

**The Law Commission**  
**Consultation Paper No 169**

**TOWARDS A COMPULSORY  
PURCHASE CODE:  
(2) PROCEDURE**

**A Consultative Report**

**London: TSO**

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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This Consultative Report, completed on 18 November 2002, is circulated for comment and criticism only. It does not represent the final views of the Law Commission.

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It would be helpful if, where possible, comments sent by post could also be sent on disk, or by email to the above address, in any commonly used format.

It may be helpful, either in discussion with others concerned or in any subsequent recommendations, for the Law Commission to be able to refer to and attribute comments submitted in response to this Consultative Report. Any request to treat all, or part, of a response in confidence will, of course, be respected, but if no such request is made the Law Commission will assume that the response is not intended to be confidential.

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**THE LAW COMMISSION**

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PURCHASE CODE:  
(2) PROCEDURE**

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# **PART I**

## **INTRODUCTION**

### **TERMS OF REFERENCE**

- 1.1 On 12 July 2001 the Lord Chancellor, at the instigation of the Minister for Housing and Planning in the then Department for Transport, Local Government and the Regions (DTLR), approved terms of reference for the Law Commission in the following terms:

To review the law (legislation, case law and common law rules) relating to compulsory purchase of land and compensation, with particular regard to

- (i) The implementation of compulsory purchase orders
- (ii) The principles for the assessment of compensation on the acquisition of land
- (iii) Compensation where compulsory purchase orders are not proceeded with
- (iv) Compensation for injurious affection

and to make proposals for simplifying, consolidating and codifying the law.

As part of the Review, the Law Commission will give priority to consideration of the rules relating to the disregard of changes in value caused by the scheme of acquisition.

### **SCOPE OF THIS PROJECT**

- 1.2 On 24 July 2002 the Commission published a Consultative Report directed to items (ii) and (iv).<sup>1</sup> We will refer to that report as the “Compensation Report”. The background to that report, and the issues covered, are explained in the Introduction. The present project is directed to the remaining items in the terms of reference: (i) implementation of compulsory purchase orders, and (iii) compensation where compulsory purchase orders are not proceeded with (“abortive orders”). We will refer to this as the “Procedure Report”.
- 1.3 In addition, for the reasons explained in the Compensation Report,<sup>2</sup> we have included in the matters to be covered by the present report, in agreement with the Office of the Deputy Prime Minister (ODPM), the subject of making and authorisation of compulsory purchase orders.

<sup>1</sup> Towards A Compulsory Purchase Code: (1) Compensation, Consultation Paper No 165.

<sup>2</sup> Compensation Report, paras 1.24-5.

## **GOVERNMENT POLICY**

### **CPPRAG Review**

- 1.4 The reference arose out of a recommendation of the Compulsory Purchase Policy Review Advisory Group (“CPPRAG”), established by the then Department of the Environment, Transport and the Regions (“DETR”). Their Final Report (referred to in this Report as the “CPPRAG Review”) was published in July 2000.<sup>3</sup>
- 1.5 The CPPRAG Review commented that the law had become “an unwieldy and lumbering creature”; they found “the existing legislative base . . . complex and convoluted” and requiring simplification and codification.<sup>4</sup> The problem was seen as lying partly in the fact that the legislation was derived from 1845<sup>5</sup> or earlier, and that:

Even where the provisions of that Act have been subject to later amendment or re-enactment, the Victorian concepts and antiquated phraseology have often been carried forward, leading inevitably to difficulties in interpretation, or even comprehension.<sup>6</sup>

- 1.6 The CPPRAG Review made a number of recommendations for detailed improvement of the law. The first of these proposed a direct role for the Law Commission in preparing new legislation “consolidating, codifying, and simplifying the law”.<sup>7</sup> It added:

In framing the new statute, particular care should be taken to bring the language up to date and to standardise procedures except where that would create difficulties of its own. The new statute(s) should set out procedures as well as a clearly defined Compensation Code.

### **Law Commission Scoping Paper**

- 1.7 In December 2000, following discussion with the Law Commission, the DETR and the Lord Chancellor’s Department (“LCD”) approved terms of reference for a preliminary study to identify the likely features of such a project. In March 2001 the Law Commission published a preliminary paper (“the Scoping Paper”). This included a draft framework for a new Code, and discussion of the main issues and a suggested programme for further work.<sup>8</sup> The Law Commission’s proposals were generally accepted by the DETR, and were reflected in the terms of reference set out above.

<sup>3</sup> *Fundamental Review of the Laws and Procedures relating to Compulsory Purchase and Compensation: Final Report* (July 2000). Its publication was announced in a Parliamentary Answer by the Minister (Nick Raynsford MP) on 27<sup>th</sup> July 2000. Government invited views on the report which would be taken into account in preparing the Government’s response.

<sup>4</sup> CPPRAG Review, p 7 para iii.

<sup>5</sup> The Lands Clauses Consolidation Act 1845 (largely re-enacted in the Compulsory Purchase Act 1965) remains the foundation for much of the law.

<sup>6</sup> CPPRAG Review, para 20.

<sup>7</sup> CPPRAG Review, para 24.

<sup>8</sup> *Compulsory Purchase and Compensation: a Scoping Paper* (Law Commission, March 2001). The text is available on the Law Commission’s web-site ([www.lawcom.gov.uk](http://www.lawcom.gov.uk)).

## **The DTLR Policy Statement**

- 1.8 The Government's response to the CPPRAG Review and its proposals for reforming the law were contained in a Paper published by the DTLR (as successor to DETR), in December 2001.<sup>9</sup> It accepted that "the most basic step" in the process of modernisation would be to "consolidate, codify and simplify the legislation as soon as the opportunity arises" and undertook to work with the Law Commission to achieve this.<sup>10</sup> It indicated that the Law Commission would be producing a Consultative Report (later to become two Reports, one on Compensation and one on Procedure) setting out proposals to codify and consolidate the existing legislation. Detailed proposals were made in relation to most of the issues raised by the CPPRAG Review. Although further responses were invited on certain issues (see below), it is clear from the Minister's introduction that it was regarded as representing a firm policy statement on most matters.<sup>11</sup>
- 1.9 The Paper identified four particular issues on which further responses were invited:
- (1) A time limit for submitting compensation claims;
  - (2) A time limit for reference of compensation disputes to the Lands Tribunal;
  - (3) Provision for appointment of an "independent complaints adviser"; and
  - (4) A statutory duty to provide accommodation works<sup>12</sup>.
- 1.10 It also indicated that in its Consultative Reports the Law Commission would be seeking views on a number of issues, including awarding compensation where a compulsory purchase order is not implemented.<sup>13</sup>

## **ODPM Policy Response Document**

- 1.11 Following expiry of the consultation period on the Policy Statement, the ODPM, as successor to the DTLR for planning-related functions, published its Policy Response Document in July 2002.<sup>14</sup> That document set out the Government's

<sup>9</sup> *Compulsory Purchase and Compensation: delivering a fundamental change* (DTLR, December 2001) (referred to in this report as the "Policy Statement"). It was published as one of three 'daughter' documents under the aegis of the Planning Green Paper *Planning: delivering a fundamental change*, and sets out "the Government's proposals for change" (pp 7-33), followed by an Appendix "Background to proposals and response to CPPRAG" (pp 39ff).

<sup>10</sup> Policy Statement, pp 3 and 11.

<sup>11</sup> Policy Statement, foreword by Lord Falconer, Minister for Housing, Planning and Regeneration.

<sup>12</sup> Accommodation works are designed ordinarily to mitigate the effect of compulsory purchase and, in particular, severance, injurious affection and disturbance. Works may involve the building of bridges, tunnels or underpasses to connect severed portions of land; the relocation of services (such as sewers or drains) or accesses or the replacement of amenities; and the erection of fencing, walls or bunding to separate land as a safety measure or to reduce noise or visual intrusion. The Commission considered the effect of such works in its Compensation Report at Part V on Core Principles at para 5.8.

<sup>13</sup> Policy Statement, para 4.21 and App para 3.76. We deal with that issue later in this Report in the context of Abortive Orders.

<sup>14</sup> Announcement made by the Deputy Prime Minister (John Prescott, MP) on 18<sup>th</sup> July 2002 through an Answer to a written Parliamentary Question, following his statement to the

proposals for a simpler, fairer and quicker system and, in particular, indicated (in the context of procedure) that it is minded to legislate to achieve:

- (1) Confirmation of unopposed orders by acquiring authorities;
- (2) Consideration of objections by means of written representations where that is agreed by objectors;
- (3) The definition of dates from which various compensation entitlements arise (and, in particular, making clear that determination and valuation of assets should ordinarily occur at date of entry or date of vesting);
- (4) Affording all persons with interest in or rights over the subject land (including tenants) the right to be treated as statutory objectors and to be heard at an inquiry;
- (5) Reduction of the overall time limit for completing the compulsory purchase process following confirmation, by reducing to 18 months the period for service of notice to treat (or making a vesting declaration), and reducing to 18 months the period of effectiveness of such notice;
- (6) Increasing effectiveness of notice of entry, once served, to a maximum period of 3 months;<sup>15</sup>
- (7) Provision of compensation for actual losses where a compulsory purchase scheme does not proceed (an issue being considered by the Law Commission);
- (8) Encouragement of easier access to the Lands Tribunal, including looking at the possibility of repealing section 4 of the Land Compensation Act 1961 (“the 1961 Act”) (which presently restricts awards of costs);
- (9) Provision for confirmation of orders in stages so that difficulties relating to part of a site should not delay progress on the remainder; and
- (10) Giving all authorities powers to acquire land compulsorily for mitigation works<sup>16</sup> where such works are being prejudiced by delay in agreeing acquisition.

House of Commons on “Sustainable Communities – Housing and Planning”; *Compulsory Purchase Response Document* (ODPM, July 2002).

<sup>15</sup> The minimum period would be 2 months and the maximum 3 months under the proposal.

<sup>16</sup> This expression derives from the Policy Statement at paras 2.9, 2.10 where Government articulated its intention to legislate to create substantive rather than procedural power allowing authorities in appropriate circumstances to acquire land “needed to mitigate adverse effects of public works” and to reduce opportunity for delay. That intent was reinforced in the Policy Response Document where Government said that the power was necessary so as to provide “a back-up for authorities where mitigation works are being prejudiced by problems in acquiring land by agreement;” ( para 15(ii)).

## **CONTENT OF THIS REPORT**

- 1.12 In this second Report, we have reviewed the standard procedural steps relating to compulsory purchase orders, from their making and confirmation, through to the procedures for taking possession of land and completing purchase. We have also reviewed the limited provisions for payment of compensation where compulsory purchase orders are abandoned or withdrawn, and made proposals for a more comprehensive right to compensation for “abortive orders”.
- 1.13 As we indicated in our first Report this, in some ways, is an unusual Law Commission project. It does not fit naturally into any one of the normal categories of work – law reform, consolidation or statute law revision, but instead combines all three. Moreover, the Commission has come to this project at a relatively late stage, following a wide-ranging review carried out by CPPRAG, and extensive public consultation, following which Government policy on many issues has been settled. Against this background, we have seen our task as being to supplement, rather than duplicate, the work already done. It would not be a productive use of our time, or that of consultees, to re-open the debate on issues which have been fully addressed in that process.
- 1.14 In the context of compensation law, notwithstanding this work, certain major issues of substance were identified as requiring further work by the Commission, notably the rules relating to disregard of the scheme of acquisition.<sup>17</sup> Equally importantly, the presentation of the law needed radical overhaul. The existing law was contained in a bewildering variety of different sources, statutory and judicial, and in a form lacking either coherence or rationality. There was and is an urgent need for the principles of compensation law to be re-stated in a comprehensive Code. Our Compensation Report contains proposals designed to form the framework for such a Code.
- 1.15 The challenge with regard to procedural issues is rather different. In the first place, much of the procedural law is contained in relatively modern, self-contained statutes, which do not in themselves require substantial recasting. In particular, the rules for making and confirmation of compulsory purchase orders (derived from a 1946 statute<sup>18</sup>) were consolidated in 1981;<sup>19</sup> and the rules for the “vesting declaration procedure”, which is one of the two normal methods by which compulsory purchase is implemented, are in a self-contained statute, also of 1981.<sup>20</sup> The main challenge lies in the Compulsory Purchase Act 1965 (“the 1965 Act”), which contains the traditional rules for implementation of compulsory purchase derived largely from the early 19<sup>th</sup> century. Although the core provisions work reasonably well, parts are obsolete or outdated, and much of the language is archaic and obscure.
- 1.16 Secondly, the main elements of the procedural machinery were found by CPPRAG to be reasonably workable and well understood. Following public consultation, the

<sup>17</sup> See Terms of Reference, para 1.1 above.

<sup>18</sup> The Acquisition of Land (Authorisation Procedure) Act 1946.

<sup>19</sup> The Acquisition of Land Act 1981: see Part II, para 2.8 below.

<sup>20</sup> The Compulsory Purchase (Vesting Declarations) Act 1981: see Part II, para 2.11(2) below.

Government has adopted certain proposals for substantive reform,<sup>21</sup> but no major outstanding issues were identified by them as requiring further work by the Commission.<sup>22</sup> On the other hand, we recognise that the CPPRAG work was necessarily selective. As part of this review, we have sought to identify points of detail in the procedural statutes which were not specifically addressed by CPPRAG, or in the Government's response, but which should properly be addressed in what is intended as a "fundamental review" of the law in this area.

- 1.17 We remain strongly of the view that the ultimate aim should be the consolidation of the existing statutes, as amended, into a single Procedural Code. However, in this report, unlike the Compensation Report, we have not thought it necessary to put forward our proposals in the form of a complete draft framework "Code".<sup>23</sup> The problem is not so much the overall presentation of the legislation, but the need for selective reform, and modernisation. Accordingly, we have attempted to set the Government's proposals in the context of a coherent statement of the procedural law. In doing so, we have had two main aims: first, to provide an opportunity for public comment on additional points of detail which may require substantive reform; and, secondly, to identify those existing provisions (mainly of the 1965 Act) which, for reasons of obsolescence or archaic language, should be repealed or restated in a modern Code.
- 1.18 The scope and effect of this exercise in relation to the existing statutes can be seen in Part IX. This contains a list of the statutory provisions which have been the subject of review, indicating (with references to the text) our proposals for retention, amendment, or repeal (including those derived from the Government Policy Statements). The list includes annotations to distinguish between proposals for substantive reform and those for modernisation of language or form.
- 1.19 This will not complete the task of modernisation. Once these reforms have been achieved, there is still a major task of consolidation to be carried out in order to achieve a unified Code. However, our proposals, if implemented will clear away much of the dead wood, and provide the basis for a modern Code. Completion of the task will depend on the availability of resources at the Commission and the Department (particularly of Parliamentary Counsel), and Parliamentary time.

### **Omissions**

- 1.20 We have omitted from our review the following aspects of compulsory purchase procedure (for the reasons stated in the text).

### ***Special cases***

- 1.21 Special procedures apply where there is intention to acquire the following categories of land:

<sup>21</sup> See generally the Policy Statement and Policy Response referred to above. In this report, we will identify and explain the individual proposals as they arise.

<sup>22</sup> Other than "Abortive orders", which, although covered by this report, is more naturally seen as part of the Compensation Code: see Part VIII below.

<sup>23</sup> Cf Compensation Report, Part XI.

- (1) Land of statutory undertakers;
- (2) Local authority-owned land;
- (3) National Trust land;
- (4) Common, open space and allotment land;
- (5) Listed buildings and land within conservation areas;
- (6) Burial grounds; and
- (7) Ecclesiastical property.

1.22 In each of these cases,<sup>24</sup> special rules relate to authorisation under the Acquisition of Land Act 1981, (“the Acquisition Act”)<sup>25</sup> and implementation under the 1965 Act.<sup>26</sup> We understand that these are to be subject to separate review by Government.<sup>27</sup>

### ***Minerals Code***

1.23 The Acquisition Act, in section 3 and Schedule 2, contains a special minerals code which re-enacts parts of the Railways Clauses Consolidation Act 1845. This matter falls outside our terms of reference but, again, is likely to be the subject of separate review by Government.

### ***Lands Tribunal procedure***

1.24 In the Scoping Paper we drew attention to the fact that the CPPRAG Review had not proposed any major change in the structure of the legislation for determination of compensation through the Lands Tribunal. We referred to the views of the President of the Tribunal (George Bartlett, QC) as to the desirability of repealing sections 2 to 4 of the 1961 Act.<sup>28</sup> Procedural reforms can for the most part be dealt with by Rules (or Practice Directions) made under existing powers.<sup>29</sup>

1.25 The Government has commented on section 4. The DTLR addressed the issue in its Policy Statement:

As CPPRAG explained, section 4 of the Land Compensation Act 1961 provides that where an acquiring authority have made an

<sup>24</sup> Discussed fully in *Butterworths Compulsory Purchase and Compensation Service*, (1<sup>st</sup> ed, 1999), (“*Butterworths*”) at C[601]ff.

<sup>25</sup> See ss 16-22 on special kinds of land and special Parliamentary procedure; s 28 and Sched 3 on acquisition of new rights over special kinds of land (statutory undertakers’ land, local authority land, National Trust land, common land).

<sup>26</sup> See s 21 and Sched 4 on common land; s31 on ecclesiastical property.

<sup>27</sup> A review is presently in hand by Government in connection with statutory undertakers: see Policy Statement, App paras 2.4, 2.5.

<sup>28</sup> The President’s reasoning is set out in our Scoping Paper at paras 46, 47.

<sup>29</sup> Lands Tribunal Act 1949, s 3(11). Repeals would need primary legislation, or possibly an order under the Regulatory Reform Act 2001.



unconditional offer of compensation in writing and the sum awarded by the Tribunal does not exceed that sum, the Tribunal has no alternative but to order the claimant to bear his own costs and pay those of the acquiring authority so far as they are incurred after the offer has been made. This provides a strong disincentive to claimants where the sum at stake may be less than the potential costs which could be awarded against them. We therefore see a case for repealing section 4 in order to allow the Lands Tribunal full discretion as to costs in all cases.<sup>30</sup>

1.26 In its most recent Policy Response Document the ODPM said

We remain committed to the need to remove the obstacles currently deterring claimants from making full use of the Tribunal's expedited procedures and, to this end, confirm that we will pursue the possibility of repealing section 4 of the Land Compensation Act 1961 insofar as it fetters the Tribunal's discretion as to the award of costs in all cases.

1.27 This is not part of our present reference, and accordingly we have not considered the issue in detail for the purposes of this report.

#### ***The Lands Clauses Consolidation Act 1845***

1.28 Much of the 1965 Act was based on the Lands Clauses Consolidation Act 1845 ("the 1845 Act"), even to the extent that whole sections were lifted wholesale into the later Act with very little modification. The rationale for that was that the 1964 Bill's main object was to consolidate the Lands Clauses Acts<sup>31</sup> as applied by the (then) Acquisition of Land (Authorisation Procedure) Act 1946, ("the 1946 Act"), incorporating the modifications introduced by that Act. It was recognised at the time that the Lands Clauses Acts would remain on the statute book (subject to certain repeals driven by the need for statute law revision), although "they will constitute a code of which little use will be made."<sup>32</sup>

1.29 Three principal obstacles appeared to prevent full consolidation:

- (1) The 1845 Act was partly adoptive and partly not. So far as it was adoptive, it had been adopted with innumerable variations of modification by a long series of Acts both public general and local. Moreover, the 1845 Act was automatically incorporated (and not simply applied) unless it was specifically excluded in the special Act;

<sup>30</sup> Policy Statement para 3.13 ("to repeal section 4 of the Land Compensation Act 1961 so as to allow the Lands Tribunal full discretion as to the award of costs in all cases") and App para 2.32.

<sup>31</sup> The Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, provides that in any Act passed after the commencement of that Act, unless the contrary intention appears, the above expression shall mean, as respects England and Wales, the following Acts: the Lands Clauses Consolidation Act 1845, the Lands Clauses Consolidation Acts Amendment Act 1860 and any Acts for the time being in force amending the same.

<sup>32</sup> Notes on Clauses in the Compulsory Purchase Bill 1964.

- (2) Many of the 1845 Act's provisions had been overtaken, without being repealed, by the property legislation of 1925; and
- (3) At some of the most important points the 1845 Act proceeded by inference rather than by specific enactment. Thus, instead of conferring a right to compensation, it assumed the existence of such right and concentrated on the method of assessing the amount (which meant that case law had filled the gaps and would need to be codified – a task outside the then scope of consolidation).

These concerns gave rise to the fear that repealing the 1845 Act would lead to errors of inadvertent omission, and consequently alteration, of the present law.

- 1.30 Today the problem remains. In the Scoping Paper we suggested that the 1845 Act should finally be repealed. The alternative view is that it is safer to leave well alone, and that the possibility of unanticipated alterations to the law remains, particularly in relation to local statutes which have incorporated the 1845 Act. Either way, it is not a priority task. Since the 1845 Act has very limited application, cases will rarely arise where the courts will need to intervene. Moreover, those private or local Acts which have incorporated the 1845 mechanisms for particular works or projects will almost certainly have been time-limited in their operation.
- 1.31 We would prefer to see the 1845 Act repealed as a whole, but we accept that there are practical reasons for a less radical solution. The ODPM likewise feels that wholesale repeal could give rise to significant and unforeseen complications. Accordingly, we are not making any specific proposals in relation to the 1845 Act.

### ***Transport and Works Act 1992***

- 1.32 The Transport and Works Act 1992 (“the 1992 Act”) provides an alternative procedure for bodies seeking to construct transport and other works which (prior to that Act) would have had to be authorised by private Bill. That procedure includes the obtaining of authorisation for the acquisition of land both by agreement and under compulsory power.
- 1.33 The 1992 procedure is not part of the present reference. Our present proposals do not affect the way in which the 1992 Act operates, nor do they seek to create a unified compulsory purchase code in that respect. The principal reasons for this are:
  - (1) That ODPM presently has in progress a review of the 1992 Act and its procedures; and
  - (2) An order made under the 1992 Act will embrace a range of issues (eg the grant of planning consent) which go beyond simply compulsory acquisition of land. The 1992 Act procedure, and the bodies which use it, need that flexibility of approach and it would not be appropriate to review one component in the package in isolation from the others.

## SUMMARY OF CONTENTS AND MAIN RECOMMENDATIONS

- 1.34 In this Report we review the existing legislation relating to procedure, taking account of the Government's proposed reforms. We make some additional proposals for substantive reform and modernisation. We also invite comments from consultees on any other aspects which may require attention as part of a "fundamental review".
- 1.35 In **Part II** we outline the main features of the existing law and its sources. We refer to the Compensation Report for a fuller description of the background history. The following Parts contain a subject-by-subject review of the law, broadly following the main stages in the process from making of the order to implementation. The division between the existing statutes does not in the main follow this logical sequence. Accordingly, we deal with the statutory provisions as they arise in the discussion, rather than necessarily following the order of the statutes themselves. However, in Part IX ("Treatment of existing provisions"), we provide a key, in the form of a list of the provisions in each relevant statute, cross-referenced to the proposals and discussion in the text.
- 1.36 **Part III – General issues** This Part discusses matters of general relevance to the procedural statutes:-
- (1) *Application of procedural statutes* We note the apparent difference between the 1961 Act, which is of universal application; and the more selective application of the 1965 Act and the Acquisition Act. There appear to be no policy reasons for the difference. We make no proposals for change at this stage. The ultimate goal should in principle be a comprehensive procedural code of universal application; any exceptions should be identified and justified as such.
  - (2) *Basic definitions* We comment briefly on three statutory concepts which are basic to the procedures:-
    - (a) *Acquiring and confirming authorities* The definition of "acquiring authority" is wide enough to cover all bodies, public or private, on whom powers of compulsory acquisition are conferred by statute. The identity of the "confirming authority" depends on the statutory context. The Government has made proposals to enable acquiring authorities to confirm their own unopposed orders.
    - (b) *Land* There is a confusing variety of definitions of "land", which does not appear to cause practical difficulties, but should be rationalised in a consolidation.
    - (c) *Service of documents* The procedural mechanics, in the various statutes, for identifying interests in the subject land, and serving notices, are discussed. Again, there is room for rationalisation, although the differences do not appear to cause practical difficulties. We note the Government's proposals to extend

“statutory objector status”<sup>33</sup> to those with no more than a right over the land; and the consequential need for amended rules for service on such interests. We make a proposal for that purpose.

- (d) *Entry for survey* We note the existing powers of entry for the purposes of preliminary survey, under section 11(3) of the 1965 Act and (for local authorities) section 15 of the Local Government (Miscellaneous Provisions) Act 1976, (“the 1976 Act”). We make no proposals for change, but invite comments.

1.37 **Part IV – Authorisation of compulsory purchase** This Part discusses the procedure for making and authorisation of compulsory purchase orders, under the Acquisition Act. We suggest generally that these provisions could be incorporated in a modern code without substantial change, subject to certain points:

- (1) The present distinction between procedures for Ministerial and non-Ministerial orders seems an unnecessary complication, which could be removed in a future consolidation;
- (2) We note the Government’s proposals for extension of statutory objector status, and for confirmation of unopposed orders by acquiring authorities, and for confirmation of orders in stages; and
- (3) We discuss the statutory procedure and powers of the court on challenges to the validity of an order. We note that at present the grounds for challenge relate to the validity of *the order*, and that the court is obliged, on a successful challenge, to quash the whole order from its inception. We propose that, in line with the corresponding procedure under other similar Acts, the grounds for challenge should relate, not to the order, but to the *decision of the confirming authority* (whether to approve or reject the order); and that the court should have power to quash that decision (or make such other order as is appropriate to the grounds upheld).

1.38 **Part V – Implementation procedures** This Part looks at the alternative steps to be taken by authorities to initiate the process for settling compensation, to obtain physical possession, and to secure title to the subject land. We start by addressing the time limits for each stage of the process:

- (1) We note the Government’s intention to retain *two alternative methods* for implementing an approved order: notice to treat and vesting declaration;<sup>34</sup>
- (2) We consider the Government’s proposals for *revised time limits* under both procedures, and make proposals to give them effect;
- (3) We review the main stages in the *notice to treat* procedure:
  - (a) Formalities of notice to treat;

<sup>33</sup> See Part II, para 2.9(2) below.

<sup>34</sup> We propose the repeal of the obsolete procedure in Schedule 3 to the 1965 Act.

- (b) Notice of entry;
  - (c) Completion of purchase;
  - (d) Deed poll procedure;
  - (e) Missing interests; and
  - (f) Persons with limited powers;
- (4) We make proposals for a new *deed poll procedure*, and for a new provision for owners who are untraced, or unable or unwilling to act. We propose the repeal of Schedule 1 to the 1965 Act (persons with limited powers). Subject to those changes, and to simplification of the language in a future consolidation, we make no further proposals, but invite comments on any practical problems which should be addressed; and
- (5) We review the rules for the *vesting declaration procedure*. We raise a question as to the effect of a vesting declaration on existing rights such as easements. Subject to that, we suggest that, as a relatively modern procedure, the existing provisions could be incorporated in a future consolidation without substantial amendment.

1.39 **Part VI – Particular interests** This Part deals with particular categories of interest which require special treatment:

- (1) *Lesser interests*
- (a) *Minor tenancies* We review the rules, under respectively the notice to treat and vesting declaration procedures, for minor tenancies (such as for a year to year or less). They enable the authority, rather than “acquiring” such interests, to rely on the contractual provisions for termination. There are some differences between the two procedures. We propose that they should be brought into line, and the archaic language of the 1965 Act restated in modern form; and
  - (b) *Easements and other private rights* We make proposals to clarify the law relating to interference with easements or other rights over the subject land, including a new power for the authority to elect whether to “override” the rights (to the extent necessary to allow the proposed works and use)<sup>35</sup> or to “extinguish” them altogether;
- (2) *Divided interests* Where part of a building or holding is subject to compulsory purchase, the owner may in certain circumstances compel the authority to take the whole. We review and compare the existing provisions relating to notice to treat procedure (1965 Act, section 8) and

<sup>35</sup> This would remove the uncertainty created by the distinction drawn in some cases between the *erection* of the works and their *use*: see *Thames Water Utilities v Oxford City Council* [1999] 1 EGLR 167 (see Part VI, para 6.21 below).

vesting declarations (Compulsory Purchase (Vesting Declarations) Act 1981, (“the Vesting Declarations Act”), section 12, Schedule 1), and note the separate rules for agricultural land (Land Compensation Act 1973, (“1973 Act”), sections 53-57). We discuss the comments of CPPRAG and the ODPM on possible reforms. We make proposals for a revised, unified set of rules for a “divided property notice”, applicable to both procedures; and suggest an extension of the existing right to enable such a notice to be served by any owner whose retained land, as a result of the acquisition, cannot reasonably be used for the previous purpose;

- (3) *Mortgages and rentcharges* We propose that the existing provisions of the 1965 Act should be retained without substantive amendment, but invite comments; and
- (4) *Public rights of way* We note the existence of a special procedure for extinguishment of rights of way over land subject to compulsory acquisition, but propose no change.

1.40 **Part VII – Supplementary provisions** Here we review incidental issues relevant to implementation under both notice to treat and vesting declaration procedures:

- (1) *Limitation* We make proposals for rationalising the limitation periods applicable to determination and recovery of compensation. We consider separately the position as it is now (under the Limitation Act 1980), and as it would be under the recommendations of the Law Commission for reforming the law of limitations generally;<sup>36</sup>
- (2) *Unauthorised entry and omitted interests* We propose the repeal of section 12 of the 1965 Act (penalty for unauthorised entry). We discuss the existing rules for dealing with omitted interests, and propose no substantive change;
- (3) *Refusal to give possession* We recommend the retention of the provision for the authority’s right of entry to be enforced by warrant to the sheriff, but propose a restatement in more modern form.<sup>37</sup> We suggest that the sheriff’s costs should be payable by the authority, subject to the power to recover them (or deduct from compensation) from the person refusing possession;
- (4) *Distress* We suggest that the special rules of the 1965 Act for levying distress are obsolete and should be repealed;
- (5) *Payments into and out of court* We summarise the rules of the 1965 Act relating to money paid into court. In view of their limited significance in modern practice, they could be considerably shortened and simplified. We suggest the inclusion of a provision to the effect that the costs incurred in connection with such payments be paid by the authority, save as the court

<sup>36</sup> Limitation of Actions: Law Com No 270 (June 2001).

<sup>37</sup> We note that this proposal is subject to the Government’s current review of civil enforcement procedures.

may otherwise order. We make a proposal to this effect and invite comments thereon;

- (6) *Costs* We propose replacing section 23 of the 1965 Act by a simple provision by which all reasonable costs incurred in completing the purchase will be borne by the authority; and
- (7) *Local land charges* We note and adopt the Government's proposal that the making of a compulsory purchase order should be registrable as a local land charge, and that the main steps in the process should be included in the register.

1.41 **Part VIII – Abortive Orders** This Part addresses the rights of claimants where an order is not confirmed or is not proceeded with (for whatever reason) after the first notice date. In line with the policy approach of the Government, we make proposals for a new right to compensation for “abortive orders”.

1.42 **Part IX – Treatment of existing provisions** We provide a key, in the form of a list of the provisions in each relevant statute, cross-referenced to the proposals and discussion in the text, to show the effects of our proposals on these provisions.

1.43 **Part X** - Our Proposals and Consultation Questions

1.44 **Part XI** – Conclusion including our impact assessment

1.45 The **Appendices** comprise:-

- (1) Glossary and abbreviations for statutes;
- (2) Selected extracts from English statutes:
  - (a) Land Compensation Act 1961, (“the 1961 Act”);
  - (b) Compulsory Purchase Act 1965, (“the 1965 Act”);
  - (c) Land Compensation Act 1973, (“the 1973 Act”);
  - (d) Local Government (Miscellaneous Provisions) Act 1976, (“the 1976 Act”);
  - (e) Acquisition of Land Act 1981, (“the Acquisition Act”);
  - (f) Compulsory Purchase (Vesting Declarations) Act 1981, (“the Vesting Declarations Act”); and
  - (g) Town and Country Planning Act 1990, (“the 1990 Act”);
- (3) Acknowledgements; and
- (4) Select bibliography.

# **PART II**

## **THE EXISTING LAW AND THE NEW CODE**

### **INTRODUCTION**

- 2.1 The existing law is best understood in its historical context, which dates back to the early part of the 19<sup>th</sup> century. In Part II of our Compensation Report<sup>1</sup> we summarised the historical development of the law of compulsory purchase, and the main sources of the current law. Readers are encouraged to refer back to that report for this material. It illustrates the derivation and scope of the principal compulsory purchase enactments (procedure and compensation) and how they have been construed judicially.

### **THE LAW TODAY**

- 2.2 We believe that it will be helpful to summarise the main sources of the law, as it stands before the present reform proposals, and to give an indication of the extent and nature of its use in practice.
- 2.3 Before we do so, it is helpful to note the extent to which the law on compulsory purchase in its current state is unsatisfactory: a Study undertaken by the City University for the then DETR in 1997<sup>2</sup> found that 63% of owners were dissatisfied with the compulsory purchase process and that 60% found the experience to be stressful. It took an average of thirty months for acquiring authorities to reach the stage of deciding to make a compulsory purchase order and a further twenty months for the order to be confirmed. This was followed by widely varying periods from just under two years to seven years for authorities to reach the point of taking possession, with a further average wait of over two years for compensation claims to be settled.

### **Sources of the current law**

- 2.4 The sources of the current law are most conveniently considered under separate heads:
- (1) Powers of compulsory purchase;
  - (2) Making and authorisation;
  - (3) Implementation;
  - (4) Determination of compensation; and
  - (5) Compensation rules.

<sup>1</sup> Compensation Report, Part II, The Existing Law: The Historical Context.

<sup>2</sup> *The Operation of Compulsory Purchase Orders: Land Use, Minerals, Land Instability and Waste Planning Research Programme* (DETR, December 1997) para 4.84. This was a detailed study of the system of compulsory purchase, commissioned by DETR from the City University Business School. It is probably the most comprehensive and authoritative modern account of the workings of the system in practice.



### **(1) Powers of compulsory purchase**

2.5 The vast majority of compulsory acquisitions are made under powers granted by numerous general Acts, for the purposes of functions of public authorities or utilities.<sup>3</sup> It is not part of our terms of reference to review these powers. The Government has announced its intention to supplement them by new powers which would:

enable local planning authorities to exercise compulsory purchase powers for a full range of planning and regeneration purposes, including halting the physical, economic and/or social deterioration of an area.<sup>4</sup>

2.6 Until recently it was common practice for transport and other similar undertakings to promote Private or Local Bills to authorise particular projects.<sup>5</sup> However, their use has become less important, since the 1992 Act enabled compulsory powers to be obtained without recourse to Parliament in most cases.

2.7 There appear to be no detailed, up to date statistics of the numbers of orders promoted under different powers. The 1997 City University study for the DETR, showed an annual average of 255 orders over the preceding three and a half years, broken down between Housing, Planning, Local Roads, Trunk Roads and Motorways, and Public Utilities.<sup>6</sup> The figures relate solely to acquisition of land, as such. Thus, for example, the figures for public utilities do not include powers obtained for the acquisition of rights in land, such as wayleaves for electricity lines or easements for pipelines.<sup>7</sup>

### **(2) Making and authorisation**

2.8 The law relating to the making and confirmation of compulsory purchase orders is in the Acquisition Act, and regulations made under it.<sup>8</sup> The Act contains separate (but substantially similar) sets of rules for orders promoted respectively by ministerial and non-ministerial authorities. It contains special rules for particular categories of land, such as land of local authorities or statutory undertakers, National Trust land or commons. It also contains an exclusive procedure for court challenges to the validity of orders.

<sup>3</sup> A list of statutes conferring compulsory powers, taken from *Butterworths*, Division B, Chapter 1.F, is reproduced as Appendix 2 to the Compensation Report.

<sup>4</sup> Policy Statement, p 13, para 2.10; Policy Response Document, para 7.

<sup>5</sup> For example: the Channel Tunnel Act 1987, the London Underground (Victoria) Act 1991, the London Docklands Railway Act 1991, the Croydon Tramlink Act 1994.

<sup>6</sup> *The Operation of Compulsory Purchase Orders*, para 1.21. The figures show the following annual average proportions, based on the annual average of 255 orders, between the categories: Housing (86); Planning (58); Local Roads (94); Trunk Roads and Motorways (13); and Public Utilities (3).

<sup>7</sup> *Ibid*, para 1.5. CPPRAG commented on the “inconsistencies caused by the wide variations in the powers available to the different suppliers” and recommended further work to standardise them: *op cit*, paras 209, 218.

<sup>8</sup> Compulsory Purchase of Land Regulations 1994, SI 1994 No 2145. Procedure at inquiries held under the Act is governed by rules made under the Tribunals and Inquiries Act 1971; see e.g. the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990, SI 1990 No 512.

2.9 The procedure in outline is as follows:

- (1) Authorisation of compulsory purchase is conferred by a compulsory purchase order, which is *made* by the acquiring authority and *confirmed* by the relevant Minister (“the confirming authority”).<sup>9</sup> The order must be in the prescribed form, including a description of the land by reference to a map, and a statement of the purpose for which the land is required.<sup>10</sup> Notices of the making of the order must be published in local newspapers, and served on owners and occupiers (other than tenants for less than a month).<sup>11</sup>
- (2) All those served with, or entitled to service of, a notice (“statutory objectors”<sup>12</sup>) have the right to object or make representations within the time specified by the notice. Other objections or representations may be received by agreement with the acquiring authority or at the discretion of the confirming authority. Objections may be disregarded if they relate exclusively to issues of compensation.<sup>13</sup> A public inquiry or hearing must be held for objections by statutory objectors, but is discretionary in other cases.<sup>14</sup>
- (3) After consideration of the objections, and the report of the inquiry or hearing, the order may be confirmed by the confirming authority, with or without modifications (but not, except by agreement, so as to extend the area of land taken).<sup>15</sup> Notices of confirmation must be published, and served as under (1).<sup>16</sup>

<sup>9</sup> Acquisition Act, s 2. Ministerial orders follow a similar procedure, save that (instead of being “made” and then “confirmed”), they are initially “prepared in draft” and then (following publication and objections) “made”: *ibid*, Schedule 1, para 1.

<sup>10</sup> The standard prescribed form is Form 1 in the Schedule to Compulsory Purchase of Land Regulations 1994, SI 1994, No 2154 (as amended by SI 1996, No 1008).

<sup>11</sup> Acquisition Act, ss 11, 12. Publication of the notice of making is the second prescribed step in the compulsory purchase process. Resolution to make an order is not governed by the compulsory purchase legislation, but the form in which the order is made is prescribed in the Compulsory Purchase of Land Regulations 1994. In the Compensation Report, we take the date of publication of notice of making as “the first notice date”. This date is the proposed starting date for compensation payment: see Part III, para 3.8 and Part IV, para 4.65.

<sup>12</sup> The term “statutory objector” is not used in the Acquisition Act itself. The term appears in the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990, defined as “any objector to whom the Secretary of State is obliged by virtue of section 13(2) [of the Acquisition Act] to afford an opportunity to be heard”: see SI 1990 No 512 r 2. In effect, “statutory objector” status is given to any person who is entitled, by virtue of his interest or right over the land, to notice of the making of the order under section 12 of the Acquisition Act, and makes an objection in accordance with the notice.

<sup>13</sup> *Ibid*, s 13(4).

<sup>14</sup> *Ibid*, ss 13(2), 13(3).

<sup>15</sup> *Ibid*, ss 13, 14.

<sup>16</sup> *Ibid*, s 15.

- (4) There is a statutory right to challenge the order on legal grounds in the Courts within 6 weeks of publication of the notice of confirmation.<sup>17</sup> Otherwise, the validity of the order is immune from challenge in legal proceedings.<sup>18</sup>

### **(3) Implementation**

- 2.10 The procedures for implementing compulsory purchase orders following confirmation, are largely contained in the 1965 Act. In particular, this reproduces the equivalent provisions of the 1845 Act, with more recent amendments relating to the notice to treat procedure and entry on land in advance of the determination of compensation. The alternative vesting declaration procedure is covered by the Vesting Declarations Act.
- 2.11 In the result, there are two alternative ways by which an acquiring authority may secure title to land, once the Compulsory Purchase Order (CPO) has ministerial confirmation: by *notice to treat* and by *vesting declaration*.<sup>19</sup>
- (1) The *notice to treat* procedure involves service of a statutory notice on each affected landowner to initiate the process of agreeing or determining compensation. Title does not pass to the authority until compensation has been settled, but the authority may take possession in the meantime by serving notice of entry.<sup>20</sup> The land is valued at the date of entry (or the date of determination of compensation if earlier) and interest runs from that date.

The purpose of service of notice to treat is threefold:

- (a) To inform interested persons that the acquiring authority intends to proceed to exercise its powers of compulsory purchase for the subject land;
- (b) To obtain particulars of the recipients' interest in the land and of the compensation to be claimed; and
- (c) To tell the relevant parties that the authority is willing to negotiate on the compensation "to be made for the damage which may be sustained by reason of the execution of the works."<sup>21</sup>

The notice to treat route encompasses two separate stages. The purpose of notice of entry as the second stage (served after, or at the same time as, notice to treat) is:

<sup>17</sup> *Ibid*, s 23.

<sup>18</sup> *Ibid*, s 25.

<sup>19</sup> The Policy Statement has accepted the CPPRAG recommendation that, in the interests of flexibility, both procedures should be retained: Policy Statement, App, para 2.28.

<sup>20</sup> 1965 Act, s 11(1).

<sup>21</sup> 1965 Act, s 5(1),(2).

- (a) to give notice to the owner, lessee and occupier of subject land that the authority will be entering that land;
  - (b) to validate such entry at the end of the prescribed period, notwithstanding non-payment of compensation at that juncture; and
  - (c) to act as a preliminary step to enforcing entry by warrant if entry is then denied.<sup>22</sup>
- (2) The more recent *vesting declaration* procedure enables the authority, after confirmation, to make a declaration, vesting in itself title and authorisation to enter after expiry of a defined period (not less than 28 days) from the service of a notice on those affected. Title passes on the date so fixed, whether or not compensation has been settled.<sup>23</sup>

The purpose of a vesting declaration is to short-circuit the lengthier process of notice to treat followed by notice of entry. Execution of a general vesting declaration is (after preliminary notice) a single-step process which vests title to subject land automatically in the acquiring authority without need for formal conveyance or investigation of title. The acquired interests convert into compensation rights, and right of entry is immediate against all interest holders except those with minor tenancies. We are given to understand that today the procedure is used extensively by acquiring authorities. It has the added advantage that it effects transfer of title where identifying ownership of land would otherwise be problematic.<sup>24</sup>

- 2.12 The 1965 Act and the Vesting Declarations Act also contain provisions enabling the owner of land partly included within an order, to compel the purchase of the whole.<sup>25</sup> These have been supplemented by provisions of the 1973 Act.<sup>26</sup>

#### **(4) Determination of compensation**

- 2.13 The 1961 Act requires unresolved issues of compensation to be referred to the Lands Tribunal.<sup>27</sup> The constitution and jurisdiction of the Tribunal, and procedures before it, are governed by the Lands Tribunal Act 1949, and rules made under it.<sup>28</sup>

#### **(5) Compensation rules**

- 2.14 The law relating to compensation, as it exists today, represents a complex amalgam of statute law and judicial interpretation. The principal statutory sources are:

<sup>22</sup> 1965 Act, s13(1). See Part VII, para 7.27 below.

<sup>23</sup> Vesting Declarations Act, s 4.

<sup>24</sup> See Barry Denyer-Green, *Compulsory Purchase and Compensation* (6<sup>th</sup> ed, 2000), p 96.

<sup>25</sup> 1965 Act, s 8; Vesting Declarations Act, s 12 and Schedule 1, para 2.

<sup>26</sup> 1973 Act, s 53ff.

<sup>27</sup> 1961 Act, s 1.

<sup>28</sup> See Lands Tribunal Rules 1996, SI 1996 No 1022.

- (1) the 1961 Act;
- (2) the 1965 Act;<sup>29</sup>
- (3) the 1973 Act;
- (4) the Acquisition Act;

The relevant provisions are discussed in detail in the Compensation Report.

<sup>29</sup> Or, where it applies, the equivalent provisions of the 1845 Act (ss 63, 68, 121).

# **PART III**

## **GENERAL ISSUES**

### **INTRODUCTION**

- 3.1 In this Part we discuss certain general issues, before outlining the procedures for arriving at a confirmed compulsory purchase order.
- 3.2 The general issues are:
- (1) Application of procedural statutes;
  - (2) Basic definitions:
    - (a) Acquiring and confirming authorities; and
    - (b) Land;
  - (3) Service of documents; and
  - (4) Entry for survey.

### **(1) APPLICATION OF THE PROCEDURAL STATUTES**

- 3.3 In our Compensation Report, we envisaged that the new Compensation Code should in principle be of universal application following compulsory purchase under any statute. Such an approach would largely follow that of the 1961 Act. Section 1 of that Act, which provides for disputed compensation to be referred to the Lands Tribunal, applies:

... where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily...<sup>1</sup>

- 3.4 By contrast the Acquisition Act is on its face more limited in scope. (The 1965 Act has the same scope as the Acquisition Act.<sup>2</sup>) It applies to any compulsory purchase “to which this Act applies by virtue of any other enactment, whether or not passed or made before this Act”, or one under an enactment specified in the following subsection.<sup>3</sup> However, in practice, as a result of consequential amendments made by the Act itself,<sup>4</sup> or by later statutes, the Acquisition Act appears to cover all the main categories of compulsory purchase.<sup>5</sup> The policy reasons for any exclusions are not apparent from the Act.

<sup>1</sup> 1961 Act, s 1. See also, *ibid*, s 5 (rules for determining compensation) which applies “in respect of any compulsory acquisition...”

<sup>2</sup> 1965 Act, s 1.

<sup>3</sup> Acquisition Act, ss 1(1), (2).

<sup>4</sup> *Ibid*, Schedule 4.

<sup>5</sup> See *Halsbury's Laws*, vol 8(1), (4<sup>th</sup> ed re-issue), para 33, where some of the exceptions are noted.

- 3.5 We acknowledge that there may be categories of compulsory purchase which, because of the nature of the subject matter or for other reasons, justify different treatment. One significant category is that of orders made under the 1992 Act, under which powers, including powers of compulsory acquisition, may be obtained for transport and other infrastructure works. Under the scheme of that Act, there is no compulsory purchase order as such, but the power of compulsory purchase is one of the powers conferred by an order under the Act, and the procedure for implementation is set out in the order.<sup>6</sup> If the current proposals are enacted, we would expect them to be reflected in the model clauses for future orders under the 1992 Act. However, that would be a matter for subsequent consideration.
- 3.6 As we have explained above, we are not seeking at this stage to attempt a consolidation of all the existing procedural statutes.<sup>7</sup> Accordingly, it is unnecessary to consider how the different provisions in relation to application should be reconciled. However, if the ultimate goal is a comprehensive code, it should, in our provisional view, extend to all compulsory purchases initiated<sup>8</sup> after its commencement, under statutes (whenever passed) conferring power to acquire by compulsory purchase order. If there are to be exceptions, they should be identified and justified as such.

## **(2) BASIC DEFINITIONS**

### ***Acquiring and confirming authorities***

- 3.7 Compulsory purchase orders may be made by a wide variety of agencies, public and private. The Acquisition Act adopts a wide definition of “acquiring authority”, which, in relation to a compulsory purchase order:

... means the Minister, local authority or other person who may be authorised to purchase the land compulsorily

“Person”, by virtue of the Interpretation Act 1978, (“the 1978 Act”), includes “a body of persons corporate or unincorporate”.<sup>9</sup> Thus, given that compulsory purchase powers are exclusively statutory, the definition extends to any body on which compulsory powers are conferred by statute. We propose to adopt this terminology in this report.

- 3.8 “Confirming authority” is defined as “the Minister having power to authorise the acquiring authority to purchase the land compulsorily”. It does not apply to a Ministerial order, which is not “confirmed” as such; instead such an order is first “prepared in draft”, and then “made” by the Minister, at what would be the

<sup>6</sup> Model clauses may be prescribed by the Secretary of State: see Transport and Works (Model Clauses for Railways and Tramways) Order 1992 SI 1992 No 3270.

<sup>7</sup> Part I, para 1.17 above.

<sup>8</sup> By “initiation” we mean the publication of notice of the making of the order (“the first notice date”).

<sup>9</sup> Interpretation Act 1978, Sched 1.

confirmation stage.<sup>10</sup> As noted below, there are Government proposals for the acquiring authority to be able to confirm its own orders in certain cases, where there are no objections.<sup>11</sup> We do not think this requires any change to the basic definition, since this proposal will be covered by a separate provision.

### ***Definition of Land***

#### GENERALLY

3.9 Another basic definition is that of “land”, for which one finds a confusing variety of definitions in the different statutes:

- (1) The word “lands” shall extend to messuages, lands, tenements and hereditaments, of any tenure;<sup>12</sup>
- (2) “Land” means any corporeal hereditament, including a building as defined by this section, and includes any interest or right in or over land and any right to water;<sup>13</sup>
- (3) “Land” includes anything falling within any definition of that expression in the enactment under which the purchase is authorised;<sup>14</sup> and
- (4) “Land” – (a) includes messuages, tenements and hereditaments, and (b) in relation to compulsory purchase under any enactment, includes anything falling within any definition of the expression in that enactment.<sup>15</sup>

3.10 The differences seem to be more historical than substantial. As general definitions, they do not appear to add anything to the definition in the 1978 Act, by which “land” includes:

... buildings and other structures, land covered with water, and any estate, interest, easement, servitude, or right in or over land.

3.11 This would provide an adequate basis for a comprehensive code, although it would need to be modified to recognise (as in (3) and (4) above) any special meaning given to “land” by the enabling statute. Again this is not a priority task, and we are not aware of any practical difficulties caused by the present definitions.

<sup>10</sup> See Acquisition of Land Act, Sched 1 paras 1(2), 4. We comment below on the distinction made in the 1981 Act between the language used for Ministerial and non-Ministerial orders, respectively, and question whether it serves any practical purpose: Part IV, para 4.3ff below.

<sup>11</sup> See Part IV, paras 4.12-13 below.

<sup>12</sup> 1845 Act, s 3. This definition gave rise to uncertainty as to whether it included incorporeal hereditaments such as easements.

<sup>13</sup> 1961 Act, s 39(1).

<sup>14</sup> 1965 Act, s 1(3), unless the context otherwise requires.

<sup>15</sup> Acquisition Act, s 7(1).



## ACQUISITION OF RIGHTS

- 3.12 It should also be noted that the definition of “land” needs to be capable of extending to the acquisition of new rights over land not being compulsorily acquired (as opposed to existing interests), where the enabling statute makes this possible.<sup>16</sup> In the absence of express provision, compulsory powers do not entitle the authority to create new easements or other rights.<sup>17</sup> Many modern Acts confer such power, notably the 1976 Act, which does so in respect of compulsory acquisitions by local authorities.<sup>18</sup> In such cases, procedure and assessment of compensation follow the ordinary rules for acquisition of land, except so far as modified by the statute conferring the power. Whether such powers should be extended to other categories of acquiring authority is a matter of policy, outside the scope of the present reference.

### (3) SERVICE OF DOCUMENTS

#### **Notice requirements**

- 3.13 The present legislation requires service of notices on interested parties at various stages of the order-making and implementation process. The following are the main stages (under the notice to treat procedure):
- (1) *Notice of making of the order* must be served on “every owner,<sup>19</sup> lessee and occupier (except tenants for a month or any period less than a month) of any land comprised in the order ...”;<sup>20</sup>
  - (2) *Notice of confirmation of the order* must be served on any person on whom notice of making was required to be served;<sup>21</sup>
  - (3) *Notice to treat* must be served on “all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry;”<sup>22</sup> and

<sup>16</sup> Cf 1976 Act, s 13(2), where the 1965 Act is modified to extend to the acquisition of new rights under the 1976 Act, and references to “land” are treated as including references “to the rights or to land over which the rights are or are to be exercisable” according to the context.

<sup>17</sup> *Sovmots Investments Ltd v Secretary of State for the Environment* [1979] AC 144.

<sup>18</sup> s 13. Other examples are Local Government, Planning and Land Act 1980 (“the 1980 Act”), s 142(4) and Sched 28, Pt IV; Highways Act 1980, s 250; Housing Act 1988, s 77 (and others listed in *Butterworths*, para D 1608, n 4). These provisions provide for amendment to the procedure in both the 1965 Act and the Vesting Declarations Act as appropriate.

<sup>19</sup> “Owner” means “a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement, the unexpired term whereof exceeds three years and a person who would have power to sell and convey or release the land to the acquiring authority if a compulsory purchase order were operative.” (Acquisition Act, s 7(1)).

<sup>20</sup> Acquisition Act, s12(1). An occupying statutory tenant under the Rent Act 1977 or the Rent (Agriculture) Act 1976 or a licensee under an assured agricultural occupancy (Housing Act 1988, Pt I) is deemed to be a tenant for a period less than a month and therefore excluded: s12(2). There is also a requirement to publish notices in local newspapers: s 11.

<sup>21</sup> Acquisition Act, s 15. Local newspaper notices must also be published.

- (4) *Notice of entry* must be served on “the owner, lessee and occupier” of the land in respect of which notice to treat has been served.<sup>23</sup>
- 3.14 Thus, whereas some forms of notice are served on “occupiers” as well as owners, notices to treat are limited to “persons interested”.<sup>24</sup>
- 3.15 Special considerations apply to rights (such as easements or restrictive covenants) affecting the subject land.<sup>25</sup> The compulsory purchase order does not of itself result in the acquisition or extinguishment of such rights.<sup>26</sup> Instead, the authority has the right to interfere with such rights to the extent necessary to achieve the purpose of the order, and compensation is payable as and when such interference occurs.<sup>27</sup> There is no express provision for any notice to be given before such interference takes place. The owner of such a right is not treated as an owner or occupier of the subject land, so as to be entitled to notice of the making or confirmation of the order,<sup>28</sup> or (for the same reason) to notice of entry. Nor is he a “person interested” under the notice to treat provision.<sup>29</sup>
- 3.16 Under the Vesting Declaration procedure, the same steps apply up to confirmation of the compulsory purchase. The effect of the declaration is to vest in the authority “all the land and all the interests therein”,<sup>30</sup> with the exception of “minor tenancies and tenancies about to expire” for which there is special procedure, involving notice to treat and notice of entry.<sup>31</sup>
- 3.17 The Vesting Declarations Act provides for two forms of notice:
- (1) *Preliminary notice*, inviting information from potential claimants, which has to be served on the persons entitled to notice of confirmation,<sup>32</sup> and
  - (2) *Notice of execution*, which must be served on every occupier of the land specified in the declaration (other than land subject to a minor tenancy or

<sup>22</sup> 1965 Act, s 5.

<sup>23</sup> 1965 Act, s 11(1). “Owner” has the meaning given by section 7(1) of the Acquisition Act (see note 19 above).

<sup>24</sup> See Part V, para 5.17(3) below.

<sup>25</sup> See Part VI, para 6.9ff below.

<sup>26</sup> Certain compulsory powers expressly provide either for extinguishment of existing adverse interests in or rights over land or for limited immunity for subsequent owners from such rights: see Housing Act 1985, s 295; the 1990 Act, s 237; Channel Tunnel Rail Link Act 1996, s 7: See Part VI below.

<sup>27</sup> See Part VI, para 6.11ff below.

<sup>28</sup> See *Grimley v Minister of Housing* [1971] 2 QB 96.

<sup>29</sup> *Clark v School Board for London* (1874) 9 Ch App 120. See Part V, para 5.17(3) below.

<sup>30</sup> Vesting Declarations Act, s 8(1).

<sup>31</sup> *Ibid* s 9. See further Part VI, para 6.18 below.

<sup>32</sup> Vesting Declarations Act 1981, s3(1) In practice therefore the requirements are the same as under the Acquisition Act, s 12 (see above).

a long tenancy about to expire); and every other person who has given information in response to the preliminary notice.<sup>33</sup>

Again there is no express provision for notices to be served on those entitled to rights over the land, such as easements or restrictive covenants.

### ***Identification of interests***

- 3.18 A related issue is the extent of the authority's obligation to identify those with interests in the land, for the purpose of service. Local authorities have wide powers to obtain information as to interests in the land, for the purposes of their functions.<sup>34</sup> There are no equivalent general powers for other bodies exercising compulsory purchase powers. In view of the wide variety of such bodies, it would probably be inappropriate to confer any general powers to obtain information by compulsion. The Government proposes to extend the powers available to planning authorities to Regional Development Agencies, which currently lack any such power.<sup>35</sup>

### ***Provisions relating to service***

- 3.19 There is a surprising variety of statutory provisions relating to service, which could usefully be rationalised. The following provisions have relevance to compulsory purchase:
- (1) 1961 Act, s 38;
  - (2) Acquisition Act, s 6 (also applied by the 1965 Act, s 30);
  - (3) 1990 Act, s 329 (applied by Vesting Declarations Act, s 6(2)); and
  - (4) the 1972 Act, s 233 (preserved by the 1990 Act, s 329(4)).
- 3.20 A comparison of these sections shows that they have many common features, but some differences of detail. For example, most require postal service to be by registered letter or recorded delivery,<sup>36</sup> but the 1972 Act allows simple service by post.<sup>37</sup> A common feature of all sections is provision for cases where following "reasonable inquiry" it is "not practicable" to ascertain the name or address of a person entitled to be served. The details of what is then required to effect good

<sup>33</sup> Vesting Declarations Act, s 6(1).

<sup>34</sup> See 1976 Act, s 16; and (in relation to planning powers) 1990 Act, s 330. They are set out in Appendix 2.

<sup>35</sup> Policy Response Document, para 15(iii): "As it is the Regional Development Agencies who are mainly hampered by the lack of such statutory powers, we intend to seek an appropriate amendment to section 20 of the Regional Development Agencies Act 1998".

<sup>36</sup> Cf 1978 Act, s 7, which provides that unless the contrary intention appears, service by post is effected "by properly addressing, pre-paying and posting a letter containing the document"; service is deemed to have been effected, unless the contrary is proved, at the time when the letter would have been received "in the ordinary course of post".

<sup>37</sup> The 1972 Act also appears to be alone in making specific provision for service on partnerships, as well as companies: 1972 Act, s 233(3)(b). By contrast the Acquisition Act, s 6(2) refers only to service on "any incorporated company or body".

service vary between the provisions; for example, it may be sufficient to deliver the notice to someone on the land, or to “leave a copy on or near the land”;<sup>38</sup> or to have it “affixed conspicuously to some object on those premises”.<sup>39</sup>

#### EXTENSION OF STATUTORY OBJECTOR STATUS

- 3.21 As noted in the next Part,<sup>40</sup> the Government proposes to extend the right to notice of the making of the order, and with it “statutory objector status”,<sup>41</sup> to all those with any form of interest or right to occupy, including owners of rights. It is proposed that notices should be served on “all known owners, lessees (including tenants) and occupiers”, who would then have the right to be “statutory objectors”. The Government recognises that it would be “impracticable to expect the authority to ascertain details of all those with other rights”. It proposes therefore that service should be effected by posting notices on the land, and that if an objection is received from a person with a right over the land (such as the benefit of a right of way) then that person should be treated as a statutory objector.

#### **Proposal**

- 3.22 The Government’s proposal can be given effect by adapting the service rules of the 1981 Act, as applied by the 1965 Act. The provision for service by notice on the site will apply, not simply to cases where the owner of an interest is unknown, but also to cases where there are easements or other rights over the land.
- 3.23 The new provision would provide for alternative methods of service covering:
- (1) Personal service;
  - (2) Service on the “proper address” by registered letter or recorded delivery;
  - (3) Service on a company or other body (including an unincorporated body) by service on an appropriate officer or member, at the registered or principal office; and
  - (4) “Special service”, involving fixing of notices on or near the land. This will apply both (as now) to cases where the names and addresses cannot reasonably be ascertained, and also to those categories of interest or right (such as easements) where it is considered unreasonable to require the authority to effect standard service.

<sup>38</sup> See e.g. Acquisition Act, s 6(4).

<sup>39</sup> 1961 Act, s 38(2)(b).

<sup>40</sup> Part IV, para 4.7 below

<sup>41</sup> See Part II, para 2.9(2) above.

- 3.24 The detail of these provisions can be left for consideration at the drafting stage, having regard to the most suitable modern precedents. The categories of interest for which “special service” will be permitted at any stage may be defined in the regulations.

**Proposal 1 – Service of documents**

- (1) Subject to (2), service of notices required under the legislation shall be effected in accordance with “standard service”, defined to include:**
- (a) Personal service;**
  - (b) Delivery, or posting by registered letter or recorded delivery, to the “proper address”;<sup>42</sup> and**
  - (c) Service on a company or other body (including an unincorporated body) by service on an appropriate officer or member, at the registered or principal office.**
- (2) In relation to categories of interest and circumstances prescribed by regulations, and in other cases where the names and addresses cannot reasonably be ascertained, service may be effected by “special service”, defined to require fixing of notices on or near the land, and such other steps as may be prescribed by the regulations.**

***Consultation issue (A) – Service of documents***

***(1) Do consultees agree that the Government’s proposals relating to service can be given effect by adapting the service rules of the Acquisition Act as applied by the 1965 Act?***

***(2) If so, do consultees feel that the detail of “special service” should be governed by secondary rather than primary legislation?***

***(3) Are there practical issues not covered by our formulation?***

**(4) ENTRY FOR SURVEY**

**Entry for survey**

- 3.25 Powers to enter the land for surveying and preliminary works are given by section 11(3) of the 1965 Act,<sup>43</sup> and, in the case of local authorities, supplemented by wider powers in section 15 of the 1976 Act.<sup>44</sup>

<sup>42</sup> See e.g. 1972 Act, s 233(4), which defines “proper address” of any person as “his last known address”.

<sup>43</sup> 1845 Act, s 84: “for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works”.

- 3.26 Section 11(3) applies to any land “subject to compulsory purchase”, and therefore only applies once the order is operative.<sup>45</sup> It provides that the acquiring authority, after giving not less than three nor more than fourteen days’ notice to the owners or occupiers, may enter on the land:

for the purpose of surveying and taking levels of any of the land subject to compulsory purchase, of probing or boring to ascertain the nature of the soil and of setting out the line of the works.

The authority must pay compensation for any damage thereby occasioned to the owners or occupiers of the land, and any question of disputed compensation under this subsection shall be referred to the Lands Tribunal.

- 3.27 Local authorities also have powers, under section 15 of the 1976 Act, to authorise entry for survey in connection with a *proposal* by the authority for compulsory purchase. The provisions are more detailed than section 11(3), and contain more extensive and detailed provisions for enabling local authorities to authorise entry for the purpose of survey. Explicitly the power is framed to include aerial survey, ascertaining of whether minerals are present, and the leaving on land of survey apparatus.<sup>46</sup> There are detailed provisions dealing with the procedures for entry, compensation for any damage, and protection of trade secrets; wilful obstruction of the exercise of the power is an offence.<sup>47</sup>
- 3.28 It would be possible to extend these wider powers to all acquiring authorities under new legislation. However, it may be thought that the power to enter in connection with what is no more than a “proposal” should be confined to specific public authorities. Accordingly, we ask:

***Consultation issue (B) – Entry for survey***

***Do consultees agree with our provisional proposal to retain the effect of section 11(3) unchanged, leaving in place any wider powers under the 1976 Act or other statutes?***

<sup>44</sup> Other statutes may contain similar powers. Specific powers of entry for surveying are contained in Highways Act 1980, s 289, 1990 Act, s 324, Planning (Listed Buildings and Conservation Areas) Act 1990, s88. The 1976 Act powers are not available in those cases: 1976 Act, s 15(9).

<sup>45</sup> 1965 Act, s 1(3).

<sup>46</sup> 1976 Act, s 15(2).

<sup>47</sup> *Ibid*, s 15(3) – (8).

# **PART IV**

## **AUTHORISATION OF COMPULSORY PURCHASE**

### **INTRODUCTION**

- 4.1 The procedure for making and authorisation of compulsory purchase orders is well established, and stated in clear and modern language in the Acquisition Act. It can therefore be incorporated in any new Code without substantial change, except so far as necessary to give effect to reforms proposed by the Policy Statement.
- 4.2 In this Part we examine three linked topics:
- (1) Ministerial and non-Ministerial orders;
  - (2) Making and confirming; and
  - (3) Legal challenge.

### **(1) MINISTERIAL AND NON-MINISTERIAL ORDERS**

- 4.3 In relation to procedure, the Acquisition Act distinguishes between compulsory purchase orders made by Ministers, and those made by other agencies. In each case there is a two stage procedure, involving initial publication, followed by consideration of objections by a Minister (if necessary, after an inquiry). However, Ministerial orders are first “prepared in draft” and then “made” after the objection stage;<sup>1</sup> non-Ministerial orders are made by the acquiring authority and then “confirmed” by a “confirming authority”.<sup>2</sup>
- 4.4 There seems little purpose in this dichotomy, which results in needless duplication in the Act<sup>3</sup> and the rules.<sup>4</sup> There seems no reason why the Minister should not be treated as the confirming authority in relation to an order made by his own Department. It would seem tidier and simpler for the same procedure to be applied to both.<sup>5</sup> The importance given, under the current Government proposals, to the date of the first notice of the making of the order (“the first notice date”) underlines the desirability, in the interests of clarity, of using the same terminology for all types of orders.

<sup>1</sup> Acquisition Act, Sched 1, paras 1(2), 4(1).

<sup>2</sup> *Ibid*, ss 11, 13.

<sup>3</sup> The only difference in the two procedures seems to be that Sched 1 (in relation to ministerial orders) includes provision, in highway acquisitions, for a joint consideration by the highways minister and the planning minister: Sched 1, para 4(2)-(6). This could be dealt with by a specific provision without need for wholesale duplication of the procedures.

<sup>4</sup> The respective procedures are set out in Part I of, and Sched 1 to, the Acquisition Act. There are also separate sets of inquiries procedure rules (Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990, SI 1990 No 512; Compulsory Purchase by Ministers (Inquiries Procedure) 1994, SI 1994 No 3264).

<sup>5</sup> See e.g. Part VIII below.

- 4.5 This is not a priority issue, and could no doubt be left for a future consolidation. For present purposes, it is sufficient to bear in mind that references to the “making” or “confirmation” of an order are to be taken as including, respectively, the “preparation” or “making” of Ministerial orders. However, we invite views of consultees on the issue.

***Consultation issue (C) – Ministerial and non-Ministerial orders***

***Does the distinction drawn in the Acquisition Act between the procedures, respectively, for ministerial and non-ministerial orders serve any practical purpose?***

**(2) MAKING AND CONFIRMING**

**Existing law**

- 4.6 The main features of the procedure are:

- (1) Authorisation of compulsory purchase is conferred by a compulsory purchase order;<sup>6</sup>
- (2) The form of the order is prescribed by regulations; among other requirements, it must describe by reference to a map the land to which it applies and the purpose for which the land is required;<sup>7</sup>
- (3) Notice of the making of the order:
  - (a) Notices must be in prescribed form, stating the effect of the order, and its purpose, and specifying the time within which, and the manner in which objections can be made;<sup>8</sup>
  - (b) Notices must be:
    - (i) Published in local newspapers;<sup>9</sup> and
    - (ii) Served<sup>10</sup> on “owners and occupiers”;<sup>11</sup> and
  - (c) The date on which the notice is first published is to be defined as “the first notice date”;<sup>12</sup>

<sup>6</sup> Acquisition Act, s 2(1).

<sup>7</sup> The standard prescribed form is Form 1 in the Schedule to Compulsory Purchase of Land Regulations 1994 SI 1994 No 2154 (as amended by SI 1996 No 1008) It includes a requirement for the “purpose” to be stated. The note (e) to the form reads: “Describe the purpose in precise terms. Where practicable the words of the relevant Act may be used, but where those words are in general terms covering a range of purposes, the particular purpose for which the land is required should be stated.”

<sup>8</sup> Acquisition Act, ss 11(2), 12(1).

<sup>9</sup> Acquisition Act, s 11(1).

<sup>10</sup> The requirements for “service” will be as under Proposal 1 above.

<sup>11</sup> Cf Acquisition Act, s 12(1), which requires service on “every owner, lessee and occupier (except for tenants for a month or any period less than a month)”.



- (4) Making and consideration of objections:<sup>13</sup>
- (a) All those served with, or entitled to service of, notice of making of the order have a right to object within the time specified by the notice; those who so object are referred to as “statutory objectors”;<sup>14</sup>
  - (b) Any other person may make an objection or representations, within the time specified in the notice, but without acquiring the status of statutory objector;
  - (c) The confirming authority may:
    - (i) require any objector to state in writing the grounds of objection; and
    - (ii) may disregard any objection if satisfied that it relates exclusively to issues of compensation;<sup>15</sup>
  - (d) If there are no objections by statutory objectors, or they are all withdrawn, the order may be confirmed (following consideration of any other objections or representations) without any hearing or public inquiry;<sup>16</sup>
  - (e) If there are outstanding objections by statutory objectors, the confirming authority must arrange a public inquiry or hearing to consider those objections, and any other objections which it appears “expedient” to consider on the same occasion.<sup>17</sup> Procedure at inquiries or hearings is governed by inquiries procedure rules;<sup>18</sup>
  - (f) Following consideration of all objections and representations, and the report of the inquiry or hearing, the confirming authority may confirm the order; and

<sup>12</sup> See Part II, para 2.9(1), n 11 and Part VIII, para 8.23 below; see also Compensation Report, Part III, para 3.8 and Part IV, para 4.65.

<sup>13</sup> Acquisition Act, s 13(1) provides for objections to be made “by any such owner, lessee or occupier as is mentioned in section 12.”

<sup>14</sup> See Part II, para 2.9(2) and Part III, para 3.23 above.

<sup>15</sup> Acquisition Act, s 13(4).

<sup>16</sup> Acquisition Act, s 13(1).

<sup>17</sup> Acquisition Act, s 13(2), (3). The Government proposes that provision will be made for consideration of written representations where parties agree: Policy Statement, para 3.7 and App, para 2.15; Policy Response Document, para 8(ii). (The DTLR is of the view that the preferences of statutory objectors should prevail over those of non-statutory objectors where the latter are the only party seeking inquiry: Policy Statement, App, para 2.15).

<sup>18</sup> The current rules are made under the Tribunals and Inquiries Act 1992: see e.g. Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 SI 1990 No 512. There are separate (but practically identical) rules for Ministerial acquisitions in SI 1994 No 3264. They could usefully be amalgamated. The Government proposes to introduce “unified inquiry rules with clear deadlines for preparatory procedures”: Policy Response Document, para 9.

- (g) The order may be confirmed (under (d) or (f)) with or without modifications, save that the area of the subject land may not be increased without the consent of all “persons interested”;<sup>19</sup> and
- (5) Post confirmation procedure:
- (a) Notices of confirmation of the order, in prescribed form,<sup>20</sup> must be published and served in the same way as notices of making of the order (under (3) above);<sup>21</sup> and
  - (b) Subject to the power of the court to suspend operation of an order pending resolution of a legal challenge (see below), an order will become operative on the date when notice of confirmation is first published (“the operative date”).<sup>22</sup>

## **Government proposals**

### ***Extension of statutory objector status***

- 4.7 As noted in the previous Part, the Government proposes to extend the right to notice of the making of the order, and “statutory objector status”<sup>23</sup> to all those with any form of interest or right to occupy, including owners of rights:

... the current definition of “statutory objector” excludes some of the categories of person who might have a direct interest in the land being acquired and who could therefore be seen as being deprived of a right of objection to the disruption of their enjoyment of the property. To remedy this, we are proposing that the new legislation should grant statutory objector status to all persons *who have any private interest in any of the land included in the relevant compulsory purchase order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.*<sup>24</sup> (emphasis added)

- 4.8 We agree. We further propose that the status of “statutory objector” should be defined in the statute, rather than left (as now) to the inquiries procedure rules.<sup>25</sup>

<sup>19</sup> Acquisition Act, s 14. The term “persons interested” is not defined.

<sup>20</sup> The Policy Statement proposed that the notice of confirmation should include details of the proposed right to serve “reverse notice to treat”, and of the time limits for taking possession: Policy Statement, App, para 2.24. The proposal for “reverse notice to treat” has since been abandoned (see Part V, para 5.12 below and Policy Response Document, para 12(iii)).

<sup>21</sup> Acquisition Act, s 15,

<sup>22</sup> Acquisition Act, s 26. Under s 26(1), this does not apply to orders subject to special Parliamentary procedure, for which specific provisions apply under the Statutory Orders (Special Procedure) Act 1945. These special procedures are not within the scope of this project: see Part I, paras 1.21-1.22 above.

<sup>23</sup> See Part II, para 2.9(2) above.

<sup>24</sup> Policy Statement, App, para 2.12.

<sup>25</sup> See Part III, para 3.23 above.

## **Proposal 2 – Statutory objector**

**Section 7 of the Acquisition Act should be amended to include a definition of “statutory objector”, as a person who is entitled under the Act to notice of the making of the order,<sup>26</sup> and who lodges an objection in accordance with the notice.**

### **Service of notices**

- 4.9 The Government in its Policy Statement proposed that notices should be served on all known owners, lessees (including tenants) and occupiers (App. Para 2.13).
- 4.10 The Government recognises that it would be “impracticable to expect the authority to ascertain details of all those with other rights”. It proposes therefore that service should be effected by posting notices on the land, and that if an objection is received from a person with a right over the land (such as the benefit of a right of way) then that person should be treated as a statutory objector. This point was recently reinforced in response to consultation:

Some concern has been expressed by respondents that it would be unreasonable to expect an acquiring authority to track-down and notify all persons who may have any interest in the land. However, that was never our intention. As we said in the consultation paper, we consider that it should be sufficient to supplement the current newspaper advertising arrangements with a requirement to post site notices.<sup>27</sup>

- 4.11 The date of the notice of the making of the order has special significance under the Government’s proposals, since it is the trigger for the right to compensation for disturbance, and for compensation if the order is subsequently abandoned. In the Compensation Report we have defined this as “the first notice date”.<sup>28</sup> We have made proposals for amended rules for service in the previous Part.<sup>29</sup>

### **Confirmation of unopposed orders**

- 4.12 A significant change, proposed in the Policy Statement, was that acquiring authorities should be given “powers to confirm orders themselves in cases where there are no unresolved statutory objections.” It was recognised that:

...there will need to be safeguards... the legislation introducing the power should also require the relevant acquiring authority to notify the Secretary of State of their intention to confirm an uncontested order, certifying that they have issued all the necessary notices and carried out the procedures properly. Such notices will need to include one announcing their intention to confirm the order and setting a time limit within which any aggrieved person could make representations to the Secretary of State, - who would then have a

<sup>26</sup> See Part III, para 3.23 above.

<sup>27</sup> Policy Response Document, para 8(ii).

<sup>28</sup> See Compensation Report, Part III, para 3.8 and Part IV, para 4.65.

<sup>29</sup> Part III, paras 3.22-3.24 and Proposal 1 above.

statutorily defined period of time in which to decide whether it was appropriate for him to call the order in for his own confirmation.<sup>30</sup>

- 4.13 More recently, the proposal has been modified, to provide for “transfer” of the decision to the acquiring authority, where there are no statutory *or non-statutory* objections:

We have concluded that this might best be achieved by giving the confirming authority the discretion to transfer the right to confirm (without modification) any particular compulsory purchase order to which the confirming authority has not received any statutory or non-statutory objections during the statutory objection period. The decision would then be made by the acquiring authority and would not be a delegation to make the decision on behalf of the confirming authority.<sup>31</sup>

### **Confirmation in stages**

- 4.14 The Policy Statement proposed that there should be a general power to confirm orders in stages. Where, for example, objections relate to only one part of the land included in the order, it may help the authority and reduce the uncertainty for other owners and occupiers, if the order can be confirmed in relation to the remainder. There is such a provision in the 1990 Act. Section 245(2) provides:

Where a compulsory purchase order authorising the acquisition of any land under section 226 is submitted to the Secretary of State in accordance with Part II of the Acquisition of Land Act 1981, then if the Secretary of State-

(a) is satisfied that the order ought to be confirmed so far as it relates to part of the land comprised in it; but

(b) he has not for the time being determined whether it ought to be confirmed so far as it relates to any other such land,

he may confirm the order so far as it relates to the land mentioned in paragraph (a), and give directions postponing consideration of the order, so far as it relates to any other land specified in the directions, until such time as may be so specified.

It is proposed that a similar provision should apply generally to confirmation of compulsory purchase orders.<sup>32</sup>

### **Conclusion on authorisation procedure**

- 4.15 We are not aware of any major problems in the operation of the present procedures, other than those addressed in the Government’s own proposals. Accordingly, apart

<sup>30</sup> Policy Statement, App, paras 2.17-2.18. This procedure would ensure that “there would be little incentive for an authority to try to ride roughshod over the concerns of any non-statutory objectors”.

<sup>31</sup> Policy Response Document, para 8.

<sup>32</sup> Policy Statement, App, para 2.22

from the proposed amendment in relation to the definition of “statutory objector” (see above)<sup>33</sup>, we make no further specific proposals of our own, but invite comments on the following issue.

### **Consultation issue (D) – Making and confirming**

**Do consultees consider that the present arrangements for making and confirmation work well in practice? If not, what practical problems are there (other than those already highlighted in the Government’s proposals) and how should they be addressed?**

### **(3) LEGAL CHALLENGE**

- 4.16 The Acquisition Act, like a number of other statutes in the planning field, contains a special procedure, subject to a strict 6 week time limit, for challenging orders in Court.<sup>34</sup> No other form of legal challenge is permitted, and after the expiry of the time limit the order becomes immune from challenge.<sup>35</sup> The grounds for challenge, as stated in the Act, are that the authorisation “was not empowered to be granted” or that the applicant has been “substantially prejudiced” by failure to comply with “relevant requirements”.<sup>36</sup> In practice, the grounds are not treated as materially different from those applying in judicial review,<sup>37</sup> and they may now include grounds based on the Human Rights Act 1998.<sup>38</sup>
- 4.17 Although there have been criticisms of this form of procedure, there are no immediate proposals to change it;<sup>39</sup> and there are particular advantages in providing a clear termination date for any possibility of challenge. We do not, therefore, propose any fundamental change to the statutory procedure. There are, however, certain points of substance which could usefully be addressed.

### **Who may make the challenge?**

- 4.18 The procedure is available to “any person aggrieved” by the order. This test for standing, used in many different statutory appeal contexts, originally required an applicant’s legal rights to be directly affected<sup>40</sup> and was derived from the restrictive

<sup>33</sup> See paras 4.7-4.8 and Proposal 2 above.

<sup>34</sup> Acquisition Act, ss 23-25. The time limit runs from the date on which the notice of confirmation is first published. For discussion of such “statutory applications to quash”, see generally De Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, (5<sup>th</sup> ed, 1995), p 681ff; See also the Law Commission’s report: *Administrative Law: Judicial Review and Statutory Appeals*, (1994), Law Com No 226, para 12.11ff.

<sup>35</sup> See *R v Secretary of State ex p Ostler* [1977] QB 122.

<sup>36</sup> Acquisition Act, ss 23(1)-(2), 24(2)(b).

<sup>37</sup> See e.g. *Ostler* (above); De Smith, *op cit*, para 15-066.

<sup>38</sup> See e.g. *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389, HL.

<sup>39</sup> See Law Com No 226, paras 12.13-14.

<sup>40</sup> “ A ‘person aggrieved’ must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something”: *Ex parte Sidebotham* (1880) 14 Ch. D 458, 465, CA.

approach to standing in cases of certiorari and prohibition.<sup>41</sup> However, this test has gradually been given a wider interpretation by the courts.<sup>42</sup>

- 4.19 Since the introduction of the “sufficient interest” test for standing for judicial review in 1981,<sup>43</sup> which redefined the general approach to standing, the “person aggrieved” test has received a wider interpretation by the courts.<sup>44</sup> In practice, the courts are recognising that the statutory procedures for “persons aggrieved” are “doing little more than giving a statutory right to judicial review”.<sup>45</sup>
- 4.20 However, ‘person aggrieved’ remains the test for standing in many different statutory appeals including those under planning and housing provisions.<sup>46</sup> Although it may seem appropriate to adopt a “sufficient interest” test in a modern statute, a global approach would be needed to adjust the various statutory provisions which retain the ‘person aggrieved’ test. Whilst a single test would be helpful in the context of judicial review and statutory appeals as a whole, it would be difficult to justify replacing the ‘person aggrieved’ test in the context of compulsory purchase alone.

### **What can be challenged?**

- 4.21 The special procedure applies where it is sought to question “the validity of a compulsory purchase order”. No other form of legal challenge of the order is permitted “either before or after it has been confirmed, made or given”.<sup>47</sup> Thus, the procedure applies not merely to a challenge to confirmation of the order, but also at earlier stages following making of the order by the acquiring authority. Conversely, it does not apply to a decision of the confirming authority to *refuse*

<sup>41</sup> See, for example, *R v Thames Magistrates Court ex parte Greenbaum* (1957) 55 LGR 129.

<sup>42</sup> See *Attorney General of the Gambia v N’jie* [1961] AC 617 at 634, where the Privy Council held that the Attorney General was a ‘person aggrieved’ for the purpose of petitioning the Crown for special leave to appeal, and described the term as of ‘wide import and ‘not to be subjected to restrictive interpretation.’ In *Arsenal FC v Ende* [1979] AC 1, the House of Lords endorsed the liberal approach, holding that a ratepayer was within the class of persons aggrieved even when he had not suffered personal financial or other loss from an alleged under-assessment of rates on land in his borough.

<sup>43</sup> Supreme Court Act 1981, s31(3). In *R v IRC ex parte National Federation of Small Businesses* [1982] AC 617, 613C, the House of Lords found that this new broader test moved the focus away from the applicant’s particular grievance or specific legal right and accorded the court a wider discretion on standing, presenting a “mixed decision of fact and law which fell to be decided on legal principles”; per Lord Wilberforce. This “increasingly liberal approach to standing on the part of the courts” (per Rose LJ in *R v Secretary of State for Foreign and Commonwealth Affairs, ex p World Development Movement* [1995] 1 WLR 386, 395F) has continued to develop: see, for example, Sedley J in *R v Somerset County Council, ex parte Dixon* [1998] Env LR 111, 121.

<sup>44</sup> See *Cook v Southend on Sea BC* [1990] 2 QB 1.

<sup>45</sup> See *Cook* (above), 18; per Woolf LJ. See also the discussion of this topic in its wider context and previous approaches to reform in Law Com No 226, paras 12.17ff.

<sup>46</sup> See, for example, ss 287-288 of the 1990 Act, which provides a remedy for “any person aggrieved by a unitary development plan or a local plan...”; a list of all these provisions can be found in Annex 2 to the Law Commission’s Consultation Paper on Administrative Law: Judicial Review and Statutory Appeals (1993), Consultation Paper No 126, and those providing additional specific standing rules can be found in Annex 3 to the Paper.

<sup>47</sup> Acquisition Act, s 25.

confirmation.<sup>48</sup> Where the statutory procedure is not available, the remedy is by way of judicial review, but the boundaries may not always be clear.<sup>49</sup>

4.22 In principle, it would seem better to confine the statutory procedure for challenge (and immunity from challenge in other proceedings) to decisions of the confirming authority to grant or refuse confirmation of the order.<sup>50</sup> A rigid time limit is appropriate at that stage, at least in relation to confirmation. That approach would also accord with the position under, for example, the 1990 Act, where the corresponding procedure applies to decisions by the Secretary of State on appeal, but not to decisions of planning authorities.<sup>51</sup> Furthermore, the statutory procedure is particularly suitable to decisions which are the subject of a fully reasoned decision letter, as are those at the confirmation stage. Challenges at earlier stages are more likely to depend on other forms of evidence for which judicial review provides more flexible procedures. In practice, as a matter of discretion, the court would be unlikely to intervene before confirmation, other than in exceptional cases, where for example it is alleged that the inquiry is proceeding on a false basis.<sup>52</sup>

### **Powers of the Court**

4.23 On such an application, the court may

- (1) by interim order suspend, until final determination, the operation of the order or any provision in it;<sup>53</sup> and
- (2) if satisfied that the grounds of challenge are made out, quash the order or any part of it, either generally, or so far as it affects any property of the applicant.<sup>54</sup>

4.24 The latter provision may be unnecessarily draconian in many cases. It apparently forces the court to quash the whole order from its inception, even where the grounds of challenge relate only to the process of confirmation, or even simply to the Secretary of State's reasoning. We propose that the court should have power, as an alternative to quashing the order, to quash the decision of the confirming authority (whether to approve or reject the order), or to make such other order as is appropriate having regard to the grounds of the challenge.

<sup>48</sup> *Islington LBC v Secretary of State* (1980) 43 P&CR 300.

<sup>49</sup> See e.g. *R v Camden LBC ex p Comyn Ching & Co Ltd* (1984) 47 P&CR 417 (judicial review available to challenge the resolution of the authority, prior to making the order); Law Com, No 226, para 12.13.

<sup>50</sup> This would include the decision of the acquiring authority itself on an unopposed order transferred to it under current proposals: see paras 4.12ff above.

<sup>51</sup> 1990 Act, ss 277-288.

<sup>52</sup> See e.g. *R v Secretary of State, ex p Kensington and Chelsea RBC* (1987) 19 HLR 191.

<sup>53</sup> Acquisition Act, s 24(1).

<sup>54</sup> *Ibid*, s 24(2).

### **Proposal 3 – Legal challenge**

- (1) The statutory procedure for challenging the validity of an order (and the statutory immunity from challenge in other proceedings) should apply to the decision of the confirming authority to confirm or refuse to confirm the order, and not to earlier stages (which would be subject to judicial review).**
- (2) The court should have power to quash simply the decision of the confirming authority, or make such order as is appropriate.**

### ***Consultation issue (E) – Legal challenge***

- (1) Do consultees agree with our provisional view that challenge by the statutory route should be restricted to the decision of the confirming authority (and that judicial review will suffice for challenge of the making of an order)?***
- (2) Do consultees agree with our provisional view that the courts should have the ability to quash the confirmation (or refusal of confirmation) of an order, as an alternative to quashing the whole order (or to make such other orders as may be appropriate)?***



# **PART V**

## **IMPLEMENTATION PROCEDURES**

### **INTRODUCTION**

- 5.1 The next three Parts look at the steps acquiring authorities must take in order to obtain physical possession, to secure title to the land subject to compulsory purchase, and to initiate the procedure for settling compensation. These procedures start from the point where the compulsory purchase order has been made, objections (if any) have been resolved, and the order has become “operative”, as explained in the previous Part.
- 5.2 This Part looks at the alternative steps to be taken by authorities to initiate the process for settling compensation, to obtain physical possession, and to secure title to the subject land:
- (1) We note the Government’s intention to retain *two alternative methods* for implementing an approved order: notice to treat and vesting declaration;<sup>1</sup>
  - (2) We consider the Government’s proposals for *revised time limits* under both procedures, and make proposals to give them effect; and
  - (3) We review the main stages in the *notice to treat* procedure:
    - (a) Formalities of notice to treat;
    - (b) Notice of entry;
    - (c) Completion of purchase;
    - (d) Deed poll procedure;
    - (e) Missing interests; and
    - (f) Persons with limited powers.
- 5.3 We make proposals for a new “deed poll procedure”, and for a new provision for owners who are untraced, or unable or unwilling to act. We propose the repeal of Schedule 1 to the 1965 Act (persons with limited powers). Subject to those changes, and to simplification of the language in a future consolidation, we make no further proposals, but invite comments on any practical problems which should be addressed.

### **(1) ALTERNATIVE PROCEDURES**

- 5.4 In modern practice,<sup>2</sup> there are two alternative ways by which an acquiring authority may secure title to land once the CPO has ministerial confirmation: by notice to treat and by vesting declaration:

<sup>1</sup> We propose the repeal of the obsolete procedure in Schedule 3 to the 1965 Act.

<sup>2</sup> We assume that the alternative procedure in 1965 Act, Sched 3, which derives from ss 85-87 of the 1845 Act, before the development of the modern procedures, is obsolete and can be repealed. The procedure requires prior payment into court of compensation assessed by an independent surveyor and the giving of a bond. See also Part VII, para 7.37(3) below.

- (1) The *notice to treat* procedure, which dates back to the 1845 Act, involves service of a statutory notice on each affected landowner to initiate the process of agreeing or determining compensation. Title does not pass to the authority until compensation has been settled, but the authority may take possession in the meantime by serving notice of entry.<sup>3</sup> In the main, the mechanisms relating to service of notice to treat and notice of entry are governed by the 1965 Act;<sup>4</sup> and
- (2) The more recent *vesting declaration* procedure enables the authority, after confirmation, to make a declaration vesting title in itself after expiry of a defined period (not less than 28 days) from the service of a notice on those affected. This procedure does not necessitate compensation being determined before title can pass.<sup>5</sup> The procedure is governed by the Vesting Declarations Act.<sup>6</sup>

5.5 The DTLR Policy Statement has accepted the CPPRAG recommendation that, in the interests of flexibility, both procedures should be retained. The Policy Statement says:

There have also been suggestions that it is unnecessary to retain both the notice to treat and the general vesting declaration procedures. The latter replaces both the notice to treat (which is deemed to have been served) and the conveyance with one procedure ... It is therefore useful to acquiring authorities where it has not been possible to identify the owners of all the affected land. It also offers a greater degree of certainty for those affected, including fixing the date of vesting as the date to which the valuation of their property will relate. However, its disadvantages include the fact that the power to withdraw the notice to treat no longer applies once the declaration has been executed. ... We therefore see sense in retaining the flexibility afforded by keeping both the notice to treat and general vesting declaration procedures.<sup>7</sup>

We accept that approach, and make no proposal for substantive change, save for the repeal of Schedule 3 to the 1965 Act.

<sup>3</sup> 1965 Act, s11(1).

<sup>4</sup> The notice to treat procedure in section 5 of the 1965 Act derives from section 18 of the 1845 Act. The terminology used in the later Act is similar and needs updating.

<sup>5</sup> Vesting Declarations Act, s 4.

<sup>6</sup> The vesting declaration procedure was introduced for the Land Commission, established by the Land Commission Act 1967; and made available to authorities more generally by the Town and Country Planning Act 1968. The 1981 Act is a consolidation of the 1968 Act and later amendments. (The Land Commission itself was abolished in 1971.)

<sup>7</sup> Policy Statement, App, para 2.28. The Department proposes to issue a circular to authorities containing “advice about when each [procedure] may provide the best course of action”: para 3.11.

## **Proposal 4 – Alternative procedures**

### **Schedule 3 to the 1965 Act should be repealed.**

#### ***Consultation issue (F) – Alternative procedures***

***Do consultees agree that Schedule 3 (alternative procedure for obtaining right of entry) is obsolete and should be repealed?***

#### **(2) TIME LIMITS**

##### **Notice to treat procedure**

###### ***Time for “exercise” of powers***

- 5.6 The 1965 Act provides that the authority’s powers of compulsory purchase shall not be “exercised” after the expiration of 3 years from the date when the CPO becomes operative.<sup>8</sup> It is clearly established that service of notice to treat is a sufficient “exercise” of the powers for this purpose.<sup>9</sup>

###### ***Time following notice to treat***

- 5.7 Under the 1965 Act, a notice to treat ceases to have effect at the end of 3 years beginning with the date of service, unless one of four events has occurred:
- (1) compensation has been agreed between the parties or has been awarded or has been paid or paid into court;
  - (2) a general vesting declaration has been executed;
  - (3) the acquiring authority have taken possession of the land specified in the notice; or
  - (4) the question of compensation has been referred to the Lands Tribunal.<sup>10</sup>

The parties can mutually agree extension of the 3 year time limit.<sup>11</sup>

- 5.8 Subject to the above provisions, there is no specific time limit for service of notice of entry,<sup>12</sup> nor any limit on the validity of a notice once served. The 1965 Act, section 11 simply states that the authority may take possession, having served “not less than 14 days notice”. This appears to leave the authority (within the limits of reasonableness) free to enter at any time thereafter, without further notice.

<sup>8</sup> 1965 Act, s 4 (1845 Act, s 123). A CPO becomes operative when notice of confirmation is first published: Acquisition Act, s 26. Notice to treat must be served within three years of that date.

<sup>9</sup> *Grice v Dudley Corporation* [1958] Ch 329.

<sup>10</sup> 1965 Act, s 5(2A), as substituted by the Planning and Compensation Act 1991 (“the 1991 Act”), s 67.

<sup>11</sup> *Ibid*, s 5(2B). In a later Part we deal with the consequences of a notice to treat ceasing to have effect: see Part VIII (Abortive orders).

<sup>12</sup> 1965 Act, s11(1).

### **Vesting declaration procedure**

- 5.9 The 3 year time limit for “exercise” of the power of compulsory purchase also applies where the vesting declaration procedure is used. There is some doubt as to what is needed for “exercise” of the power in this context. Under that procedure, the first step is the service of a “preliminary notice”, giving prescribed particulars of the effect of the vesting declaration, and inviting information from potential claimants.<sup>13</sup> This is followed by the formal execution of the declaration, vesting the land in the authority from a defined date.<sup>14</sup>
- 5.10 There have been conflicting High Court decisions as to whether the service of a preliminary notice within the 3 year time limit keeps the order alive.<sup>15</sup> The Department has advised that, in view of this uncertainty, an authority should ensure that it *executes* the declaration within the 3 year period.<sup>16</sup>
- 5.11 There are no other time limits under the vesting declaration procedure (other than in relation to reference to the Lands Tribunal<sup>17</sup>). That is understandable, since the only interests outstanding following the vesting date are by definition limited in time.<sup>18</sup>

### **Reform proposals**

- 5.12 CPPRAG recommended, and the Government has consulted upon, a variation of the notice to treat procedure, whereby affected owners and occupiers would be able to take the initiative by serving a “reverse notice to treat” (not sooner than one year after confirmation) requiring the authority to implement the order.<sup>19</sup> In the light of the responses, Government now takes the view that the proposals should not be pursued;<sup>20</sup> instead it proposes that the time limits for action by the authority, following confirmation of the order, should be reduced:

.... (except where the parties agree otherwise), we propose to reduce the overall period within which an acquiring authority has to complete the compulsory purchase process following confirmation from six years to three years, with a maximum of eighteen months between confirmation and serving the notice to treat (or a general

<sup>13</sup> Vesting Declarations Act, s 3: see paras 5.48ff below.

<sup>14</sup> *Ibid*, s 4(1).

<sup>15</sup> It was held to be sufficient in *Westminster City Council v. Quereshi* (1990) 60 P&CR 380 (Aldous J). However, in *Co-operative Insurance Society v. Hastings Borough Council* (1993) 91 LGR 608, Vinelott J held that execution of the vesting declaration was required; a section 3 notice was “no more than a warning by an acquiring authority that it may use the procedure of the 1981 Act”, and did not amount to a formal commitment by the authority.

<sup>16</sup> Department of Environment Circular 14/94, App R, para 8.

<sup>17</sup> See Part VII, paras 7.3ff below.

<sup>18</sup> That is, “minor tenancies and tenancies about to expire”: see Part VI, para 6.6 below.

<sup>19</sup> Policy Statement, paras 2.26-28.

<sup>20</sup> Policy Response Document, para 11 (iii): “we recognise that the reverse notice to treat procedure would make forward planning very difficult for the authority”.

vesting declaration) and then a maximum of a further eighteen months during which the notice to treat remains effective.<sup>21</sup>

- 5.13 In addition it proposes that the minimum period for taking possession following notice of entry,<sup>22</sup> should be two months, and that the validity of the notice thereafter should be limited to one month:

We also envisage increasing the degree of certainty for those whose property is affected by increasing the period between the authority serving notice of entry and taking possession from fourteen days to two months, with an absolute requirement that, if the authority has not then taken possession within one month of the expiry of the two-month period specified in the notice of entry, that notice will immediately cease to have effect and the authority will not be able to serve a further notice of entry.<sup>23</sup>

- 5.14 These revised proposals leave some questions unresolved:

- (1) *Starting date* The initial 18 month period is stated to run “between confirmation and serving the notice to treat (or a general vesting declaration)...” We consider that the reference to “confirmation” should be read as meaning the “operative date” to allow for any legal challenge to the confirmed order.<sup>24</sup>
- (2) *Vesting declaration* We have referred above to the doubts as to whether, in order to keep the order alive under the vesting declaration procedure, a preliminary notice is sufficient, or whether there needs to be actual execution of the declaration.<sup>25</sup> We agree with the latter view, which was also the position taken in the Policy Statement.<sup>26</sup>
- (3) *Effect of notice of entry* It is not clear whether the proposed 2 month period stated in the notice of entry is intended to be a fixed requirement, or a minimum period. The 14 day period, which it is intended to replace, is a minimum; the notice must be “not less than 14 days”.<sup>27</sup> A fixed period would probably provide greater certainty. Although there may be reasons in practice for the authority to want to give longer notice in particular

<sup>21</sup> Policy Response Document, para 12(iii): “Recognising the practicalities of organising, say, a major regeneration scheme, we feel that this reduction in time represents a fair balance between the interests of acquiring authorities and of those whose property is to be acquired.” The same paragraph refers to concerns about the implications of this proposal for transport schemes carried out by means of a Transport and Works Act Order. It is envisaged that these will be “taken into account in assessing the need for consequential amendments when preparing legislation to give effect to the proposals outlined here.”

<sup>22</sup> See Part V, para 5.22 below.

<sup>23</sup> Policy Response Document, para 12(iii).

<sup>24</sup> See Part IV, paras 4.16ff above.

<sup>25</sup> Para 5.9 above.

<sup>26</sup> Policy Statement, para 3.11.

<sup>27</sup> 1965 Act, s 11(1) See paras 5.23ff below; under the present law, at least as applied in practice, there appears to be no limit in time to the validity of the notice of entry itself.

cases, this can be done informally. The time may also be extended by agreement (see below). We provisionally propose, therefore, that the formal notice of entry should take effect after a fixed period of two months, applicable in all cases.

- (4) *Taking possession* The implication of the proposal appears to be that actual possession must be taken within the 18 month period. This would mean that the notice of entry would need to be served within 15 months of notice to treat, in order both to allow for 2 months notice, and to take full advantage of the one month allowed for entry thereafter. However, since the additional one month is optional, it would be possible in theory for the period to be extended up to one day short of 16 months. There may also be room for argument about when precisely, during the one month period, actual possession is taken. It may be simpler and clearer for all parties if the 18 month limit is stated to run to service of notice of entry.<sup>28</sup> The overall period would then be a maximum of 21 months.<sup>29</sup>
- (5) *Extensions of time* The current proposal envisages that the time limits may be extended by agreement between the parties. In the earlier proposals, it was envisaged that there might be an extension of the time for exercise of the power, up to a maximum of three years, “by the minister at confirmation stage (on the basis of a case put forward by the acquiring authority and discussed at the inquiry)...”<sup>30</sup> This possibility is not mentioned in the current proposals. It seems reasonable that the authority, in a case of particular complexity, should have the right to seek a longer period.

5.15 In the light of these comments, we propose that the time limits should be re-stated in the following form.

#### **Proposal 5 – Time limits**

- (1) A compulsory purchase order will cease to have effect at the end of the period of 18 months from the operative date, other than in relation to any land in respect of which the order has been implemented.**
- (2) For this purpose, an order is implemented in respect of any land, if notice to treat has been served or a vesting declaration has been executed in respect of that land.**
- (3) A notice to treat shall cease to have effect at the end of the period of 18 months beginning with the date on which it is served, other than in relation to any land in respect of which:**

<sup>28</sup> Cf 1965 Act, s 5(2A)(c) which refers to actual “entry and taking possession”.

<sup>29</sup> This proposal assumes that, as proposed above, the two month period is fixed rather than a minimum.

<sup>30</sup> Policy Statement, para 3.11.

- (a) **compensation has been agreed or awarded or has been paid or paid into court;**
  - (b) **a vesting declaration has been executed;**
  - (c) **the acquiring authority have served notice of entry; or**
  - (d) **the question of compensation has been referred to the Lands Tribunal.**
- (4) **A notice of entry shall be expressed to take effect at the end of two months from the date of service, and shall state that, if the authority has not taken possession within one month of the expiry of the two-month period so specified, the notice will cease to have effect and the authority will not be able to serve a further notice of entry.**
- (5) **These time limits may be extended by agreement between the parties or on application to the confirming authority.**

***Consultation issue (G) – Time limits***

***Do consultees agree with the above proposals (including in particular those discussed in paragraph 5.14(1)-(5)?***

**(3) NOTICE TO TREAT PROCEDURE**

5.16 The main features of the notice to treat procedure can be considered under the following headings:

- (a) Formalities for notice to treat;
- (b) Notice of entry;
- (c) Completion of purchase;
- (d) Deed poll procedure;
- (e) Missing interests; and
- (f) Persons with limited powers.

**(a) Formalities for notice to treat**

***Existing law***

5.17 Section 5 of the 1965 Act governs the procedure for implementation by notice to treat. The following are the main legal requirements:

- (1) The compulsory purchase order must have become “operative”.<sup>31</sup>

<sup>31</sup> See Part IV, para 4.6(5) above.

- (2) The acquiring authority must “require to purchase” the land specified in the notice for the authorised purpose;<sup>32</sup> it may be only part of that included in the confirmed order;<sup>33</sup>
- (3) Notice to treat must be given to “all the persons interested in, or having power to sell and convey or release”, so far as known to the authority after making “diligent inquiry”; and
- (4) The notice must give particulars of the land; demand particulars of the recipient’s “estate and interest”; state that the authority is willing to “treat” (negotiate) both for purchase of the land and for the compensation payable for “the damage which may be sustained by reason of the execution of the works”.

5.18 These requirements, and much of the language, are derived from section 18 of the 1845 Act.

### **Proposal**

5.19 The Government has not proposed any changes of substance to these requirements. The language could be modernised in a consolidation. For example, reference to the compensation payable “for damage which may be sustained by reason of the execution of the works” is a very incomplete description of the different heads of compensation under the modern code.<sup>34</sup> On the other hand, the expression “notice to treat”, though archaic in other contexts, has acquired a familiar and well-established meaning in compulsory purchase, and is short. Because of the historical origins of the procedure, there is no prescribed form of notice to treat. However, as with other forms of notice, we think a prescribed form would help to ensure consistency.

5.20 An issue of more substance is the definition of those entitled to service of notice to treat. As already noted,<sup>35</sup> the 1965 Act requires notice to treat to be served only on those with recognised “interests” in the land. There is extensive case law establishing what “interests” qualify for service of notice to treat.<sup>36</sup> For example, they include rights under a contract for sale;<sup>37</sup> options to purchase;<sup>38</sup> and mortgages (legal or equitable).<sup>39</sup> They do not include tenancies for no greater interest than

<sup>32</sup> The land must be required for a purpose within the authorising legislation. Use for a collateral purpose will be unlawful (see e.g. *Webb v Minister of Housing and Local Government* [1965] 1 WLR 755, CA; *Grice v Dudley Corporation* [1958] Ch 329).

<sup>33</sup> The precise extent of land required is a matter for the discretion of the authority, acting in good faith: see eg. *Stockton & Darlington Rly v Brown* (1860) 9 HL Cas 246.

<sup>34</sup> See Compensation Report Part III, para 3.3 and Part IV, para 4.14 and Proposal 2.

<sup>35</sup> See Part III, paras 3.15ff above.

<sup>36</sup> See the summary in *Butterworths*, D306-7.

<sup>37</sup> *Hillingdon Estates Co v Stonefield Estates Ltd* [1952] Ch 627.

<sup>38</sup> *Oppenheimer v Minister of Transport* [1942] 1 KB 242.

<sup>39</sup> *Cooke v LCC* [1911] 1 Ch 604. The interests of mortgagees may also be dealt with by the special procedure under the 1965 Act, ss 14 – 16: see Part VI, paras 6.57ff below.



from year to year,<sup>40</sup> or occupational licences<sup>41</sup>, or easements,<sup>42</sup> or rights of commoners.<sup>43</sup> We invite views on whether the definition of “interest” in the cases creates any practical problems.

- 5.21 We deal in more detail with minor tenancies in the context of notice to treat procedure in Part VI(1) below and, more particularly, discuss the utility of the special procedure in section 20 of the 1965 Act. The reason for excluding certain lesser interests is no doubt that the authority may not need to acquire these interests, and therefore does not need to “treat” for their “purchase”. For example, a tenancy from year to year may be brought to an end by notice to quit within the timescale required by the authority. On the other hand, the authority may find it convenient to treat all owners of interests or occupiers in the same way. Furthermore, under the present law, all those in occupation, whether or not they have interests entitling them to notice to treat, are likely to be entitled to some form of compensation for displacement.<sup>44</sup>
- 5.22 Subject to those points, we see no need for substantive amendment to the existing statutory provisions, although the language could be simplified in a future consolidation.

### **Proposal 6 – Notice to treat**

**(1) There should be a prescribed form of notice to treat.**

**(2) The reference to compensation (in 1965 Act, section 5(2)(c)) should be amended to substitute a reference to the compensation to be paid in respect of that interest under the Compensation Code.**

#### ***Consultation issue (H) – Notice to treat***

***(1) Is the definition of those on whom notice to treat is required to be served (1965 Act s 5) sufficiently clear? If not, what problems arise?***

***(2) Should the authority have a discretion to serve notice to treat on owners of interests or occupiers outside the defined categories?***

***(3) Do consultees agree (a) that there should be a prescribed form of notice to treat, and (b) that the reference to compensation should be updated as proposed?***

<sup>40</sup> 1965 Act s 20 (headed “Tenants at will etc) provides a special procedure where the land is “in the possession of a person having no greater interest... than as tenant for a year or from year to year”. This is a self-contained procedure, and impliedly excludes the obligation to serve notice to treat: see *Newham LBC v Benjamin* [1968] 1 WLR 694.

<sup>41</sup> *Frank Warr & Co Ltd v LCC* [1904] 1 KB 713, CA.

<sup>42</sup> See Part III, para 3.12 above.

<sup>43</sup> See *Lewis v Glamorgan CC* [1995] 1 All ER 760, 770; 1965 Act, Schedule 4 contains a special procedure for common land, which constitutes a complete code.

<sup>44</sup> Under 1973 Act, s 37; see Compensation Report Part VIII, paras 8.81-82

## **(b) Notice of entry**

### ***Existing law***

5.23 The normal procedure for taking possession following notice to treat is by “notice of entry” under section 11 of the 1965 Act. Apart from this section, the authority may not take possession (other than by consent) until compensation has been paid.<sup>45</sup> The notice of entry procedure was introduced in 1946.<sup>46</sup> For practical purposes, it has replaced the more complex procedure under the 1845 Act, which is still preserved in a Schedule to the 1965 Act,<sup>47</sup> but should in our view be repealed.

5.24 Section 11(1) provides that, if the authority have:

(1) served notice to treat in respect of any of the land;<sup>48</sup> and

(2) “served on the owner, lessee, and occupier of that land not less than fourteen days notice of entry”;

they may “enter and take possession of” the land or “such part of the land as is specified in the notice”.<sup>49</sup> The compensation ultimately awarded carries interest from the time of entry until payment (or payment into court).<sup>50</sup>

As has been seen, entry following a notice under section 11 is one of the steps required to be performed within 3 years of the date of service of the notice to treat, to prevent the notice from lapsing.<sup>51</sup>

5.25 Service of a notice of entry does not commit the authority to taking possession at the end of the specified period, nor result in a notional taking of possession at that time.<sup>52</sup> What constitutes actual entry will be a question of fact.<sup>53</sup> In practice, the notice is usually treated as giving the right to enter at any time following expiry of the time specified, and actual entry may be significantly delayed.<sup>54</sup>

<sup>45</sup> 1965 Act, s 11(4). The section also allows entry for the purpose of survey: *ibid*, s 11(3) (see Part III, para 3.27 above).

<sup>46</sup> 1946 Act, Sched 2, para 3.

<sup>47</sup> 1845 Act, ss 85-87, re-enacted in 1965 Act, Sched 3. The procedure required prior payment into court of compensation assessed by an independent surveyor and the giving of a bond.

<sup>48</sup> In practice the notice to treat and notice of entry are often served at the same time: see Butterworth's, *op cit*, para D703.

<sup>49</sup> 1965 Act, s 11(1). If the land is ecclesiastical property, notice of entry must also be served on the Church Commissioners.

<sup>50</sup> *Ibid*, s 11(1). The rate is prescribed under 1961 Act s 32: see Compensation Report Part VIII, paras 8.37, 8.46-8.48 and Proposal 15. For payment into court, see Part VII, paras 7.32ff below.

<sup>51</sup> See 1965 Act, s 5(2A) (Part V, para 5.7 above)

<sup>52</sup> See *Burson v Wantage RDC* (1974) 27 P&CR 556, LT.

<sup>53</sup> *Ibid*.

<sup>54</sup> It seems open to question whether this practice complies with the section, which appears to envisage that the notice will indicate the time of entry with some precision.

- 5.26 This arrangement may cause serious uncertainty for occupiers. In such cases, it is usually in the interests of both sides to agree detailed arrangements for the actual take-over, in order to minimise the disruption and compensatable losses. As we have seen, the Government recognises the difficulty and has made proposals for change.<sup>55</sup>
- 5.27 As section 11 makes clear, an authority may serve separate notices for different parts of the land, and take possession in stages. Alternatively, it may serve notice of entry in respect of the whole of the land, but then take actual possession by stages. However, in the latter case, the first entry on part will be treated (for compensation purposes) as taking possession of the whole of the land included in the notice of entry, even if the owner remains in actual possession of the remainder.<sup>56</sup>

### **Discussion**

- 5.28 We have already referred to the Government's proposals for revised time limits for notice of entry.<sup>57</sup> We see no need for further substantive change, but invite comments on any other practical problems.

### **Consultation issue (I) – Notice of entry**

***Subject to the proposals for amended time limits (para 5.15 above), are there any other practical problems in the operation of the rules for notice of entry? If so, how should they be remedied?***

### **(c) Completion of purchase**

#### **Generally**

- 5.29 In a normal case, where notice to treat is followed by agreement or determination of compensation (whether or not entry has taken place), completion is governed by the ordinary law relating to sale of land.
- 5.30 The notice to treat itself does not create a binding contract of sale.<sup>58</sup> Thus, for example, a contract for sale of land will not be frustrated by service of a notice to treat; the owner is free to sell or otherwise deal with his property.<sup>59</sup> There is no requirement that it be registered as a land charge under the Land Charges Act

<sup>55</sup> Paras 5.12ff above. There may also be an issue under the Human Rights Act 1998: if a landowner does not know precisely when he must vacate that could involve interference both with his right to privacy (Article 8) and with his right to peaceful enjoyment of his possessions (First Protocol, Article 1).

<sup>56</sup> *Chilton v Telford Development Corporation* [1987] 1 WLR 872, CA (a case under the equivalent provisions of the New Towns Act 1981). Compensation will accordingly be assessed on the basis that possession of the whole was taken on that date, even though the occupant has remained in possession thereafter.

<sup>57</sup> Paras 5.12ff above.

<sup>58</sup> *Haynes v. Haynes* (1861) 1 Dr. & Sm. 426.

<sup>59</sup> *Hillingdon Estates Co. v. Stonefield Estates Ltd.* [1952] Ch 627, applied in *Johnson (E) & Co (Barbados) Ltd v NSR Ltd* [1997] AC 400, PC.

1972, since it is not an estate contract.<sup>60</sup> However, the rights and obligations it creates are legal incidents binding on the land.<sup>61</sup> It has the effect of preventing the owner from creating any new interest in the land so as to increase the compensation burden on the acquiring authority.<sup>62</sup> It also puts either party in the position, in default of agreement, to require the compensation to be determined by the Lands Tribunal,<sup>63</sup> and thereby to create a legally enforceable contract.

- 5.31 Once compensation has been agreed or determined, the position changes.<sup>64</sup> There is then a relationship equivalent to that of vendor and purchaser under an ordinary contract for sale of land (sometimes called a “statutory contract”<sup>65</sup>). This is enforceable by specific performance by either party in the ordinary way.<sup>66</sup> A form of conveyance is prescribed by the 1965 Act, but this is not mandatory, and it is doubtful whether it serves any useful purpose.<sup>67</sup> We invite views.
- 5.32 One issue arising from this assimilation of the compulsory purchase procedure to that for a private sale is the availability of the “vendor’s lien”. Under the ordinary law, a vendor retains a lien over the land, until the purchase price is paid.<sup>68</sup> In principle, it seems, a person whose land is compulsorily acquired may also claim a “vendor’s lien”, until compensation is paid.<sup>69</sup> However, the cases which established this principle arose under the procedures in the 1845 Act, as applied to railway

<sup>60</sup> *Capital Investments Ltd v Wednesfield UDC* [1965] Ch 774, 794. In practice, it is usually registered by the acquiring authority as a local land charge, and will be apparent on local searches: see Denyer Green *op cit* p 91. That, however, is not a statutory requirement in either the Local Land Charges Act 1975 or the Local Land Charges Rules 1977 (SI 1977 No 985) as amended. Notice to treat does not amount to a “prohibition” or “restriction” in s 1(1) of the 1975 Act. See Part VII (7) below, for discussion of local land charges.

<sup>61</sup> *Mercer v. Liverpool, etc Rly* [1903] 1 KB 652, 662 (approved at [1904] AC 461).

<sup>62</sup> *Ibid.* See Compensation Report, Part V, paras 5.63-5.68 and Proposal 7(4).

<sup>63</sup> 1965 Act, s 6. The limited rights of the authority to withdraw the notice to treat are governed by s 31 of the 1961 Act: see Part VIII, paras 8.11ff below.

<sup>64</sup> If the purchase price is agreed “subject to contract” (so that it is only provisional) that is not sufficient to fix quantum: *Munton v GLC* [1976] 1 WLR 649, CA; *Duttons Breweries Ltd v Leeds City Council* (1981) 43 P&CR 160, CA.

<sup>65</sup> See *Capital Investments Ltd v Wednesfield UDC* [1965] Ch 774, 794.

<sup>66</sup> *Harding v. Metropolitan Rly* (1872) LR 7 Ch 154 See generally, *Halsbury’s Laws*, Vol 8 para 115 (“Effect of notice to treat”). This contract is registrable as an estate contract under Class C; *ibid.*, and see *Capital Investments Ltd v Wednesfield UDC* (above).

<sup>67</sup> 1965 Act, sched 5, applied by *ibid.*, s 23(6), which also permits “any other form which the acquiring authority may think fit”. By s 23(6), a conveyance using the prescribed form (or one as near as the circumstances admit) is effectual to “bar all estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever” in the land so far as “purchased or compensated for by the consideration mentioned in the conveyance”; it is not clear what this adds to the position as it would be in any event. It seems that the prescribed form is rarely used in modern practice: *Butterworths*, para D1007. 1965 Act, s 23 also deals with the costs of conveyance: see Part VII, paras 7.41-7.43 below.

<sup>68</sup> See generally, *Halsbury’s Laws*, (4<sup>th</sup> ed, 2000 reissue), Vol 8, para 758.

<sup>69</sup> *Walker v Ware, Hadham etc Rly* (1865) LR 1 Eq 195; see *Halsbury’s Laws*, (4<sup>th</sup> ed, 2000 reissue), Vol 28, paras 762, 780.

companies.<sup>70</sup> It is not clear how far it would be followed under modern procedures, for example where the authority has taken possession before determination of compensation.<sup>71</sup> There seems little justification for such a lien, to secure what is a statutory right to payment of compensation by a public authority. On the other hand, where the acquiring authority is a commercial entity, such as a privatised utility company, the additional protection of the vendor's lien may continue to be important.

- 5.33 Subject to the last point, we are not aware of any particular difficulties in the powers available for completion. We provisionally propose no change to the present procedure: that is, the right of either party to refer the question of compensation to the Tribunal, and to enforce the resulting "statutory contract" by specific performance. However, we invite comments.

***Consultation issue (J) – Completion of purchase***

***(1) Do consultees agree that the law relating to completion of purchase following notice to treat operates satisfactorily?***

***(2) Is there a need to clarify or amend by statute the law relating to the vendor's lien in its application to property subject to compulsory purchase? If so, in what circumstances, if any, should there be such a lien, and subject to what conditions?***

***(3) What practical purpose (if any) is served by the prescribed forms of conveyance (1965 Act s23, Schedule 5)?***

***(d) Deed poll procedure***

- 5.34 In addition to the remedy of specific performance, the authority has a statutory remedy under the 1965 Act. Section 9 of the 1965 Act applies if the purchase price or compensation (agreed or awarded) has been tendered to the landowner, and he (a) refuses to accept it or (b) fails to make good title or (c) fails to execute the necessary conveyance or release.<sup>72</sup> The acquiring authority may then pay the compensation sum into court,<sup>73</sup> and execute a deed poll,<sup>74</sup> describing the land, the circumstances of the payment and the parties to whose credit the payment is made.<sup>75</sup> This will have the effect of "vesting absolutely" in the authority the interests of those for whom the payment is made, together with right to immediate

<sup>70</sup> The lien in *Walker's* case arose in the context of s85 of the 1845 Act (the precursor to the alternative bond procedure in Schedule 3 to the 1965 Act). Sched 3 is now obsolete: see paras 5.3-5.5 above.

<sup>71</sup> 1965 Act, s 11 makes no reference to a lien, but merely confers a right to interest from the date of possession.

<sup>72</sup> 1965 Act, s 9(1).

<sup>73</sup> Payment-in, in the specific context of compensation, is governed by ss 25-26 of the 1965 Act; the general provision is to be found in s 75, Sched 9, Administration of Justice Act 1982 (repealing and replacing s 4 of the Administration of Justice Act 1965, which is referred to in s 25 of the 1965 Act). See also the Court Funds Rules 1987.

<sup>74</sup> 1965 Act, s 28 contains general provisions for deed polls.

<sup>75</sup> *Ibid*, s 9(2), (3).

possession as against them.<sup>76</sup> Section 9(5) provides for the court to make orders for distributing the moneys paid into court “according to the respective estates, titles or interests” of the claimants. The order may be made on the application of any person claiming any of the money, or any interest in the land.<sup>77</sup>

5.35 The 1965 Act contains further detailed provisions relating to payments in, which may be unnecessary in a new Code. Although section 9 gives the Court power to make such order “as it thinks fit”,<sup>78</sup> there is also special provision, in the case of money paid in respect of a lease or similar interest, for the court to order it to be invested and paid to give “the same benefit as they might lawfully have had from the lease... or as near as may be thereto.”<sup>79</sup> There is also a lengthy provision, probably more relevant in 1845, requiring it to be assumed, unless the contrary is shown, that those in possession as owners at the time of the purchase are “deemed to be lawfully entitled”.<sup>80</sup> We doubt whether either needs express provision in a modern Code. A general power for the Court to make such orders as it thinks fit would be sufficient.

5.36 Otherwise, we are not aware of any particular difficulties in the application of these rules.<sup>81</sup> However, we think it would be desirable to replace the present provisions with a new version of the deed poll procedure, expressed in modern and simplified terms along the lines proposed below. As will be seen, it is also applied in the context of vesting declaration procedure.<sup>82</sup> We welcome comments from consultees as to the extent of use of the deed poll procedure in practice, and any practical problems to which it gives rise. Section 28 of the 1965 Act (Provisions as to deed polls), which deals with incidental matters relevant to deed polls,<sup>83</sup> could be retained as part of this provision. We doubt, however, whether it is necessary to retain section 28(3), which provides that the execution of a deed poll is subject to the Law of Property Act 1925, s 7(4). The latter provision requires any power for disposing of or creating a legal estate which is being exercised by a person who is not the estate owner to be exercised, when practicable, in the name and on behalf of the estate owner. The effect of the two provisions combined appears to be that the acquiring authority is required to exercise its powers in the name of the estate owner where it is practicable to do so. We are unsure whether this is considered to be the effect of the provisions by those who utilise the deed poll procedure, and if so whether the reference to section 7(4) serves a useful purpose, or whether it is felt that section 28(3) can safely be repealed. We invite views from consultees as to its continuing relevance.

<sup>76</sup> 1965 Act, ss 9(1)-(4). Title by this route is only valid as against those interests for which payment into court has specifically been made: s 9(4).

<sup>77</sup> *Ibid*, s 9(5) Thus, for example, a mortgagee may apply for payment out of the mortgage amount: *Re Marriage* (1861) 9 WR 843.

<sup>78</sup> 1965 Act, s 9(5).

<sup>79</sup> 1965 Act, s 25(2).

<sup>80</sup> 1965 Act, s 25(3).

<sup>81</sup> See Part VII, para 7.32ff for the rules on payments into court.

<sup>82</sup> See para 5.50 below.

<sup>83</sup> s 28(1)(2) provides that a deed poll shall be executed under the common seal of the authority, and stamped with the duty which would have been payable on a conveyance.

- 5.37 We provisionally propose that the detailed provisions of sections 25 and 26 of the 1965 Act, relating to payments into court, should be replaced in simpler form in this provision.<sup>84</sup>

**Proposal 7 – Deed Poll procedure**

**(1) If after compensation in respect of any land or interest in land has been agreed or determined, the person entitled:**

**(a) refuses to accept the compensation;**

**(b) fails to make out title to the satisfaction of the acquiring authority;  
or**

**(c) refuses to convey or release the land as directed by the acquiring authority;**

**the authority may proceed by “deed poll procedure” as described in this proposal.**

**(2) The acquiring authority may pay into court the compensation payable in respect of the relevant land, or interest, accompanied by a description of the person or persons entitled (so far as known to the authority). The compensation so paid into court shall, subject to the provisions of this Act, be placed to the credit of those persons.**

**(3) On payment into court as above, the acquiring authority may execute a deed poll describing the relevant land, and the circumstances of the payment, and giving the names of the persons to whose credit the compensation is paid.**

**(4) On execution of the deed poll, all the interests in respect of which the compensation was so paid shall vest absolutely in the acquiring authority together with the right to immediate possession as respects those interests.**

**(5) On the application of any person claiming any part of the money paid into court, or any interest in any part of the land in respect of which it was paid into court, the High Court may order its distribution according to the respective interests of the claimants,<sup>85</sup> and may make such incidental orders as it thinks fit.**

**(6) The incidental provisions of section 28 of the 1965 Act (sealing of deed polls, stamp duty etc) should be incorporated.<sup>86</sup>**

<sup>84</sup> See Part VII, paras 7.32ff below, for a discussion of the 1965 Act, ss 25-26.

<sup>85</sup> See 1965 Act, s 9.

<sup>86</sup> Although we question the need to retain sub-section (3): see para 5.36 above.

- (7) The costs incurred in connection with a payment into court under this proposal shall be borne by the authority, save as the court may otherwise order.**

***Consultation issue (K) – Deed poll procedure***

***(1) Do consultees agree that it would be desirable to re-state the deed poll procedure in modern form? If so, do they have any comments on the detail of the above proposal?***

***(2) In particular, do they agree that the detailed provisions (referred to in para 5.35) are unnecessary, so long as the Court has a general power to make such orders as it thinks fit?***

***(3) Further, do consultees have any comments on the effect and continuing relevance of section 28(3) of the 1965 Act and the reference therein to section 7(4) of the Law of Property Act 1925? Can section 28(3) be safely repealed?***

***(4) Consultees are asked to indicate the extent of use of the present deed poll procedure, and any practical problems to which it gives rise.***

***(e) Missing interests***

5.38 Schedule 2 to the 1965 Act<sup>87</sup> contains special rules dealing with “absent and untraced owners.” It applies to land to be acquired from either a person who “is prevented from treating with [the authority] on account of absence from the United Kingdom”; or a person who “cannot be found after diligent inquiry has been made”.<sup>88</sup> Compensation is determined by a surveyor member of the Lands Tribunal,<sup>89</sup> and is paid into court, following which the authority may execute a deed poll vesting the relevant interests in the authority.<sup>90</sup> Any person claiming an interest in the land may apply to court for payment out;<sup>91</sup> if he is dissatisfied with the amount determined by the surveyor, he may require the authority to submit that issue to the Lands Tribunal for determination.<sup>92</sup>

5.39 We understand from the Lands Tribunal<sup>93</sup> that about a dozen cases a year are dealt with under Schedule 2. Generally they concern small pieces of land which have

<sup>87</sup> Applied by 1965 Act, s 5(3) (re-enacting provisions in 1845 Act, ss 76-78).

<sup>88</sup> 1965 Act, Sched 2 para 1(1). The procedure is not applicable where the problem is a dispute as to ownership: *Ex p London and SW Ry* (1869) 38 LJ Ch 527.

<sup>89</sup> “The compensation... shall be determined by the valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949”: Sched 2, para (1)(b). This provision is derived from the 1845 Act, s 58, under which the valuation was made by an “able practical surveyor” appointed by two justices. (Section 3 of the Lands Tribunal Act 1949 gives the President the duty to select the member to deal with a particular case, and also provides for procedural rules).

<sup>90</sup> 1965 Act, Sched 2 paras 1, 2.

<sup>91</sup> *Ibid*, para 3.

<sup>92</sup> *Ibid*, para 4.

<sup>93</sup> We are grateful to the President of the Lands Tribunal for this information.



been forgotten by their owners, and are of little value. Occasionally, a parcel may be more valuable, for example because it holds the key to a development site. The normal practice is for the appointed surveyor to seek a valuation from the District Valuer,<sup>94</sup> and there will usually be no reason to question that valuation.

- 5.40 One issue which is raised by the Tribunal for possible consideration is whether there should be provision for the acquiring authority to challenge the surveyor's assessment as being too high. There is currently procedure for challenge by the claimant, but not by the authority. However, the procedure for subsequent challenge by the claimant is needed because he is not party to the original reference. It would appear open to the Tribunal to regulate its procedure so that the authority is able to present its views to the Tribunal before the "valuation" is fixed. If statutory provision is needed, this could be covered by the procedural rules.<sup>95</sup>
- 5.41 We think that the present missing interests procedure should be replaced, in modern language and form. Furthermore, provisionally we see no reason to limit it to the categories referred to in Schedule 2.<sup>96</sup> It should be available whenever the authority is unable to deal directly with the person entitled to a relevant interest, whether because he cannot be traced, or because he is unable or unwilling to deal with them. We invite views on this point.

### **Proposal 8 – Owner untraced, or unable or unwilling to act**

#### **(1) Where either:<sup>97</sup>**

- (a) the owner of any interest in the subject land cannot, after reasonable inquiry, be found by the authority; or**
- (b) the owner has been found, but it appears to the authority that he is prevented from dealing, or is unwilling to deal, with them, by reason of illness, absence or any other circumstance;**

**the authority may proceed under this proposal.**

<sup>94</sup> A question has been raised whether reference to the District Valuer (rather than an independent local surveyor) is appropriate, in cases where he or she is retained as the authority's agent in negotiations under the Order. In practical terms this may avoid unnecessary expense, and, in view of the claimant's right to challenge the valuation, there is unlikely to be an issue under the Human Rights Act 1998. In any event, it seems to us a matter of practice for the Tribunal.

<sup>95</sup> Although it is referred to as a "valuation", rather than a determination, the express reference to section 3 implies that it is within the potential scope of procedural rules. However, use of the word "valuation" has the advantage of making clear that a formal hearing is not required, and that it is not necessarily final as respects the claimant.

<sup>96</sup> 1965 Act, Sched 2, para 1(1)(a) refers to being prevented "on account of absence from the UK". This seems rather anomalous in the age of the telephone and e-mail. In any event, there seems no reason to limit it to this form of impediment.

<sup>97</sup> We assume this is not needed for vesting declarations, where the authority can proceed regardless of any outstanding interests.

- (2) The authority may apply to the Lands Tribunal for the compensation to be paid in respect of the interest to be fixed by a valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949.**
- (3) The acquiring authority shall hold the valuation and produce it on demand, to the owner of the interest to which the valuation relates, or any other persons interested in the land.**
- (4) All the expenses of and incidental to the valuation shall be borne by the acquiring authority.**
- (5) Following the determination of compensation, subject to (6) below, the authority may proceed under the deed poll procedure, and the same consequences shall apply.**
- (6) Where any person claiming to be entitled to compensation paid into court under this proposal, wishes to challenge the amount of compensation as fixed under (2):**
  - (a) He may, before applying to the High Court for payment, by notice in writing to the acquiring authority require the submission of the issue to the Lands Tribunal;**
  - (b) Pending the decision of the Tribunal, the High Court may make such orders for interim payment as it thinks fit; and**
  - (c) If the Lands Tribunal awards a further sum, the acquiring authority shall pay over or pay into court, as the case may require, that further sum within fourteen days of the making of the award.<sup>98</sup>**

***Consultation issue (L) – Owners untraced or unable or unwilling to act***

***(1) Do consultees agree with our provisional view that the missing interests procedure should be re-stated in modern terms?***

***(2) In particular, do they agree that it should not be restricted to persons absent from the UK or who are untraceable, but should also include persons who are unwilling or unable to deal with the authority for whatever reason?***

<sup>98</sup> Sched 2, para 4(3) also contains provision for the costs of the reference, which are to be in the discretion of the Tribunal if it determines that the compensation paid into court was sufficient; but payable by the authority if it was too low. However, we think this can be left to the general discretion of the Tribunal under 1949 Act, s 3(5).

## **(f) Persons with limited powers**

### ***Existing law***

- 5.42 Schedule 1 to the 1965 Act<sup>99</sup> contains a number of provisions described variously as “of limited and rare application”<sup>100</sup> and “of little practical interest [because in] most, if not all, cases . . . power to sell and convey exists elsewhere.”<sup>101</sup>
- 5.43 In essence the Schedule sets out arrangements which enable various classes of person subject to some legal disability to sell lands to an acquiring authority (and the mechanics for handling compensation payable). The classes include corporate bodies, tenants in tail or for life, charitable and other trustees, and persons entitled to receipt of rent and profits from land.<sup>102</sup> Valuation of the subject land is carried out initially by two nominated surveyors, and the compensation is paid into court pending a direction as to its use.<sup>103</sup> We are not aware of any cases where these provisions are required or used in practice.

### ***An Australian comparison***

- 5.44 The Australian Law Reform Commission was faced with similar provisions in the Commonwealth legislation, also derived from the 1845 Act. It took the view that such elaborate treatment was unnecessary in a modern Code. It recommended two provisions: first, to empower the person in whom the legal interest is vested, notwithstanding any contrary legal provision, to dispose of land to the acquiring authority; secondly, to empower the Federal Court to approve any agreement for that purpose.<sup>104</sup>
- 5.45 The Lands Acquisition Act 1989 (Commonwealth) (“LAA (Cth)”), section 116 now provides:

(1) Where:

- (a) an acquiring authority wishes to acquire an interest in land from a person by agreement; and
- (b) but for this subsection, the person would not have the capacity or power to enter into or carry out such an agreement;

the person may, with the approval of the Federal Court, enter into and carry out such an agreement.

<sup>99</sup> Applied by s 2 and derived principally from ss7-9, 69-73, 75 of the 1845 Act.

<sup>100</sup> Encyclopaedia of Compulsory Purchase and Compensation, para B-0443.

<sup>101</sup> Halsbury’s Statutes (4<sup>th</sup> ed, 2000 reissue), vol 9, page 244.

<sup>102</sup> Sched 1, para 2. Excluded are minors, married women and persons suffering from mental disability or mental illness.

<sup>103</sup> Sched 1, paras 4, 6.

<sup>104</sup> *Lands Acquisition and Compensation* (ALRC 1980), para 340 and App C Draft Lands (Acquisition and Compensation) Bill, cl 71.

- (2) Where:
- (a) an interest in land has been acquired from a person by compulsory process; and
  - (b) but for this subsection, the person would not have the capacity or power to do something in connection with compensation in respect of the acquisition;
- the person may, with the approval of the Court, do the thing.
- (3) Where, under subsection (1) or (2), the Court gives its approval to a person entering into an agreement, or doing something in connection with compensation, amounts payable under the agreement, or by way of compensation, shall be:
- (a) paid to a trustee appointed by the Court, subject to such trusts as the Court directs; or
  - (b) otherwise applied in accordance with the directions of the Court.
- (4) This section has effect despite any law, deed, will, memorandum or articles of association or other instrument.

***Proposal for change***

- 5.46 We have no doubt that Schedule 1 to the 1965 Act, in its present form, is unnecessarily complex. If there is a need to deal with this issue in a new Code, the Australian legislation provides a suitable model. However, we are not at present persuaded that there are any situations in practice where such a provision would be used. Accordingly, we provisionally propose simply to repeal Schedule 1 without replacement. We invite views.

***Consultation issue (M) – Persons with limited powers***

***Do consultees agree that Schedule 1 to the 1965 Act can be repealed without replacement?***

**(4) VESTING DECLARATION PROCEDURE**

- 5.47 The other method of implementing a compulsory purchase order is by general vesting declaration. The procedure is now consolidated in the Vesting Declarations Act, replacing earlier provisions first contained in the Land Commission Act 1967.<sup>105</sup> The procedure is available to an acquiring authority once the order has become operative.

**Procedure**

- 5.48 The Act lays down three steps before the declaration can take effect:

<sup>105</sup> Applied generally by Town and Country Planning Act 1968, s 30.

- (1) the giving of the statutory particulars,<sup>106</sup> either in the notice of confirmation of the order, or in a subsequent statement published and served in the same way.<sup>107</sup> The declaration itself may not be executed less than 2 months after first publication of this notice, although the notice may specify a longer period, or a shorter period may be agreed with all the occupiers;<sup>108</sup>
- (2) the execution of the declaration in prescribed form vesting the land in the acquiring authority at the end of a specified period, not less than 28 days after the service of notices under (3) below;<sup>109</sup> and
- (3) service of a notice in the prescribed form (specifying the land and the effect of the declaration) on every occupier of the subject land and on any person who supplied information in response to the particulars under (1) above.<sup>110</sup>

5.49 Once executed the declaration will have the effect of vesting in the acquiring authority, on the vesting date, title to the land specified in the declaration, together with the right to take possession, as though it had executed a deed poll “in respect of all the land and all the interests therein”.<sup>111</sup> Notice to treat is deemed to have been served, on the date of execution, on every person who could have been served with a notice under section 5 of the 1965 Act.<sup>112</sup> From the vesting date the authority becomes liable to pay compensation, and interest on it, as though possession had been taken under a notice of entry.<sup>113</sup> “Minor tenancies” and long tenancies “about to expire” are excluded from this procedure.<sup>114</sup>

5.50 We have already mentioned that, under the notice to treat procedure, easements or other rights (such as restrictive covenants) affecting the subject land are not automatically extinguished on compulsory acquisition, but may be overridden

<sup>106</sup> A prescribed statement of the effect of the procedure, and an invitation to potential claimants to make a statement in the prescribed form of their names and interests: Vesting Declarations Act, s 3(3); see also Compulsory Purchase of Land (Vesting Declarations) Regulations 1990, SI 1990, No 497 (“the Vesting Declarations Regs”) in which the prescribed forms are given.

<sup>107</sup> Vesting Declarations Act, s 3.

<sup>108</sup> *Ibid*, s 5(1).

<sup>109</sup> *Ibid*, s 4(1); the first day after the end of that period is “the vesting date”: s 4(3).

<sup>110</sup> *Ibid*, s 6.

<sup>111</sup> *Ibid*, s 8: the authority is deemed to have executed a deed poll for all the land. “Vesting date” is defined as the first day after the end of the period specified in the declaration in accordance with s4(1): ss 2(1), 4(3). For “deed poll”, see paras 5.34-5.37 above.

<sup>112</sup> But excluding anyone actually served with notice to treat before the vesting date, and those with minor tenancies or tenancies about to expire (as defined: *ibid*, s 7(1)). Unlike an actual notice to treat (see paras 5.16-5.22 above), the deemed notice to treat cannot be withdrawn.

<sup>113</sup> *Ibid*, s 10. There is provision for recovery of overpaid compensation, if further incumbrances are discovered subsequent to payment: *ibid*, s 11.

<sup>114</sup> *Ibid*, s 9, which provides for service of notice to treat and notice of entry on such interests. Minor tenancies are tenancies from year to year or less; “long tenancies about to expire” are tenancies with a remaining period less than the period specified in the declaration: *ibid* s 2. See discussion of “minor tenancies” under Part VI below.

when necessary on payment of compensation.<sup>115</sup> It is not entirely clear from the Vesting Declarations Act whether the same applies. Section 8(1) provides that the land vests in the authority as if a deed poll under Part I of the 1965 Act had been executed in respect of “all the land and all the interests therein”; and subsection (2) provides that this includes a deed poll “for extinguishing... any rent-charge... or other incumbrance”.<sup>116</sup> There is no reference to the extinguishment of rights such as easements. The implication seems to be, therefore, that, under the vesting declaration procedure, such rights are not extinguished automatically, but may be overridden on payment of compensation, as under the notice to treat procedure.<sup>117</sup>

### **Discussion**

- 5.51 The Policy Statement contains no proposal to amend the main features of the vesting declaration procedure, and we are not aware of substantial difficulties in its operation, although there may be a need for clarification of the effect of a vesting declaration on existing rights, such as easements.<sup>118</sup> As a relatively modern procedure, it may be incorporated in a future consolidation without substantial amendment. However, we invite views on any specific problems to which the existing procedure gives rise.

#### ***Consultation issue (N) – Vesting declaration procedure***

***(1) Do consultees agree that the vesting declaration procedure operates satisfactorily in practice? If not, what problems arise and how should they be addressed?***

***(2) In particular, do consultees agree with our analysis of the operation of the vesting declaration procedure in relation to easements and other rights over subject land?***

<sup>115</sup> See Part III. para 3.17 above; and the more detailed discussion in Part VI below. See also Compensation Report, Part VIII(1).

<sup>116</sup> This reference appears to be designed to cover the special powers available under e.g. 1965 Act, Sched 1, para 3 to release such rights, which may also be subject to the deed poll procedure (*ibid*, para 10(2)).

<sup>117</sup> See further Part VI, paras 6.18ff below.

<sup>118</sup> And some adjustment relating to divided land: see further para 6.56 below.

# PART VI

## PARTICULAR INTERESTS

### INTRODUCTION

6.1 In this Part we deal with particular categories of interest which require special treatment:

- (1) *Lesser interests:*
  - (a) *Minor tenancies* We review the rules, under respectively the notice to treat and vesting declaration procedures, for minor tenancies (such as from year to year or less). They enable the authority, rather than “acquiring” such interests, to rely on the contractual provisions for termination. There are some differences between the two procedures. We propose that they should be brought into line, and the archaic language of the 1965 Act restated in modern form; and
  - (b) *Easements and other private rights* We make proposals to clarify the law relating to interference with easements or other rights over the subject land, including a new power for the authority to elect whether to “override” the rights (to the extent necessary to allow the proposed works and their use<sup>1</sup>) or to “extinguish” them altogether.
- (2) *Divided interests* Where part of a building or holding is subject to compulsory purchase, the owner may in certain circumstances compel the authority to take the whole. We review and compare the existing provisions relating to notice to treat procedure (1965 Act, s 8) and vesting declarations (Vesting Declarations Act, s 12, Sched 1), and note the separate rules for agricultural land (1973 Act, ss 53-7). We discuss the comments of CPPRAG and the ODPM on possible reforms. We make proposals for a revised, unified set of rules for a “divided property notice”, applicable to both procedures; and suggest an extension of the existing right to enable such a notice to be served by any owner whose retained land, as a result of the acquisition, cannot reasonably be used for the previous purpose.
- (3) *Mortgages and rentcharges* We propose that the existing provisions of the 1965 Act should be retained without substantive amendment, but invite comments.
- (4) *Public rights of way* We note the existence of a special procedure for extinguishment of rights of way over land subject to compulsory acquisition, but propose no change.

## **(1) LESSER INTERESTS**

### **Introduction**

6.2 As already explained,<sup>2</sup> two important categories of interest are excluded under the present law from the requirement to serve a notice to treat:

- (1) Minor tenancies; and
- (2) Easements and other private rights.

There are similar rules in respect of Vesting Declarations.<sup>3</sup>

### **(a) Minor tenancies**

#### ***Notice to treat procedure***

6.3 Section 20 of the 1965 Act (headed, misleadingly, “tenants at will, etc”) embodies a special procedure for dealing with an occupant of the land “having no greater interest than as tenant for a year or from year to year”.<sup>4</sup> Such a person is not entitled to notice to treat, although in practice the authority may serve such a notice.<sup>5</sup> The authority may simply await the expiry of the contractual term, or serve notice to quit under the contract.<sup>6</sup> In that case, there is no right to compensation under the 1965 Act, although there may be a right to a “disturbance payment” under the 1973 Act.<sup>7</sup> Section 20 enables possession to be required in advance of the contractual date, by means of a specific demand by the authority and the payment or tender of compensation.<sup>8</sup>

6.4 The Act defines the heads of compensation to which a tenant is entitled in such cases:

- (1) the value of the unexpired term or interest in the land;
- (2) “any just allowance which ought to be made to him by an incoming tenant”;
- (3) “any loss or injury he may sustain”;<sup>9</sup> and

<sup>1</sup> This would remove the uncertainty created by the distinction drawn in some cases between the *erection* of the works and their *use*: see *Thames Water Utilities v Oxford City Council* [1999] 1 EGLR 167 (see para 6.21 below).

<sup>2</sup> Part V, paras 5.20-5.22 above.

<sup>3</sup> Part V, paras 5.47-5.50 above.

<sup>4</sup> It is derived from 1845 Act, s 121. It does not apply to a person occupying under a mere licence: cf *Frank Warr & Co v LCC* [1904] 1 KB 713.

<sup>5</sup> A practice sanctioned by *Newham LBC v Benjamin* [1968] 1 WLR 694, 701, CA.

<sup>6</sup> See *Newham LBC v Benjamin*, above, for a modern explanation of the procedure.

<sup>7</sup> 1973 Act, ss 37-8; see Compensation report Part VIII, para 8.81.

<sup>8</sup> 1965 Act, s 20(4). There must be a specific demand, even if notice to treat has in fact been served (see the *Newham* case, above).

<sup>9</sup> 1965 Act, s 20(1), covering the first three heads.



(4) if part only of the holding is taken, compensation for severance or injurious affection.<sup>10</sup>

6.5 As originally enacted, the section required to be left out of account any right of a business tenant to a new tenancy under the Landlord and Tenant Act 1954.<sup>11</sup> This was amended in 1973, so that now the rights of both business and agricultural tenants (as well as residential tenants) to statutory protection have to be taken into account.<sup>12</sup>

### ***Vesting declaration***

6.6 Similarly, the vesting declaration procedure has special rules for land subject to a “minor tenancy”<sup>13</sup> or “a long tenancy which is about to expire”.<sup>14</sup> In respect of such interests, the vesting declaration does not give the authority an immediate right to immediate possession.<sup>15</sup> Instead, section 9 provides for a form of notice to treat and notice of entry:

(2) The right of entry conferred by section 8(1) above shall not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the acquiring authority have served on every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of such period as is specified in the notice (not being less than 14 days) from the date on which the notice is served, they intend to enter upon and take possession of such land as is specified in the notice, and that period has expired.

(3) The vesting of the land in the acquiring authority shall be subject to the tenancy until the period specified in a notice under subsection (2) above expires, or the tenancy comes to an end, whichever first occurs.

6.7 Thus, the authority must either acquire the minor tenancy by notice to treat, and pay compensation accordingly, or wait for it to expire.

### ***Discussion***

6.8 As already explained,<sup>16</sup> the advantage of these arrangements is that the acquiring authority does not have to trouble at the outset with minor and expiring tenancies. It may well be more convenient to allow the interests to expire, or to make informal arrangements, as implementation proceeds, to deal with relocation or

<sup>10</sup> *Ibid*, s 20(2).

<sup>11</sup> 1965 Act, s 20(6), applying Landlord and Tenant Act 1954, s 39.

<sup>12</sup> 1973 Act, ss 47- 48.

<sup>13</sup> Defined as “a tenancy from year to year or any lesser interest”: Vesting Declarations Act, s 2(1).

<sup>14</sup> In summary, a tenancy having at the vesting date such period (longer than a year) as specified in the declaration: Vesting Declarations Act, s 2(2).

<sup>15</sup> Nor is there a deemed notice to treat: Vesting Declarations Act, s 7(1)(ii) (see Part V, para 5.49 above).

<sup>16</sup> Part V, para 5.20-5.22 above.

rehousing requirements. The Policy Statement contains no proposal to change the substance of these provisions. Although the language of section 20 of the 1965 Act is archaic and confusing, its operation in practice does not appear to give rise to difficulty, following the clarification given by the *Newham* case.<sup>17</sup> We propose that it should be restated in modern terms. There are differences between the two procedures, the reasons for which (other than historical) are not obvious. For example, it might seem sensible for “long tenancies about to expire” to be covered by both procedures. We invite views on that suggestion, and whether any other substantive amendment is required.

### **Proposal 9 – Minor tenancies**

**Section 20 of the 1965 Act should be restated in modern language, in accordance with the *Newham* case,<sup>18</sup> and consistently with section 9 of the Vesting Declaration Act (including provision for “long tenancies about to expire”, as defined in that Act).**

#### ***Consultation issue (O) – Minor tenancies***

***(1) Do consultees agree that the current procedures for minor tenancies under (a) the 1965 Act, section 20 and (b) the Vesting Declarations Act, section 9, operate satisfactorily? If not, what amendments should be made?***

***(2) Should section 20 of the 1965 Act be restated in modern form as proposed above?***

#### **(b) Easements and other private rights**

##### ***Introduction***

6.9 In the application of the Code to easements and other rights over land, three situations need to be distinguished:

- (1) Acquisition of new rights over the subject land, without acquiring the land itself;
- (2) Acquisition of the subject land (“the dominant tenement”) with the benefit of existing easements or rights over other land (“the servient tenement”); and
- (3) Acquisition of the servient tenement, followed by use so as to interfere with existing easements or other rights attached to other land.

6.10 The first two raise no special issues in the context of the present project:

- (1) *Acquisition of new rights* As explained previously,<sup>19</sup> this is largely a question of powers, rather than procedure. Where powers to acquire new rights are

<sup>17</sup> *Newham LBC v Benjamin* [1968] 1 WLR 694 (para 6.3, n 5, 6 above)

<sup>18</sup> See note 17 and para 6.3 above.

<sup>19</sup> Part III, para 3.12 above.

conferred (for example, under the 1976 Act), procedure and assessment of compensation generally follow the ordinary rules for acquisition of land, with detailed modifications specified in the enabling Act.

- (2) *Rights attached to the subject land* Where an authority purchases a dominant tenement, ordinarily it acquires the benefit of any rights attached to it in the same way as any other purchaser (subject to the definition of “land” in the enabling statute), without needing to identify them specifically in the notice to treat, or vesting declaration.<sup>20</sup>

The third situation gives rise to more difficulty and is addressed in the following paragraphs.

### ***Interference with existing rights***

#### NOTICE TO TREAT PROCEDURE

- 6.11 Where the servient tenement is acquired, the acquiring authority, in carrying out the statutory purpose, is able to interfere with easements, covenants or similar rights, subject to payment of compensation.<sup>21</sup>
- 6.12 The right is not acquired or extinguished,<sup>22</sup> but continues to bind the land:

It is, I think, settled law that in all cases where land is subject to a burden which runs with it for the benefit of other land, a purchaser taking under compulsory powers takes the land subject to that burden like any other purchaser; but the covenant cannot be enforced by injunction in the Courts if the breach is attributable to the execution of the works authorised by the statute under which it was taken, or to the exercise of the statutory powers thereby conferred on the purchaser.<sup>23</sup>

- 6.13 This principle, though well established, may cause uncertainty, particularly where the authority wishes to dispose of the land for development. In the first place, it may be difficult for the authority, or those dealing with it, to be sure of the extent

<sup>20</sup> See *Butterworths*, para B-447.

<sup>21</sup> See Compensation Report Part IX, and Part III, para 3.17 above. For a modern discussion of the case law, see *Re Elm Avenue, New Milton* [1984] 1 WLR 1398. The same rules apply whether the servient tenement is acquired compulsorily, or by agreement: *ibid*.

<sup>22</sup> There is a suggestion to the contrary in *Marten v Flight Refuelling Ltd* [1962] Ch 115, 141 (see below), where Wilberforce J mentioned *Clarke v School Board for London* (1874) LR 9 Ch 120 as establishing “that by procedure in the Lands Clauses Consolidation Act 1845, an easement can be got rid of”. It is a possible interpretation of the judgment of Mellish LJ in that case (p 126) that such rights may be “acquired” by the authority, if necessary; however, the judgment of the Lord Chancellor proceeds on the basis that the acquisition procedures are inapplicable to them (p 124).

<sup>23</sup> Per Luxmoore J, *Re Simeon and Isle of Wight RDC* [1937] Ch 525, 535 See also *Manchester, Sheffield and Lincs Ry Co v Andersen* [1898] 2 Ch 394, 404, per Chitty LJ: “The covenant... is not gone; but the remedy by action has been taken away.”

of such rights. Even where the land is registered, the existence of such rights will not normally be apparent from the register.<sup>24</sup>

- 6.14 Secondly, there is some doubt as to the continued effect of the rights following acquisition by the authority. Although the authority itself may (subject to paying compensation) lawfully interfere with the rights by virtue of its statutory powers, it seems that the rights remain in suspension, and may restrict the use of land by third parties if the authority in due course disposes of the land.
- 6.15 This is illustrated by *Marten v Flight Refuelling Ltd*.<sup>25</sup> In that case, agricultural land, which had been requisitioned by the Air Ministry in 1942, had been sold by the then owner in 1943 subject to a covenant restricting it to agricultural use; it was later acquired compulsorily by the Ministry under the Defence Acts in 1958. The issue was whether that covenant still held good when the Ministry let the land to an aviation company. It was held that the covenant could not prevent use by the Air Ministry and its agents for purposes for which it was acquired,<sup>26</sup> nor the use by the tenant company, so far as the company's activity could be treated, on a "broad approach", as done "for the purposes for which the airfield may be considered to have been acquired."<sup>27</sup> On the facts, it was held that the company was protected in respect of its work on flight refuelling for the Air Force; but separate nuclear research work and contract work undertaken for the Belgian Air Force fell outside the statutory protection.<sup>28</sup>
- 6.16 It is also uncertain what happens to the rights, once there has been interference for which the authority has paid compensation. Denyer-Green suggests that the rights continue to bind the land, except to the extent of the interference for which compensation has been paid:

The payment of compensation is in lieu of an action for an injunction or damages... If the owner of the third-party right had been awarded damages at common law for an interference with his right, he would not be entitled to make a further claim in respect of the same interference. Neither would he be likely to obtain an injunction after the expiration of a reasonable period of time from the initial interference. There seems no reason why the payment of compensation under statutory provisions should have any different effect. Accordingly, if compensation is paid, no further payment can be made in respect of the same interference. But if the original cause

<sup>24</sup> The position is summarised in *Butterworths*, para B- 462-3: "in respect of registered land, overriding interests and minor interests noted on the register will continue to bind the land, unless specifically acquired or extinguished. Similarly, in respect of unregistered land, legal interests in the land under the LPA 1925, s 1(2) registered as land charges under the Land Charges Act 1972 and other equitable interests which are not registrable as land charges and of which the acquiring authority has notice, will continue to bind the land, unless specifically acquired or extinguished". The effect of the Land Registration Act 2002, when it comes into force, will be to limit the circumstances in which interests can be overridden: see Law Com No 271, Land Registration for the Twenty-First Century, Part VIII.

<sup>25</sup> [1962] Ch 115 (Wilberforce, J).

<sup>26</sup> *Ibid*, p 145 (reference was made to *Hawley v Steele* (1877) 6 Ch D 521 at 528).

<sup>27</sup> *Ibid*, p 148.

<sup>28</sup> *Ibid*, p149.

of interference is removed or the scheme terminated, there seems no reason in principle why the third-party right cannot then be potentially enforceable, subject of course to the statutory powers of the acquiring authority. Accordingly, if the acquiring authority were to dispose of land subject to third-party rights, and the cause of the original interference [with] those rights ceases or is removed, it may be possible to argue that the third-party right continues to bind the affected land in the hands of successors to the acquiring authority, even in cases where compensation has been paid: in the latter respect it is arguable that the *Marten* case is wrong.<sup>29</sup>

- 6.17 In principle this analysis seems correct. However, it may create considerable uncertainty for those acquiring land from public authorities following the initial development. In practice, it seems, the authority faced with a claim for compensation may prefer to negotiate the extinguishment or partial extinguishment of the right, thus putting the matter beyond doubt.<sup>30</sup>

#### VESTING DECLARATION PROCEDURE

- 6.18 As already mentioned,<sup>31</sup> the Vesting Declarations Act contains no express rules dealing with interference with easements and other rights over land acquired under that procedure. The effect of such a declaration is that the land vests in the authority as though under the 1965 Act “any power to execute a deed poll had arisen in respect of all the land and all the interests therein”, and the authority had duly exercised that power on the vesting date.<sup>32</sup> It might be thought that this language is apt to give the authority clear title to the land, free of any interests or rights of any kind. However, since the effect of the declaration is defined by reference to the procedure under the 1965 Act, the vesting seems to be limited to the interests which would vest under that procedure.<sup>33</sup> Thus, under this procedure also, easements and other similar rights over the subject land are not acquired or extinguished, but will give rise to rights to compensation when interfered with.<sup>34</sup>

#### SPECIAL STATUTORY PROVISION

- 6.19 Some statutes make special provision for extinguishing or overriding rights over the subject land. An example of “extinguishment” is in the Housing Act 1985. It provides that, where land is acquired (compulsorily or by agreement) within a clearance area, then on completion of the purchase all private rights of way, rights relating to maintaining apparatus, and “all other rights or easements in or relating

<sup>29</sup> Barry Denyer-Green, *Compulsory Purchase and Compensation* (6<sup>th</sup> Ed, 2000), p 115.

<sup>30</sup> See *Butterworths*, para B-465.

<sup>31</sup> Part V, para 5.50 above.

<sup>32</sup> Vesting Declarations Act, s 8(1).

<sup>33</sup> This restricted view is reinforced by, *ibid*, s 8(2), which provides that the reference to a “deed poll” is to “any deed poll whether for vesting land or any interest in land in the acquiring authority, or for extinguishing the whole or any part of any rent-service, rentcharge, chief or other rent, or other payment or incumbrance.” The effect of this provision is somewhat obscure, but it seems to be designed to ensure that the vesting declaration procedure extends to all the categories of interest referred to in Schedule 1 to the 1965 Act (which do not include easements and other such rights).

<sup>34</sup> This seems to be the assumption of the editors of *Butterworths* (see para D 350-60, n 6).

to the land” shall be “extinguished”.<sup>35</sup> Any person who “suffers loss by the extinguishment of any right” is entitled to compensation “to be determined under and in accordance with the Land Compensation Act 1961”.<sup>36</sup>

- 6.20 The 1990 Act does not provide for the extinguishment of rights, but confers an extended power to override easements and other rights,<sup>37</sup> which covers those deriving title from the authority. Where land has been acquired or appropriated by a local authority for planning purposes, the “erection, construction or carrying out, or maintenance of any building or other work”, “whether done by the local authority or by a person deriving title under them”, is authorised if done in accordance with planning permission, notwithstanding interference with interests or rights over the land.<sup>38</sup> The purpose was described in a recent case:

The statutory objective which underlies section 237 of the 1990 Act is that, provided that work is done in accordance with planning permission, and subject to payment of compensation, a local authority should be permitted to develop their land in the manner in which they, acting bona fide, consider will best serve the public interest. To that end, it is recognised that a local authority should be permitted to interfere with third party rights.<sup>39</sup>

- 6.21 In *Thames Water Utilities v Oxford City Council*,<sup>40</sup> the court adopted a narrow interpretation of section 237. In that case, it was held that the erection and operation by the council of a football stadium and associated development was in breach of a covenant limiting its use of the land to “recreational and ancillary purposes”. Although the “erection” of the stadium and other buildings was within the protection of section 237, it was held that this protection did not extend to their “use” by the Oxford Football Club, to which they had been leased. The immunity granted by the section was limited to the “precise immunity” given by the wording of the section, the effect of which was “to set limits upon the exercise of such powers where they involve interference with third party rights”.<sup>41</sup>

<sup>35</sup> Housing Act 1985, s 295(1).

<sup>36</sup> *Ibid*, s 295(3). The 1961 Act does not make specific provision for compensation for extinguishment of rights, but the intention appears to be that compensation will, in accordance with the ordinary rules for injurious affection, be based on diminution in the value of the dominant tenement (see Compensation Report, Part VIII, paras 8.5, 8.6).

<sup>37</sup> The rights to which it applies are extensively defined by s 237(2): “any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support...” (but excluding rights of statutory undertakers).

<sup>38</sup> 1990 Act, s 237(1). Compensation is assessed in accordance with the rules for injurious affection: s 237(4).

<sup>39</sup> Per Dyson J, *R v City of London Corporation, ex p. Mystery of the Barbers of London* [1996] 2 EGLR 128. In this case the court decided that section 237 applied so as to authorise both an original development and subsequent redevelopment if done for “planning purposes”.

<sup>40</sup> [1999] 1 EGLR 167, ChD (Judge Rich, QC).

<sup>41</sup> Arguably, this narrow view was at odds with the “broad approach” adopted in the *Marten* case (see para 6.15 above), which was apparently not referred to in the *Thames Water* case.

### **Proposals for reform**

- 6.22 We think the legal position should be clarified in the statute. The original reason for excluding such rights from acquisition under the ordinary notice to treat procedure was that in many cases, until the work was carried out, it would not be clear to what extent interference was required.<sup>42</sup> Although this may be true in some cases, there will be others in which the authority may reasonably prefer to acquire clean title from the outset. Subject to payment of compensation, it seems reasonable for the authority to have that option. The Housing Act 1985 (see above) provides a precedent.
- 6.23 In other cases, the authority may prefer to wait until the interference is actually required, as under the present law. We see no objection in principle to that, although, as already discussed,<sup>43</sup> owners of such rights should have the opportunity to object to the use of compulsory powers. For such cases, we provisionally propose that the extended power conferred by section 237 of the 1990 Act (see above) should apply generally to authorities having powers of compulsory purchase. The uncertainty created by the *Thames Water* case should be removed by providing that the immunity extends to both erection and use.
- 6.24 There also needs to be clarification of the position following interference with a right, and payment of compensation. We suggest that, where a claim for compensation is made for such interference, it should be open to either party to elect for compensation to be paid on the basis of extinguishment or partial extinguishment of the right; and that, on payment of compensation on that basis, the right is then treated as extinguished to that extent.
- 6.25 We provisionally propose that the law should be restated in accordance with these comments, along the lines suggested below.

### **Proposal 10 – Easements and other rights**

- (1) Where the subject land is or may be subject to easements or other rights,<sup>44</sup> such rights may be *overridden* in accordance with (3) below, save to the extent that the authority elects to proceed by *extinguishment* of the rights, or any of them, over all or part of the land.**
- (2) Where the authority elects to proceed by extinguishment, it shall proceed as though the rights in question were interests entitling the owners to notice to treat; and, on completion of the purchase or on prior taking of possession by the authority, all rights or easements in the land to which the election relates shall be extinguished.<sup>45</sup>**

<sup>42</sup> See *Clark v School Board for London* (1874) LR 9 Ch 120, 124.

<sup>43</sup> See Part III, paras 3.23ff above.

<sup>44</sup> Defined as in the 1990 Act, s 237(2) (see n 37 above).

<sup>45</sup> Cf Housing Act 1985, s 295(1). There would need to be exceptions for special categories, such as right of statutory undertakers.

- (3) In other cases, the rights may be “overridden”: that is, the erection, maintenance or use of any building or other work, whether done by the local authority or by a person deriving title under them, is authorised if done in accordance with planning permission, notwithstanding interference with interests or rights over the land.<sup>46</sup>
- (4) Subject to (5), any person who suffers loss by the extinguishment of, or overriding of, any right, is entitled to compensation to be determined under and in accordance with the Compensation Code.
- (5) Where a claim is made for compensation for rights which have been overridden under (3), either party may elect for compensation to be paid on the basis of extinguishment or partial extinguishment of the right; on payment of compensation on that basis, the right shall to that extent be treated as extinguished or partially extinguished for all purposes.

***Consultation issue (P) – Easements and other rights***

***(1) Where there is to be interference with (and not acquisition of) existing rights, do consultees agree that the position should be clarified in legislation?***

***(2) If consultees agree with (1), do they consider that the acquiring authority should elect to extinguish or to override and that the status of the interference should be clear from the outset? In the event that rights are to be extinguished, do they agree that those rights should be the subject of notice to treat?***

***(3) Where rights are simply to be overridden, do consultees agree***

***(a) that statutory immunity should apply both to erection and to use of any building or other work; and***

***(b) that either party should be able to elect for extinguishment or partial extinguishment?***

**(2) DIVIDED INTERESTS**

**Introduction**

6.26 Where the authority only requires part of a building or a holding, the owner in certain circumstances may require them to take the whole. The provisions, derived in the main from the 1845 Act, are complex and archaic, although the main principles are reasonably clear.

<sup>46</sup> Cf 1990 Act, s 237(1).



6.27 The main relevant provisions of the existing law are found in:

- (1) 1965 Act, section 8<sup>47</sup> (notice to treat procedure);
- (2) 1973 Act, section 58 (criteria for establishing 'material detriment' under section 8);
- (3) 1976 Act, Schedule 1 (adapting 1965 Act, section 8 to the acquisition of rights);
- (4) Vesting Declarations Act, Schedule 1 (procedure for vesting declarations); and
- (5) 1973 Act, sections 53 to 57 (part of an agricultural unit).

### **Outline of the existing law**

#### ***Buildings and other land***

##### NOTICE TO TREAT PROCEDURE

6.28 Section 8 of the 1965 Act provides the general rule that:

- (1) No person shall be required to sell a part only – (a) of any house, building or manufactory, or (b) of a park or garden belonging to a house, if he is willing and able to sell the whole of the house, building, manufactory, park or garden.

This does not apply if, following counter-notice by the landowner, the Lands Tribunal determines that the part of the house, building or manufactory to be acquired can be taken "without material detriment" to that structure, or that the part of the park or garden can be taken "without seriously affecting the amenity or convenience of the house". If it so decides, the authority may acquire part only, and the owner will be entitled to compensation for severance.<sup>48</sup>

6.29 The words "house, building or manufactory" have been construed so widely that, in practice, they include all types of buildings, domestic or business.<sup>49</sup> The 1965

<sup>47</sup> Re-enacting 1845 Act, ss 92, 94.

<sup>48</sup> 1965 Act, s 8(1). Neither the 1845 Act, s 92 nor the 1965 Act, s 8 provided any rules for the manner and timing of service of counter-notices to take the whole. It was held that verbal notice could be sufficient: *Binney v Hammersmith Rly* (1863) 8 LT 161; *Spackman v GW Rly* (1855) 1 Jur (NS) 790; *Richards v Swansea Improvement Co* (1878) 9 ChD 425. The authority could respond to the counter notice, by withdrawing the notice to treat (contrary to the normal rule: see Part VIII, para 8.3 below), but this did not preclude the service of a new notice: *King v Wycombe Rly Co* (1860) 28 Beav 104; *Ashton Vale Iron Co Ltd v Bristol Corporation* [1901] 1 Ch 591, CA. As to timing, it was held that the counter-notice must be served before entry by the authority on the part: *Glasshouse Properties v Department of Transport* (1994) 66 P & CR 285. The effect of counter-notice is that (in default of agreement or of withdrawal of the notice to treat for part) the matter goes to the Lands Tribunal for determination. If the authority enters the part before determination, it is then at risk of having to take the whole without the option of withdrawal: see *Butterworths*, vol 1, para D[388].

<sup>49</sup> See *Ravenseft Properties v Hillingdon London Borough Council* (1968) 20 P & CR 483, LT and cases noted in *Butterworths*, para D385.

Act does not provide any definition of “material detriment”. As interpreted in the cases, material detriment implies that the retained land will be “less useful or less valuable in some significant degree”.<sup>50</sup> The 1973 Act provides that in determining this issue, the Tribunal is to take into account not only the effect of the severance but also “the use to be made of the part proposed to be acquired”, and, where it is acquired for works or use extending to other land, the effects of the whole of the works or use.<sup>51</sup>

- 6.30 Section 8(2) has separate provision for land “which is not situated in a town or built upon”.<sup>52</sup> If the intersection caused by the acquisition leaves land measuring less than half an acre,<sup>53</sup> which cannot conveniently be “thrown into” other land in the same ownership, the landowner has the option of requiring the acquiring authority to purchase that land.<sup>54</sup> Conversely, section 8(3) contains provision to enable the authority to purchase an area of less than half an acre, to which it otherwise might be required to provide a bridge or other connection under the empowering Act.

#### ACQUISITION OF RIGHTS

- 6.31 A modified version of the same tests under section 8 applies, where a local authority is seeking, under the 1976 Act, to acquire new rights over land,<sup>55</sup> rather than the land.<sup>56</sup> In that case, the authority may be required to purchase the claimant’s interest in the land itself, if the Tribunal is satisfied that the right cannot be taken without “material detriment” or “serious effect”, as the case may be. In that event the order is “deemed to authorise the purchase of [the claimant’s] interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs”.<sup>57</sup>

<sup>50</sup> *Ravenseft Properties* (above).

<sup>51</sup> 1973 Act, s 58(1). The words necessitate a “whole scheme approach” so that “all damage or disbenefit to the claimant” in the use of the property will be considered including, e.g. impact on amenity caused by traffic using an adjoining highway: *Blyth v Humberside County Council* (1997) 73 P & CR 213, LT.

<sup>52</sup> Agricultural land is dealt with separately: see paras 6.35ff below.

<sup>53</sup> On one side or both sides of the works.

<sup>54</sup> Section 8(2) of the 1965 Act. The term “thrown into” is used in the proviso, which states: “Provided that this subsection shall not apply if the owner has other land adjoining the land so left into which it can be thrown so as to be conveniently occupied with it, and in that case the acquiring authority shall, if so required by the owner, at their own expense throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof, and by soiling it in a satisfactory and workmanlike manner.”

<sup>55</sup> Ie “rights which are not in existence when the order specifying them is made”: 1976 Act, s 13(1).

<sup>56</sup> *Ibid*, Sched 1, para 7, substituting a modified s 8 in the 1965 Act.

<sup>57</sup> 1965 Act, section 8(1) as substituted. 1973 Act, s 58(1) (see para 6.29 above) is also modified: Sched 1, para 7.

## VESTING DECLARATION

- 6.32 Section 8(1) of the 1965 Act is mirrored in the Vesting Declarations procedure.<sup>58</sup> Where a declaration comprises part only of “any house, building or factory, or . . . a park or garden belonging to a house”, the landowner may serve notice on the authority requiring it to purchase his interest in the whole.<sup>59</sup> Once that notice has been served, the procedure follows a similar course to that under the 1965 Act. The authority may serve notice either withdrawing the deemed notice to treat as respects the severed land, or extending the effect of the vesting declaration to the whole; or may refer the matter to the Lands Tribunal. The Tribunal is required to take into account not only the effect of severance, but also “the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land”.<sup>60</sup>
- 6.33 While Schedule 1 to the Vesting Declarations Act specifically disapplies section 8(1) of the 1965 Act,<sup>61</sup> it is silent on section 8(2),(3). That appears to mean that those provisions remain intact, and apply under both the notice to treat and the vesting declaration routes.
- 6.34 The Vesting Declarations Act scheme differs from the 1965 Act in some respects, for example:
- (1) It gives the Tribunal power to consider the extent of the owner’s land that the authority should acquire and to substitute for the whole of the land a smaller area, including the portion which was proposed to be severed;<sup>62</sup>
  - (2) It provides a normal limit for service of the owner’s notice, of 28 days from the notice of the declaration,<sup>63</sup> and a limit of 3 months within which the authority must respond withdrawing, agreeing or referring the matter to the Tribunal.<sup>64</sup>

### ***Agricultural land***

- 6.35 Separate provisions relating to agricultural land were introduced by sections 53 to 57 of the 1973 Act. These apply to acquisitions by notice to treat or vesting

<sup>58</sup> Vesting Declarations Act, s 12, Sched 1. These provisions are derived from Land Commission Act 1967, Sched 3, paras 3ff, as incorporated by the Town and Country Planning Act 1968, Sched 3, para 9.

<sup>59</sup> This is referred to as a “notice of objection to severance”: Vesting Declarations Act, Sched 1 para. 1

<sup>60</sup> *Ibid*, Sched 1, para 8(2), reflecting the words used in section 58 of the 1973 Act (see para 6.29 above).

<sup>61</sup> *Ibid*, Sched 1, para 2(3).

<sup>62</sup> *Ibid*, Sched 1, para 9.

<sup>63</sup> *Ibid*, Sched 1, para 2. There is provision for extension of time if notice of the declaration was not received: para 10.

<sup>64</sup> *Ibid*, Sched 1, para 4. If they fail to respond within three months, they are treated as having withdrawn from the purchase: para 5.

declaration.<sup>65</sup> There are corresponding provisions for tenancies from year to year or less, following service of notice of entry.<sup>66</sup>

- 6.36 Where an acquiring authority serves notice to treat in respect of part of land within an agricultural unit, the recipient<sup>67</sup> may serve a counter-notice<sup>68</sup> on the authority requiring it to purchase the whole of the land on the ground that the other land is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land,<sup>69</sup> as a separate agricultural unit.
- 6.37 The Lands Tribunal has held that, in deciding this issue, the nature and effect of the authority's proposed use on the use of the remaining land are relevant, but that a claimant's financial arrangements (such as the impact of proposed usage on land value and adequacy of security for a mortgage) are not.<sup>70</sup>
- 6.38 The acquiring authority may accept the counter-notice or, in default, the matter may be referred to the Lands Tribunal for resolution.<sup>71</sup> The Tribunal also has jurisdiction to deal with the terms of surrender by the acquiring authority of an acquired lessee's interest to a lessor<sup>72</sup> (where the lessee but not the lessor has served a counter-notice).
- 6.39 A similar procedure applies, under section 55, where notice of entry is served on an occupying tenant with an interest of a year to year or less.<sup>73</sup> The tenant may serve a counter-notice raising the same issue, namely whether the remainder of the holding is "reasonably capable of being farmed . . . as a separate agricultural unit". If this issue is determined in favour of the tenant, the notice of entry is treated as extending to the whole unit, so far as concerns the tenant.<sup>74</sup> There is special provision for cases where such a counter-notice is successful, but the acquiring authority has not been authorised to acquire the landlord's interest in the part covered by the counter-notice. If the tenant gives up possession of that land to the authority, the tenancy is terminated, and the authority must give up possession of the land to the landlord.<sup>75</sup>

<sup>65</sup> 1973 Act, s 53(1),(5).

<sup>66</sup> 1973 Act, s 55; para 6.39 below.

<sup>67</sup> Being a person who has an interest greater than 'tenant for a year or from year to year' (whether or not in occupation): 1973 Act, s 53(1).

<sup>68</sup> Counter-notice must be served within 2 months of the date of service of the notice to treat: s 3(1).

<sup>69</sup> "Other relevant land" in this context includes other land in the same agricultural unit (occupied in whatever interest), and any other agricultural unit in which he has an interest greater than from year to year: 1973 Act, s 53(3).

<sup>70</sup> *Johnson v. North Yorkshire County Council* (1992) 65 P & CR 65.

<sup>71</sup> 1973 Act, s 54(1). Once the counter-notice is accepted or declared valid, the authority is then deemed to have served notice to treat in respect of the additional land: section 54(2)

<sup>72</sup> 1973 Act, s 54(6).

<sup>73</sup> Such a tenant is not entitled to notice to treat: see Part V, para 5.20 above.

<sup>74</sup> 1973 Act, s 56(2).

<sup>75</sup> 1973 Act, s 56(3). None of the former tenant's pre-existing rights against (or liabilities to) the landlord or the acquiring authority are extinguished (s 56(3)(c); any enhancement in the value of retained land caused by the landlord taking possession will be discounted from compensation in respect of his interest in the remainder of the holding (s 56(3)(e)).

### ***Rentcharges and unexpired tenancies***

- 6.40 Special provisions relate to partial acquisition of rentcharges and unexpired tenancies in the 1965 Act and the Vesting Declarations Act. Rentcharges are dealt with below.<sup>76</sup>
- 6.41 In the case of unexpired tenancies the provisions in section 19 of the 1965 Act apply to both notice to treat and vesting declarations.<sup>77</sup> If part only of land comprised in a lease “for a term of years unexpired” is required, the rent payable under the lease is apportioned between the subject land and the residue by agreement or (in default) by the Lands Tribunal, on the application of any of the three parties (authority, lessor, lessee).<sup>78</sup> We see no reason to alter this provision.

### **Government proposals**

#### ***CPPRAG***

- 6.42 CPPRAG identified several practical difficulties with the existing statutory provisions in the 1965 and 1973 Acts:
- (1) The statutory terminology, especially in section 8 of the 1965 Act, is archaic and in need of modernisation and clarification;
  - (2) The test is “entirely subjective, the residue must be *less* useful or *less* valuable in *some* significant degree”;<sup>79</sup>
  - (3) No regard is paid to the compensation which would otherwise be payable for severance or injurious affection; and
  - (4) Confusion as to whether an acquiring authority, having withdrawn notice to treat, can then unilaterally serve notice in respect of a smaller area.<sup>80</sup>
- 6.43 CPPRAG recommended that the statutory language relating to part acquisition should be updated in a modern codification, and that the position of acquiring authorities in respect of their ability to withdraw notice to treat and to substitute notice on a smaller area should be clarified.<sup>81</sup>

#### ***Policy Statement***

- 6.44 The Policy Statement expresses the Government’s intention:

<sup>76</sup> See paras 6.66ff below.

<sup>77</sup> Applied by Vesting Declarations Act, Sched 1, para 12 (under which the “time of vesting” is substituted for the time of apportionment under the 1965 Act).

<sup>78</sup> After apportionment the lessee becomes liable only for the rent apportioned for the remaining part of the land, and the lessor retains his original rights and remedies for that part: 1965 Act, ss 19(3), (4).

<sup>79</sup> Applying the language of the *Ravensft Property* case (para 6.29 above).

<sup>80</sup> CPPRAG, para 133.

<sup>81</sup> CPPRAG, para 135.

to improve the provisions which allow for the purchase of the whole of a landholding where that is in the better interests of the owner, even though only a part is actually required, including extending the provisions to include all categories of property.<sup>82</sup>

- 6.45 Its response to CPPRAG implied, on its face, a more radical approach than proposed by the Advisory Group:<sup>83</sup>

We see no reason for any restriction on the type of landowner able to require an acquiring authority to acquire the whole of his landholding so long as he can demonstrate that taking only a part would have a materially detrimental effect on the value of the remainder.<sup>84</sup>

- 6.46 It was thought that applying the procedure to landowners generally would avoid the need for attempting to modernise the terms “manufactory” and “park”, which were carried forward from the 1845 Act into the 1965 legislation, but would “reinforce the need to establish objective criteria for determining whether or not taking only part of the landholding would be detrimental.”

- 6.47 On the other hand, the Government agreed with CPPRAG that the present “material detriment” test had the merit of allowing “important considerations which are difficult to quantify in monetary terms to be taken into account”:

As with most valuation issues, the final decision has to take account of subjective issues: the issue being to determine whether the purchase of the whole of the claimant’s land is necessary to put him in the same position as he would have been in if there had been no compulsory purchase.<sup>85</sup>

- 6.48 The recent Policy Response Document contains no further statement of Government policy on this issue.<sup>86</sup>

### **Proposals**

- 6.49 We consider that any new legislation should at least reproduce, in substance, the main features of the existing provisions for divided lands. There appear to be no significant reasons of policy for the differences between the two procedures. The same provisions could be applied to both notice to treat and vesting declaration procedures.<sup>87</sup> Generally, we would propose that the new provision should be based

<sup>82</sup> Policy Statement, para. 4.13

<sup>83</sup> CPPRAG had recommended simply that “as part of the codification of the existing law, the language relating to the acquisition of part of a person’s land should be reviewed to bring it into line with modern parlance”: para 135.

<sup>84</sup> Policy Statement, App, para 3.42. We understand from our discussions with the Department that the word “value” in this context was intended as shorthand for the existing test, as explained in the *Ravenseft* case: see para 6.29 above.

<sup>85</sup> Policy Statement, App, para 3.43.

<sup>86</sup> The Policy Response Document is silent on the issue.

<sup>87</sup> As a consequential matter, the version applied to acquisition of rights, in the 1976 Act, s 13, Sched 1, para 7 (see para 6.31 above), will need to be adapted.

on the more modern Vesting Declarations Act, which includes detailed procedures, including time-limits.<sup>88</sup>

- 6.50 The language can be simplified. For example, the expression “house, building or manufactory” does not reflect the wide interpretation given by the cases.<sup>89</sup> Substantially the same effect would be produced if the procedure were available, where either any building, or any land attached to and used with a building, is acquired in part. In spite of the criticisms made of the “material detriment” test, we are not convinced that it causes serious problems in practice. We think it is difficult to define more precise criteria without limiting unduly the scope of the protection.
- 6.51 This leaves the issue of small parcels of land which remain after the subject land has been taken. At present, that is dealt with by section 8(2), (3) of the 1965 Act. In essence these sub-sections make provision for plots of land less than half-an-acre in size. If the plot does not adjoin other usable land the owner can require the authority to purchase it. By the same token if the enabling statute requires some form of accommodation works to be executed by the authority (eg building a bridge) but the land falls below the half-acre threshold or its value is exceeded by the cost of the works, the authority can require the owner to sell that plot.
- 6.52 The practical need for the former of these provisions (section 8(2)) has been reduced by the enactment of a comprehensive code for agricultural land in the 1973 Act.<sup>90</sup> As to the latter, (section 8(3)), we doubt whether many modern statutes impose specific requirements for accommodation works, which would cause problems if applied to small parcels of land.<sup>91</sup> Accordingly, we do not propose to reproduce these provisions, but invite comments.
- 6.53 The provisions of the 1973 Act relating to agricultural land are complex, but they represent a modern scheme, and we are not aware of any strong case for altering it. Subject to what follows, we would provisionally propose that it be left unamended. The provisions for apportionment of rent under unexpired tenancies<sup>92</sup> may also be retained without substantive amendment.
- 6.54 As has been seen, the Government has made a more radical proposal, to remove any restriction on the type of landowner able to require an acquiring authority to acquire the whole of his landholding; the only criterion would be whether he could “demonstrate that taking only a part would have a materially detrimental effect on the value of the whole.”<sup>93</sup> Although we welcome views, our provisional view is that

<sup>88</sup> The 1965 Act contains very little detail as to procedure; see paras 6.28-6.30 above. The Vesting Declarations Act is a consolidation of provisions mostly derived from the Town and Country Planning Act 1968, which introduced this form of procedure.

<sup>89</sup> See para 6.29 above.

<sup>90</sup> See para 6.35ff above.

<sup>91</sup> The Policy Response Document makes clear that Government considers provision of accommodation works to be a matter better left to the discretion of acquiring authorities: para 17(iv).

<sup>92</sup> See para 6.39 above.

<sup>93</sup> See para 6.45 above.

this would be too wide. There are many cases where it would be an undue burden on the authority to have to acquire land which it does not need, and where any material detriment can be adequately redressed by compensation for injurious affection. Buildings, and land held with buildings, are in a special category because of the direct impact of the taking on the activities of the owner.

- 6.55 On the other hand, it might be more appropriate to extend the rights, given to owners of interests in agricultural land by the 1973 Act, to other categories of owner/occupier.<sup>94</sup> The criterion would be, not material detriment, but whether the remaining land is “reasonably capable of” continuing to be used for the occupier’s purpose. It might be appropriate to limit the general right to those who have substantial interests, or at least more than a “minor tenancy”.<sup>95</sup> If so, it would be necessary to preserve the special provision for agricultural occupiers with lesser interests.<sup>96</sup> If this approach were adopted, it should be possible to rationalise and simplify the existing provisions of the 1965 Act, the Vesting Declarations Act, and the 1973 Act, into a single provision based on “material detriment”, in respect of buildings and land held with buildings; and “reasonable capability of use” for other categories of land. In the following proposal, the latter suggestion is shown in italics.
- 6.56 Although the following proposal offers a unified provision applicable under both notice to treat and vesting declaration procedures, an alternative first step would be selective amendment of the existing provisions of the 1965 Act and the Vesting Declarations Act, to modernise the former and to bring the two into line with each other. Substantive changes would be made by way of amendment of Schedule 1 to the Vesting Declarations Act, which, as we have said, represents a reasonably detailed modern code. At the same time a new section, embodying the same procedure (as amended), could be substituted for section 8 of the 1965 Act. The precise mechanics of this are matters for consideration at the drafting stage.

### **Proposal 11 - Divided interests (unified procedure)<sup>97</sup>**

#### **(A) Divided property notice**

- (1) If the land specified in a notice of acquisition comprises part only:**
- (a) of any building; or**
  - (b) of any land attached to and used with a building;**

<sup>94</sup> This might be seen as a logical extension of the policy decision already made to extend the right to disturbance payments under the 1973 Act (currently available to limited categories, including agricultural occupiers) to all categories of occupier: see Policy Statement App para 3.52 (Compensation Report Part IV, paras 4.49-4.68 and Proposal 4).

<sup>95</sup> i.e. more than a tenancy from year to year; cf Vesting Declarations Act, s 2(1) (para 6.6 above).

<sup>96</sup> 1973 Act, s 55 (para 6.39 above).

<sup>97</sup> This procedure will apply under both notice to treat and vesting declaration procedures.



any person who is able to sell the whole of the land, may by notice (“a divided property notice”) served on the acquiring authority require them to purchase his interest in the whole.

*[(1A) A divided property notice may also be served by the owner of any interest in the subject land (greater than a tenancy from year to year) if, as a result of the acquisition, his retained land<sup>98</sup> or any part of it, is no longer reasonably capable of being used for the purpose for which he was using it at the time of the notice of acquisition.]<sup>99</sup>*

- (2) In this proposal “notice of acquisition” means, as the case may be, a notice to treat or a preliminary notice of a vesting declaration; and the “relevant property” means the building or land to which the divided property notice relates.**
- (3) Except as provided by regulations under this section, a divided property notice shall be served within 28 days of the notice of acquisition.**
- (4) Where a divided property notice has been served, the authority may, within 3 months of the notice:**
  - (a) serve notice withdrawing the notice to treat (or deemed notice to treat);**
  - (b) serve notice to acquire the whole; or**
  - (c) refer the matter to the Lands Tribunal;**

**If it fails to act within 3 months, it is deemed to have served a notice under (a).<sup>100</sup>**
- (5) The Lands Tribunal (on an application, as under (4)(c) above, made in accordance with regulations under this proposal) may determine that:**
  - (a) in the case of a building, the part proposed to be acquired can be taken without material detriment to the building or its use; or**
  - (b) in the case of land attached to a building, the part proposed to be acquired can be taken without seriously affecting the amenity or use of the building;**

<sup>98</sup> “Retained land” would be defined as in relation to the rules for compensation for injurious affection: see Compensation Report Part V, para 5.35, Part XI, para 11.2 (A) General Definitions.

<sup>99</sup> See para 6.55 above.

<sup>100</sup> See Vesting Declarations Act, Sched 1, para 4, on which this part of the proposal is based.

(c) *[in the case of other land, the part proposed to be acquired can be taken without the effect mentioned in (1A)].*

(6) **In determining any such reference, the Tribunal:**

(a) **shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land; and**

(b) **may determine the area of the relevant property which the acquiring authority ought to be required to take.**

(7) **If the authority does not so refer the notice to the Tribunal within 3 months, or if, following a reference, the Tribunal determines it against the authority, the notice to treat or (as the case may be) the declaration shall be treated as having effect as though the whole of the relevant property (or the part determined under (6)(b)) were included.**

**(B) Agricultural land**

**The provisions of 1973 Act ss 53-57<sup>101</sup> will continue to apply *[so far as not superseded by (1A)]*.**

**(C) Unexpired tenancies**

**1965 Act, section 19 (apportionment of rent) will continue to apply.<sup>102</sup>**

***Consultation issue (Q) – Divided interests (unified procedure)***

***(1) Do consultees agree with our view that, in respect of divided interests, the same provision should apply to both notice to treat and vesting declaration procedures, and that the provisions of the Vesting Declaration Act should be taken as the model?***

***(2) Should the right to serve a divided property notice be extended (as proposed in (1A) above) to all categories of land, in cases where the owner’s retained land or any part of it is no longer reasonably capable of being used for the purpose for which he was using it at the time of the notice of acquisition? If so, what, if any, limitations or qualifications should there be?***

<sup>101</sup> Where the test is that the separated land is “not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit”.

<sup>102</sup> See para 6.53 above.

**(3) Do consultees agree our provisional approach that the provisions of the 1965 Act (s8(2), (3)) relating to small parcels of separated land can be dispensed with?**

**(4) Should any changes be made to the provisions of the 1973 Act, in respect of divided agricultural interests?**

### **(3) MORTGAGES AND RENTCHARGES**

#### **Existing law**

##### ***Mortgages***

- 6.57 When an acquiring authority compulsorily purchase land, that land may be subject to a variety of encumbrances. A mortgagee (lender) has an interest in land upon which his loan is secured and is entitled to a notice to treat under section 5 of the 1965 Act.<sup>103</sup> However, failure to serve a notice on the mortgagee means no more than that his interest cannot be prejudiced by exercise of the compulsory powers.<sup>104</sup>
- 6.58 Section 14 of the 1965 Act<sup>105</sup> provides that an acquiring authority may purchase or redeem a mortgagee's interest either:
- (1) immediately, by paying the mortgagee the principal (the outstanding capital sum of the loan) and interest due on the mortgage plus any costs and charges incurred, together with 6 months' additional interest; or
  - (2) by giving 6 months' notice to the mortgagee that the authority will pay to the mortgagee all the principal and interest due at the end of the notice period, plus any costs and expenses incurred.
- 6.59 In the event that the mortgagee fails to release his interest in the mortgage or fails to make good title, the acquiring authority may pay the composite sum (principal, interest, costs) into court and then execute a deed poll transferring the mortgagee's interest to the authority and authorising the lawful taking of possession.<sup>106</sup>
- 6.60 The mortgagor (borrower) has no right to compel the authority to exercise this power, nor does the Lands Tribunal have jurisdiction to determine the date when an acquiring authority should have exercised their power. This may leave the mortgagor in a difficult position if his own interest has been acquired, but compensation has not yet been paid to enable him to pay off the mortgage. Substantial arrears may accrue for which the claimant, and not the authority, is liable. The power in section 14 is not a duty to redeem, and it exists for the benefit

<sup>103</sup> See *Martin v London, Chatham etc Rly* (1876) 1 Ch App 501.

<sup>104</sup> *Shewu v Hackney London Borough Council* [1999] 3 EGLR 1 CA, at p 4H. Failure to serve a notice to treat does not apparently detract from the authority's right to acquire the mortgagee's interest under the following provisions.

<sup>105</sup> Derived from ss 108, 109 of the 1845 Act.

<sup>106</sup> Section 14(4)-(6) of the 1965 Act.

of the authority and not for the mortgagor.<sup>107</sup> The mortgagor's only remedy in such a case is to expedite the compensation procedure:

A person whose property is being compulsorily purchased can do a number of things to hurry along the process of acquisition. If he cannot agree a price, he can refer the dispute to the Lands Tribunal... If he needs money to pay off the mortgage he can, after the authority have taken possession, ask for compensation on account.<sup>108</sup>

- 6.61 Section 15 deals with the situation where the mortgage debt exceeds the land value. It provides that the value of the compensation shall be assessed by tripartite agreement (mortgagor, mortgagee and acquiring authority) and, failing that, the matter will be determined by the Lands Tribunal. The Tribunal's jurisdiction is limited to determination of valuation. As with the section 14 procedure, if the mortgagee fails to transfer his interest or to make good title the authority can make payment into court and execute a deed poll to vest the interest in itself.<sup>109</sup>
- 6.62 Compensation is not payable if the value of the mortgaged land does not exceed nil, e.g. where the remediation costs of contaminated land, or the costs of demolition and clearance of derelict buildings (either of which would fall to the authority) exceeds its present value.<sup>110</sup>
- 6.63 Section 15(7) continues to protect the mortgagee where the mortgage has been discharged but the compensation only reflects the lower land value. In this circumstance the mortgagee does not lose his remedy to sue the mortgagor on his personal covenant to pay the balance of the full mortgage debt. The mortgagee obtains no form of charge on the compensation or other assets; in other words, his debt becomes unsecured.

### **Part acquisition**

- 6.64 Acquisition of part only of mortgage land is governed by section 16 of the 1965 Act. This makes provision similar to that in section 15. Where the part to be taken has less value than the mortgage on the whole, and the mortgagee is unwilling to release that part, then the value of the land to be taken (and the compensation for severance) must be agreed between the mortgagee, the mortgagor and the

<sup>107</sup> See *Shewu v Hackney London Borough Council* [1999] 3 EGLR 1, CA. In that case, the compulsory purchase order had been confirmed in 1985; notice to treat was served on the owner, but not the mortgagee, in 1987; notice of entry was served in 1994, but entry was not taken until 1996. In the meantime, as the owner alleged, he was unable to sell the property so as to redeem the mortgage. It was held that he had no redress against the authority, either by way of increased compensation or damages.

<sup>108</sup> *Ibid*, per Schiemann, LJ at p 5E. "Compensation on account" appears to be intended as a reference to the provision for advance payment under 1973 Act s 52 (see Compensation Report, Part VIII, paras 8.21ff) However, it is to be noted that under the present law, the amount of the advance payment is reduced by the amount needed by the authority to redeem the mortgage: *ibid* s 52(6). We propose, in line with the Policy Statement, to amend this provision to enable the advance payment to be made to the mortgagee: Compensation Report, Part VIII, paras 8.25-6.

<sup>109</sup> Section 15(3)-(5).

<sup>110</sup> *McNichol v Glasgow Corporation* (1974) 14 RVR 587.

authority, or determined by the Tribunal;<sup>111</sup> and paid to the mortgagee, upon which he must release his interest to the authority.<sup>112</sup> In default of transferring the compensatable interest or making good title, the authority can make payment into court and execute a deed poll.<sup>113</sup> The mortgagee retains under this provision his right to sue the mortgagor on his original covenant for repayment of any balance due, although that right is no longer secured over the land.<sup>114</sup>

- 6.65 If a mortgage is paid off under these arrangements before the contractual date in the mortgage deed, the mortgagee is entitled to be compensated both for the expenses involved in reinvesting the paid-off sum (taxed if necessary<sup>115</sup>) and for any loss resulting from achieving a lower rate of interest on reinvestment than was provided for under the mortgage.<sup>116</sup>

### **Rentcharges**

- 6.66 All other forms of “payment or incumbrance” charged on land which is to be acquired compulsorily are grouped together as “rentcharges” and are governed by section 18 of the 1965 Act.<sup>117</sup> The acquiring authority may require the person entitled to benefit of the rentcharge to execute a release and to make good title. If the owner fails to do so, the authority may make payment of compensation (agreed or determined by the Lands Tribunal<sup>118</sup>) into court and execute a deed poll extinguishing the charge.<sup>119</sup>
- 6.67 Where only part of the land affected by a rentcharge is required by an authority, the rentcharge will be apportioned between authority and owner and rentcharge beneficiary by agreement or, in default, by the Tribunal. If the remaining (untaken) part of the land is still adequate security for the whole rentcharge, the person entitled to the charge may (with the landowner’s consent) release the acquired part of land from the effects of the charge, and attach the whole charge to the remaining parcel of land.<sup>120</sup> Under the vesting declaration arrangements, similar procedure applies, so that the rentcharge can be apportioned and released as respects the part to be acquired.<sup>121</sup>

<sup>111</sup> 1965 Act, s 16(1).

<sup>112</sup> 1965 Act, s 16(2)-(3).

<sup>113</sup> *Ibid*, s 16(5).

<sup>114</sup> *Ibid*, s 16(6).

<sup>115</sup> See 1965 Act, s 23(3)-(5). These subsections provide for the taxation of costs of conveyances etc., under s 23(1)-(2) by a Master of the Supreme Court on an order of the court obtained by either parties, in the absence of agreement.

<sup>116</sup> *Ibid*, s 17(1), (2).

<sup>117</sup> “Rentcharge” is defined as “any other payment or incumbrance charged on the land not provided for in the foregoing provisions of this Act”: *ibid*, s 18(6).

<sup>118</sup> *Ibid*, s 18(1).

<sup>119</sup> *Ibid*, s 18(3).

<sup>120</sup> *Ibid*, s 18(2).

<sup>121</sup> Vesting Declarations Act, Sched 1, para 11.

- 6.68 Section 18 is applied with modifications to acquisitions under a general vesting declaration.<sup>122</sup>
- 6.69 The Rentcharges Act 1977 abolished rentcharges<sup>123</sup> as defined in that Act,<sup>124</sup> by making them redeemable on application to the Secretary of State for a “redemption certificate”.<sup>125</sup> However, the provisions of section 18 are still relevant for cases not covered by the 1977 Act, notably in relation to “estate rent charges” which are not redeemable.<sup>126</sup>

### **Discussion**

- 6.70 We are not aware that these provisions have given rise to difficulty in practice. The problems of delay for the mortgagor, highlighted by the *Shewu* case, seem to have been exceptional, due to the very protracted nature of the procedure in that case, and the absence of the owner abroad.<sup>127</sup> The proposals in the Policy Statement for imposing tighter time-limits on the exercise of compulsory powers,<sup>128</sup> and the proposed amendments to the advance payment procedure<sup>129</sup> should help mitigate such problems.<sup>130</sup>
- 6.71 Accordingly, we provisionally propose to retain sections 14-16 (mortgages) and 18 (rentcharges) of the 1965 Act, without substantial amendment (while noting the desirability of simpler statement of the rules, in a future consolidation). However, we invite comments on any practical issues raised by these provisions. For example, it is not clear whether there is any practical advantage in giving authorities the two alternative options in section 14. We would also invite comments on the working of the provisions in relation to mortgagors (having regard to the proposed changes mentioned in the last paragraph).

### **Consultation issue (R) – Mortgages and rentcharges**

**(1) Do consultees agree with our provisional proposal to retain the existing provisions in the 1965 Act relating to mortgages and rentcharges? If not, do these provisions give rise to any practical problems which should be addressed?**

<sup>122</sup> Vesting Declarations Act, Sched 1, Part II.

<sup>123</sup> Rentcharges Act 1977, s 2.

<sup>124</sup> “Any annual or periodic sum charged on or issuing out of land, except: (a) rent reserved by a lease or tenancy, or (b) any sum payable by way of interest”: *ibid*, s 1.

<sup>125</sup> *Ibid*, s 8.

<sup>126</sup> *Ibid*, s 2(3)(c). An “estate rentcharge” is one created for the purpose of making covenants enforceable, or meeting the cost of performance of covenants etc: *ibid*, s 2(4).

<sup>127</sup> See para 6.60, n 107 above.

<sup>128</sup> Since modified in the ODPM Policy Response Document (July 2002) para 12(iii).

<sup>129</sup> See n 108 above.

<sup>130</sup> We have also proposed giving the County Court power to enforce the authority’s duty to make an advance payment: see Compensation Report, Part VIII, paras 8.28-8.29.

**(2) What (if any) are the practical benefits of the two alternative options for dealing with mortgages in section 14?**

**(4) PUBLIC RIGHTS OF WAY**

**Existing law**

- 6.72 Where a public right of way exists over the land proposed to be acquired by compulsory purchase order, the acquiring authority may seek an “acquisition extinguishment order”, so as to extinguish the right of way.<sup>131</sup> It seems that this procedure is available, whichever method of implementation is adopted.
- 6.73 The power to make such an order is subject to the proviso that the acquiring authority be satisfied that a “suitable alternative right of way has been or will be provided, or that the provision thereof is not required”.<sup>132</sup> Such orders are subject to confirmation by the Secretary of State,<sup>133</sup> and he must consider whether he is satisfied that a suitable alternative right of way has been or will be provided or whether an alternative is required or not.<sup>134</sup>
- 6.74 The acquisition extinguishment order cannot be made earlier than:
- (a) confirmation of the [compulsory purchase] order, or if the Secretary of State is the acquiring authority, the making of the order;
  - (b) if in the exercise of the power conferred by section 11(1) of the Compulsory Purchase Act 1965, or by agreement, the acquiring authority takes possession of the land, the date on which the authority takes possession of the land;
  - (c) if the acquiring authority does not take possession of the land in exercise of any such power, the date on which the acquisition of the land is completed.<sup>135</sup>
- 6.75 Section 32(5) also caters for where a right of way is extinguished before the acquisition of land is completed and after that date there appears to be abandonment of the proposal to acquire the land. In such circumstances, the right of way shall be revived, subject to the making of a new order extinguishing the right.
- 6.76 The provisions also provide for protection of the apparatus of statutory undertakers.<sup>136</sup> The procedures for the making of the extinguishment order are

<sup>131</sup> Acquisition Act, s 32(1)(a). The procedure is also available where land is acquired by agreement, in circumstances where it could be acquired compulsorily: s 32(1)(b).

<sup>132</sup> Acquisition Act, s 32(2).

<sup>133</sup> *Ibid*, s 32(3)(a).

<sup>134</sup> *Ibid*, s 32(3)(b).

<sup>135</sup> *Ibid*, s 32(4).

<sup>136</sup> *Ibid*, s 32(6) and (6A).

prescribed in the Highways Act 1980, Schedule 6.<sup>137</sup> It provides for notices to be served and published,<sup>138</sup> and for objections.<sup>139</sup>

### **Discussion**

6.77 We have no information as to how often this procedure is used in practice. There appears to be considerable overlap with powers of highway authorities and planning authorities, under the Highways Act 1980 and the 1990 Act, respectively, for stopping up rights of way.<sup>140</sup> However, it seems useful to have a specific power directly relate to compulsory purchase. Accordingly, we provisionally propose that it should be retained without amendment.

### ***Consultation issue (S) – Public rights of way***

***Can consultees comment on how frequently the Acquisition Act procedure is used in practice, and whether it gives rise to any practical difficulty?***

<sup>137</sup> Applied by virtue of Acquisition Act, s 32(2).

<sup>138</sup> Highways Act 1980, Sched 6, para 1.

<sup>139</sup> *Ibid*, s 2.

<sup>140</sup> E.g. Highways Act 1980, ss 116-120 (stopping up and diversion of highways); ss 124-125 (stopping up private means of access); 1990 Act, ss 209-217.



# **PART VII**

## **SUPPLEMENTARY PROVISIONS**

### **INTRODUCTION**

- 7.1 In this Part we discuss certain supplementary issues which arise under either procedure (notice to treat or vesting declaration):
- (1) Limitation;
  - (2) Unauthorised entry and omitted interests;
  - (3) Refusal to give possession;
  - (4) Distress;
  - (5) Payments into and out of Court;
  - (6) Costs of completion; and
  - (7) Local land charges.

### **(1) LIMITATION**

#### **The existing law**

- 7.2 The Limitation Act 1980 (“The Limitation Act”) establishes the general rules governing time limits for commencement of legal proceedings. The Act does not deal specifically with claims for compensation on compulsory purchase.
- 7.3 In relation to the vesting declaration procedure, section 10(3) of the Vesting Declarations Act imposes a time limit of 6 years for a reference to the Lands Tribunal, running from the date at which the claimant or his predecessor “first knew, or could reasonably be expected to have known” of the vesting of title in the authority. Since the Lands Tribunal has exclusive jurisdiction in relation to the assessment of compensation,<sup>1</sup> this provision has the effect, after the defined period, of relieving the authority of its obligation to pay compensation altogether.<sup>2</sup>
- 7.4 There is no equivalent provision in the statutes relating to the notice to treat procedure. As has been explained, under that procedure following service of notice to treat the authority may serve a notice of entry, which gives the right to take possession (but not title to the land) in advance of the assessment of compensation. The Court of Appeal has recently held, in *Hillingdon London Borough Council v ARC Ltd*,<sup>3</sup> that a claim to compensation, following notice to treat

<sup>1</sup> 1961 Act, s 1; *Harrison v Croydon LBC* [1968] Ch 479.

<sup>2</sup> See *Royal Bank of Scotland v Clydeside DC* [1992] SLT 356.

<sup>3</sup> [1999] Ch 139.

and entry, is subject to a limitation period of six years from the date of entry, under section 9 of the Limitation Act.<sup>4</sup>

- 7.5 The Court in that case was not concerned with the application of the Limitation Act, under the notice to treat procedure, to enforcement of rights following the agreement or determination of compensation. As has been seen, at that point there is the equivalent of a specifically enforceable contract for the sale of the land. It seems that an action for recovery of such compensation is subject to the ordinary 12 year time limit, applicable to actions to recover the proceeds of the sale of land.<sup>5</sup>
- 7.6 It is less clear whether the same limit applies where compensation has been paid into court under the deed poll procedure, for example where the owner cannot be traced. Section 29 of the 1976 Act provides that, 12 years after payment-in, the authority may apply for unclaimed compensation in court to be paid to the authority.<sup>6</sup> However, this is not final. A person, who would previously have been entitled to payment out, may still apply to the Court, and the Court may order the authority to pay such sum as the Court considers just.<sup>7</sup> Section 29 applies only to local authorities.
- 7.7 As discussed in the Compensation Report, other rights to compensation are given by the 1973 Act. In general, it may be assumed, such claims are to be subject to the ordinary 6 year time limit applied in the *Hillingdon* case. In some cases, the Act specifies dates from which such claims are to be treated as accruing for the purposes of the Limitation Act.<sup>8</sup>

### **Law Commission Report on the Law of Limitations**

- 7.8 In 2001, the Law Commission published a final report (with draft Bill) proposing reform of the law of limitations.<sup>9</sup> In general we recommended replacing the present time limits with a “core regime”: based on a “primary limitation period” of 3 years, running from the date when the claimant knows or ought reasonably to know of the facts giving rise to the claim; and a “long-stop limitation period” of 10 years from the accrual of the cause of action.<sup>10</sup> Claims to recover the proceeds of the sale of land would not be subject to the “primary” period, but would be subject

<sup>4</sup> 1980 Act, s 9 provides: “ an action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued”; “action” is defined as including “any proceedings in a court of law” (s 38(1)). The Court of Appeal held that the right to make a reference to the Lands Tribunal was a cause of action in this sense, and had to be brought within six years; by the same token, the making of a reference would stop time running.

<sup>5</sup> 1980 Act, s 20(1)(b).

<sup>6</sup> 1976 Act, s 29(1).

<sup>7</sup> *Ibid*, s 29(2).

<sup>8</sup> See e.g. 1973 Act, s 19(2A) (compensation for depreciation caused by public works; right of action accrues on “first claim day”).

<sup>9</sup> Limitation of Actions: Law Com, No 270, (June 2001). The Government has accepted the recommendations in principle, subject to their further consideration of certain aspects of the Report, and will legislate when a suitable opportunity arises: Written Answer, (HC) 16 July 2002, vol 389, col 272W; (HL) 16 July 2002, vol 637, col 127WA.

<sup>10</sup> Law Com 270, para 1.12.

to the “long-stop” period of 10 years from the date when the vendor became entitled to recover the proceeds.<sup>11</sup>

7.9 The report records consultation responses<sup>12</sup> relating to the application of the law to land compensation:

- (1) The Royal Institute of Chartered Surveyors had proposed that the 6 year limit applied to vesting declarations should be adapted for the notice to treat procedure, by treating the vesting date under that Act as embracing the date of entry. This would mean that the 6 year time limit for reference to the Lands Tribunal would run, not (as in *Hillingdon*) from the date of entry itself, but from the date when the claimant became aware (or should reasonably have become) of entry.
- (2) The Holborn Law Society proposed that the limitation period for the reference should be extended to equate with the period for recovery of land or of money secured on land. They commented:

It is difficult to see how the acquiring authority could be prejudiced by a long limitation period. Section 9 of the Compulsory Purchase Act 1965 is there to provide for the problem of the inactive or untraceable owner. The section gives the authority power to vest the property in itself by deed poll and pay the compensation money into court. Thereupon the owner’s rights against the authority cease, and there is no limitation at all on the time within which the owner may apply for payment out of court. We see no attraction in a limitation period whose effect is to allow an authority to choose not to pay into court in the hope of enjoying a windfall at the expense of the owner whose claim may soon become statute-barred.

7.10 The Law Commission did not make any substantive recommendations for reforming the law in this area, pending the completion of the present project. It was recommended that the core regime should not apply where there were specific statutory periods, such as under the vesting declaration procedure.<sup>13</sup> However, the draft Bill includes provisions to apply the core regime to the various compensation rights under the 1973 Act.<sup>14</sup>

### **Proposals**

7.11 The present project offers an opportunity to clarify and rationalise the application of the law of limitations in this area (whether under the existing law, or under our proposed “core regime”, if and when it is implemented.) As the above summary shows, there are four different periods under the present law:

<sup>11</sup> Law Com No 270, para 4.151.

<sup>12</sup> Following the Law Commission Consultation Paper on the same topic (Consultation Paper No 151 (1998)).

<sup>13</sup> Law Com No 270, paras 4.285, 4.287.

<sup>14</sup> Law Com No 270, para 4.287(4) (the reference to s 34 of the 1973 Act here and in footnote 333 (under para 4.285) should be to s 32); draft Bill, Sched 3, paras 12-14.

- (1) For reference to Lands Tribunal:
  - (a) Notice to treat procedure: 6 years from the date of entry until reference to the Lands Tribunal;<sup>15</sup> and
  - (b) Vesting declaration procedure: 6 years from the date of knowledge (or presumed knowledge)<sup>16</sup> of vesting;<sup>17</sup>
- (2) Following settlement of amount of compensation: 12 years for action to recover compensation;<sup>18</sup> and
- (3) Following payment-in: right of authority after 12 years to apply for repayment, subject to court's power, subsequently, to order payment of "just" amount to claimant.<sup>19</sup>

7.12 It is necessary to consider the position for the future, on the respective assumptions (a) of no change to the general law, and (b) of implementation of the "core regime" as recommended by the Law Commission.

***(a) No change to general law***

7.13 We see force in the comments of both respondents cited above. It seems anomalous that there should be a specific time limit under one implementation procedure, but not under the other. Furthermore, if the date of knowledge is the appropriate starting-date for vesting declaration, it should also apply under the notice to treat procedure. On the other hand, it is open to question whether there is need for any limit, since the authority can protect itself at any time after service of notice to treat, or vesting declaration, by referring the matter to the Lands Tribunal, and paying the compensation into court.

7.14 The choice therefore, in our view, is between:

- (1) Under both procedures, a 6 year time limit for reference to the Tribunal, running from the date of knowledge (or presumed knowledge) of taking of possession or vesting of the land;
- (2) No time limit under either procedure.

On balance, we provisionally favour the former, in the interests of finality. Provided the time runs from the date when the claimant had, or should have had, knowledge, there should be no risk of serious injustice. We acknowledge, however, that there are arguments for having no time limit. In view of the other procedures available to the authority, and since the authority is acting by compulsion, it might be considered reasonable for it to bear the primary responsibility for completing

<sup>15</sup> 1980 Act, s 9.

<sup>16</sup> When he "first knew, or could reasonably be expected to have known": see para 7.8 above.

<sup>17</sup> 1981 Act, s 10(3).

<sup>18</sup> 1980 Act, s 20(1)(b).

<sup>19</sup> 1976 Act, s 29.

the process of acquisition, including determination of compensation. Accordingly, we invite views on both alternatives, and their practical implications.

- 7.15 With regard to time limits following determination of compensation, a 12 year period seems appropriate, as being consistent with that applying to proceeds of sale of land generally. Although the same logic could be applied to a payment into court, the more generous view reflected in section 29 of the 1976 Act<sup>20</sup> is presumably based on the consideration that in such cases the authority has acted unilaterally, and there may be reasons for the claimant not having acted before. However, if the discretion is to be retained, it should in our view be restricted to cases where there is good reason for the claimant not having applied within the 12 year period, or some other exceptional factor.

***(b) Under proposed “core regime”***

- 7.16 Under the proposed core regime, similar reasoning would apply. Thus, for reference to the Lands Tribunal, the choice in our view would be between
- (1) Under both procedures, application of the core regime: that is, 3 years from the date of knowledge<sup>21</sup> of the taking of possession or entry, with a “long-stop” period of 10 years; and
  - (2) No time limit under either procedure.

For the reasons given above we would adopt the former.

- 7.17 Following determination of compensation, we would apply the same approach as proposed above under the present law, but with the substitution (for 12 years) of 10 years, as recommended by the Law Commission in relation to actions to recover the proceeds of sale.

**Proposal 12 – Limitation periods**

- (1) **In respect of compensation for compulsory purchase, there should be time limits for reference to the Lands Tribunal, which should apply equally to the notice to treat and vesting declaration procedures.**

**The appropriate limits should be:**

- (i) **(under the present law) 6 years from the date when the claimant knew or ought reasonably to have known of the taking of possession or vesting; or**
- (ii) **(if the Law Commission’s recommendations are adopted) in accordance with the “core regime”: that is, 3 years from the date when the claimant knew or ought**

<sup>20</sup> See para 7.6 above.

<sup>21</sup> That is: “when the claimant knows or ought reasonably to know of the facts giving rise to the claim” (para 7.8 above).

reasonably to have known of the taking of possession or vesting, with a “long-stop” period of 10 years;

- (2) The time limit for an action to recover compensation following determination by the Tribunal or agreement of compensation will be 12 years (or 10 years under the Law Commission’s recommendations);
- (3) Following payment-in, the authority may apply after 12 years (or 10 years under the Law Commission’s recommendations) for repayment, subject to the power of the court subsequently to order such payment to the claimant as may be just, if the court is satisfied that there are good reasons for application not having been made within 12 years (or 10 years), or other exceptional circumstances.

### ***Consultation issue (T) – Limitation periods***

#### ***Do consultees agree***

***(1) That there should be time limits for reference to the Lands Tribunal of disputes in relation to compensation for compulsory purchase? If not, why not?***

***(2) That the time limits should be the same under both procedures (notice to treat and vesting declaration), and should be as proposed above? If not, what rules should apply?***

## **(2) UNAUTHORISED ENTRY AND OMITTED INTERESTS**

### **Existing law**

- 7.18 An authority which enters land without going through the correct procedures may be subject to ordinary civil remedies for trespass.<sup>22</sup>
- 7.19 In addition, section 12 of the 1965 Act provides that if the authority or its contractors wilfully enter land subject to compulsory purchase, other than in accordance with section 11, they shall “forfeit the sum of £10” in addition to the amount of any damage, such sums to be “recoverable summarily as a civil debt”.<sup>23</sup>
- 7.20 Section 22 of the 1965 Act provides a means to remedy the position in the case of omitted interests. It provides that if the acquiring authority has entered land subject to compulsory purchase and:

it appears that they have through mistake or inadvertence failed or omitted duly to purchase or to pay compensation for any estate, right or interest in or charge affecting that land

<sup>22</sup> For a modern example, see *National Provident v Avon CC* [1992] EGCS 56.

<sup>23</sup> 1965 Act, s 12(2). There is provision for a further forfeiture of £25 per day if they remain in possession thereafter: s 12(4).

they may remain in possession of that land,<sup>24</sup> provided that they purchase or pay compensation for that omitted interest within six months from the date when the authority had notice of the interest, or it was legally established.<sup>25</sup> Compensation is assessed as at the time when the authority took possession, and without regard to any subsequent works by the authority.<sup>26</sup>

7.21 Apart from this remedy, the authority can apparently regularise the position, by serving a notice to treat, even after entry. Thus, in *Cohen v Haringey LBC*<sup>27</sup> the acquiring authority had gone into possession of a property without having served notice to treat on the mortgagee. The Court of Appeal held that the authority could still regularise the position by serving notice to treat and notice of entry, with the effect that lawful possession would begin 14 days later.<sup>28</sup> This will not assist the authority if the time for service of notice to treat (3 years from the operative date under the present law<sup>29</sup>) has expired. Thus, where a notice to treat was served on a mortgagee more than three years after the operative date, and more than six months after the mortgagee had established title, the Lands Tribunal held that it had no jurisdiction in the matter.<sup>30</sup>

### **Discussion**

7.22 Section 12 seems to serve no useful purpose in modern circumstances. The amount of the “forfeit” is derisory, and, where damage is suffered, there seems no reason why a claim should not be brought by civil action in the ordinary way. We suggest that section 12 is repealed.

7.23 Section 22 provides a means to rectify the omission, by payment of compensation. However, it is not without difficulty. In particular, the time limit of 6 months takes no account of the time that may be needed to settle compensation, which may take longer. Furthermore, it does not apply where the authority was aware of the interests, but failed to serve the necessary notices.<sup>31</sup>

7.24 However, the decision of the Court of Appeal in *Cohen* shows that there is already a wider power to correct omissions than that provided by section 22. It is open to question therefore whether any further provision is needed.

<sup>24</sup> 1965 Act, s 22(1).

<sup>25</sup> *Ibid*, s 22(3).

<sup>26</sup> *Ibid*, s 22(4). The section also provides for “mesne profits”, defined as “the mesne profits or interest which would have accrued to the person concerned during the interval between the entry of the acquiring authority and the time when the compensation is paid”: s 22(5).

<sup>27</sup> (1980) 42 P&CR 6.

<sup>28</sup> 14 days being the minimum period for a notice of entry under the present law: 1965 Act, s 11(1).

<sup>29</sup> See Part V, para 5.6 above.

<sup>30</sup> *Advance Ground Rents Ltd v Middlesborough BC* [1986] 2 EGLR 221.

<sup>31</sup> See e.g. *Martin v London etc Ry Co* (1866) 1 Ch App 501 (the mortgagee’s interest was known, but the company wrongly thought that the equity of redemption was sufficient to cover it); *Stretton v GWRy* (1870) 5 Ch App 751 (possession taken without notice to treat to a known interest). It is also unclear who is to initiate the assessment of compensation: see *Caledonian Railway Company v Davidson* [1903] AC 22, HL.

- 7.25 On the other hand, there is the important difference, from the point of view of compensation, that, whereas under section 22 there is specific provision to backdate the assessment of compensation to the time of entry, under the *Cohen* procedure there is no such provision for backdating the valuation date. It seems that the valuation date will be treated as the date of notional entry following the service of the valid notice to treat and notice of entry. That may cause problems if works have been carried out since the actual entry, since, arguably, they may have to be taken into account in assessing compensation.
- 7.26 It would be possible to enact a new provision, to replace section 22 and the *Cohen* procedure, which would give a general power to rectify accidental omissions retrospectively within a defined time limit (say 18 months from the date of possession), and would provide for compensation to be assessed by reference to the date of the original entry. We are not aware, however, that the present law causes significant problems in practice. Accordingly, we make no proposal but invite views.

***Consultation issue (U) – Unauthorised entry and omitted interests***

***(1) Do consultees agree that section 12 of the 1965 Act should be repealed?***

***(2) Are the present rules for rectifying accidental omissions (1965 Act s 22, and the principle in the Cohen case) adequate for the purpose? If not, how should they be amended or replaced?***

**(3) REFUSAL TO GIVE POSSESSION**

- 7.27 Where an owner or occupier refuses to give possession, the authority can issue a warrant to the Sheriff to deliver possession.<sup>32</sup> No application to the court is required. There is provision for the recovery of the Sheriff's costs out of compensation or by distress and sale of goods on premises. The costs may be deducted from the compensation, if any, payable to the person refusing to give possession. There is also provision for the costs to be levied by distress.<sup>33</sup>
- 7.28 We understand that this is regarded as a useful procedure. The lack of any requirement for a court order seems surprising at first sight. However, by this stage the authority has obtained the right to possession, by a procedure which provided an opportunity for a hearing, which satisfies the requirements of the Human Rights Act 1998.<sup>34</sup> The main concern may be the lack of any control over costs.<sup>35</sup>

<sup>32</sup> 1965 Act, s 13. The "sheriff" includes "an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated": s 13(6).

<sup>33</sup> *Ibid*, s 13(4)-(5).

<sup>34</sup> See *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389, HL.

<sup>35</sup> See *Kennerly v Secretary of State*, Lands Tribunal 25.10.01 (ACQ/127/1999), where the Tribunal decided that it had no jurisdiction to review the amount of the costs. The decision contains a graphic description of the practical problems the sheriff's officer may face (in that case in dealing with horses on site), and the potential costs (almost £60,000): see paras 84-5.



We suggest that the authority should bear the sheriff's costs, and have the right to deduct them from compensation, but subject to the possibility of review of their reasonableness by the Tribunal. We see no reason why there needs to be provision for levying by distress.

- 7.29 The Government is currently conducting a review of civil enforcement procedures generally.<sup>36</sup> The results of that review will need to be borne in mind in drafting any replacement. Subject to that point, we propose that the remedy should be restated in more modern form along the following lines.

#### **Proposal 13 – Refusal of entry**

- (1) If the acquiring authority are authorised to enter or take possession of any land, and the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquiring authority from entering on or taking possession of it, the acquiring authority may issue their warrant to the sheriff to deliver possession of it to the person appointed in the warrant to receive it.**
- (2) The sheriff's costs shall be paid by the authority, which (subject to (3)) may recover them from the person refusing to give possession, and may deduct them from the compensation, if any, payable to that person.**
- (3) A person liable to pay such costs may (subject to procedural rules) require the reasonableness of the amount to be reviewed by the Lands Tribunal.**

#### ***Consultation issue (V) – Refusal of entry***

- (1) Do consultees agree with our provisional view that the present warrant-based enforcement route should be restated in modern form?***
- (2) Does it give rise to any practical problems?***
- (3) Do they agree that the sheriff's costs should be borne in the first instance by the authority?***

#### **(4) DISTRESS**

- 7.30 Section 29 of the 1965 Act states that any distress under this Act is not deemed to be unlawful, nor is the person making the distress deemed to be a trespasser. However, any person "aggrieved by any defect or irregularity may recover full satisfaction for the special damage in civil proceedings".
- 7.31 We see no reason for this special provision for levying by distress in the modern law, and we propose that this provision be repealed.

<sup>36</sup> See the Green Paper "Towards effective enforcement" (LCD July 2001); and the Responses to Consultation (April 2002).

## **Proposal 14 – Distress**

**That 1965 Act, s 29 should be repealed and not replaced.**

### ***Consultation issue (W) - Distress***

***Do consultees agree with our view that section 29 today serves no useful purpose?***

## **(5) PAYMENTS INTO AND OUT OF COURT**

### **Payments into court**

7.32 Sections 25 and 26 of the 1965 Act make general provision for payment of compensation into court, where required under other provisions in the Act. They reproduce the substance of provisions originally in the 1845 Act.<sup>37</sup> Payment-in was a much more frequent occurrence under the 1845 Act, because it was a normal pre-requisite for taking possession, where compensation could not be agreed.<sup>38</sup> Under modern procedures, an authority is entitled to enter (under the notice to treat or vesting declaration procedures) before compensation is assessed or paid.<sup>39</sup>

7.33 The circumstances in which payment-in may arise under the 1965 Act are:

- (1) Where the landowner refuses to convey or make good title;<sup>40</sup>
- (2) Where a mortgagee of subject land refuses to convey, or to make good title<sup>41</sup>;
- (3) Where the acquired land is subject to a rentcharge and the person entitled fails to release or to make good title<sup>42</sup>;
- (4) Where the acquisition is from a landowner who is under a legal disability<sup>43</sup>;
- (5) Where the alternative means for obtaining entry is used<sup>44</sup>; or
- (6) Where payment is made in respect of common land but there is not a committee of commoners<sup>45</sup>.

<sup>37</sup> 1845 Act, ss 78-80.

<sup>38</sup> See (now) 1965 Act, Sched 3, para 2. We recommend repeal of this obsolete procedure: see Part V, para 5.35 above. Under modern procedures, as we understand from the Court Funds Office, there are some 50 to 100 requests annually for payments-in in respect of compulsory purchase orders.

<sup>39</sup> 1965 Act, s 11(1) and Vesting Declarations Act, s 10(1).

<sup>40</sup> 1965 Act, ss 9(1), 25(1). See Part V, para 5.34 above.

<sup>41</sup> 1965 Act, ss 14(4), 15(3), 16(5). See Part VI, paras 6.57ff above.

<sup>42</sup> 1965 Act, s 18(3). See Part VI, paras 6.66ff above.

<sup>43</sup> 1965 Act, Sched 1, para 6(2). See Part V, paras 5.42-5.46 above.

<sup>44</sup> 1965 Act, Sched 3, para 2. See Part V, paras 5.4-5.5 and Proposal 4 above.

<sup>45</sup> 1965 Act, Sched 4, para 7. The provisions relating to common land are not part of this report: see Part I, paras 1.20-1.21 above.

7.34 General provision for payment into court and the administration of such funds is made by the Administration of Justice Act 1982, Part VI,<sup>46</sup> and by the Court Funds Rules 1987. Section 25 of the 1965 Act makes specific provision for two matters in relation to compensation:

- (1) Where the payment was “in respect of any lease, or any estate in land less than the whole fee simple, or of any reversion dependent on any such lease or estate”, any interested person may apply to the court for an order as to investment or accumulation or payment out so as to preserve the equivalent of the benefit they would have had in the original land-based interest.<sup>47</sup> This means that the court can fairly apportion between interested parties, for limited estates, sums paid into court and the income generated; and
- (2) Any person who has only a possessory title (and no documentary proof of ownership) is entitled to apply for payment out of court of moneys if no other claim is made for them.<sup>48</sup>

#### ***Costs in respect of money paid into court***

7.35 Section 26 of the 1965 Act reproduces from the 1845 Act a complex provision for the payment of costs related to the administration of compensation paid into court, for example costs of the purchase of the land and investment of compensation, payment of dividends, and payment out of court.<sup>49</sup> As the editor of the Compulsory Purchase Encyclopaedia says:

The corresponding section of the Act of 1845 (s 80) was in former times of considerable importance. Two facts, however, contribute to render this section a dead letter today. First, it is rarely necessary to resort to payment into court, since the disabilities which rendered such payment necessary (see now Schedule 1 para 6) have been largely removed, and the authority can enter upon land by virtue of s11(1), without paying money into court. Secondly, even in the cases excepted by this section, eg. cases where there has been a wilful refusal to make title, the court has a discretion as to costs under the Judicature Act 1925, s50.<sup>50</sup>

#### **Payments out of court**

7.36 Where compensation money has been paid into court any interested party may apply to the court for payment out. Applications are dealt with in the Chancery Division, and subject to approval by a Chancery Master.<sup>51</sup>

<sup>46</sup> The 1982 Act repealed and replaced the equivalent provisions of the Administration of Justice Act 1965, s 4 (which is mentioned in the 1965 Act, s 25): 1982 Act, s 75, Sched 9. Requests for lodgement are made on CPR Form 102 (in the Chancery Division).

<sup>47</sup> 1965 Act, s 25(2).

<sup>48</sup> 1965 Act, s 25(3). This sub-section follows closely 1845 Act, s79.

<sup>49</sup> 1965 Act, s 26.

<sup>50</sup> Vol 1, para B-0505.

<sup>51</sup> The Chancery Orders and Accounts Section processes payments out of funds in Court under what was formerly RSC Order 92 (as from December 2002, CPR 37PD para 6-10)

7.37 Payment out under modern procedures is governed by the following provisions:

- (1) Section 9 of the 1965 Act deals with the position where a land or interest owner fails to make title or to convey. Section 9(5) enables any person, who believes he is entitled, to make a claim. The court may order distribution “according to the respective estates, titles or interests of the claimants” and make “such other order as [it] thinks fit”;
- (2) Schedule 2 provides for payment into court of compensation determined for land owned by absent or untraced owners following service of notice to treat.<sup>52</sup> Distribution may be ordered by the court, on the application of any person claiming, “according to the respective estates, titles or interests of the claimants”, and likewise may make any other order as it thinks fit;<sup>53</sup> and
- (3) Schedule 3 (which is now obsolete) sets out an alternative procedure for obtaining entry, and that procedure makes provision for payment into and out of court.

7.38 In addition, special provision relates to local authorities where money has not been paid out of court for more than 12 years after payment-in. Where an authority applies for payment out in these circumstances the court may so order, but it may later order that the whole or part be transferred to another person if it then considers that to be just.<sup>54</sup>

### **Discussion**

7.39 The provisions governing payments-in are derived from the 1845 Act, at a time when they were a much more significant element in the procedure for obtaining entry.<sup>55</sup> Under modern procedures, they are likely to arise only in cases where owners cannot be found, or are unwilling to deal with the authority, and it is

The two categories relevant to compulsory purchase are individual claims for monies paid into Court under a compulsory purchase order, and claims by local authorities after the expiration of twelve years from the date of lodgement of the Fund. If the Fund in Court is £15,000 or less, the Applicant is required to provide an Affidavit/Witness Statement, and pay a fee of £25. If the Fund in Court is over £15,000 the Applicant is required to issue a Part 8 Claim, supported by an Affidavit/Witness Statement, and pay a fee of £120. Once the Applicant has complied with the requirements, the Court File is referred to the Master, together with a Payment Schedule (prepared in the office) giving specific instructions to the Court Funds Office. If the Master is satisfied that the payment out is appropriate, he will sign and date the Payment Schedule. Once the Payment Schedule has been authenticated by the Court Manager, it will be sent to the Court Funds Office, which will pay the monies out of Court to the Applicant. (We are grateful to Neil Kiernan of the Chancery Orders and Accounts Office for this information.)

<sup>52</sup> 1965 Act, s 5(3), Sched 2, para 2.

<sup>53</sup> Sched 2, para 3. Under both this provision and section 9(5), if the money is dealt with under Administration of Justice Act 1965, s6 the court may make an order as to payment of the dividends. Provision for payment in and out of court is also found in Sched 3 (alternative procedure for obtaining entry), which is now obsolete (see Part V, paras 5.4-5.5 above).

<sup>54</sup> 1976 Act, s 29(1), (2). See paras 7.6, 7.15 above.

<sup>55</sup> The case-law under the 1845 Act is discussed in detail in *Halsbury's Laws* (4th Ed) Vol 8(1), para 153ff

necessary therefore to proceed by deed poll. We have already made proposals for a simplified “deed poll procedure”,<sup>56</sup> which would include a general power for the High Court to make “such order as it thinks fit” in relation to distribution of such money. Our provisional view is that this, combined with the general provisions of the Administration of Justice Act 1982 for managing funds in court, would provide a sufficient statutory basis for the compulsory purchases procedures, without the need for the detailed provisions of section 25. Similarly, section 26 could be replaced by a simple provision providing that the authority will be responsible for any costs incurred in connection with payments-in, save as the court may otherwise order.

- 7.40 We have already discussed and invited comment on a proposal for amending, and extending to all authorities, the provision of the 1976 Act, section 29, relating to payment out after 12 years.<sup>57</sup>

#### **Proposal 15 – Payments into court**

**Sections 25 and 26 of the 1965 Act should be replaced by a simple provision (a) giving the court power, subject to rules of court, to make orders, in relation to money paid into court under the Act, for the distribution of the money in accordance with the respective interests of the claimants (and to make such incidental orders as it thinks fit); and (b) providing that costs incurred in connection with such payments-in shall be paid by the authority, save as the court otherwise orders.**<sup>58</sup>

#### ***Consultation issue (X) – Payments into and out of court***

***(1) Are consultees aware of any practical problems arising from the provisions of the 1965 Act for payments into and out of court? If so, how should they be addressed?***

***(2) Do they agree that sections 25 and 26 should be replaced by a simpler provision as proposed above?***

#### **(6) COSTS OF COMPLETION**

- 7.41 The 1965 Act, section 23 makes detailed provision for the costs of completing the purchase:

- (1) The costs of all conveyances of the land subject to compulsory purchase shall be borne by the acquiring authority.
- (2) The costs shall include all charges and expenses, whether incurred on the part of the seller or on the part of the purchaser,—

<sup>56</sup> Part V, paras 5.34-5.37 and Proposal 7 above

<sup>57</sup> See para 7.6 above and Proposal 12 (under Limitation Periods).

<sup>58</sup> These provisions would form part of Proposal 7 (deed poll procedure); see Part V, paras 5.34-5.37 above.

(a) of all conveyances and assurances of any of the land, and of any outstanding terms or interests in the land, and

(b) of deducing, evidencing and verifying the title to the land, terms or interests, and

(c) of making out and furnishing such abstracts and attested copies as the acquiring authority may require,

and all other reasonable expenses incident to the investigation, deduction and verification of the title.

(3) If the acquiring authority and the person entitled to any such costs do not agree as to the amount of the costs, the costs shall be taxed by a Master of the Supreme Court on an order of the court obtained by either of the parties.

(4) The acquiring authority shall pay what the Master certifies to be due in respect of the costs to the person entitled and, in default, that amount may be recovered in the same way as any other costs payable under an order of the Supreme Court.

(5) The expense of taxing the costs shall be borne by the acquiring authority unless on the taxation one-sixth of the amount of the costs is disallowed, and in that case the costs of the taxation shall be borne by the party whose costs have been taxed; and the amount thereof shall be ascertained by the Master and deducted by him accordingly in his certificate of taxation.

7.42 We do not think it is necessary for this to be spelt out in such detail. In principle the authority should be required to bear all the costs connected with purchase. For example, sub-section (5), which requires the claimant to bear the costs of taxation, if one sixth or more is disallowed, seems unnecessarily prescriptive. There could be a simple requirement for the authority to pay to those interested all reasonable costs in connection with the completion of the compulsory purchase (so far as not covered by any other provisions).<sup>59</sup>

7.43 Although there have been suggestions that the task of assessing costs might be given to the Lands Tribunal, it is our provisional view that this task should remain with the High Court, because of its existing expertise in this area.<sup>60</sup> We invite views.

### **Proposal 16 – Costs of completion**

**Section 23 should be replaced by a provision that the acquiring authority should pay to those interested all reasonable costs (as assessed by the Costs judge) incurred in connection with the completion of the compulsory purchase (so far as not covered by any other provisions).**

<sup>59</sup> Such as compensation for disturbance: see Compensation Report, Part IV, paras 4.22-4.68 and Proposal 4 .

<sup>60</sup> This provisional view is presented here without prejudice to the review of the courts and property tribunals being undertaken, as a separate exercise, by the Law Commission, arising out of the Leggatt Review of Tribunals.

## **Consultation issue (Y) – Costs of completion**

**(a) Do consultees agree with this proposal? If not, what practical purpose is served by the detailed rules of section 23?**

**(b) Should the assessment of such costs be transferred to the Lands Tribunal?**

### **(7) LOCAL LAND CHARGES**

#### **Existing law**

##### **Registration of local land charges**

7.44 “Local land charges” are charges or other matters affecting land, falling within the descriptions in section 1 of the Local Land Charges Act 1975.<sup>61</sup> They include various types of restriction, imposed by public authorities, including (for example):

any prohibition of or restriction on the use of land... imposed by a local authority... being a prohibition or restriction binding on successive owners of the land affected.<sup>62</sup>

There is a general category for “any charge or other matter which is expressly made a local land charge by any statutory provision not contained in this section”.<sup>63</sup>

7.45 Registers of local land charges are maintained by “registering authorities”.<sup>64</sup> The form of the register, and other procedural matters, are governed by rules.<sup>65</sup> Responsibility for registering, or applying for registration, falls on the “originating authority”, that is (generally) the authority by whom the charge is brought into existence or by whom it is enforceable.<sup>66</sup> Searches of the register may be made by members of the public personally (on payment of a fee),<sup>67</sup> or by requisitioning an official search.<sup>68</sup> Where a registered charge is varied or ceases to have effect, the register must be amended accordingly.<sup>69</sup>

7.46 Generally, registration of any matter is deemed to constitute actual notice to all persons and for all purposes connected with the land affected, as from the date of

<sup>61</sup> Local Land Charges Act 1975, s 1(1); certain matters are excluded by *ibid* s 2.

<sup>62</sup> *Ibid*, s 1(1)(b).

<sup>63</sup> *Ibid*, s 1(1)(e) For a list of such provisions, see *Halsbury’s Laws* 4<sup>th</sup> Ed (Re-issue) vol 26 para 574.

<sup>64</sup> *Ibid*, s 3 (e.g. the district council for the area).

<sup>65</sup> *Ibid*, s 10; see Local Land Charges Rules 1977, SI 1977 No 985, as amended. The register is divided into twelve parts, depending on the category of charge: *ibid*, r 3.

<sup>66</sup> *Ibid*, s 5.

<sup>67</sup> *Ibid*, s 8.

<sup>68</sup> *Ibid* s 9.

<sup>69</sup> Local Land Charges Rules 1977, r 8. The originating authority, if different from the registering authority, must supply the necessary information: *ibid* r 8(2).

registration.<sup>70</sup> Failure to register a charge does not generally affect its enforceability.<sup>71</sup> However, there is provision for compensation for loss suffered by a person who has bought land affected by an unregistered local land charge, following a personal search or official search.<sup>72</sup>

### **Registration of compulsory purchase orders**

7.47 There is no general requirement to register steps in the compulsory purchase process. A compulsory purchase order is not one of the specific categories mentioned in section 1 of the Act. In particular, it is not a “prohibition or restriction on the use of land”,<sup>73</sup> since the making of an order does not in itself restrict the owner’s use of the land. The owner remains free to use it, or deal with it, even following notice to treat, up to the time of possession or vesting.<sup>74</sup>

7.48 Of the general procedures considered in this report, the only matter which is expressly subject to registration as a local land charge is a preliminary notice of a general vesting declaration, given under section 3 of the Vesting Declarations Act.<sup>75</sup> The execution of the declaration itself is not registrable. In addition there are two matters relevant to compensation under the 1973 Act:<sup>76</sup>

(1) Where an authority acquires land for public works and the affected landowner retains land in respect of which he has the right to claim compensation for injurious affection (under section 7 of the 1965 Act);<sup>77</sup>

(2) Where an advance payment of compensation is to be made under section 52 of the 1973 Act.<sup>78</sup>

7.49 There are also requirements to register certain particular categories of compulsory purchase order. Thus:-

(1) The New Towns Act 1981, section 12 provides that a compulsory purchase order under section 11 or 12 of that Act<sup>79</sup> “shall, when

<sup>70</sup> Law of Property Act 1925, s 198 (as amended by Local Land Charges Act 1975, s 17(2), Sched 1).

<sup>71</sup> Local Land Charges Act 1975, s 10(1).

<sup>72</sup> *Ibid* s 10(1) Compensation is payable by the registering authority, but may (in certain circumstances) be recoverable from the originating authority: *ibid*, s 10(4).

<sup>73</sup> See para 7.44 and n 62 above.

<sup>74</sup> See e.g. *Cardiff Corpn v Cook* [1923] 2 Ch 115.

<sup>75</sup> Vesting Declarations Act, s 3(4). Registration is in Part 4 of the register, which relates to charges not registrable in any other part: Local Land Charges Rules 1977, r 3.

<sup>76</sup> See Compensation Report Parts VIII and IX.

<sup>77</sup> 1973 Act, s8(4), (4A). In such cases the right to compensation under the 1973 Act is restricted: *ibid* s 8(1).

<sup>78</sup> 1973 Act, s52(8), (8A). Both this and the preceding item are registrable in Part 6 (land compensation charges).

<sup>79</sup> i.e. one made by a development corporation, or by a local highway authority, for the purposes of the new town.



operative,<sup>80</sup> be a local land charge". The entry is in Part 7 (new town charges).<sup>81</sup>

- (2) The Opencast Coal Act 1958 provides that a compulsory rights order under that Act<sup>82</sup> "shall be a local land charge".<sup>83</sup> It is provided that rules under the Local Land Charges Act 1975 must include provision for cancelling the registration if the order is not confirmed, or is revoked, and for varying it, if the order is amended or varied.<sup>84</sup>

We are not aware of the policy reasons (if any) for making the New Towns order, in contrast to the Opencast Coal order, registrable only from the time when it becomes operative (that is, following confirmation).

- 7.50 Although in other cases there is no statutory requirement to register the making of a compulsory purchase order, or any subsequent steps in the procedure, we understand that in practice, at the time of making of a compulsory purchase order, a local authority may add an informal note on the register relating to that fact. Similarly, in practice, authorities may make an informative note on the register at the time of notice to treat and notice of entry. The recent Departmental Guidance Manual goes further and advises authorities to register the making of an order, even though it is not a statutory requirement.<sup>85</sup>

### **Proposals for change**

- 7.51 In its Policy Statement DTLR recognised the need for greater openness in the compulsory purchase process. The Statement says that Government propose to

. . . take steps to help people check the position as it affects their properties, - by providing a formal notification procedure where an order is withdrawn and introducing requirements to register the status of all orders (from the time at which they are made, onwards) as local land charges: . . .<sup>86</sup>

<sup>80</sup> Subject to any proceedings to challenge its validity, the order is "operative" when notice of confirmation is published: New Towns Act 1981, Sched 4, para 15. Cf Part IV, para 4.6 above, in relation to orders under the Acquisition Act.

<sup>81</sup> Local Land Charges Rules 1977, r 3. It must include a description of the order, the identity of the originating authority, the place where relevant documents may be inspected, and the date of registration: *ibid* Sched 2, pt 7.

<sup>82</sup> i.e. under Opencast Coal Act 1958, s 4. The procedure for making and confirmation is governed by the Acquisition of Land Act 1981 (see Part V above): *ibid* s 4(4A).

<sup>83</sup> Opencast Coal Act 1958, s 11, as amended.

<sup>84</sup> *Ibid*, s 11(2). The order is entered in Part 9 of the register (opencast coal charges), which provides for the same particulars as under Part 7 (above): Local Land Charges Rules 1977, Sched 2 pt 9. The required provision for cancellation or amendment is covered by the general provisions of r 8 (see above).

<sup>85</sup> DTLR Compulsory Purchase Procedure Manual (November 2001) Part V, Section B (Drafting and Making the Order), para 57 ('Registration as Local Land Charge'): "The making of the order should be registered as a local land charge, although this is not a statutory requirement. Registration should ensure that the existence of the compulsory purchase order is revealed to those making enquiries."

<sup>86</sup> Policy Statement, para 3.9

The legislative proposal is to impose a requirement -

for the registration as a local land charge by the acquiring authority, within a specified period, of the making, withdrawal, confirmation/decision to refuse to confirm or cancellation of an order.<sup>87</sup>

### **Discussion<sup>88</sup>**

- 7.52 We endorse this approach.<sup>89</sup> We believe that a compulsory purchase order should be registrable as a local land charge from the time when it is made.<sup>90</sup> We do not think the requirement should start only at the time when the order is operative (as under the New Towns Act 1981), since the existence of even the unconfirmed order may have serious implications in practice for a potential purchaser. The rules already contain provision for cancellation or variation of the local land charges register, and so no specific statutory provision seems necessary to deal with withdrawal or non-confirmation.<sup>91</sup>
- 7.53 As to whether later stages in the procedure should be subject to specific requirements for registration, as implied by the Policy Statement, a balance needs to be drawn between the need to inform those interested, and the burden on the authority. If it is thought desirable for more information to be available about the status of the order, beyond the simple facts of making, withdrawal or non-confirmation, this could be provided for in the rules. However, we doubt if it is needed. Once an interested party has been alerted to the existence of the order, and has notice of the place where the relevant documents may be inspected, he can find out further details for himself.
- 7.54 The key stage, following the making of the order, is the commencement of implementation, whether by service of notice to treat or by serving a preliminary notice of a vesting declaration. As we have noted, the latter is already registrable in its own right.<sup>92</sup> If this is to be retained, as we would propose, it would seem logical to apply the same requirement to the service of a notice to treat. We do not think

<sup>87</sup> Policy Statement, App, para 2.23 and legislative proposal at para 3.9. The paper points out that failure to register a registrable charge would not affect its enforceability, but there would be a right to claim compensation under s10 of the Local Land Charges Act 1975.

<sup>88</sup> We are very grateful to Alison Barker of Birmingham CC, Ian Foote of Newham LBC and Pat Morgan of the Association of Local Land Charges Officers for contributing their knowledge and expertise to enable us to develop our proposals in this area.

<sup>89</sup> It would be the responsibility of the acquiring authority to establish a system of notifying the registering authority of the making of a CPO and, following acquisition, of its cancellation. Existing examples of such systems are notification from the Highways Agency, of advance payment of compensation; and from the Department of Culture, Media and Sport, of listed buildings.

<sup>90</sup> Or, in the case of a Ministerial order, prepared in draft: see Part IV, para 4.3 above. We anticipate that registration would be in Part 4 (Miscellaneous), as applies now to vesting declarations.

<sup>91</sup> Local Land Charges Rules 1977, r 8 (see above). The rules are made under Local Land Charges Act 1975, s 14. (Although specific provision was in the Opencast Coal Act 1958 for cancellation and amendment, this preceded the general power given by s 14 of the 1975 Act.)

<sup>92</sup> Para 7.48 above.

there is a need for a separate requirement in relation to notice of entry, since (under the current Government proposals<sup>93</sup>) this will follow the notice to treat within a defined timescale, and, again, information can be obtained from the authority.

- 7.55 Such statutory requirements can of course be supplemented, as now, by more detailed information by way of informal notes. This should not be a matter for legislation. However, to encourage consistency, it would be helpful if guidance were included in the official circulars or manuals issued by the Department.
- 7.56 The consequences of non-registration would remain as at present, both as to deemed notice and compensation.<sup>94</sup> We see no need, in respect of compulsory purchase orders, to alter or add to the provisions of the Local Land Charges Act 1975 in this respect.

### **Proposal 17 – Local land charges**

- (1) The following will be registrable as local land charges for the purpose of the Local Land Charges Act 1975:**
  - (a) Making of the order (or preparation in draft of a ministerial order);**
  - (b) Service of notice to treat in respect of any land under section 5 of the 1965 Act; and**
  - (c) Service of a preliminary notice under section 3 of the Vesting Declarations Act (as now).**
- (2) Amendment of the register, to reflect the order or notices being varied or ceasing to have effect, will be governed by the Local Land Charges rules (as now).**
- (3) If necessary, Departmental guidance should be given as to informal notes (relating to the status of the order at any time or other matters) to supplement the statutory requirements.**
- (4) Failure to register will not invalidate the order or notice, but any person adversely affected by that failure will be entitled to claim compensation for consequential loss suffered in accordance with the Local Land Charges Act 1975, section 10 (as now).**

### ***Consultation issue (Z) – Local land charges***

***(1) Do consultees agree that the definition of local land charges should include the stages in the CPO process set out above?***

***(2) Do they have any other comments on the above proposal?***

<sup>93</sup> See Part V, paras 5.12-5.13 above.

<sup>94</sup> See Part V, para 5.49 above.

# **PART VIII**

## **ABORTIVE ORDERS**

### **EXISTING LAW**

#### **Introduction**

- 8.1 This Part is concerned with the circumstances in which a compulsory purchase order may be withdrawn or become abortive, at any time between the first notice date and the completion of the purchase; and the rights of those interested to compensation for loss suffered in consequence.
- 8.2 In considering the existing law, a distinction must be drawn between the positions respectively before and after service of notice to treat. English law has never recognised any right to compensation for losses caused by threatened CPO proposals which are withdrawn or abandoned before notice to treat. The position after notice to treat depends on statutory provisions which have been subject to recent amendment, and are reviewed below.

#### **Historical Background**

- 8.3 Under the 1845 Act, other than by agreement and subject to any special provision in the enabling statute,<sup>1</sup> there was no general power to withdraw a notice to treat, once served; the acquiring authority were bound to proceed with the purchase, or pay damages.<sup>2</sup> The Acquisition of Land (Assessment of Compensation) Act 1919, section 5(2) changed the position by setting out specific requirements for the notice of claim, and providing that after delivery of a notice of claim the acquiring authority had six weeks to withdraw any notice to treat served on the claimant. The acquiring authority would be liable to pay compensation to any claimant for any loss or expenses occasioned by the notice to treat having been given and withdrawn.
- 8.4 The Lands Tribunal Act 1949 established the Lands Tribunal as the normal forum for determination of compensation. Section 5 modified the provisions of the 1919 Act to deal with a case where no claim was served; in that event withdrawal of the notice to treat was allowed up to six weeks after the Tribunal's determination, and compensation was limited to losses incurred before the time when a notice of claim should have been served. The provisions as so modified were consolidated in the 1961 Act, section 31.

<sup>1</sup> See, e.g., Small Holdings and Allotments Act 1908, s 39(8), which allows a notice to treat to be withdrawn within 6 weeks of determination of compensation, if the amount so awarded makes the project uneconomic; on withdrawal, compensation is payable for any resulting loss or expense.

<sup>2</sup> *Morgan v Metropolitan Railway Co* (1868) LR 4 CP 97, where it was held that the authority would be liable for damages if it failed to proceed within a reasonable time following notice to treat. The only exception was where, in response to a notice relating to part only of his land, the land-owner had served a notice requiring purchase of the whole (under 1845 Act s 92; 1965 Act s 8); see Part VIII, paras 8.14-15 below.

- 8.5 There was still no statutory time limit for the validity of the notice to treat, nor any provision for compensation if it was not pursued without being formally withdrawn. Case law established that a notice to treat could be treated as abandoned in certain circumstances, but the consequences were not spelt out.<sup>3</sup>
- 8.6 This uncertainty was left unresolved by the 1965 Act. Section 5 re-enacted the relevant parts of the 1845 Act relating to notice to treat, but made no change in relation to withdrawal or abandonment. However, amendments made by the 1991 Act clarified the position, by providing for a notice to treat to lapse if unimplemented after three years, and for the payment of compensation for consequential losses.<sup>4</sup>
- 8.7 The modern law, accordingly, is contained in 1961 Act, section 31 (withdrawal of notice to treat), and 1965 Act, section 5(2A)-(2C) (notice ceasing to have effect).

### **Outline of existing law**

#### ***Before notice to treat***

- 8.8 At present, there is no restriction on the authority's right to withdraw or abandon a compulsory purchase order before confirmation, or subsequent service of a notice to treat or making a vesting order; nor is there any right to compensation if it does so.
- 8.9 Equally, there is no statutory requirement on either the authority or Minister to carry out the steps necessary for confirmation of the order within any set time. The acquiring authority is advised by a Departmental Circular in these terms:
- There should be no delay between the making and submission of an order and an authority should, so far as is reasonably practicable and possible, make advertise and submit a fully documented order as soon as they have resolved to make one. Failing that, they should aim to make the order at the earliest possible date following their resolution.<sup>5</sup>
- 8.10 Once an order has been submitted to the Secretary of State for confirmation together with the required supporting documentation, the Secretary of State as confirming authority "may confirm the order either with or without modifications."<sup>6</sup> There is no statutory requirement placed on the Minister to confirm or refuse the order within a set time<sup>7</sup>.

<sup>3</sup> See *Simpsons Motor Sales (London) v Hendon Corporation*, [1964] AC 1088, where the House of Lords recognised that a notice to treat could be abandoned, but, on the facts of the case, upheld its continuing validity, notwithstanding 6 years delay since service.

<sup>4</sup> 1965 Act, s 5(2A)-(2E) (as substituted by s 67 of the 1991 Act): see below.

<sup>5</sup> DoE Circular 14/94, para 8.

<sup>6</sup> Acquisition Act, s 13(2): an inquiry or hearing must first be held if there is any unwithdrawn properly-made objection. Similar provisions apply where the order is a ministerial one: Sched 1, para 4.

<sup>7</sup> There are time limits where the Secretary of State, having decided that an inquiry should be held, must give notice of that intention to the acquiring authority and to statutory objectors

## ***After notice to treat***

### RIGHT TO WITHDRAW

8.11 The 1961 Act, section 31, gives the authority the right to withdraw notice to treat: (1) within 6 weeks of a properly formulated claim for compensation;<sup>8</sup> or (2) if no such claim is received, within 6 weeks of the determination of compensation by the Tribunal (unless the authority has entered into possession).<sup>9</sup>

8.12 The right to compensation is given by sub-section (3):

Where the acquiring authority withdraw a notice to treat under this section, the authority shall be liable to pay compensation to the person to whom it was given for any loss or expenses occasioned to him by the giving and withdrawal of the notice, but if the notice is withdrawn under subsection (2) of this section, not for any loss or expenses incurred by the claimant mentioned therein after the time when, in the opinion of the Lands Tribunal, a proper notice of claim should have been delivered by him.<sup>10</sup>

8.13 The Lands Tribunal has held that a notice to treat can be withdrawn by agreement, otherwise than under the procedures specified in sub-sections (2) and (3). It is thus open to the parties to agree to the withdrawal of a notice to treat on payment to the claimant of compensation.<sup>11</sup>

8.14 Cases under the 1845 Act established that, where an authority had served notice to treat in respect of part of land held by a landowner, and the landowner has served counter-notice requiring acquisition of the whole,<sup>12</sup> the authority was entitled to withdraw the notice.<sup>13</sup> That withdrawal does not seem to give rise to a right to compensation, although expense may well have been incurred. Withdrawal of a notice to treat will not of itself affect the continuing validity of the order. Thus, following a section 8 withdrawal, so long as the time limit has not expired for service, the authority may serve fresh notice.<sup>14</sup>

(and for subsequent inquiry stages): Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 SI 1990 No 512, r 4 and Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 SI 1994 No 3264, r 4.

<sup>8</sup> That is, a claim complying the 1961 Act, s 4(1)(b), (2), which must state “the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.”

<sup>9</sup> Under (1), where a claim has been served, the notice to treat may be withdrawn within 6 weeks notwithstanding that the acquiring authority have entered into possession of the land: *R v Northumbrian Water Ltd, ex parte Able K Ltd* [1996] 2 EGLR 15.

<sup>10</sup> The amount of any compensation, in default of agreement, is determined by the Lands Tribunal: *ibid*, sub-s (4).

<sup>11</sup> *Williams v Blaenau Gwent Borough Council* (1994) 67 P&CR 393.

<sup>12</sup> 1965 Act, s 8(1); for the right to serve such notices in respect of divided interests, see Part VI, para 6.26ff above

<sup>13</sup> *King v Wycombe Rly Co* (1860) 28 Beav 104; *Ashton Vale Iron Co Ltd v Bristol Corporation* [1901]1 Ch 591, CA.

<sup>14</sup> *Ashton Vale Iron Co Ltd* (*ibid*).

## NOTICE TO TREAT CEASING TO HAVE EFFECT

- 8.15 The 1965 Act provides that a notice to treat ceases to have effect three years after service, if action has not been taken to implement it (s 5(2A)),<sup>15</sup> unless the time is extended by agreement (s 5(2B)). Where a notice to treat ceases to have effect, compensation for any loss is payable under section 5(2C), which provides:

Where a notice to treat ceases to have effect by virtue of (2A) or (2B) of this section, the acquiring authority-

- (a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2B) of this section, and
- (b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.

### ***General vesting declaration***

- 8.16 The Vesting Declarations Act confers power on an acquiring authority to elect to execute a general vesting declaration, rather than proceed by service of notice to treat under the 1965 Act. This replaces the notice to treat and the conveyance with one procedure which, on a fixed date, automatically vests title in the land with the acquiring authority, except in relation to certain minor interests. There is no provision for withdrawing a deemed notice to treat under a vesting declaration; the Act expressly provides that the 1961 Act power is not exercisable.<sup>16</sup> However, where in the case of divided land notice of objection to severance has been served, the authority does then have the right to withdraw the deemed notice.<sup>17</sup>

### ***Advance payment***

- 8.17 Provision for the advance payment of compensation, where possession is taken before compensation is settled, is made by section 52 of the 1973 Act. The advance payment is equal to 90% of the authority's estimate of compensation, if no amount has been agreed.<sup>18</sup> Provision is made for repayment, if the authority's estimate exceeds the compensation as finally determined or agreed (subs (5)):

(5) Where the amount, or aggregate amount, of any payment under this section made on the basis of the acquiring authority's estimate of

<sup>15</sup> The section specifies the actions which will prevent the notice ceasing to have effect: the compensation has been agreed, awarded or been paid into court; a vesting declaration has been executed; the acquiring authority has entered on and taken possession of the land; or the question of compensation has been referred to the Lands Tribunal: see Part V, paras 5.6-5.8 above.

<sup>16</sup> Vesting Declarations Act, s7(3). This mirrors the 1973 Act, s 54(4) provision (relating to deemed notice to treat in respect of agricultural land).

<sup>17</sup> Vesting Declarations Act, Sched 1 para 4(1)(a), (2). This specifically disapplies section 7(3). See Part VI, paras 6.26ff for divided interests.

<sup>18</sup> For discussion of the provisions for advance payments, see Compensation Report, Part VIII(3) paras 8.21-8.29 and Proposal 13.

the compensation exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after any payment under this section has been made to any person it is discovered that he was not entitled to it, the amount of payment shall be recoverable by the acquiring authority.

- 8.18 As noted above, under 1961 Act, section 31 a notice to treat may be withdrawn following the receipt of a claim, even where the authority have taken possession. However, neither the 1961 Act nor the 1973 Act makes any specific provision for repayment of any advance payment made before withdrawal of the notice to treat. It has been held, however, that there is to be inferred an obligation to repay any excess over the compensation ultimately found due:

Looking at [subsection (5)] as a whole, the obvious purpose is to contrast the position at the time of the advance payment with the position when compensation is finally determined or agreed. If at the time it is found that there is either an excess or no entitlement, then I think the right to payment arises. If this were wrong, then...the principles of restitution are broad enough to provide an appropriate remedy.<sup>19</sup>

### **Human Rights Act 1998**

- 8.19 Failure to complete CPO procedures within a reasonable time may be a breach of the European Convention of Human Rights (under either Article 6 or Article 1 of the First Protocol). Damages may be awarded, including non-pecuniary loss.<sup>20</sup> Remedies for such breaches are now available in the English courts under the Human Rights Act 1998.<sup>21</sup>

### **PROPOSALS FOR CHANGE**

#### **The CPPRAG Review**

- 8.20 The Review noted the current patchwork of provisions relating to the consequences flowing from abortive CPOs. It suggested that:

There is clearly a case in equity for a landowner to be compensated for **any** costs (other than those directly attributable to his opposition to the proposal) or other losses incurred which are directly attributable to the acquiring authority's decision to make the compulsory purchase order, irrespective of whether the land is ultimately acquired from him or not.<sup>22</sup>

- 8.21 The Review also recommended that such costs or losses should be claimable from:

<sup>19</sup> *R v Northumbrian Water Ltd, ex parte Able K Ltd* [1996] 2 EGLR 15, 19.

<sup>20</sup> See *Guillemin v France* 1997-VI, p 149, 25 EHRR 435 (merits), 1998-VI, p 2544 (just satisfaction): proceedings to determine compensation extended more than seven years; the award included 250,000 FF for non-pecuniary loss, including "living in a state of uncertainty and anxiety about the outcome of the proceedings."

<sup>21</sup> See the Report on Damages under the Human Rights Act (2000) Law Com No 266; Scot Law Com 132.

<sup>22</sup> CPPRAG Review, para 188.



...the later of the date when the order became operative or the date when a specific cost was incurred or loss arose.<sup>23</sup>

### **Policy Statement**

8.22 As has been seen,<sup>24</sup> the Policy Statement proposed to extend the categories of “statutory objectors” entitled to notice of the proposals to:<sup>25</sup>

... all persons who have any private interest in any of the land included in the relevant compulsory purchase order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.<sup>26</sup>

8.23 It followed the recommendations of the CPPRAG Review, in proposing that there should be a right to compensation for any losses resulting from an abortive proposal to acquire, starting from the date of the first notice of the proposal:

**... [T]he date on which the acquiring authority notify those directly affected of the making of the compulsory purchase order should be defined as the date from which appropriate losses can be reimbursed and as the date from which such claimants have a duty to mitigate their losses.** This should apply in relation to any actual and justifiable loss or expense irrespective of whether the relevant compulsory purchase order is subsequently confirmed or implemented. However, the defined date should be regarded as a baseline and, as CPPRAG pointed out, any particular loss should only be reimbursable from the date, thereafter, on which it is first incurred.<sup>27</sup>

... It should apply uniformly irrespective of the reasons for not proceeding with the order and in respect of all costs reasonably incurred up to the date on which the acquiring authority notifies the claimant that the scheme has been abandoned, as well as any unavoidable costs arising beyond that date.<sup>28</sup>

8.24 The Government’s legislative intent was expressed as twofold:

(1) Procedural:

to provide a notification procedure for the withdrawal of compulsory purchase orders; and

<sup>23</sup> *Ibid*, para 190.

<sup>24</sup> Part IV, paras 4.7-4.8 and Proposal 2 above.

<sup>25</sup> Provisions for the giving of notice, and rights of objection are set out in Acquisition Act, Sched 1 paras 2-4 (Ministerial purchases); ss 11-13 (purchases by other bodies). The term “statutory objector” is not used in the Act, but is used in the Inquiries Procedure Rules to describe those entitled with a statutory right to object following receipt of notice under those provisions: see e.g. Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 SI 1994/3264 r 2.

<sup>26</sup> Policy Statement, App, para 2.12.

<sup>27</sup> *Ibid*, App, para 3.8.

<sup>28</sup> *Ibid*, App, para 3.76.

to require (within a stated period), registration as a local land charge of information relating to the making, withdrawal, confirmation, cancellation or refusal to confirm a compulsory purchase order;<sup>29</sup> and

(2) Compensatory:

to confirm that compensation is payable where the threat of compulsory purchase subsequently fails to materialise because the compulsory purchase order is not confirmed, is withdrawn, is quashed or is not implemented within the appropriate time limits after confirmation (Law Commission).<sup>30</sup>

8.25 The ODPM in its Policy Response Document more recently indicated that the Law Commission is considering, amongst other matters, “compensation for actual losses if a scheme does not proceed.”<sup>31</sup>

### COMMONWEALTH COMPARISONS

8.26 The ODPM’s proposals are in line with reforms made in Australian law. In its 1980 Report, the Australian Law Reform Commission expressed the view that in principle, if the government decided not to proceed with an acquisition, compensation should be paid for any loss suffered. The ALRC fixed the starting date as the first formal declaration of the proposal:

To require government to underwrite losses sustained by people who buy and sell on the basis of mere expectation seems both wrong in principle (the government has not *caused* those losses) and impracticable (the task of causally relating loss to expectation would be great). If on the other hand, there has been a formal government proposal for the use of the land it is unreasonable that losses caused by such a proposal should be uncompensated simply because no formal acquisition step has been taken.<sup>32</sup>

It recommended accordingly that, where a declaration is revoked, any person who had an interest in the land to which the declaration relates should have a right to recover as compensation:

Such amount as will justly compensate him in respect of any loss or damage suffered, or expense reasonably incurred by him as a result of the making of the declaration for the acquisition of land pursuant to that declaration.<sup>33</sup>

<sup>29</sup> Policy Statement, para 3.9 Our proposals in relation to local land charges are discussed above: Part VII, paras 7.51-56.

<sup>30</sup> Policy Statement, para 4.21

<sup>31</sup> Policy Response Document (July 2002), para 12(iv)

<sup>32</sup> ALRC Report, para 188.

<sup>33</sup> *Ibid*, para 190.

8.27 This proposal was given effect by LAA (Cth), section 96, which applies where a “pre-acquisition declaration”<sup>34</sup> is revoked or ceases to have effect.<sup>35</sup> In such a case, where:

(b) a person who, when the declaration was in force, was an owner of an interest affected by the declaration, suffers loss as a direct, natural and reasonable consequence of the making of the declaration; and

(c) within 3 years after the declaration is revoked or ceases to have effect, the person claims compensation in accordance with section 97;<sup>36</sup>

the Commonwealth is liable to pay to the person as compensation such amount as will justly compensate him or her for the loss.<sup>37</sup>

8.28 Similar provisions are found in recent state legislation. For example, the Lands Acquisition and Compensation Act 1986 (Victoria), (“LACA (Vic)”) provides for the cancellation of the proposal or its lapse after a specified period from the notice of intention to acquire.<sup>38</sup> It gives a right to compensation for pecuniary loss or expenses suffered in consequence of a notice of intention to acquire, where the authority determines not to proceed, or does not proceed within the time prescribed. Compensation is limited to losses in the period between the giving of notice to acquire and the time of the notice to proceed or of the lapsing of the notice to acquire.<sup>39</sup> There is a separate right to compensation for loss caused by temporary occupation by the authority.<sup>40</sup>

8.29 Likewise, the Land Acquisition (Just Terms Compensation) Act 1991 (NSW), (“LA(JTC)A”), section 14(1) imposes an obligation to proceed with expedition:

As soon as practicable after the expiration of the minimum period of notice of a proposed compulsory acquisition, the authority of the State must:

(a) acquire the land by compulsory process or by agreement; or

<sup>34</sup> Under LAA (Cth) 1989 the compulsory acquisition procedure is initiated by a “pre-acquisition declaration” by the Minister that he is “considering the acquisition by an acquiring authority of an interest in land... for a public purpose”: *ibid*, s 22(1). The declaration must identify the interest to be acquired and the public purpose: s 22(2).

<sup>35</sup> The Act refers to two circumstances where the declaration “ceases to have effect”: first, where the interest is not acquired within 3 months of the owner giving notice to require acquisition (under s 44(2)); secondly, where the acquisition is disallowed under a special Parliamentary procedure relating to land in a public park (s 46(2)).

<sup>36</sup> Section 97 is purely procedural.

<sup>37</sup> This provision started life in the ALRC (1980) draft Bill cl 27 which would have provided a right to recover “such amount as will justly compensate him in respect of any loss or damage suffered, or expense incurred by him, as a natural and reasonable consequence of the making of the [revoked] declaration...” (and see supporting text at para 190).

<sup>38</sup> LACA (Vic), ss 15-16.

<sup>39</sup> *Ibid*, s 46.

<sup>40</sup> *Ibid*, s 47.

(b) withdraw the proposed acquisition notice.<sup>41</sup>

The acquisition notice is to be taken as withdrawn if the land is not acquired within the 120 days from the notice of intention to acquire, or any agreed extension.<sup>42</sup>

8.30 This provides the trigger for a right to compensation:

(1) If a proposed acquisition notice is withdrawn (or taken to be withdrawn) under this Act, an owner of the land concerned is entitled to be compensated by the authority of the State who gave the notice for any financial costs or any damage actually incurred or suffered by the owner as direct consequence of the giving of the notice and its later withdrawal.

(2) Compensation is not payable under this section in respect of any change in the value of the land.<sup>43</sup>

The purpose of subsection (2) presumably is to exclude a claim for alleged losses due to a fall in the market during the life of the CPO proposal. It is probably unnecessary, since it seems unlikely in any event that such a loss would be regarded as a “direct consequence” of the giving of the notice and its withdrawal.<sup>44</sup>

8.31 Another modern example is found in the Canadian Expropriation Act 1985, which ties the period of claim to the registration of the notice of intention, and also covers partial abandonment:

(2) Where an intention to expropriate an interest or remainder of an interest in land has been abandoned, the compensation payable by the Crown to the owner thereof is the amount of any actual loss sustained by the owner, after the time when the notice of intention was registered and before the time when the abandonment of the intention, or the intention to expropriate a more limited interest, as the case may be, was confirmed, in consequence of the registration:

(a) of the notice of intention, where the intention to expropriate the interest has been abandoned; or

<sup>41</sup> LA(JTC)A, s 14.

<sup>42</sup> *Ibid*, s 14(2).

<sup>43</sup> *Ibid*, s 69.

<sup>44</sup> Cf *Banque Bruxelles Lambert SA v Eagle Star* [1997] AC 191: the valuer was not liable for any loss suffered by the lender as a result of a fall in the market, since such a loss was not a foreseeable consequence of the valuer’s negligence in providing inaccurate information. See per Lord Hoffmann at p 214 on the limited extent of the duty of care, distinguishing between provision of information and advising on a course of action. In *Hancock v Turner* [1999] Lloyd’s Rep. P.N.814, QBD, it was held that negligent advice leading to foreseeable loss of a marketing opportunity could give rise to liability for that loss (and there would be sufficient causal link).

(b) of the notice of intention in so far as that notice relates to the remainder of the interest, where the intention to expropriate the remainder has been abandoned.<sup>45</sup>

#### **MAIN ISSUES**

8.32 The main issues are:

- (1) *When should the entitlement begin?*
- (2) *Who may claim?*
- (3) *In what circumstances does the entitlement arise?*
- (4) *What should be the basis of compensation?*

#### **When should the entitlement begin?**

8.33 The Policy Statement proposes that the starting date for the right to compensation should be “the date on which the acquiring authority notify those directly affected of the making of the compulsory purchase order.” (We have referred to this as “the first notice date”.)<sup>46</sup> This is consistent with the approach of the Australian statutes.

#### **Who may claim?**

8.34 As explained above, the Policy Statement proposes to extend the definition of “statutory objector” to cover all interests or rights in the land, including not simply those with interests in the land, but also those with no more than a right to occupy any of that land, or a right restrictive of the use of any of the land.

8.35 It might seem appropriate for the right to compensation on withdrawal or abandonment of a compulsory purchase order to be extended to those who would be entitled to compensation if the order were implemented. It is the corollary of their obligation to mitigate their loss from the same date.<sup>47</sup> In practice, of course, those with lesser interests may find it less easy to prove any loss. For example, occupiers without compensatable interests, who under the 1973 Act have a right to compensation for business loss,<sup>48</sup> are unlikely in practice to be adversely affected by the mere making of the order. Nor, consistent with their obligation to act reasonably, are they likely to be able to justify running down a business before at least confirmation of the order. However, this should not affect the principle.

8.36 Those with no more than an easement or right over the subject land may well be in a different category. Their right to compensation does not arise unless and until their interests are interfered with.<sup>49</sup> In those cases, since even implementation of the order does not confer a right to compensation, there seems no reason to confer

<sup>45</sup> Canadian Expropriation Act 1985, s 28(2)

<sup>46</sup> See Compensation Report, Part III, para 3.8.

<sup>47</sup> This “duty to mitigate” is also proposed to run from the first notice date: Compensation Report, Part IV, para 4.34 and Proposal 4(2)(e).

<sup>48</sup> See Compensation Report, Part VIII, paras 8.81-82.

<sup>49</sup> See Compensation Report, Part VIII, paras 8.3-9 and Proposal 11(1).

a right at an earlier stage. Accordingly, we would not extend the right to compensation to such interests.

- 8.37 We think a reasonable compromise, and a reasonably precise test, is to give the right to compensation to all those entitled to *individual* notice of the making of the order.<sup>50</sup> This, under the current proposals, will include all those with a direct interest or right of occupation, but not those entitled simply to an easement or restrictive covenant.

### **In what circumstances should the entitlement arise?**

#### ***Abortive orders – definable events***

- 8.38 The first step is to define the circumstances in which a compulsory purchase order is to be treated as becoming “abortive”. On the basis of the earlier discussion (apart from agreement or special statutory provision), there are, in summary, seven definable events which might lead to an order being regarded as becoming abortive, following the first notice date:

- (1) Where the order is formally withdrawn by the acquiring authority before confirmation;
- (2) Where confirmation is refused by the Secretary of State;
- (3) Where the order is quashed by the High Court;
- (4) Where, after the “operative date”,<sup>51</sup> the authority fails to implement it (by notice to treat or vesting declaration) within the statutory time limit;
- (5) Where, following notice to treat or vesting declaration, a notice is served under the divided interests rules, and the authority exercises its right to withdraw;
- (6) Where the authority exercises its right to withdraw the notice to treat within 6 weeks of a proper claim for compensation (or, in default of a proper claim, of determination);<sup>52</sup> and
- (7) Where, following notice to treat, the authority fails to take possession within the statutory time limit.

- 8.39 As has been seen, only (4) and (6) are subject to rights to compensation under the present law.<sup>53</sup> We propose that there should be a right to compensation on any of the events listed in (1) to (7). The authority should be under an obligation to give

<sup>50</sup> This would exclude those (such as owners of easements etc) who are entitled only to “special service” under Proposal 1: see paras 3.15-3.26 above.

<sup>51</sup> Acquisition Act, s 26(1). Subject to the power of the court to suspend operation by interim order, the operative date is that on which notice of confirmation is first published.

<sup>52</sup> Under 1961 Act, s 31: see para 8.11 above

<sup>53</sup> Time limit is specified in 1965 Act, s 5(2A) unless extended by agreement under s5(2B). Notice of withdrawal and the compensation entitlement is governed by s5(2C).

notice of such an event to all those who were entitled to notice of the making of the order, with details of their right to compensation.<sup>54</sup>

- 8.40 For this purpose of drafting the new provisions, it is necessary to define the circumstances in which an order becomes abortive, by reference to specific circumstances. This in turn makes it desirable to formalise the rules as to when a compulsory purchase order, or a subsequent procedural act, can be withdrawn. We would not propose any substantive change to those rules, other than to require a formal notice of withdrawal, to be served on the same interests, and in the same way, as notice of the making of the order.
- 8.41 Thus, in line with the existing law,<sup>55</sup> we propose that the authority be permitted to withdraw a compulsory order at any time up to implementation (by service of notice to treat or execution of vesting declaration). By contrast, a notice to treat could only be withdrawn (a) as permitted by the 1961 Act, section 31 (following notice of claim or determination), (b) by agreement, (c) under the “divided interest” provisions,<sup>56</sup> or (d) under any special statutory provision permitting withdrawal; (b) to (d) will also apply to a vesting declaration. We do not propose a separate provision for withdrawal of notice of entry, in view of the short time-scale now proposed.<sup>57</sup>
- 8.42 Where a notice to treat or vesting declaration is withdrawn under these proposals, we think that this should be treated as a withdrawal of the order itself. Even if, under the short time limits now proposed, it were theoretically possible for the authority to re-start the implementation process, we see no reason why the owners should be left in any uncertainty.

### ***Other circumstances***

- 8.43 Such a scheme assumes that the order is withdrawn or ceases to have effect at a defined point in time. It does not provide a remedy for cases where, before the operative date, the order is simply not pursued, or not pursued expeditiously. The Australian statutes lay down relatively tight timetables for completion of the procedures following the initial proposal; failure to comply results in lapse of the order and triggers the right to compensation.<sup>58</sup> This approach would be difficult to apply to the English procedure before confirmation, because the provision for objections and public inquiries, is more protracted, and less predictable. Also, to the extent that delay is caused by the confirmation procedure, it is largely out of the control of the acquiring authority (on whom liability would fall).
- 8.44 There are three relevant periods:

<sup>54</sup> Notice of withdrawal will also be recorded in the local land charges register: see Part VII, para 7.52 above.

<sup>55</sup> Para 8.8ff above.

<sup>56</sup> See Part VI para 6.48ff above.

<sup>57</sup> See Part V, para 5.13 above.

<sup>58</sup> See paras 8.26-8.31 above.

- (1) *From making of the order to submission to the confirming authority* This is within the control of the authority, and could be subject to a specific time limit (say two months from the first notice date). However, it is unlikely that significant loss will have occurred at this stage;
- (2) *From submission until confirmation* This is outside the control of the acquiring authority. It is for Government to decide, as a matter of policy, whether it wants to place itself under time constraints or to put in place some form of binding default procedure. It is probably impracticable to do so, not least because each CPO differs in its nature, extent and complexity, and the weight of objection will vary from case to case, but also the time-scale within which inquiries or hearings can be established will depend on a multiplicity of factors;
- (3) *From confirmation to operative date* This may be delayed by legal challenge, which is again outside the control of the authority.

8.45 There could be a general statutory duty on the acquiring authority and the confirming authority to complete the procedures expeditiously. However, it is difficult to make provision for a trigger mechanism for a right to compensation, particularly for (2) and (3). We have considered whether those interested in the land should be able to apply to the Lands Tribunal, if their position is prejudiced by unreasonable delay in completing the procedure. The Tribunal could have power to require the authority to elect to acquire the interests, or to withdraw the order, thereby triggering the right to compensation for withdrawal. However, it would be difficult for the Tribunal to judge whether the delay is “unreasonable”, where, for example, that depends on the length of a public inquiry, or internal Government procedures.

8.46 In any event, this problem is part of the wider problem of “blight”, which is being considered separately by the Government.<sup>59</sup> As we have already noted, in an extreme case, there may be a remedy for unreasonable delay under the Human Rights Act 1998.<sup>60</sup> We make no specific proposals at this stage, but invite views, and examples of difficulties experienced in practice.

### **What should be the basis of compensation?**

8.47 As noted above, the Policy Statement envisages that compensation should cover any loss or expense directly attributable to the proposal and its abandonment, subject to the ordinary duty of the claimant to mitigate his loss. This seems correct in principle. As has been noted, where a notice to treat lapses following the time limit under section 5 of the 1965 Act, the recipient is entitled to compensation for “any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect”. A similar form of wording could be used for loss caused by the order as a whole ceasing to have effect. We do not think it necessary to spell out the basis of compensation in any greater detail, since the circumstances may vary considerably. However, we would anticipate the right being subject to the general

<sup>59</sup> Policy Statement, para 5.1.

<sup>60</sup> See above, para 8.19 and see also Compensation Report, Part II, para 2.23.



principles stated in the Compensation Report, including the principle of “fair compensation”, and the “duty to mitigate loss”, although this is probably implied.<sup>61</sup>

#### **ACQUISITIONS FOR ENFORCEMENT PURPOSES**

8.48 There remains a problem drawn to our attention by local authorities with housing and environmental health functions. Compulsory purchase orders are sometimes used to assist enforcement of repairing or maintenance obligations of owners of residential property.<sup>62</sup> Compulsory powers are often used as a means of final resort because other statutory powers have failed.<sup>63</sup> The authority may indicate that the order will be withdrawn if the owner undertakes to carry out the work himself.

8.49 This practice is supported by Government:

Some authorities have adopted a practice of offering undertakings to owners that they will not implement compulsory purchase orders if the owner improves the property and/or brings it into acceptable use within a specified period of time. Undertakings of this nature may be offered before or at the local inquiry held into the order and may be helpful in establishing that compulsory purchase will only proceed as a last resort in a case where an owner has proposals for a property but fails to carry these out. . . . Where an authority has given an undertaking it should give the owner every reasonable assistance to carry out his proposals, in the hope that implementation of the order will not be necessary.<sup>64</sup>

8.50 The City of Westminster is a case in point. There the authority use CPOs made under the Housing Act<sup>65</sup> as an integral part of their private sector housing strategy. Westminster’s CPO housing policy is (we are told):

- (1) to give first priority to occupied properties where tenants are experiencing poor living conditions, or bad management of their homes, or both;
- (2) to give second priority to long-term empty properties which are in poor condition and do not make a contribution to the overall housing stock in the authority’s district;
- (3) but where an owner gives a time limited binding undertaking to refurbish a substandard property and return it to residential use, the CPO is not implemented (even if it is in its later stages).<sup>66</sup>

In such cases, CPOs are only implemented as a last resort. The Council is not anxious to acquire properties (and the liabilities attached to them); they prefer to

<sup>61</sup> Compensation Report, Part IV, para 4.11 (“Fair compensation”); 4.58 (“duty to mitigate”).

<sup>62</sup> A similar issue may arise in other areas, such as in relation to listed buildings.

<sup>63</sup> Guidance on the use of CPOs made under Housing powers is given in DoE Circular 5/93.

<sup>64</sup> DoE Circular 5/93, para 18.

<sup>65</sup> Housing Act 1985, s17.

<sup>66</sup> Letter from Housing Department, City of Westminster Council, 27 February 2002.

find ways in which building owners will voluntarily refurbish and reuse their housing accommodation.

- 8.51 Authorities who use compulsory purchase powers in this way have objected to the imposition of an obligation to pay compensation where the order is withdrawn solely because its objective will be achieved in other ways. We agree that such cases should be exempted from the proposed new right to compensation for abortive orders. We would welcome views on the precise scope of any such exemption: for example, should it apply to *any* order made for the purpose of improving existing property, or should it be tied to particular statutory powers (for example for enforcement of duties of landlords to keep properties in repair)? Should it be confined to cases where the order is withdrawn for reasons directly related to the achievement of the improvement (rather than say a failure for technical reasons or lapse of a time limit)?
- 8.52 We propose provisionally that the exemption should not be limited to any particular statutory context, but should apply generally to the use of compulsory purchase powers to secure the improvement or proper maintenance or management of existing property. The authority should be able to certify in the order that it is made wholly or mainly for that purpose. Where such a certificate is given, and the authority thereafter decides to withdraw the order before implementation, no right to compensation will arise. The exemption will only apply where the order is withdrawn by the authority, and not where it is quashed or fails for other reasons. We invite views as to whether there should be any further protection against abuse by the authority, for example a power for the Tribunal to award compensation where it is shown that the authority has acted unreasonably. On balance we think this can be left to the ordinary control of judicial review.

#### **DISPUTE RESOLUTION**

- 8.53 As under the existing provisions, disputes in respect of compensation will be referred to the Lands Tribunal. They will be subject to the same limitation period as other statutory rights to compensation.<sup>67</sup>

#### **Proposal 18 - Abortive orders**

- (1) An order will be treated as having become abortive in respect of the subject land or any part of it or interest in it:**
- (a) if it is withdrawn by the acquiring authority under paragraph (2) below; or**
  - (b) in the circumstances set out in paragraph (3) below.**
- (2) Withdrawal of orders and notices:**
- (a) At any time before implementation (by service of a notice to treat or execution of a vesting order) in respect of the subject land or any part of it, the acquiring authority may**

<sup>67</sup> See Part VII, paras 7.2-7.17 and Proposal 12 above.

**formally withdraw the order in respect of the land or that part by serving notice of withdrawal in the same manner, and on the same persons, as would apply to notice of making of the order.**

**(b) After implementation (as above), the authority may withdraw from the purchase (with the effect that the order itself becomes abortive to the extent of the interests affected) by notice served on all those entitled to service of the relevant notice to treat or vesting declaration, in the following circumstances (and no other):**

**(i) by agreement;**

**(ii) under any special statutory provision permitting withdrawal;**

**(iii) as permitted by the divided interest procedures; or**

**(iv) (in the case of a notice to treat) within 6 weeks of a proper<sup>68</sup> claim for compensation, or, in default of a proper claim, within 6 weeks of determination of compensation.<sup>69</sup>**

**(3) The compulsory purchase order shall also be treated as becoming abortive in the following circumstances:**

**(a) Where confirmation is refused by the Secretary of State;**

**(b) Where the order is quashed by the High Court;**

**(c) Where, after the “operative date”, the authority fails to implement it in respect of that interest or right (by notice to treat or vesting declaration) within the statutory time limit; or**

**(d) Where, following notice to treat, the authority fails to take possession within the statutory time limit.**

**(4) Where an order becomes abortive under the paragraph (3), the authority shall forthwith give notice of that fact and of the right to compensation under this Proposal, to all the persons entitled to be served with individual notice of making.**

<sup>68</sup> i.e. a claim complying with 1961 Act, s 4: see para 8.11 above.

<sup>69</sup> i.e. to the extent permitted by the 1961 Act, s 31 (or any replacement of that section).

- (5) Where an order becomes abortive under this Proposal, any person who was entitled to be served with individual<sup>70</sup> notice of making of the order, or any person served with a notice which is later withdrawn, may claim from the acquiring authority compensation for any loss or expenses occasioned to him by the making of the order and its becoming abortive, or by the withdrawal of the notice.
- (6) There shall be no right to compensation under this proposal where:
- (a) an order is withdrawn by the authority, if the authority certified in the order that it was made wholly or mainly for the purpose of securing the improvement, maintenance or management of existing property; or
  - (b) where, following the service of a blight notice under the 1990 Act, s 150, notice to treat is deemed to have been withdrawn under section 156(2) of that Act.<sup>71</sup>
- (7) Where notice is given that an order has become abortive or that an order or notice has been withdrawn, the acquiring authority shall, at the same time as giving the notice, cause the register of local land charges to be amended accordingly.<sup>72</sup>

***Consultation issue (AA) – Abortive orders***

***(1) Do consultees agree that a right to compensation should arise in the circumstances defined in this proposal?***

***(2) In particular, do they agree:***

***(a) that the right to compensation should be defined by reference to those entitled to individual notice of the making of the order? If not, how should the right be limited, or defined?***

***(b) that there be an exception, as proposed, for cases where the authority certifies that the order is made for the purpose of securing the improvement, maintenance or management of existing property? If so, should the Tribunal be able to disallow the exemption where the authority has acted unreasonably?***

***(c) that there should be no right to compensation under this provision,<sup>73</sup> arising simply out of delay in completing the compulsory purchase procedures? (If consultees disagree, it would be helpful to***

<sup>70</sup> See para 8.37 above.

<sup>71</sup> This reproduces the effect of 1990 Act, s 156(4).

<sup>72</sup> See Part VII, paras 7.51-7.56 and Proposal 17 for our proposals in respect of registration.

<sup>73</sup> As noted above, in some circumstances there may be a right to relief under the Human Rights Act 1998: para 8.19 above.

***have examples of cases where such a right might have been appropriate, and an indication as to how it could be defined.)***

***(d) Do consultees have any other comments on the detail of this proposal?***

# **PART IX**

## **TREATMENT OF EXISTING PROVISIONS**

### **NB:**

- (1) *Numbers in italics and square brackets refer to paragraph numbers of the report where the issue is discussed.*
- (2) *Proposals marked (G) follow, or are based on, proposals already adopted in Government policy statements.*
- (3) *Section numbers in **bold** are proposals for new provisions, rather than replacements or amendments of existing sections. (Their numbering and positioning in the list is for illustration only.)*
- (4) *Proposals for replacement marked (\*) are directed principally to modernisation or simplification rather than substantive change.*
- (5) *The drafting of any statutory provisions or amendments is a matter for Parliamentary Counsel.*

### **MAKING AND AUTHORISATION OF COMPULSORY PURCHASE ORDERS**

#### **Acquisition of Land Act 1981**

Retain unamended subject to the following:

#### PART I - GENERAL

##### S 6 (Service of documents)

Amend to provide for “special service” (by fixing site notices) on those with interests or rights to occupy not presently entitled to notice of the order (to be defined by regulations) [3.26] (G)

##### S 7 (Interpretation)

Add definition of “statutory objector”, as a person who is entitled to notice of making under the statute, and who lodges an objection in accordance with the notice [4.8] (G)

#### PART II - NON-MINISTERIAL ORDERS

##### S 12 (Notices in newspapers)

Amend:

- (a) to confer right to notice of the order on any person with a private interest over the land, or right to occupy any part of it; [4.8] (G)
- (b) to provide that, for categories of interest or right defined by regulations, “special service” will be sufficient service. [3.26] (G)

S 13 (Confirmation of order)

Amend:

- (a) to provide for transfer of unopposed orders for confirmation by the acquiring authority; [4.13] (G)
- (b) for consideration of objections by written representations, where parties agree; [4.6(4)(e), n 17] (G)
- (c) to provide for confirmation in stages. [4.14] (G)

PART IV - VALIDITY

S 23 (Grounds for application to High Court)

Amend s 23(1), to substitute (for the right to challenge the compulsory purchase order) a right to challenge the confirmation of the order, or the decision refusing confirmation; [4.21]

S 24 (Powers of the court)

Amend s 24(2), to allow the court (instead of quashing the order) to quash the confirmation of the order, or the refusal of confirmation, or to make such other order (including quashing the order as a whole) as is appropriate having regard to the grounds of challenge; [4.23]

S 25 (Restriction on other court proceedings)

Amend s 25 to provide (following the decision of the confirming authority, but not before) immunity from challenge in other proceedings for the confirmed order or the refusal of confirmation;<sup>1</sup> [4.22]

SCHEDULE 1 - PURCHASES BY MINISTERS

Amend paras 3-4, to correspond with ss 12-13 above.<sup>2</sup>

<sup>1</sup> Sections 23-25 also deal with legal challenge of certificates under Part III of the 1961 Act, (appropriate alternative development – s 17) or Schedule 3 (exchange land for commons – Sch 3 para 6) of the 1961 Act. The former is referred to in the Compensation Report (Part VII, paras 7.31-7.45). The special provisions for commons are not part of this reference: see Part I, para 1.17 above.

<sup>2</sup> Our preferred option in due course would be to repeal this schedule and amend Part II of the Act to apply to ministerial and non-ministerial orders [4.3].

## IMPLEMENTATION OF COMPULSORY PURCHASE

### Compulsory Purchase Act 1965

#### PART I – COMPULSORY PURCHASE UNDER ACQUISITION OF LAND ACT OF [1981]<sup>3</sup>

##### *Preliminary*

S 1 (Application of Part I and interpretation)

Retain [3.6]

S 2 (Persons without power to sell) (also Schedule 1)

Repeal [5.46]

S 3 (Acquisition by agreement)

Retain, save to delete reference to Schedule 1.

##### *Compulsory Purchase*

S 4 (Time limits)

Replace by Proposal 5 (Time limits) [5.15] (G)

**S4A** Add new section on **limitation periods** [7.13-17]

S 5 (Notice to treat and untraced owners) (also Schedule 2)

(1), (2) (Notice to treat procedure) – retain, subject to –

(i) provision for a prescribed form

(ii) up-dating of reference to “compensation” [5.19-22]\*.

(2A) – (2E) (time limits and compensation) – replace by amended s 4 (time-limits) [5.15](G), and **s 5A** (abortive orders) [8.15, 8.38-8.42] (G)

(3) and Schedule 2 (absent owners) – replace by Proposal 8 [5.41]

**S 5A** Add new sections on compensation for **abortive orders** [Part VIII]<sup>4</sup> (G)

S 6 (Reference to Lands Tribunal)

Retain, subject to **s 4A** (limitation periods) [7.13-17]

S 7 (Compensation for severance)

<sup>3</sup> The heading to Part I refers to the 1946 Act, which has since been replaced by the 1981 Act.

<sup>4</sup> As an alternative, the new provisions for compensation for abortive orders would be included in the proposed Compensation Code.



Repeal, to be replaced in Compensation Code [*Compensation Report, Part V, paras 5.3-5.16*]

S 8 (Divided land)

Replace by Proposal 11 (divided property) [*6.49-6.56*] (G)

*Deposit of compensation and execution of deed poll*

S 9 (Refusal to convey)

Replace by Proposal 7 (deed poll procedure) [*5.37*]\*

*Further provision for compensation*

S 10 (Injurious affection where no land is taken)

Repeal, to be replaced in the Compensation Code [*Compensation Report, Part IX, paras 9.10-9.24, 9.82*]

*Entry on land*

S 11 (Powers of entry)

(1) (notice of entry procedure) – retain, subject to amended s 4 (time limits) [*5.28*]

(2) (alternative procedure under Sched 3) – repeal [*5.23*]

(3) (entry for survey) - retain [*3.30*]

S 12 (Unauthorised entry)

Repeal [*7.19, 7.22*]

S 13 (Refusal to give possession)

Replace by Proposal 13 [*7.27-7.29*]\*

*Special interests*

S 14-16 (Mortgages)

Retain [*6.70-6.71*]

S 18 (Rentcharges)

Retain [*6.70-6.71*]

S 19 (Apportionment of rent under leases)

Retain [6.41]

S 20 (Tenants at will etc)

Restate as in Proposal 1 [6.8]\*

S 21 (Common land)

Retain [not part of this project]<sup>5</sup>

**S 21A** Add new section – **Easements and other private rights** – as in Proposal 10 [6.22-25]

*Supplemental*

S 22 (Omitted interests)

Retain [7.22-7.26]

S 23 (Costs of conveyance etc)

Replace (1) – (5) by proposal 16 [7.42-7.43]\*

Retain (6), Schedule 5 (forms of conveyance) [5.31]<sup>6</sup>

S24-25 (Payment into court)

Replace with Proposal 7 (deed poll procedure) [5.37, 7.39]\*

S 26 (Costs in respect of money in court)

Replace with proposal 15 [7.39]\*

S 27 (*Repealed*)<sup>7</sup>

S 28 (Provisions as to deed polls)<sup>8</sup>

Retain, as part of new s 9 (deed poll procedure)<sup>9</sup> [5.37]\*

<sup>5</sup> See Part I, paras 1.20-1.21 above, for the matters excluded from this Law Commission project.

<sup>6</sup> We invite views on whether the prescribed form serves any practical purpose: see Part V, para 5.31 above.

<sup>7</sup> See SI 1990 No 776, art 3(1), Sched 1.

<sup>8</sup> This provides for incidental matters, such as sealing of deed polls, and stamp duty. We question the need to retain s 28(3): see Part V, para 5.36 above.

<sup>9</sup> Although we suggest that s 28(3) may be unnecessary, and invite views on this issue (as n 9 above): see Part V, para 5.36 above.

S 29 (Irregularities in distress proceedings)

Repeal [7.30-7.31]

S 30 (Service of notices)

Retain<sup>10</sup> [3.24-3.26]

S 31 (Ecclesiastical property)

Retain [*not part of this project*]<sup>11</sup>

S 32 (Commencement)

Retain

## PART II

Retain [*not part of this project*]<sup>12</sup>

Sch 1 (Persons without power to sell)

Repeal (see s 2 above)

Sch 2 (Absent and untraced owners)

Replace (see s 5(3) above)

Sch 3 (Alternative procedure for entry)

Repeal (see s 11 above)

Sch 4 (Common land)

Retain [*not part of this project*]<sup>13</sup>

Sch 5 (Forms of conveyance)

Retain [5.31]<sup>14</sup>

Sch 7-8 (Consequential amendments and repeals)

Retain [*not part of this project*]<sup>15</sup>

<sup>10</sup> Section 30 simply applies the provisions for service in the Acquisition of Land Act 1981 (s 6), which would be amended as in Proposal 1 (see Part III, para 3.26 above).

<sup>11</sup> See Part I, paras 1.20-1.21 above, for the matters excluded from this Law Commission project.

<sup>12</sup> See Part I, paras 1.20-1.21, for the matters excluded from this Law Commission project.

<sup>13</sup> See Part I, paras 1.20-1.21, for the matters excluded from this Law Commission project.

<sup>14</sup> We invite views on whether the prescribed form serves any practical purpose: see Part V, para 5.31 above.

### **Compulsory Purchase (Vesting Declarations) Act 1981**

Retain [5.47], subject to:-

Time-limits (Proposal 5 above) [5.12] (G)

Easements and other private rights (Proposal 10 above) [6.22-4]

Divided interests (Proposal 11 above) [6.49-6.56](G)

### **OTHER STATUTES<sup>16</sup>**

#### **Land Compensation Act 1973**

S 53-57 (Provisions for divided agricultural interests)

Retain, or incorporate in Proposal 11 (divided interests) [6.52-4]\*

#### **Local Land Charges Act 1975**

S1 Amend (or legislate separately) to include stages of compulsory purchase order in definition of "local land charge" [7.52ff] (G)

#### **Local Government (Miscellaneous Provisions) Act 1976**

S 29 (Repayment of unclaimed compensation in court)

Amend, and extend to all acquiring authorities [7.15]

<sup>15</sup> See Part I, paras 1.20-1.21 above, for the matters excluded from this Law Commission project.

<sup>16</sup> We refer only to those provisions which are affected by our proposals.

# **PART X PROPOSALS AND CONSULTATION ISSUES**

## **PART III – GENERAL ISSUES**

### **Proposal 1 – Service of documents**

- (1) Subject to (2) service of notices required under the legislation shall be effected in accordance with “standard service”, defined to include:
  - (a) Personal service;**
  - (b) Delivery, or posting by registered letter or recorded delivery, to the “proper address”;<sup>1</sup> and**
  - (c) Service on a company or other body (including an unincorporated body) by service on an appropriate officer or member, at the registered or principal office.****
- (2) In relation to categories of interest and circumstances prescribed by regulations, and in other cases where the names and addresses cannot reasonably be ascertained, service may be effected by “special service”, defined to require fixing of notices on or near the land, and such other steps as may be prescribed by the regulations.**

*[See Part III, paras 3.15-3.26]*

### ***Consultation issue (A) – Service of documents***

- (1) Do consultees agree that the Government’s proposals relating to service can be given effect by adapting the service rules of the Acquisition Act as applied by the 1965 Act?***
- (2) If so, do consultees feel that the detail of “special service” should be governed by secondary rather than primary legislation?***
- (3) Are there practical issues not covered by our formulation?***

*[See Part III, paras 3.15-3.26]*

<sup>1</sup> See e.g. 1972 Act, s 233(4), which defines “proper address” of any person as “his last known address”.

**Consultation issue (B) – Entry for survey**

**Do consultees agree with our provisional proposal to retain the effect of section 11(3) of the 1965 Act unchanged, leaving in place any wider powers under the 1976 Act or other statutes?**

[See Part III, paras 3.27-3.30]

**PART IV – AUTHORISATION OF COMPULSORY PURCHASE**

**Consultation issue (C) – Ministerial and non-Ministerial orders**

**Consultation issue**

**Does the distinction drawn in the Acquisition Act between the procedures, respectively, for ministerial and non-ministerial orders serve any practical purpose?**

[See Part IV, paras 4.3-4.5]

**Proposal 2 – Statutory Objector**

**Section 7 of the Acquisition Act should be amended to include a definition of “statutory objector”, as a person who is entitled under the Act to notice of the making of the order,<sup>2</sup> and who lodges an objection in accordance with the notice.**

[See Part IV, paras 4.6-4.8]

**Consultation issue (D) – Making and confirming**

**Do consultees consider that the present arrangements for making and confirmation work well in practice? If not, what practical problems are there (other than those already highlighted in the Government’s proposals) and how should they be addressed?**

[See Part IV, paras 4.9-4.15]

**Proposal 3 – Legal challenge**

- (1) The statutory procedure for challenging the validity of an order (and the statutory immunity from challenge in other proceedings) should apply to the decision of the confirming authority to confirm or refuse to confirm the order, and not to earlier stages (which would be subject to judicial review).**
- (2) The court should have power to quash simply the decision of the confirming authority, or make such order as is appropriate.**

[See Part IV, paras 4.16-4.24]

<sup>2</sup> See Part III, para 3.23 above.

***Consultation issue (E) – Legal challenge***

***(1) Do consultees agree with our provisional view that challenge by the statutory route should be restricted to the decision of the confirming authority (and that judicial review will suffice for challenge of the making of an order)?***

***(2) Do consultees agree with our provisional view that the courts should have the ability to quash the confirmation (or refusal of confirmation) of an order, as an alternative to quashing the whole order (or to make such other orders as may be appropriate)?***

*[See Part IV, paras 4.16-4.24]*

**PART V – IMPLEMENTATION PROCEDURES**

**Proposal 4 – Alternative procedures**

**Schedule 3 to the 1965 Act should be repealed.**

*[See Part V, paras 5.4-5.5]*

***Consultation issue (F) – Alternative procedures***

***Do consultees agree that Schedule 3 to the 1965 Act (alternative procedure for obtaining right of entry) is obsolete and should be repealed?***

*[See Part V, paras 5.4-5.5]*

**Proposal 5 – Time limits**

- (1) A compulsory purchase order will cease to have effect at the end of the period of 18 months from the operative date, other than in relation to any land in respect of which the order has been implemented.**
- (2) For this purpose, an order is implemented in respect of any land, if notice to treat has been served or a vesting declaration has been executed in respect of that land.**
- (3) A notice to treat shall cease to have effect at the end of the period of 18 months beginning with the date on which it is served, other than in relation to any land in respect of which:**
  - (a) compensation has been agreed or awarded or has been paid or paid into court;**
  - (b) a vesting declaration has been executed;**
  - (c) the acquiring authority have served notice of entry; or**
  - (d) the question of compensation has been referred to the Lands Tribunal.**

- (4) A notice of entry shall be expressed to take effect at the end of two months from the date of service, and shall state that, if the authority has not taken possession within one month of the expiry of the two-month period so specified, the notice will cease to have effect and the authority will not be able to serve a further notice of entry.**
- (5) These time limits may be extended by agreement between the parties or on application to the confirming authority.**

*[See Part V, paras 5.6-5.15]*

***Consultation issue (G) – Time limits***

***Do consultees agree with the above proposals (including in particular those discussed in paragraph 5.14(1)-(5))?***

*[See Part V, paras 5.6-5.15]*

**Proposal 6 – Notice to treat**

- (1) There should be a prescribed form of notice to treat.**
- (2) The reference to compensation (in 1965 Act, section 5(2)(c)) should be amended to substitute a reference to the compensation to be paid in respect of that interest under the Compensation Code.**

*[See Part V, paras 5.16-5.22]*

***Consultation issue (H) – Notice to treat***

***(1) Is the definition of those on whom notice to treat is required to be served (s 5 of the 1965 Act) sufficiently clear? If not, what problems arise?***

***(2) Should the authority have a discretion to serve notice to treat on owners of interests or occupiers outside the defined categories?***

***(3) Do consultees agree (a) that there should be a prescribed form of notice to treat, and (b) that the reference to compensation should be updated as proposed?***

*[See Part V, paras 5.16-5.22]*

***Consultation issue (I) – Notice of entry***

***Subject to the proposals for amended time limits (paras 5.16–5.22 above), are there any other practical problems in the operation of the rules for notice of entry? If so, how should they be remedied?***

*[See Part V, paras 5.23-5.28]*



**Consultation issue (J) – Completion of purchase**

**(1) Do consultees agree that the law relating to completion of purchase following notice to treat operates satisfactorily?**

**(2) Is there a need to clarify or amend by statute the law relating to the vendor’s lien in its application to property subject to compulsory purchase? If so, in what circumstances, if any, should there be such a lien, and subject to what conditions?**

**(3) What practical purpose (if any) is served by the prescribed forms of conveyance (1965 Act s 23 and Schedule 5)?**

*[See Part V, paras 5.29-5.33]*

**Proposal 7 – Deed poll procedure**

**(1) If after compensation in respect of any land or interest in land has been agreed or determined, the person entitled:**

**(a) refuses to accept the compensation;**

**(b) fails to make out title to the satisfaction of the acquiring authority;  
or**

**(c) refuses to convey or release the land as directed by the acquiring authority;**

**the authority may proceed by “deed poll procedure” as described in this proposal.**

**(2) The acquiring authority may pay into court the compensation payable in respect of the relevant land, or interest, accompanied by a description of the person or persons entitled (so far as known to the authority). The compensation so paid into court shall, subject to the provisions of this Act, be placed to the credit of those persons.**

**(3) On payment into court as above, the acquiring authority may execute a deed poll describing the relevant land, and the circumstances of the payment, and giving the names of the persons to whose credit the compensation is paid.**

**(4) On execution of the deed poll, all the interests in respect of which the compensation was so paid shall vest absolutely in the acquiring authority together with the right to immediate possession as respects those interests.**

**(5) On the application of any person claiming any part of the money paid into court, or any interest in any part of the land in respect of which it was paid into court, the High Court may order its distribution**

according to the respective interests of the claimants,<sup>3</sup> or make such other order as it thinks fit.

**(6) The incidental provisions of section 28 of the 1965 Act (sealing of deed polls, stamp duty etc) should be incorporated.<sup>4</sup>**

*[See Part V, paras 5.34-37]*

***Consultation issue (K) – Deed poll procedure***

***(1) Do consultees agree that it would be desirable to re-state the deed poll procedure in modern form? If so, do they have any comments on the detail of the above proposal?***

***(2) In particular, do they agree that the detailed provisions (referred to in para 5.35) are unnecessary, so long as the Court has a general power to make such orders as it thinks fit?***

***(3) Consultees are asked to indicate the extent of use of the present deed poll procedure, and any practical problems to which it gives rise.***

*[See Part V, paras 5.34-5.37]*

**Proposal 8 - Owner untraced, or unable or unwilling to act**

**(1) Where either:<sup>5</sup>**

**(a) the owner of any interest in the subject land cannot, after reasonable inquiry, be found by the authority; or**

**(b) the owner has been found, but it appears to the authority that he is prevented from dealing, or is unwilling to deal, with them, by reason of illness, absence or any other circumstance;**

**the authority may proceed under this proposal.**

**(2) The authority may apply to the Lands Tribunal for the compensation to be paid in respect of the interest to be fixed by a valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949.**

**(3) The acquiring authority shall hold the valuation and produce it on demand, to the owner of the interest to which the valuation relates, or any other persons interested in the land.**

<sup>3</sup> See 1965 Act, s 9.

<sup>4</sup> Although we question the need to retain sub-section (3): see Part V, para 5.36 above.

<sup>5</sup> We assume this is not needed for vesting declarations, where the authority can proceed regardless of any outstanding interests.

- (4) All the expenses of and incidental to the valuation shall be borne by the acquiring authority.**
- (5) Following the determination of compensation, subject to (6) below, the authority may proceed under the deed poll procedure, and the same consequences shall apply.**
- (6) Where any person claiming to be entitled to compensation paid into court under this proposal, wishes to challenge the amount of compensation as fixed under (2):**
- (a) He may, before applying to the High Court for payment, by notice in writing to the acquiring authority require the submission of the issue to the Lands Tribunal;**
  - (b) Pending the decision of the Tribunal, the High Court may make such orders for interim payment as it thinks fit; and**
  - (c) If the Lands Tribunal awards a further sum, the acquiring authority shall pay over or pay into court, as the case may require, that further sum within fourteen days of the making of the award.<sup>6</sup>**

*[See Part V, paras 5.38-5.41]*

***Consultation issue (L) – Owners untraced, or unable or unwilling to act***

***(1) Do consultees agree with our provisional view that the missing interests procedure should be re-stated in modern terms?***

***(2) In particular, do they agree that it should not be restricted to persons absent from the UK or who are untraceable, but should also include persons who are unwilling or unable to deal with the authority for whatever reason?***

***(3) Further, do consultees have any comments on the effect and continuing relevance of section 28(3) of the 1965 Act and the reference therein to section 7(4) of the Law of Property Act 1925? Can section 28(3) be safely repealed?***

***(4) Consultees are asked to indicate the extent of use of the present deed poll procedure, and any practical problems to which it gives rise.***

*[See Part V, paras 5.38-5.41]*

<sup>6</sup> Sched 2, para 4(3) also contains provision for the costs of the reference, which are to be in the discretion of the Tribunal if it determines that the compensation paid into court was sufficient; but payable by the authority if it was too low. However, we think this can be left to the general discretion of the Tribunal under 1949 Act, s 3(5).

**Consultation issue (M) - Persons with limited powers**

**Do consultees agree that Schedule 1 to the 1965 Act can be repealed without replacement?**

[See Part V, paras 5.42-5.46]

**Consultation issue (N) - Vesting declaration procedure**

**(1) Do consultees agree that the vesting declaration procedure operates satisfactorily in practice? If not, what problems arise and how should they be addressed?**

**(2) In particular, do consultees agree with our analysis of the operation of the vesting declaration procedure in relation to easements and other rights over subject land?**

[See Part V, paras 5.47-5.51]

**PART VI – PARTICULAR INTERESTS**

**Proposal 9 – Minor tenancies**

**Section 20 of the 1965 Act should be restated in modern language, in accordance with the *Newham* case,<sup>7</sup> and consistently with section 9 of the Vesting Declaration Act (including provision for “long tenancies about to expire”, as defined in that Act).**

[See Part VI, paras 6.3-6.8]

**Consultation issue (O) – Minor tenancies**

**(1) Do consultees agree that the current procedures for minor tenancies under (a) section 20 of the 1965 Act and (b) section 9 of the Vesting Declarations Act operate satisfactorily? If not, what amendments should be made?**

**(2) Should section 20 of the 1965 Act be restated in modern form as proposed above?**

[See Part VI, paras 6.3-6.8]

**Proposal 10 – Easements and other rights**

- (1) Where the subject land is or may be subject to easements or other rights,<sup>8</sup> such rights may be *overridden* in accordance with (3) below, save to the extent that the authority elects to proceed by *extinguishment* of the rights, or any of them, over all or part of the land.**

<sup>7</sup> See Part VI, para 6.3 and n 17 above.

<sup>8</sup> Defined as in 1990 Act, s 237(2) (see Part VI, para 6.20, n 37 above).

- (2) Where the authority elects to proceed by extinguishment, it shall proceed as though the rights in question were interests entitling the owners to notice to treat; and, on completion of the purchase or on prior taking of possession by the authority, all rights or easements in the land to which the election relates shall be extinguished.<sup>9</sup>
- (3) In other cases, the rights may be “overridden”: that is, the erection, maintenance or use of any building or other work, whether done by the local authority or by a person deriving title under them, is authorised if done in accordance with planning permission, notwithstanding interference with interests or rights over the land.<sup>10</sup>
- (4) Subject to (5), any person who suffers loss by the extinguishment of, or overriding of, any right, is entitled to compensation to be determined under and in accordance with the Compensation Code.
- (5) Where a claim is made for compensation for rights which have been overridden under (3), either party may elect for compensation to be paid on the basis of extinguishment or partial extinguishment of the right; on payment of compensation on that basis, the right shall to that extent be treated as extinguished or partially extinguished for all purposes.

[See Part VI, paras 6.9-6.25]

**Consultation issue (P) – Easements and other rights**

**(1) Where there is to be interference with (and not acquisition of) existing rights, do consultees agree that the position should be clarified in legislation?**

**(2) If consultees agree with (1), do they consider that the acquiring authority should elect to extinguish or to override and that the status of the interference should be clear from the outset? In the event that rights are to be extinguished, do they agree that those rights should be the subject of notice to treat?**

**(3) Where rights are simply to be overridden, do consultees agree**

**(a) that statutory immunity should apply both to erection and to use of any building or other work;**

**(b) that either party should be able to elect for extinguishment or partial extinguishment?**

[See Part VI, paras 6.9-6.25]

<sup>9</sup> Cf Housing Act 1985, s 295(1). There would need to be exceptions for special categories, such as right of statutory undertakers.

<sup>10</sup> Cf 1990 Act, s 237(1).

**Proposal 11 - Divided interests (unified procedure)<sup>11</sup>**

**(A) Divided property notice**

- (1) If the land specified in a notice of acquisition comprises part only:**
- (a) of any building; or**
  - (b) of any land attached to and used with a building.**

**any person who is able to sell the whole of the land, may by notice (“a divided property notice”) served on the acquiring authority require them to purchase his interest in the whole.**

***[(1A) A divided property notice may also be served by the owner of any interest in the subject land (greater than a tenancy from year to year) if, as a result of the acquisition, his retained land<sup>12</sup> or any part of it, is no longer reasonably capable of being used for the purpose for which he was using it at the time of the notice of acquisition.]***

- (2) In this proposal “notice of acquisition” means, as the case may be, a notice to treat or a preliminary notice of a vesting declaration; and the “relevant property” means the building or land to which the divided property notice relates.**
- (3) Except as provided by regulations under this section, a divided property notice shall be served within 28 days of the notice of acquisition.**
- (4) Where a divided property notice has been served, the authority may, within 3 months of the notice:**
- (a) serve notice withdrawing the notice to treat (or deemed notice to treat);**
  - (b) serve notice to acquire the whole, or**
  - (c) refer the matter to the Lands Tribunal.**

**If it fails to act within 3 months, it is deemed to have served a notice under (a).<sup>13</sup>**

<sup>11</sup> This procedure will apply under both notice to treat and vesting declaration procedures.

<sup>12</sup> “Retained land” would be defined as in relation to the rules for compensation for injurious affection: see Compensation Report Part V, para 5.35, Part XI, para 11.2 (A) General Definitions.

<sup>13</sup> See Vesting Declarations Act, Sched 1, para 4, on which this part of the proposal is based.

- (5) **The Lands Tribunal (on an application, as under (4)(c) above, made in accordance with regulations under this proposal) may determine that:**
- (a) **in the case of a building, the part proposed to be acquired can be taken without material detriment to the building or its use;**
  - (b) **in the case of land attached to a building, the part proposed to be acquired can be taken without seriously affecting the amenity or use of the building; or**
  - (c) ***[in the case of other land, the part proposed to be acquired can be taken without the effect mentioned in (1A)].***
- (6) **In determining any such reference, the Tribunal:**
- (a) **shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land; and**
  - (b) **may determine the area of the relevant property which the acquiring authority ought to be required to take.**
- (7) **If the authority does not so refer the notice to the Tribunal within 3 months, or if, following a reference, the Tribunal determines it against the authority, the notice to treat or (as the case may be) the declaration shall be treated as having effect as though the whole of the relevant property (or the part determined under (6)(b)) were included.**

**(B) Agricultural land**

**The provisions of 1973 Act ss 53-57<sup>14</sup> will continue to apply *[so far as not superseded by (1A)]*.**

**(C) Unexpired tenancies**

**1965 Act, section 19 (apportionment of rent) will continue to apply.<sup>15</sup>**

*[See Part VI, paras 6.26-6.56]*

<sup>14</sup> Where the test is that the separated land is “not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit”.

<sup>15</sup> See Part VI, para 6.53 above.

**Consultation issue (Q) – Divided interests (Unified procedure)**

**(1) Do consultees agree with our view that, in respect of divided interests, the same provision should apply to both notice to treat and vesting declaration procedures, and that the provisions of the Vesting Declaration Act should be taken as the model?**

**(2) Should the right to serve a divided property notice be extended (as proposed in (1A) above) to all categories of land, in cases where the owner's retained land or any part of it is no longer reasonably capable of being used for the purpose for which he was using it at the time of the notice of acquisition? If so, what, if any, limitations or qualifications should there be?**

**(3) Do consultees agree our provisional approach that the provisions of the 1965 Act (s 8(2), (3)) relating to small parcels of separated land can be dispensed with?**

**(4) Should any changes be made to the provisions of the 1973 Act, in respect of divided agricultural interests?**

[See Part VI, paras 6.26-6.56]

**Consultation issue (R) – Mortgages and rentcharges**

**(1) Do consultees agree our provisional proposal to retain the existing provisions in the 1965 Act relating to mortgages and rentcharges? If not, do these provisions give rise to any practical problems which should be addressed?**

**(2) What (if any) are the practical benefits of the two alternative options for dealing with mortgages in section 14?**

[See Part VI, paras 6.57-6.71]

**Consultation issue (S) – Public rights of way**

**Can consultees comment on how frequently the Acquisition Act procedure is used in practice, and whether it gives rise to any practical difficulty?**

[See Part VI, paras 6.72-6.77]

**PART VII – SUPPLEMENTARY PROVISIONS**

**Proposal 12 – Limitation periods**

- (1) In respect of compensation for compulsory purchase, there should be time limits for reference to the Lands Tribunal, which should apply equally to the notice to treat and vesting declaration procedures.**

**The appropriate limits should be:**

- (i) (under the present law) 6 years from the date when the claimant knew or ought reasonably to have known of the taking of possession or vesting; or**



- (ii) (if the Law Commission’s recommendations are adopted) in accordance with the “core regime”: that is, 3 years from the date when the claimant knew or ought reasonably to have known of the taking of possession or vesting, with a “long-stop” period of 10 years.
- (2) The time limit for an action to recover compensation following determination by the Tribunal or agreement of compensation will be 12 years (or 10 years under the Law Commission’s recommendations).
  - (3) Following payment-in, the authority may apply after 12 years (or 10 years under the Law Commission’s recommendations) for repayment, subject to the power of the court subsequently to order such payment to the claimant as may be just, if the court is satisfied that there are good reasons for application not having been made within 12 years (or 10 years), or other exceptional circumstances.

*[See Part VII, paras 7.2-7.17]*

***Consultation issue (T) – Limitation periods***

***Do consultees agree***

***(1) That there should be time limits for reference to the Lands Tribunal of disputes in relation to compensation for compulsory purchase? If not, why not?***

***(2) That the time limits should be the same under both procedures (notice to treat and vesting declaration), and should be as proposed above? If not, what rules should apply?***

*[See Part VII, paras 7.2-7.17]*

***Consultation issue (U) – Unauthorised entry and omitted interests***

***(1) Do consultees agree that section 12 of the 1965 Act should be repealed?***

***(2) Are the present rules for rectifying accidental omissions (s 22 of the 1965 Act, and the principle in the Cohen case) adequate for the purpose? If not, how should they be amended or replaced?***

*[See Part VII, paras 7.18-7.26]*

**Proposal 13 – Refusal of entry**

- (1) If the acquiring authority are authorised to enter or take possession of any land, and the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquiring authority from entering on or taking possession of it, the acquiring authority may issue their warrant to the sheriff to deliver possession of it to the person appointed in the warrant to receive it.

- (2) The sheriff's costs shall be paid by the authority, which (subject to (3)) may recover them from the person refusing to give possession, and may deduct them from the compensation, if any, payable to that person.**
- (3) A person liable to pay such costs may (subject to procedural rules) require the reasonableness of the amount to be reviewed by the Lands Tribunal.**

*[See Part VII, paras 7.27-7.29]*

***Consultation issue (V) – Refusal of entry***

- (1) Do consultees agree with our provisional view that the present warrant-based enforcement route should be restated in modern form?***
- (2) Does it give rise to any practical problems?***
- (3) Do they agree that the sheriff's costs should be borne in the first instance by the authority?***

*[See Part VII, paras 7.27-7.29]*

**Proposal 14 – Distress**

**That 1965 Act, s29 should be repealed and not replaced.**

*[See Part VII, paras 7.30-7.31]*

***Consultation issue (W) - Distress***

***Do consultees agree with our view that section 29 of the 1965 Act today serves no useful purpose?***

*[See Part VII, paras 7.30-7.31]*

**Proposal 15 – Payments into court**

**Sections 25 and 26 of the 1965 Act should be replaced by a simple provision (a) giving the court power, subject to rules of court, to make orders, in relation to money paid into court under the Act, for the distribution of the money in accordance with the respective interests of the claimants (and to make such incidental orders as it thinks fit); and (b) providing that costs incurred in connection with such payments-in shall be paid by the authority, save as the court otherwise orders.<sup>16</sup>**

*[See Part VII, paras 7.32-7.40]*

<sup>16</sup> These provisions would form part of Proposal 7 (deed poll procedure); see Part V, paras 5.34-5.37 above.

**Consultation issue (X) – Payments into and out of court**

**(1) Are consultees aware of any practical problems arising from the provisions of the 1965 Act for payments into and out of court? If so, how should they be addressed?**

**(2) Do they agree that sections 25 and 26 should be replaced by a simpler provision as proposed above?**

*[See Part VII, paras 7.32-7.40]*

**Proposal 16 – Costs of completion**

**Section 23 should be replaced by a provision that the acquiring authority should pay to those interested all reasonable costs (as assessed by the Costs judge) incurred in connection with the completion of the compulsory purchase (so far as not covered by any other provisions).**

*[See Part VII, paras 7.41-7.43]*

**Consultation issue (Y) – Costs of completion**

**(a) Do consultees agree with this proposal? If not, what practical purpose is served by the detailed rules of section 23 of the 1965 Act?**

**(b) Should the assessment of such costs be transferred to the Lands Tribunal?**

*[See Part VII, paras 7.41-7.43]*

**Proposal 17 – Local land charges**

**(1) The following will be registrable as local land charges for the purpose of the Local Land Charges Act 1975:**

**(a) Making of the order (or preparation in draft of a ministerial order);**

**(b) Service of notice to treat in respect of any land under section 5 of the 1965 Act;**

**(c) Service of a preliminary notice under section 3 of the Vesting Declarations Act (as now).**

**(2) Amendment of the register, to reflect the order or notices being varied or ceasing to have effect, will be governed by the Local Land Charges rules (as now).**

**(3) If necessary, Departmental guidance should be given as to informal notes (relating to the status of the order at any time or other matters) to supplement the statutory requirements.**

**(4) Failure to register will not invalidate the order or notice, but any person adversely affected by that failure will be entitled to claim**

**compensation for consequential loss suffered in accordance with the Local Land Charges Act 1975, section 10 (as now).**

*[See Part VII, paras 7.44-7.56]*

**Consultation issue (Z) – Local land charges**

**(1) Do consultees agree that the definition of local land charges should include the stages in the CPO process set out above?**

**(2) Do they have any other comments on the above proposal?**

*[See Part VII, paras 7.44-7.56]*

**PART VIII – ABORTIVE ORDERS**

**Proposal 18 - Abortive orders**

- (1) An order will be treated as having become abortive in respect of the subject land or any part of it or interest in it:**
  - (a) if it is withdrawn by the acquiring authority under paragraph (2) below, or**
  - (b) in the circumstances set out in paragraph (3) below.**
- (2) Withdrawal of orders and notices:**
  - (a) At any time before implementation (by service of a notice to treat or execution of a vesting order) in respect of the subject land or any part of it, the acquiring authority may formally withdraw the order in respect of the land or that part by serving notice of withdrawal in the same manner, and on the same persons, as would apply to notice of making of the order;**
  - (b) After implementation (as above), the authority may withdraw from the purchase (with the effect that the order itself becomes abortive to the extent of the interests affected) by notice served on all those entitled to service of the relevant notice to treat or vesting declaration, in the following circumstances (and no other):**
    - (i) by agreement;**
    - (ii) under any special statutory provision permitting withdrawal;**
    - (iii) as permitted by the divided interest procedures; or**

- (iv) (in the case of a notice to treat) within 6 weeks of a proper<sup>17</sup> claim for compensation, or, in default of a proper claim, within 6 weeks of determination of compensation.<sup>18</sup>**
- (3) The compulsory purchase order shall also be treated as becoming abortive in the following circumstances:**
- (a) Where confirmation is refused by the Secretary of State;**
  - (b) Where the order is quashed by the High Court;**
  - (c) Where, after the “operative date”, the authority fails to implement it in respect of that interest or right (by notice to treat or vesting declaration) within the statutory time limit; or**
  - (d) Where, following notice to treat, the authority fails to take possession within the statutory time limit.**
- (4) Where an order becomes abortive under the paragraph (3), the authority shall forthwith give notice of that fact and of the right to compensation under this Proposal, to all the persons entitled to be served with individual notice of making.**
- (5) Where an order becomes abortive under this Proposal, any person who was entitled to be served with individual<sup>19</sup> notice of making of the order, or any person served with a notice which is later withdrawn, may claim from the acquiring authority compensation for any loss or expenses occasioned to him by the making of the order and its becoming abortive, or by the withdrawal of the notice.**
- (6) There shall be no right to compensation under this proposal where:**
- (a) an order is withdrawn by the authority, if the authority certified in the order that it was made wholly or mainly for the purpose of securing the improvement, maintenance or management of existing property;**
  - (b) where, following the service of a blight notice under the 1990 Act, s150, notice to treat is deemed to have been withdrawn under section 156(2) of that Act.<sup>20</sup>**

<sup>17</sup> i.e. a claim complying with 1961 Act, s 4: see para 8.11 above.

<sup>18</sup> i.e. to the extent permitted by 1961 Act, s 31 (or any replacement of that section).

<sup>19</sup> See para 8.37 above.

<sup>20</sup> This reproduces the effect of 1990 Act, s 156(4).

- (7) **Where notice is given that an order has become abortive or that an order or notice has been withdrawn, the acquiring authority shall, at the same time as giving the notice, cause the register of local land charges to be amended accordingly.**<sup>21</sup>

*[See Part VIII, paras 8.1-8.53]*

**Consultation issue (AA) – Abortive orders**

**(1) Do consultees agree that a right to compensation should arise in the circumstances defined in this proposal?**

**(2) In particular, do they agree:**

**(a) that the right to compensation should be defined by reference to those entitled to individual notice of the making of the order? If not, how should the right be limited, or defined?**

**(b) that there be an exception, as proposed, for cases where the authority certifies that the order is made for the purpose of securing the improvement, maintenance or management of existing property? If so, should the Tribunal be able to disallow the exemption where the authority has acted unreasonably?**

**(c) that there should be no right to compensation under this provision,<sup>22</sup> arising simply out of delay in completing the compulsory purchase procedures? (If consultees disagree, it would be helpful to have examples of cases where such a right might have been appropriate, and an indication as to how it could be defined.)**

**(d) Do consultees have any other comments on the detail of this proposal?**

*[See Part VIII, paras 8.1-8.53]*

**Consultation issue (BB) - Conclusion**

**Do consultees have any comments on the likely impact of our proposals if they were to be enacted? We would welcome consultees' views on both practical effects and cost-benefit impact (with tangible examples where available).**

*[See Part XI, paras 11.1-11.15]*

<sup>21</sup> See Part VII, paras 7.51-7.56 and Proposal 17 for our proposals in respect of registration.

<sup>22</sup> As noted above, in some circumstances there may be a right to relief under the Human Rights Act 1998: Part VIII, para 8.19 above.

# PART XI

## CONCLUSION

### IMPACT OF OUR PROPOSALS

#### **The Law Commission's role and Government policy**

- 11.1 The Law Commission has a statutory duty to keep under review the laws of England and Wales, with a view to their "systematic development and reform", including in particular

... the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law<sup>1</sup>

- 11.2 There can be few areas of the law which are in more obvious need of radical treatment, under each of the heads mentioned in the statute, than the law of compulsory purchase. We have already referred to CPPRAG's description of the "unwieldy and lumbering creature" represented by the present law, as a result of piecemeal evolution over more than 150 years,<sup>2</sup> and the Government's own recognition of the defects of the present law.

- 11.3 Such a position is unacceptable in a modern society, particularly in an area of the law which has such direct relevance to human rights guaranteed by the Human Rights Act 1998. Modernisation of the law is a key policy objective of the present Government.<sup>3</sup> The Commission's central role in that task has been underlined on numerous occasions.<sup>4</sup> The Law Commission believes strongly that reform of the law in this area should be seen as an essential priority in its own right, regardless of any identifiable financial savings or gains. The following discussion of the impact of our proposals, in financial and other terms, should not detract from that message.

#### **Background**

- 11.4 The proposals in this second Consultative Report flow from the work undertaken by CPPRAG in its Fundamental Review and then the response from Government, first in its Policy Statement (published December 2001, as a 'daughter' document to the Planning Green Paper) and second in its Policy Response Document (published July 2002). The former document was a consultative paper, and the latter document sets out the Government's legislative intent.

<sup>1</sup> Law Commissions Act 1965, s 3(1)

<sup>2</sup> Part I, para 1.3 above.

<sup>3</sup> See White Paper, *Modernising the Law*, Cm 4155 (December 1998), para 1.11.

<sup>4</sup> In a speech to a Law Commission's Conference in 2001 ("Catching the Eye of Government"), Lord Bach (Parliamentary Under-Secretary to the Lord Chancellor) confirmed the Government's commitment to keeping the law "up-to-date, relevant and useable", and to "keeping the Law Commission at the centre of the law reform process".

- 11.5 These documents (together with our specific Terms of Reference) provide the framework for the Commission's task.

***Policy Statement***

- 11.6 The Government in its first document assessed the likely financial implications of the changes proposed. In setting the context for changes in the law of both procedure (which we provisionally referred to as "implementation" in our Compensation Report) and compensation, the Policy Statement said:

The cost of implementing the proposals set out in this policy statement will be partially influenced by the extent to which the revised procedures, accompanied by a fairer and more clearly defined compensation code, result in acquiring authorities making increased use of their compulsory purchase powers. Furthermore, the extent to which any such cost has to be borne by the public sector will depend on the degree to which the availability of more efficient compulsory purchase powers makes replacement schemes more attractive as investment opportunities for private sector bodies working in partnership with acquiring authorities.<sup>5</sup>

- 11.7 In the context of the Government's proposals for reform of compulsory purchase procedure, the Policy Statement described the impact thus:

To the extent that the procedural changes proposed in this statement are effective in speeding up the compulsory purchase order confirmation and implementation stages, there should be substantial savings in administrative costs, including those associated with organising and running the inquiry and professional fees. If, as expected, the greater degree of certainty about the system reduces the number of objections to any particular compulsory purchase order, there should be a need for fewer inquiries and those which are held should generally be much shorter. Allowing authorities to confirm orders themselves where no statutory objections are sustained should, of itself, represent a substantial saving of both time and money.<sup>6</sup>

- 11.8 In its more recent Policy Response Document, the Government did not address directly the issues of regulatory impact or of the financial consequences attached to its future intentions on procedural (as opposed to compensation) change, but it acknowledged that:

. . . the diversity of views expressed by respondents [to the Policy Statement] representing different types of interests also highlighted the fact that there are inevitably going to be tensions arising between the interests of those acquiring the land and those from whom it is being taken. Some of these tensions can probably never be resolved to the complete satisfaction of both sides. In such cases it will ultimately be for Parliament to determine the appropriate balance between protecting property rights and serving the public interest.<sup>7</sup>

<sup>5</sup> Policy Statement, App, para 6.1.

<sup>6</sup> *Ibid*, App, para 6.2.

<sup>7</sup> Policy Response Document (July 2002), para 5.



It also made the point that:

If we can achieve a system which is simpler and fairer, it can be expected that, in general, it will also operate more quickly and efficiently. Many of the proposals already outlined above will therefore contribute to improving performance, . . .<sup>8</sup>

Thus, it is recognised that the objectives of simplicity and fairness will themselves contribute to a more efficient system, and consequent cost savings, albeit unquantifiable.

### **The Law Commission's proposals**

11.9 The Government asked us to have particular regard to the following procedural issues in order to work towards "the introduction of clear, unambiguous, consolidated legislation":

- (1) The implementation of compulsory purchase orders, having regard to the changes already proposed by Government;
- (2) Provision of a mechanism whereby eligible claimants can require acquiring authorities to make advance payments of compensation without delay where an estimate has been made [This aspect has been dealt with in our Compensation Consultative Report in Part VIII at Proposal 13(ii)]; and
- (3) Compensation where compulsory purchase orders are not proceeded with after the date of notice of making (the first notice date), whether that be because of abandonment, withdrawal, quashing or refusal of confirmation.

We indicate below in broad terms the likely consequences of reform.

11.10 In contrast to our Compensation Report, this report does not propose a complete framework code for procedure. The principal rules on procedure already exist in statutory form. They are to be found, in the main, in the 1965 Act and the two Acts of 1981: the Acquisition of Land Act and the Vesting Declarations Act. The 1981 Acts are relatively modern and comprehensible. The 1965 Act is not. That statute, based on the 1845 Act, contains the principal features of the present rules for implementation, including the notice to treat procedure.

11.11 Our priority therefore has been to focus on systematic review of the 1965 Act, taking account of the Government's proposals, in order to identify and address significant defects and anomalies. We have also taken the opportunity to identify the more limited aspects of the other statutes which raise problems, justifying legislative change. Our proposals will in themselves improve the efficiency of the procedure overall, and make it simpler and more accessible for practitioners and public alike. They will pave the way for a complete consolidation of the procedural law, when resources are available, to produce a single Procedure Code, to stand with the Compensation Code proposed under our previous report. The benefits of such modernisation, in terms of fairness and efficiency, are unquantifiable.

<sup>8</sup> *Ibid*, para 15.

## 11.12 More particularly we address:

- (1) *Service of documents* We set out some simplified rules for the service of notices by two methods: standard service and special service. “Special service” is designed to facilitate the Government’s intention to extend “statutory objector” status to owners of easements and other rights over the subject land. By avoiding the need for personal service, the proposal will limit the additional cost to authorities of that policy objective. It will thus mitigate the implementation costs for authorities who are spending public money; while ensuring that interested persons are more likely to find out earlier about proposals affecting their rights (which could save costs at a later stage).
- (2) *Powers of the court* Where the validity of a compulsory purchase order is successfully challenged in court, the court must quash the whole order. We propose that the court should be able to quash only the confirmation process, or make such other order as is appropriate. This will mean that the order is better targeted to the ground of challenge, and will avoid the entire order being voided from its inception (leaving the acquiring authority to start from the beginning). The proposal will therefore mitigate wasted time and expenditure, where the defect is simply procedural and does not affect the validity of the initial order.
- (3) *Alternative procedures for obtaining entry* We accept the Government’s policy approach relating to retention of the notice to treat and the vesting declaration routes. We believe that the alternative procedure in the 1965 Act today performs no useful purpose, and we propose its repeal. This accords with our statutory objective of repealing obsolete enactments, and will have no adverse cost effects.
- (4) *Time limits* Government has made the policy decision that, for reasons of fairness and efficiency, the implementation process should be subject to stricter time-limits. We have formulated more detailed proposals to give effect to this policy. This will provide greater certainty for participants in the system, and limit the hardship and economic consequences of blight.
- (5) *Deed poll procedure* We propose to re-state in modern form the procedures for transferring title where landowners are unco-operative, or untraceable, or otherwise unable or unwilling to act. This should both simplify and expedite matters, and thus should reduce authorities’ costs.
- (6) *Easements and other rights* There is considerable uncertainty as to the effect of the powers of acquiring authorities, and the rights of those affected, in respect of easements or other rights over land subject to compulsory purchase. We set out new mechanisms for extinguishing or for simply overriding rights, and for clarifying the status of the rights in the future. That certainty should ensure that costs are not wasted at later stages, and should also produce a fairer settlement (for example, where compensation is paid on the basis of extinguishment, that will be reflected both in the quantum and the finality of the settlement).
- (7) *Divided land* We have taken account of the Government’s proposals for clarifying and modernising the rights of owners in respect of land severed

by compulsory purchase. The present law is derived from a number of sources, and parts are archaic or confused. Our approach has been to create a unitary procedure (involving service of a “divided property notice”) applicable to both notice to treat and vesting declaration routes. We also suggest an extension of the present rights, to enable such a notice to be served by any owner whose retained land, following the acquisition, has ceased to be capable reasonably of continued use for its previous purpose. This, we believe, will create a more logical and fairer mechanism, although it is likely to add marginally to the costs of authorities.

- (8) *Limitation* We make proposals for rationalising the limitation periods applicable to determination and recovery of compensation. They should clarify the position for parties and should prevent unproductive litigation. In particular, this will assist financial planning of authorities by providing an end-date for their potential liabilities. We have taken account of our own recommendations for reform of the Limitation Act 1980, which have been accepted in principle by Government.
  - (9) *Refusal of entry* We propose to restate in modern form the present enforcement procedure for enforcement by warrant to the sheriff, which has proved simple and cost-effective. The proposal also clarifies the responsibility for the enforcement costs, as between the authority and the sheriff. The cost will not increase (instead the initial burden will be better defined between two public bodies); as now, the ultimate liability will normally be borne by the obstructing landowner.
  - (10) *Implementation costs* We propose replacing the present complex provision relating to the costs of payments into and from court, with a more simply expressed discretion. This gives effect to the established principle that all reasonable costs incurred in connection with implementation of an order will be borne by the authority.
  - (11) *Local land charges* We propose that compulsory purchase orders should be registered as local land charges, and the main stages in their progress recorded. This accords with the Government’s objective of openness. We agree that timely notification will help reduce property owners’ anxiety and will enable them to keep professional fees and other expenditure to a minimum.
  - (12) *Abortive orders* We make detailed proposals to carry forward the Government’s policy to give a right of compensation, where a compulsory purchase order does not proceed for any reason, and loss results. This may add to the compensation costs for authorities, but it will achieve a fairer system for those affected, and may encourage more efficiency in the use of compulsory purchase powers.
- 11.13 We have summarised our initial thoughts on possible impact but we specifically ask in our Consultation Questions for consultees’ views on the issue.

#### **CONSULTATION**

- 11.14 The consultation period for the Commission’s first Report (on Compensation) ended on 24 October 2002. This second Report (on Procedure) is part of the same project and has been designed to follow on from the previous work. Our present

aim, following review of the consultation responses, is to publish a Final Report on both aspects of compulsory purchase, with firm recommendations to Government, by mid-2003.

- 11.15 Against that background, consultees are invited to send written comments on the specific Consultation Questions and on our Proposals in this Report by the date shown on the inside front cover of this document. The Commission would value comment not only on legal issues, but also from a practical and cost-benefit viewpoint, as seen by public- and private-sector practitioners.

***Consultation issue (BB) – Conclusion***

***Do consultees have any comments on the likely impact of our proposals if they were to be enacted? We would welcome consultees' views on both practical effects and cost-benefit impact (with tangible examples where available).***

# **NOTE**

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**APPENDIX 1  
GLOSSARY - ABBREVIATIONS OF  
STATUTES**

**ENGLISH STATUTES**

**'1845 Act'** – Lands Clauses Consolidation Act 1845

**'1946 Act'** – Acquisition of Land (Authorisation Procedure) Act 1946

**'1961 Act'** – Land Compensation Act 1961

**'1965 Act'** – Compulsory Purchase Act 1965

**'1972 Act'** – Local Government Act 1972

**'1973 Act'** – Land Compensation Act 1973

**'1976 Act'** – Local Government (Miscellaneous Provisions) Act 1976

**'1978 Act'** – Interpretation Act 1978

**'1980 Act'** – Local Government, Planning and Land Act 1980

**'Limitation Act'** – Limitation Act 1980

**'Acquisition Act'** – Acquisition of Land Act 1981

**'Vesting Declarations Act'** – Compulsory Purchase (Vesting Declarations) Act 1981

**'1990 Act'** – Town and Country Planning Act 1990

**'1991 Act'** – Planning and Compensation Act 1991

**'1992 Act'** – Transport and Works Act 1992

**AUSTRALIAN STATUTES**

**'LACA (Vic)'** – Land Acquisition and Compensation Act 1986 (Victoria)

**'LAA (Cth)'** – Lands Acquisition Act 1989 (Commonwealth)

**'LA(JTC)A'** – Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

**CANADIAN STATUTES**

**'Canadian Expropriation Act 1985'** – Expropriation Act R.S.C. 1985, c. E-21

## **APPENDIX 2**

# **APPENDIX 2 EXTRACTS FROM ENGLISH STATUTES**

The following is a short selection of statutory provisions which we have set out for reference purposes. It does not include every provision to which we refer in the text, but only those which are of central importance to our proposals and consultation questions.

### **CONTENTS**

- |  |   |
|--|---|
| (1) <b>Land Compensation Act 1961:</b>                               | sections 31 and 38;                             |
| (2) <b>Compulsory Purchase Act 1965:</b>                             | sections 1-6, 8-9, 11-20, 22-30 and Schedule 2; |
| (3) <b>Land Compensation Act 1973:</b>                               | section 58;                                     |
| (4) <b>Local Government<br/>(Miscellaneous Provisions) Act 1976:</b> | sections 16 and 29;                             |
| (5) <b>Acquisition of Land Act 1981:</b>                             | sections 6-7, 10-15<br>and 23-26;               |
| (6) <b>Compulsory Purchase<br/>(Vesting Declarations) Act 1981:</b>  | sections 2, 6 and 9; and                        |
| (7) <b>Town and Country Planning Act 1990:</b>                       | sections 329-330.                               |

### **(1) LAND COMPENSATION ACT 1961**

#### **31 Withdrawal of notice to treat**

- (1) Where a claimant has delivered such a notice as is mentioned in paragraph (b) of subsection (1) of section four of this Act, the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired.
- (2) Where a claimant has failed to deliver a notice as required by the said paragraph (b), the acquiring authority may, at any time after the decision of the Lands Tribunal on his claim but not later than six weeks after the claim has been finally determined, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired, unless the authority have entered into possession of the land by virtue of the notice.
- (3) Where the acquiring authority withdraw a notice to treat under this section, the authority shall be liable to pay compensation to the person to whom it was given for any loss or expenses occasioned to him by the giving and withdrawal of the notice, but if the notice is withdrawn under subsection (2) of this section not for any loss or expenses incurred by the claimant mentioned therein after

## APPENDIX 2

the time when, in the opinion of the Lands Tribunal, a proper notice of claim should have been delivered by him.

- (4) The amount of any compensation payable under subsection (3) of this section shall, in default of agreement, be determined by the Lands Tribunal.
- (5) So long as the acquiring authority are entitled to withdraw a notice to treat under subsection (2) of this section, the authority shall not be compellable to take the land to which the notice relates or to pay any compensation awarded in respect of the taking.
- (6) For the purposes of this section, a claim shall not be deemed to be finally determined so long as the time for requiring the Lands Tribunal to state a case with respect thereto, or for appealing from any decision on the points raised by a case so stated, has not expired.

### **38 Service of notices**

- (1) Subject to the provisions of this section, any notice or other document required or authorised to be served or given under Part III or Part IV of this Act may be served or given either—
  - (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode of that person, or, in a case in which an address for service has been furnished by that person, at that address; or
  - (c) by sending it in a pre-paid registered letter addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been furnished by that person, at that address; or
  - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a pre-paid registered letter addressed to the secretary or clerk of the company or body at that office.
- (2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, the notice shall be deemed to be duly served if—
  - (a) being addressed to him either by name or by the description of “the owner” of the premises (describing them) it is delivered or sent in the manner mentioned in paragraph (a), (b) or (c) of subsection (1) of this section; or
  - (b) being addressed as aforesaid and marked in the manner for the time being prescribed by regulations under the Town and Country Planning Act 1947, for securing that notices thereunder are plainly identifiable as a communication of importance, it is sent in a pre-paid registered letter to the premises and is not returned to the authority sending it, or is delivered to some person on those premises or is affixed conspicuously to some object on those premises.



## APPENDIX 2

### COMPULSORY PURCHASE ACT 1965

#### Part I

##### 1 Application of Part I

(1) [This Part of this Act shall apply in relation to any compulsory purchase to which Part II of the Acquisition of Land Act 1981, or Schedule 1 to that Act, applies, and in this Part of this Act—

(a) "the Acquisition of Land Act" means that Act,

(b) "compulsory purchase order" has the same meaning as in that Act. ]<sup>1</sup>

(2) In construing this Part of this Act the enactment under which the purchase is authorised and the compulsory purchase order . . .<sup>2</sup> shall be deemed to be the special Act.

(3) In this Part of this Act, unless the context otherwise requires.—

"acquiring authority" means the person authorised by the compulsory purchase order . . .<sup>3</sup> to purchase the land;

"land" includes anything falling within any definition of that expression in the enactment under which the purchase is authorised;

"lease" includes an agreement for a lease;

"notice to treat" has the meaning given by section 5 of this Act;

"subject to compulsory purchase", in relation to land, means land the compulsory purchase of which is authorised by the compulsory purchase order.

(4) In this Part of this Act "the works" or "the undertaking" means the works or undertaking, of whatever nature, authorised to be executed by the special Act:

Provided that where this Part of this Act applies by virtue of [Part IX of the Town and Country Planning Act 1990 or section 52 of the Planning (Listed Buildings and Conservation Areas) Act 1990]<sup>4</sup> references in this Part of this Act to the execution of the works shall be construed in accordance with [section 245(4) of the Town and Country Planning Act 1990 or, as the case may be, section 52(2) of

<sup>1</sup> s 1(1) substituted by Sched 4, para 14(2) of the Acquisition Act.

<sup>2</sup> Words repealed by Sched 6, Part I of the Acquisition Act.

<sup>3</sup> Words repealed by Sched 6, Part I of the Acquisition Act.

<sup>4</sup> Words substituted by s 4 and Sched 2, para 13(1)(a) of the Planning (Consequential Provisions) Act 1990.

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the Planning (Listed Buildings and Conservation Areas) Act 1990]<sup>5</sup>.

- (5) A justice of the peace may act under this Act in relation to land which is partly in one area, and partly in another, if he may act as respects land in either area, but no justice of the peace shall act under this Act if he is interested in the matter.
- (6) Where under this Act any notice is to be given to the owner of any land or where any act is authorised or required to be done with the consent of any such owner, the word "owner" shall, unless the context otherwise requires, mean any person having power to sell and convey the land to the acquiring authority.

### **2 Persons without power to sell their interests**

Schedule 1 to this Act (which gives owners power to sell to the acquiring authority) shall have effect for the purposes of this Act.

### **3 Acquisition by agreement**

It shall be lawful for the acquiring authority to agree with the owners of any of the land subject to compulsory purchase, and with all parties having an estate or interest in any of the land, or who are by Schedule 1 to this Act or any other enactment enabled to sell and convey or release any of that land, for the absolute purchase, for a consideration in money [or money's worth]<sup>6</sup>, of any of that land, and of all estates and interests in the land.

### **4 Time limit**

The powers of the acquiring authority for the compulsory purchase of the land shall not be exercised after the expiration of three years from the date on which the compulsory purchase order becomes operative.<sup>7</sup>

### **5 Notice to treat**

- (1) When the acquiring authority require to purchase any of the land subject to compulsory purchase, they shall give notice (hereafter in this Act referred to as a "notice to treat") to all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.
- (2) Every notice to treat–
  - (a) shall give particulars of the land to which the notice relates,

<sup>5</sup> Words substituted by s 4 and Sched 2, para 13(1)(b) of the Planning (Consequential Provisions) Act 1990.

<sup>6</sup> Words inserted by s 70 and Sched 15, Part I, para 3 of the 1991 Act.

<sup>7</sup> Words were added at the end of this section by s 116 of the Housing Act 1974 (c 44); these were repealed by s 3 and Sched 1, Part I of the Housing (Consequential Provisions) Act 1985 (c 71).

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- (b) shall demand particulars of the recipient's estate and interest in the land, and of the claim made by him in respect of the land, and
  - (c) shall state that the acquiring authority are willing to treat for the purchase of the land, and as to the compensation to be made for the damage which may be sustained by reason of the execution of the works.
- [(2A) A notice to treat shall cease to have effect at the end of the period of three years beginning with the date on which it is served unless–
- (a) the compensation has been agreed or awarded or has been paid or paid into court,
  - (b) a general vesting declaration has been executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981,
  - (c) the acquiring authority have entered on and taken possession of the land specified in the notice, or
  - (d) the question of compensation has been referred to the Lands Tribunal.
- (2B) If the person interested in the land, or having power to sell and convey or release it, and the acquiring authority agree to extend the period referred to in subsection (2A) of this section, the notice to treat shall cease to have effect at the end of the period as extended unless–
- (a) any of the events referred to in that subsection have then taken place, or
  - (b) the parties have agreed to a further extension of the period (in which case this subsection shall apply again at the end of the period as further extended, and so on).
- (2C) Where a notice to treat ceases to have effect by virtue of subsection (2A) or (2B) of this section, the acquiring authority–
- (a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2B) of this section, and
  - (b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.
- (2D) The amount of any compensation payable under subsection (2C) shall, in default of agreement, be determined by the Lands Tribunal.
- (2E) Compensation payable to any person under subsection (2C) shall carry interest at the rate prescribed under section 32 of the Land Compensation

## APPENDIX 2

Act 1961 from the date on which he was entitled to be given notice under that subsection until payment.]<sup>8</sup>

- (3) Schedule 2 to this Act (which relates to absent or untraced owners) shall have effect for the purposes of this Act.

### **6 Reference to Lands Tribunal**

If a person served with a notice to treat does not within twenty-one days from the service of the notice state the particulars of his claim or treat with the acquiring authority in respect of his claim, or if he and the acquiring authority do not agree as to the amount of compensation to be paid by the acquiring authority for the interest belonging to him, or which he has power to sell, or for any damage which may be sustained by him by reason of the execution of the works, the question of disputed compensation shall be referred to the Lands Tribunal.

### **7 Measure of compensation in cases of severance [not reproduced here]<sup>9</sup>**

### **8 Other provisions as to divided land**

- (1) No person shall be required to sell a part only—

- (a) of any house, building or manufactory, or
- (b) of a park or garden belonging to a house,

if he is willing and able to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determines that—

- (i) in the case of a house, building or manufactory the part proposed to be acquired can be taken without material detriment to the house, building or manufactory, or
- (ii) in the case of a park or garden, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house,

and, if the Lands Tribunal so determine, the Lands Tribunal shall award compensation in respect of any loss due to the severance of the part proposed to be acquired, in addition to its value; and thereupon the party interested shall be required to sell to the acquiring authority that part of the house, building, manufactory, park or garden.<sup>10</sup>

- (2) If any land which is not situated in a town or built upon is cut through and divided by the works so as to leave, either on both sides of the works, or on one side, a quantity of land which is less than half an acre, the owner of the land

<sup>8</sup> s 5(2A) – (2E) inserted by s 67 of the 1991 Act (c 34) from 25 September 1991.

<sup>9</sup> See Compensation Report, App 3, p 238.

<sup>10</sup> s 8(1) amended by s 58(1) of the 1973 Act.

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may require the acquiring authority to purchase the land along with the land subject to compulsory purchase:

Provided that this subsection shall not apply if the owner has other land adjoining the land so left into which it can be thrown so as to be conveniently occupied with it, and in that case the acquiring authority shall, if so required by the owner, at their own expense throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof, and by soiling it in a satisfactory and workmanlike manner.

(3) If the owner of any land cut through and divided by the works requires the acquiring authority under the provisions of the special Act to make any bridge, culvert or other communication between the land so divided, and—

(a) the land is so cut through and divided as to leave, either on both sides or on one side, a quantity of land which is less than half an acre, or which is of less value than the expense of making the communication between the divided land, and

(b) the owner has not other land adjoining that piece of land,

the acquiring authority may require the owner to sell them the piece of land.

Any dispute as to the value of the piece of land, or as to the expense of making a communication between the divided land shall be determined by the Lands Tribunal, and either party to proceedings for determining the compensation to be paid for the land acquired may require the Lands Tribunal to make their determination under this subsection in those proceedings.

### **9 Refusal to convey, failure to make title, etc**

(1) If the owner of any of the land purchased by the acquiring authority, or of any interest in the land so purchased, on tender of the compensation agreed or awarded to be paid in respect of the land or interest refuses to accept it, or neglects or fails to make out a title to the land or interest to the satisfaction of the acquiring authority, or refuses to convey or release the land as directed by the acquiring authority, it shall be lawful for the acquiring authority to pay into court the compensation payable in respect of the land or interest.

(2) The compensation so paid into court shall, subject to the provisions of this Act, be placed to the credit of the parties interested in the land and the acquiring authority shall, so far as they can, give their descriptions.

(3) When the acquiring authority have paid into court the compensation, it shall be lawful for them to execute a deed poll containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names of the parties to whose credit, the payment into court was made.

(4) On execution of the deed poll all the estate and interest in the land of the parties for whose use and in respect whereof the compensation was paid into court shall vest absolutely in the acquiring authority and as against those

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persons the acquiring authority shall be entitled to immediate possession of the land.

- (5) On the application of any person claiming all or any part of the money paid into court, or claiming all or any part of the land in respect of which it was paid into court, or any interest in it, the High Court may order its distribution according to the respective estates, titles or interests of the claimants, and if, before the money is distributed, it is dealt with under section 6 of the Administration of Justice Act 1965<sup>11</sup> payment likewise of the dividends thereof, and may make such other order as the Court thinks fit.

- (6) [...] <sup>12</sup>

### **10 Further provision as to compensation for injurious affection [not reproduced here<sup>13</sup>]**

#### **11 Powers of entry**

- (1) If the acquiring authority have served notice to treat in respect of any of the land and have served on the owner, lessee and occupier of that land not less than fourteen days notice, the acquiring authority may enter on and take possession of that land, or of such part of that land as is specified in the notice; and then any compensation agreed or awarded for the land of which possession is taken shall carry interest at the rate prescribed under section 32 of the Land Compensation Act 1961 from the time of entry until the compensation is paid or is paid into court in accordance with this Act.

Where under this subsection a notice is required to be served on an owner of land, and the land is ecclesiastical property as defined in [section 12(3) of the Acquisition of Land Act]<sup>14</sup>, a like notice shall be served on the Church Commissioners.

In this subsection "owner" has the meaning given by [section 7(1) of the Acquisition of Land Act]<sup>15</sup>.

- (2) The acquiring authority may also enter on and take possession of any of the land by following the procedure in Schedule 3 to this Act.

[...] <sup>16</sup>

<sup>11</sup> 1965 (c 2).

<sup>12</sup> s 9(6) repealed by Schedule 1 of the Statute Law (Repeals) Act 1973 (c 39).

<sup>13</sup> See Compensation Report, App 3, p 238.

<sup>14</sup> Words substituted by Sched 4, para 14(3)(a) of the Acquisition Act.

<sup>15</sup> Words substituted by Sched 4, para 14(3)(b) of the Acquisition Act.

<sup>16</sup> s 11(2) second para repealed by s 3 and Sched 1, Part 1 of the Housing (Consequential Provisions) Act 1985 (c 71), as from 1<sup>st</sup> April 1986.

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- (3) For the purpose of surveying and taking levels of any of the land subject to compulsory purchase, of probing or boring to ascertain the nature of the soil and of setting out the line of the works, the acquiring authority, after giving not less than three nor more than fourteen days' notice to the owners or occupiers of that land, may enter on that land, but the acquiring authority shall make compensation for any damage thereby occasioned to the owners or occupiers of the land, and any question of disputed compensation under this subsection shall be referred to the Lands Tribunal.
- (4) Except as provided by the foregoing provisions of this section, the acquiring authority shall not, except with the consent of the owners and occupiers, enter on any of the land subject to compulsory purchase until the compensation payable for the respective interests in that land has been agreed or awarded, and has been paid to the persons having those interests or has been paid into court in accordance with this Act.

### **12 Unauthorised entry**

- (1) If the acquiring authority, or any of their contractors, wilfully enter on and take possession of any of the land subject to compulsory purchase in contravention of subsection (4) of the last foregoing section, the acquiring authority shall forfeit to the person in possession of that land the sum of ten pounds in addition to the amount of any damage done to the land by entering and taking possession.
- (2) The said sum of ten pounds, and the amount of any such damage, shall be recoverable summarily as a civil debt.
- (3) An appeal shall lie to [the Crown Court]<sup>17</sup> against an order of a magistrates' court adjudging a sum to be forfeited under the foregoing provisions of this section.
- (4) If, after a sum has been adjudged to be forfeited under this section, the acquiring authority, or their contractors, remain in unlawful possession of any of the land the acquiring authority shall be liable to forfeit the sum of twenty-five pounds for every day on which they so remain in possession.
- (5) A sum forfeited under the last foregoing subsection shall be recoverable by the person in possession of that land in the High Court, and in any such proceedings the decision of the magistrates' court shall not be conclusive as to the acquiring authority's right of entry.
- (6) This section shall not subject the acquiring authority to the payment of a penalty if they have in good faith and without collusion paid the compensation agreed or awarded in respect of the land to a person whom they reasonably believed to be entitled to the compensation, or have paid it into court for the benefit of the person entitled to the land, or have paid it into court under

<sup>17</sup> Words substituted for the reference to the court of quarter sessions by s 56(2) and Sched 9, Part 1 of the Courts Act 1971 (c 23).

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Schedule 3 to this Act by way of security, although such person may not have been legally entitled thereto.

### **13 Refusal to give possession to acquiring authority**

- (1) If the acquiring authority are under this Act authorised to enter on and take possession of any land, and the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquiring authority from entering on or taking possession of it, the acquiring authority may issue their warrant to the sheriff to deliver possession of it to the person appointed in the warrant to receive it.
- (2) On receipt of the warrant the sheriff shall deliver possession of any such land accordingly.
- (3) The costs accruing by reason of the issue and execution of the warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of those costs shall be deducted and retained by the acquiring authority from the compensation, if any, payable by them to that person.
- (4) If no compensation is payable to the person refusing to give possession, or if it is less than the amount of the costs, that amount or the amount by which the costs exceed the compensation, if not paid on demand, shall be levied by distress, and on application to any justice of the peace for that purpose he shall issue his warrant accordingly.
- (5) The said amount shall be levied by distress and sale of the goods and chattels of the person liable to pay that amount, and any surplus arising from the sale, after satisfying the amount due, and the expenses of the distress and sale, shall be returned, on demand, to the person whose goods or chattels have been distrained.
- (6) In this section "sheriff" includes an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated.

### **14 Mortgages**

- (1) The acquiring authority may purchase or redeem the interest of the mortgagee of any of the land subject to compulsory purchase in accordance with either of the two following subsections.
- (2) The acquiring authority may pay or tender to the mortgagee the principal and interest due on the mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon the mortgagee shall immediately convey or release his interest in the land comprised in the mortgage to the acquiring authority or as they may direct.
- (3) Alternatively, the acquiring authority may give notice in writing to the mortgagee that they will pay all the principal and interest due on the mortgage at the end of six months, computed from the day of giving the notice; and if they have given any such notice, or if the person entitled to the equity of redemption has given six months notice of his intention to redeem, then at the



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expiration of either of the notices, or at any intermediate period, on payment or tender by the acquiring authority to the mortgagee of the principal money due on the mortgage, and the interest which would become due at the end of six months from the time of giving either of the notices, together with his costs and expenses, if any, the mortgagee shall convey or release his interest in the land comprised in the mortgage to the acquiring authority, or as they may direct.

- (4) If, in a case under subsection (2) or subsection (3) of this section, on such payment or tender the mortgagee fails to convey or release his interest in the mortgage as directed by the acquiring authority, or fails to make out a good title to that interest to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the sums payable under subsection (2) or subsection (3) of this section, as the case may be.
- (5) When the acquiring authority have paid those sums into court, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act.
- (6) On execution of the deed poll, as well as in the case of a conveyance by the mortgagee, all the estate and interest of the mortgagee (and of all persons in trust for him, or for whom he may be a trustee) in the land shall vest in the acquiring authority and, where the mortgagee was entitled to possession of the land, the acquiring authority shall be entitled to possession of the land.
- (7) This section shall apply—
  - (a) whether or not the acquiring authority have previously purchased the equity of redemption.
  - (b) whether or not the mortgagee is a trustee,
  - (c) whether or not the mortgagee is in possession of the land, and
  - (d) whether or not the mortgage includes other land in addition to the land subject to compulsory purchase.

### **15 Mortgage debt exceeding value of mortgaged land**

- (1) If the value of any such mortgaged land is less than the principal, interest and costs secured on the land, the value of the land, or the compensation to be paid by the acquiring authority in respect of the land, shall be settled by agreement between the mortgagee and the person entitled to the equity of redemption on the one part, and the acquiring authority on the other part, or, if they fail to agree, shall be determined by the Lands Tribunal.
- (2) The amount so agreed or awarded shall be paid by the acquiring authority to the mortgagee in satisfaction or part satisfaction of his mortgage debt.
- (3) On payment or tender of the amount so agreed or awarded the mortgagee shall convey or release all his interest in the mortgaged land to the acquiring authority or as they direct, and if he fails to do so, or fails to adduce a good title to that interest to the satisfaction of the acquiring authority, it shall be

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lawful for the acquiring authority to pay into court the amount agreed or awarded.

- (4) When the acquiring authority have so paid into court the amount agreed or awarded, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act.
- (5) On execution of the deed poll the land, as to the estate and interest which were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the acquiring authority and, where the mortgagee was entitled to possession of the land, the acquiring authority shall be entitled to possession of the land.
- (6) The making of payment to the mortgagee or into court of the amount agreed or awarded shall be accepted by the mortgagee in satisfaction, or part satisfaction, of his mortgage debt, and shall be a full discharge of the mortgaged land from all money due thereon.
- (7) All rights and remedies possessed by the mortgagee against the mortgagor by virtue of any bond or covenant or other obligation, other than the right to the land, shall remain in force in respect of so much of the mortgage debt as has not been satisfied by payment to the mortgagee or into court.

### **16 Acquisition of part of land subject to mortgage**

- (1) If a part only of any mortgaged land is required by the acquiring authority, and—
  - (a) the part so required is of less value than the principal, interest and costs secured on such land, and
  - (b) the mortgagee does not consider the remaining part of the land a sufficient security for the money charged thereon, or is not willing to release the part so required,

then the value of that part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of that land on the one part and the acquiring authority on the other and, if the parties fail to agree, shall be determined by the Lands Tribunal.

- (2) The amount so agreed or awarded shall be paid by the acquiring authority to the mortgagee in satisfaction or part satisfaction of his mortgage debt.
- (3) On payment or tender of the amount so agreed or awarded the mortgagee shall convey or release all his interest in the land to be taken to the acquiring authority or as they direct.
- (4) A memorandum of what has been so paid shall be endorsed on the deed creating the mortgage and shall be signed by the mortgagee; and a copy of the memorandum shall at the same time (if required) be furnished by the acquiring authority at their expense to the person entitled to the equity of redemption of the land comprised in the mortgage.

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- (5) If, on payment or tender to any such mortgagee of the amount of compensation agreed or awarded, the mortgagee fails to convey or release to the acquiring authority, or as they direct, his interest in the land in respect of which the compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the amount of the compensation; and subsections (4) to (6) of the last foregoing section shall apply as if references in those subsections to the land were references to the part of the land comprised in the mortgage which is required by the acquiring authority.
- (6) Notwithstanding the foregoing provisions of this section the mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue of it (as the case may be), and the interest thereon, as against the remaining land comprised in the mortgage, as he would have had for recovering or compelling payment thereof as against the whole of the land originally comprised in the mortgage.

### **17 Compensation where mortgage paid off before stipulated time**

- (1) If in the mortgage deed a time was limited for the payment of the principal secured and under the three last foregoing sections the mortgagee has been required to accept payment of the principal at a time earlier than the time so limited, the amounts payable under those sections shall include—
- (a) all such costs and expenses as may be incurred by the mortgagee in respect of, or as incidental to, the re-investment of the sum paid off, and
  - (b) if the rate of interest secured by the mortgage is higher than can reasonably be expected to be obtained on re-investment at the time the mortgage is paid off, regard being had to the current rate of interest, compensation in respect of the loss thereby sustained.
- (2) The costs under paragraph (a) of the foregoing subsection shall, in case of difference, be taxed and their payment enforced in the manner provided in section 23 of this Act for costs of conveyances, and the amount of compensation under paragraph (b) of the foregoing subsection shall, in case of difference, be referred to and determined by the Lands Tribunal.

### **18 Rentcharges**

- (1) If any difference arises between the acquiring authority and a person entitled to a rentcharge on any of the land subject to compulsory purchase as to the compensation to be paid for the release of the land from the rentcharge, or from the part of the rentcharge affecting the land, it shall be referred to and determined by the Lands Tribunal.
- (2) If part only of the land charged with a rentcharge is comprised in the land required by the acquiring authority the apportionment of the rentcharge—
- (a) may be settled by agreement between the person entitled to the rentcharge and the owner of the land on the one part and the acquiring authority on the other part, and
  - (b) if not so settled, shall be referred to and determined by the Lands Tribunal,

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but if the remaining part of the land so charged is a sufficient security for the rentcharge the person entitled to the rentcharge may, with the consent of the owner of that part of the land, release from the rentcharge the land required by the acquiring authority on condition or in consideration of that part of the land remaining exclusively subject to the whole of the rentcharge.

- (3) If the person entitled to a rentcharge on any of the land subject to compulsory purchase, on payment or tender to him of the compensation agreed or awarded, fails to execute in favour of the acquiring authority a release of the rentcharge, or if he fails to make out a good title to the rentcharge to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the amount of the compensation.

When the acquiring authority have paid the compensation into court, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act, and on execution of the deed poll the rentcharge, or the part of the rentcharge in respect of which the compensation was paid, shall be extinguished.

- (4) If any of the land subject to compulsory purchase is so released from a rentcharge, or part of a rentcharge, to which it was subject jointly with other land, the last-mentioned land shall alone be charged with the whole of the rentcharge, or, as the case may be, with the remainder of the rentcharge, and the person entitled to the rentcharge shall have all the same rights and remedies over the last-mentioned land, for the whole, or as the case may be for the remainder, of the rentcharge as he had previously over the whole of the land subject to the rentcharge.
- (5) If upon any rentcharge or part of a rentcharge being so released the deed or instrument creating or transferring the charge is tendered to the acquiring authority for the purpose, the acquiring authority shall affix their common or official seal to a memorandum of the release endorsed on the deed or instrument declaring—
- (a) what part of the land originally subject to the rentcharge has been purchased by virtue of this Act, and
  - (b) if the land is released from part of the rentcharge, what part of the rentcharge has been released and how much of it continues payable, and
  - (c) if the land has been released from the whole of the rent charge, then that the remaining land is thenceforward to remain exclusively charged with the rent charge,

and the memorandum shall be made and executed at the expense of the acquiring authority and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

- (6) In this section "rentcharge", in relation to any land, includes any other payment or incumbrance charged on the land not provided for in the foregoing provisions of this Act.

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### **19 Apportionment of rent under leases**

- (1) If part only of the land comprised in a lease for a term of years unexpired is required by the acquiring authority, the rent payable in respect of the land comprised in the lease shall be apportioned between the land so required and the residue of the land.
- (2) The apportionment may be settled by agreement between the lessor and lessee of the land on the one part, and the acquiring authority on the other part, and if the apportionment is not so settled by agreement between the parties, it shall be settled by the Lands Tribunal.
- (3) After the apportionment the lessee shall, as to all future accruing rent, be liable only for so much of the rent as is apportioned in respect of the land not required by the acquiring authority.
- (4) As respects the land not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of the apportioned rent as, before the apportionment, he had for the recovery of the whole rent reserved by the lease: and all the covenants, conditions and terms of the lease, except as to the amount of rent to be paid, shall remain in force with regard to the part of the land not so required in the same manner as they would have done if that part only of the land had been included in the lease.
- (5) Every such lessee shall be entitled to receive from the acquiring authority compensation for the damage done to him in his tenancy by reason of the severance of the land required by the acquiring authority from that not required, or otherwise by reason of the execution of the works.

### **20 Tenants at will, etc**

- (1) If any of the land subject to compulsory purchase is in the possession of a person having no greater interest in the land than as tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation for the value of his unexpired term or interest in the land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain.
- (2) If a part only of such land is required, he shall also be entitled to compensation for the damage done to him [by severing]<sup>18</sup> land held by him or otherwise injuriously affecting it.
- (3) If the parties differ as to the amount of compensation payable under the foregoing provisions of this section the dispute shall be referred to and determined by the Lands Tribunal.

<sup>18</sup> Words substituted by s 70 of and Sched 15, para 4 to the 1991 Act, from 25 September 1991.

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- (4) On payment or tender of the amount of such compensation all such persons shall respectively deliver up to the acquiring authority, or to the person appointed by them to take possession, any such land in their possession required by the acquiring authority.
- (5) If any person having a greater interest than as tenant at will claims compensation in respect of any unexpired term or interest under any lease or grant of the land subject to compulsory purchase, the acquiring authority may require that person to produce the lease or grant, or the best evidence thereof in his power; and if, after demand in writing by the acquiring authority, the lease or grant, or that best evidence, is not produced within twenty-one days, that person shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.
- (6) This section has effect subject to section 39 of the Landlord and Tenant Act 1954<sup>19</sup>.

### **21 Common land [not reproduced here]**

### **22 Interests omitted from purchase**

- (1) If after the acquiring authority have entered on any of the land subject to compulsory purchase it appears that they have through mistake or inadvertence failed or omitted duly to purchase or to pay compensation for any estate, right or interest in or charge affecting that land the acquiring authority shall remain in undisturbed possession of the land provided that within the time limited by this section—
  - (a) they purchase or pay compensation for the estate, right or interest in or charge affecting the land, and
  - (b) they also pay to any person who may establish a right to it, full compensation for the mesne profits,and the compensation shall be agreed or awarded and paid (whether to claimants or into court) in the manner in which, under this Act, it would have been agreed or awarded and paid if the acquiring authority had purchased the estate, right, interest or charge before entering on the land, or as near to that manner as circumstances admit.
- (2) The foregoing subsection shall apply whether or not the period specified in section 4 of this Act has expired.
- (3) The time limited by this section shall be six months after the acquiring authority have notice of the estate, right, interest or charge or, if it is disputed by the acquiring authority, six months after the right to the estate, right, interest or charge is finally established by law in favour of the claimant.

<sup>19</sup> 1954 (c 56).

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- (4) In assessing compensation under this section the value of the land, and of any estate or interest in the land, or any mesne profits of the land, shall be taken to be the value at the time when the acquiring authority entered on the land, and without regard to any improvements or works made in or upon the land by the acquiring authority, and as though the works had not been constructed.
- (5) In this section the "mesne profits" means the mesne profits or interest which would have accrued to the persons concerned during the interval between the entry of the acquiring authority and the time when the compensation is paid, so far as such mesne profits or interest may be recoverable in any proceedings.

### **23 Costs of conveyances, etc**

- (1) The costs of all conveyances of the land subject to compulsory purchase shall be borne by the acquiring authority.
- (2) The costs shall include all charges and expenses, whether incurred on the part of the seller or on the part of the purchaser,—
  - (a) of all conveyances and assurances of any of the land, and of any outstanding terms or interests in the land, and
  - (b) of deducing, evidencing and verifying the title to the land, terms or interests, and
  - (c) of making out and furnishing such abstracts and attested copies as the acquiring authority may require,and all other reasonable expenses incident to the investigation, deduction and verification of the title.
- (3) If the acquiring authority and the person entitled to any such costs do not agree as to the amount of the costs, the costs shall be taxed by a Master of the Supreme Court on an order of the court obtained by either of the parties.
- (4) The acquiring authority shall pay what the Master certifies to be due in respect of the costs to the person entitled and, in default, that amount may be recovered in the same way as any other costs payable under an order of the Supreme Court.
- (5) The expense of taxing the costs shall be borne by the acquiring authority unless on the taxation one-sixth of the amount of the costs is disallowed, and in that case the costs of the taxation shall be borne by the party whose costs have been taxed; and the amount thereof shall be ascertained by the Master and deducted by him accordingly in his certificate of taxation.
- (6) Conveyances of the land subject to compulsory purchase may be according to the forms in Schedule 5 to this Act, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the acquiring authority may think fit.

All conveyances made according to the forms in the said Schedule, or as near thereto as the circumstances of the case may admit, shall be effectual to vest the land thereby conveyed in the acquiring authority and shall operate to bar and to

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destroy all estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever of and in the land comprised in the conveyance which have been purchased or compensated for by the consideration mentioned in the conveyance.

### **24 Power to sell in consideration of a rentcharge<sup>20</sup>**

[...]

### **25 Payment into court**

- (1) References in this Act to payment of money into court are references to payment of the money into the Supreme Court and section 4 of the Administration of Justice Act 1965 (which prescribes the method of payment into court) shall apply accordingly.
- (2) Where any money paid into court under this Act was paid in respect of any lease, or any estate in land less than the whole fee simple, or of any reversion dependent on any such lease or estate, the High Court on the application of any person interested in the money may order that the money shall be laid out, invested, accumulated and paid in such manner as the court may consider will give to the persons interested in the money the same benefit as they might lawfully have had from the lease, estate or reversion or as near thereto as may be.
- (3) If any question arises respecting the title to land in respect of which money has been paid into court under this Act, the persons respectively in possession of the land, as being the owners, or in receipt of the rents of the land, as being entitled to the rents at the time when the land was purchased, shall be deemed to have been lawfully entitled to the land until the contrary is shown to the satisfaction of the court; and unless the contrary is shown to the satisfaction of the court the persons so in possession, and all persons claiming under them, or consistently with their possession, shall be deemed to be entitled to the money so paid into court, and to the interest and dividends of it or of the securities purchased therewith; and the money, dividends, interest and annual proceeds shall be paid and applied accordingly.

- (4) [...]<sup>21</sup>

### **26 Costs in respect of money paid into court**

- (1) This section shall apply in relation to any compensation paid into court under this Act except where it was so paid in consequence—
  - (a) of the wilful refusal of the person entitled to accept it, or

<sup>20</sup> s 24 repealed by Sched 2 to the Rentcharges Act 1977.

<sup>21</sup> Repealed by Sched 1 to the Statute Law Repeals Act 1973 (c 39).



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- (b) of the wilful refusal of that person to convey the land in respect of which the compensation was payable, or
  - (c) of the wilful neglect of any person to make out a good title to the land.
- (2) Where this section applies the High Court may order the acquiring authority to pay–
- (a) the costs of, or incurred in consequence of, the purchase of the land, and
  - (b) the cost of the investment of the compensation paid into court, or of its reinvestment in the purchase of other land.
- (3) References in this section to costs include references to all reasonable charges and expenses incidental to the matters mentioned in this section and to–
- (a) the cost of obtaining the proper orders for any of the purposes set out above,
  - (b) the cost of obtaining the orders for the payment of dividends out of the compensation.
  - (c) the cost of obtaining the orders for the payment out of court of the principal amount of the compensation, or of any securities in which it is invested, and
  - (d) the cost of all proceedings relating to such orders, except such as are occasioned by litigation between adverse claimants.
- (4) The costs of not more than one application for reinvestment in land shall be allowed unless it appears to the High Court that it is for the benefit of the parties interested in the compensation that it should be invested in the purchase of land in different sums and at different times.

### **27 Acquiring authority to make good deficiencies in rates [repealed<sup>22</sup>]**

### **28 General provisions as to deeds poll**

- (1) Any deed poll executed by the acquiring authority in accordance with this Act shall be under their common seal or official seal.
- (2) Any such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the acquiring authority of the land described therein, or otherwise duly stamped.
- (3) The provisions of this Act as to the execution of deeds poll have effect subject to section 7(4) of the Law of Property Act 1925<sup>23</sup> (under which any such power

<sup>22</sup> ss (1) – (4), (6) and (7) repealed by Sched 1 to the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (SI 1990 No 776); s (5) repealed by Sched 14 to the General Rate Act 1967 (c 9).

<sup>23</sup> 1925.

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of disposing of a legal estate exercisable by a person who is not the estate owner is, when practicable, to be exercised in the name and on behalf of the estate owner).

### **29 Irregularities in proceedings under the Act.**

(1) No distress levied under this Act shall be deemed unlawful, nor shall the person making the distress be deemed a trespasser on account of any defect or want of form in the warrant of distress or other proceedings relating to the distress; and the person making the distress shall not be deemed a trespasser ab initio on account of any irregularity afterwards committed by him so, however, that any person aggrieved by any defect or irregularity may recover full satisfaction for the special damage in civil proceedings.

(2) [...]<sup>24</sup>

### **30 Service of notices**

[Section 6 of the Acquisition of Land Act shall apply to the service of notices under this Act.]<sup>25</sup>

### **31 Ecclesiastical property [not reproduced here]**

### **32 Commencement of Part I [not reproduced here]**

## **PART II**

### **Application of Part I in other cases and Supplemental provisions [not reproduced here]**

#### **Schedules**

### **1 Persons without power to sell their interests [not reproduced here]**

### **2 Absent and untraced owners**

1. (1) The compensation to be paid for any land subject to compulsory purchase to be purchased by the acquiring authority–

(a) from a person who is prevented from treating with them on account of absence from the United Kingdom, or

(b) from a person who cannot be found after diligent inquiry has been made,

and the compensation to be paid for any permanent injury to any such land, shall be determined by the valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949.

<sup>24</sup> s 29(2) repealed by s 1 of and Sched, Part III to the Statute Law (Repeals) Act 1974 (c 22)

<sup>25</sup> Words substituted by s 34(1) of and Sched 4, para 14(4) to the Acquisition Act.

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(2) [...] <sup>26</sup>

(3)...the acquiring authority shall preserve the valuation... <sup>27</sup> and produce them, on demand, to the owner of the land to which the valuation relates, and to all other persons interested in the land.

(4) All the expenses of and incident to the valuation shall be borne by the acquiring authority.

**2.** (1) The acquiring authority may pay into court the compensation determined under this Schedule to be placed to the credit of the parties interested in the land, giving their descriptions so far as the acquiring authority is in a position to do so.

(2) When the acquiring authority have paid into court the compensation, it shall be lawful for them to execute a deed poll containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names of the parties to whose credit, the payment into court was made.

(3) On execution of the deed poll all the estate and interest in the land of the parties for whose use and in respect whereof the compensation was paid into court shall vest absolutely in the acquiring authority, and as against those persons the acquiring authority shall be entitled to immediate possession of the land.

**3.** (1) On the application of any person claiming any part of the money paid into court, or of the land or any interest in the land in respect of which it was paid into court, the High Court may order its distribution according to the respective estates, titles or interests of the claimants, and if, before the money is distributed, it is dealt with under section 6 of the Administration of Justice Act 1965 <sup>28</sup> payment likewise of the dividends thereof, and may make such other order as the court thinks fit.

(2) [...] <sup>29</sup>

**4.** (1) If the person mentioned in paragraph 1(1) of this Schedule is dissatisfied with the surveyor's valuation he may, before applying under paragraph 3 of this Schedule to the High Court for payment or investment of the compensation paid into court, by notice in writing to the acquiring authority require the submission to the Lands Tribunal of the question whether the compensation paid into court was sufficient, or whether any and what further sum ought to be paid over or paid into court.

<sup>26</sup> Repealed by s 1 of and Sched, Part III to the Statute Law (Repeals) Act 1974 (c 22).

<sup>27</sup> See note 22 above

<sup>28</sup> 1965.

<sup>29</sup> Repealed by s 1(1) of and Sched 1, Part IX to the Statute Law (Repeals) Act 1973 (c 39).

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(2) If the Lands Tribunal award a further sum, the acquiring authority shall pay over or pay into court as the case may require that further sum within fourteen days of the making of the award, and if they make default, that further sum may be recovered in proceedings in the High Court.

(3) If the Lands Tribunal determine that the compensation paid into court was sufficient, the costs of and incident to the proceedings before the Lands Tribunal shall, in accordance with section 3(5) of the Lands Tribunal Act 1949<sup>30</sup>, be in the discretion of that Tribunal, but if the Lands Tribunal determine that a further sum ought to be paid, all the costs of and incident to the proceedings shall be borne by the acquiring authority.

**3 *Alternative procedure for obtaining right of entry* [not reproduced here]**

**4 *Common land* [not reproduced here]**

**5 *Forms of conveyance* [not reproduced here]**

<sup>30</sup> 1949 (c 42).

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### (3) LAND COMPENSATION ACT 1973

#### **58 Determination of material detriment where part of house etc proposed for compulsory acquisition**

(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, [...] <sup>31</sup>, or [section 166(2) of the Town and Country Planning Act 1990] <sup>32</sup> whether—

- (a) part of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Lands Tribunal shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.

<sup>31</sup> Words repealed by s 16(3) of and Sched 5 to the Vesting Declarations Act.

<sup>32</sup> Words substituted by s 4 of and Schedule 2, para 29 to the Planning (Consequential Provisions Act 1990.

### **(4) LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

#### ***13 Compulsory acquisition by local authorities of rights over land [not reproduced here]***

#### **16 Power of local authorities to obtain particulars of persons interested in land**

(1) Where, with a view to performing a function conferred on a local authority by any enactment, the authority considers that it ought to have information connected with any land, the authority may serve on one or more of the following persons, namely—

- (a) the occupier of the land; and
- (b) any person who has an interest in the land either as freeholder, mortgagee or lessee or who directly or indirectly receives rent for the land; and
- (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it,

a notice specifying the land and the function and the enactment which confers the function and requiring the recipient of the notice to furnish to the authority, within a period specified in the notice (which shall not be less than fourteen days beginning with the day on which the notice is served), the nature of his interest in the land and the name and address of each person whom the recipient of the notice believes is the occupier of the land and of each person whom he believes is, as respects the land, such a person as is mentioned in the provisions of paragraphs (b) and (c) of this subsection.

(2) A person who—

- (a) fails to comply with the requirements of a notice served on him in pursuance of the preceding subsection; or
- (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding [level 5 on the standard scale].

#### **29 Repayment of unclaimed compensation etc, paid into court**

(1) Where—

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- (a) a local authority has paid money into court in pursuance of section 76 or 85 of the Lands Clauses Consolidation Act 1845<sup>33</sup> or section 9 of or Schedule 2 or 3 to the Compulsory Purchase Act 1965; and
- (b) after the expiration of the period of twelve years beginning with the date when the money was paid into court any of the money, or any assets attributable to the money by way of interest, securities, accumulations from securities, proceeds of sale of securities or otherwise, has not or have not been ordered by a court of competent jurisdiction to be paid or transferred to or applied for the benefit of the authority or another person,

the High Court may, on the application of the authority, order that the money or assets shall be paid or transferred to the authority.

- (2) Where at any time after money has been paid or assets have been transferred to a local authority in pursuance of the preceding subsection it appears to the High Court, on the application of another person, that the Court would have ordered the whole or part of the money or assets to be paid or transferred to the applicant if the money or assets had not been paid or transferred to the authority as aforesaid, the Court may order the authority to pay to the applicant such a sum as the Court considers just.

- (3) If a former authority paid money into court as mentioned in subsection (1)(a) of this section in respect of land or an interest in land which—

- (a) is held by a local authority; and
- (b) has not since its acquisition by the former authority been transferred otherwise than by an Act or an order made under an Act,

subsection (1) of this section shall have effect in relation to the payment as if it had been made by the local authority on the date on which it was actually made; and in this subsection "former authority" means an authority which has ceased to exist and which, when it existed, was constituted in pursuance of the enactments relating to local government which were then in force.

- [(4) For the purposes of the preceding subsection—

- (a) any land held by a parish council shall be treated as held by the district council whose area includes the area of the parish council, and
- (b) any land held by a community council shall be treated as held by the county or county borough council whose area includes the area of the community council. ]<sup>34</sup>

### ***Schedule 1, paragraph 7 Adaptation of section 8 of the Compulsory Purchase Act 1965 [not reproduced here]***

<sup>33</sup> 1845 (c 18).

<sup>34</sup> Words substituted by art 2 of the Sched to SI 1996 No 3071 from 7 November 1997.

### **(5) ACQUISITION OF LAND ACT 1981**

#### **5 Local inquiries [not reproduced here]**

#### **6 Service of documents**

- (1) Any notice or other document required or authorised to be served under this Act may be served on any person either by delivering it to him, or by leaving it at his proper address, or by post, so however that the document shall not be duly served by post unless it is sent by registered letter, or by the recorded delivery service.
- (2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.
- (3) For the purposes of this section and of section 7 of the Interpretation Act 1978 the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person to be served:

Provided that where the person to be served has furnished an address for service, his proper address for the purposes aforesaid shall be the address furnished.

- (4) If the authority or Minister having jurisdiction to make the order in connection with which the document is to be served is satisfied that reasonable inquiry has been made and that it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of "owner", "lessee" or "occupier" of the land (describing it) to which it relates, and by delivering it to some person on the [land or, if there is no person on the land to whom it may be delivered, by leaving it or a copy of it on or near the land]:

Provided that this subsection shall not have effect in relation to an owner, lessee or occupier being a local authority or statutory undertakers or the National Trust.

#### **7 Interpretation ('land' and 'owner')**

- (1) In this Act, except where the context otherwise requires- ...

"land"-

- (a) includes messuages, tenements and hereditaments, and
- (b) in relation to compulsory purchase under any enactment, includes anything falling within any definition of the expression in that enactment,

...

"owner" in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement, the unexpired term whereof exceeds three years[and a person who would have



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power to sell and convey or release the land to the acquiring authority if a compulsory purchase order were operative]<sup>35</sup> ...

### **Part II Purchases by local and other authorities**

#### **10 Preliminary**

- (1) This Part of this Act has effect except where a Minister is the acquiring authority.
- (2) The compulsory purchase order shall be in the prescribed form and shall describe by reference to a map the land to which it applies.
- (3) Before submitting the order to the confirming authority the acquiring authority shall comply with sections 11 and 12 below.

*Notices prior to submission of order to confirming authority*

#### **11 Notices in newspapers**

- (1) The acquiring authority shall in two successive weeks publish a notice in the prescribed form in one or more local newspapers circulating in the locality in which the land comprised in the order is situated.
- (2) The notice shall—
  - (a) state that the order has been made and is about to be submitted for confirmation,
  - (b) describe the land and state the purpose for which the land is required,
  - (c) name a place within the locality where a copy of the order and of the map referred to therein may be inspected, and
  - (d) specify the time (not being less than twenty-one days from the first publication of the notice) within which, and the manner in which, objections to the order can be made.

#### **12 Notices to owners, lessees and occupiers**

- (1) The acquiring authority shall serve on every owner, lessee and occupier (except tenants for a month or any period less than a month) of any land comprised in the order a notice in the prescribed form—
  - (a) stating the effect of the order,
  - (b) stating that it is about to be submitted for confirmation, and
  - (c) specifying the time (not being less than twenty-one days from service of the notice) within which, and the manner in which, objections to the order can be made.

<sup>35</sup> Definition of 'owner' extended by the insertion of the words by s 70 and Sched 15, para 9 to the 1991 Act, from 25 September 1991.

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- (2) For the purposes of this section an occupier being a statutory tenant within the meaning of the Rent Act 1977<sup>36</sup> or the Rent (Agriculture) Act 1976<sup>37</sup> [or a licensee under an assured agricultural occupancy within the meaning of Part I of the Housing Act 1988]<sup>38</sup> shall be deemed to be a tenant for a period less than a month.
- (3) Where under this section any notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Church Commissioners.

In this subsection "ecclesiastical property" means land belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of the bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction [or being diocesan glebe land within the meaning of the Endowments and Glebe Measure 1976]<sup>39</sup>.

### 13 Confirmation of order

- (1) If no objection is duly made by any such owner, lessee or occupier as is mentioned in section 12 above, or if all objections so made are withdrawn, the confirming authority, upon being satisfied that the proper notices have been published and served, may, if the confirming authority thinks fit, confirm the order with or without modifications.
- (2) If any objection duly made as aforesaid is not withdrawn, the confirming authority shall, before confirming the order, either cause a public local inquiry to be held or afford to any person by whom any objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the confirming authority for the purpose, and, after considering the objection and the report of the person who held the inquiry or the person appointed as aforesaid, may confirm the order either with or without modifications.
- (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the confirming authority shall afford to the acquiring authority, and to any other persons to whom it appears to the confirming authority expedient to afford it, an opportunity of being heard on the same occasion.
- (4) Notwithstanding anything in subsection (2) or (3) above, the confirming authority may require any person who has made an objection to state in writing the grounds thereof, and may disregard the objection for the purposes of this section if the confirming authority is satisfied that the objection relates

<sup>36</sup> 1977 (c 42)

<sup>37</sup> 1976 (c 80)

<sup>38</sup> Words inserted by s 140(1) of and Sched 17, Part I, para 32(1) to the Housing Act 1988.

<sup>39</sup> Words inserted by s 70 of and Sched 15, para 27 to the 1991 Act, from 25 September 1991.

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exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed.

- (5) This section has effect subject to section 31 below (joint confirmation by confirming authority and appropriate Minister).

### **14 Land not originally included in order**

The order as confirmed by the confirming authority shall not, unless all persons interested consent, authorise the acquiring authority to purchase compulsorily any land which the order would not have authorised that authority to purchase compulsorily if it had been confirmed without modification.

### **15 Notices after confirmation of order**

As soon as may be after the order has been confirmed the acquiring authority shall publish in one or more local newspapers circulating in the locality in which the land comprised in the order is situated a notice in the prescribed form—

- (a) describing the land,
- (b) stating that the order has been confirmed, and
- (c) naming a place where a copy of the order as confirmed and of the map referred to therein may be inspected at all reasonable hours,

and shall serve a like notice, and a copy of the order as confirmed, on any person on whom notices with respect to the land were required to be served under section 12 above.

## **Part IV Validity and date of operation of orders and certificates**

### **23 Grounds for application to High Court**

- (1) If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provision contained therein, on the ground that the authorisation of a compulsory purchase thereby granted is not empowered to be granted under this Act or any such enactment as is mentioned in section 1(1) of this Act, he may make an application to the High Court.

- (2) If any person aggrieved by—

- (a) a compulsory purchase order, or
  - (b) a certificate under Part III of, or Schedule 3 to, this Act,
- desires to question the validity thereof on the ground that any relevant requirement has not been complied with in relation to the order or certificate he may make an application to the High Court.

- (3) In subsection (2) above "relevant requirement" means—

- (a) any requirement of this Act, or of any regulation under section 7(2) above, or

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- (b) any requirement of the Tribunals and Inquiries Act [1992]<sup>40</sup> or of any rules made, or having effect as if made, under that Act.
- (4) An application to the High Court under this section shall be made within six weeks–
- (a) in the case of a compulsory purchase order to which the Statutory Orders (Special Procedure) Act 1945<sup>41</sup> applies (and which is not excluded by section 27 below), from the date on which the order becomes operative under that Act,
  - (b) in the case of a compulsory purchase order to which the said Act of 1945 does not apply, from the date on which notice of the confirmation or making of the order is first published in accordance with this Act,
  - (c) in the case of a certificate, the date on which notice of the giving of the certificate is first published in accordance with this Act.

### 24 Powers of the court

- (1) On an application under section 23 above the court may by interim order suspend the operation of the compulsory purchase order or any provision contained therein, or of the certificate, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings.
- (2) If on the application the court is satisfied that–
- (a) the authorisation granted by the compulsory purchase order is not empowered to be granted under this Act or any such enactment as is mentioned in section 1(1) of this Act, or
  - (b) the interests of the applicant have been substantially prejudiced by any relevant requirement (as defined in section 23(3) above) not having been complied with,
- the court may quash the compulsory purchase order or any provision contained therein, or the certificate, either generally or in so far as it affects any property of the applicant.

### 25 Restriction on other court proceedings

Subject to the preceding provisions of this Part of this Act, a compulsory purchase order, or a certificate under Part III of, or Schedule 3 to, this Act, shall not, either before or after it has been confirmed, made or given, be questioned in any legal proceedings whatsoever.

<sup>40</sup> The reference to 1992 was substituted by ss18(1) and 19(2) of and Sched 3, para 14 to the Tribunals and Inquiries Act 1992 (c 53).

<sup>41</sup> 1945 (9 & 10 Geo 6) (c 18)

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### **26 Date of operation**

- (1) Subject to section 24 above, a compulsory purchase order, other than one to which the Statutory Orders (Special Procedure) Act 1945<sup>42</sup> applies, shall become operative on the date on which notice of the confirmation or making of the order is first published in accordance with this Act.
- (2) Subject to section 24 above, a certificate under Part III of, or Schedule 3 to, this Act shall become operative on the date on which notice of the giving of the certificate is first published in accordance with this Act.

### ***28 Acquisition of rights over land by the creation of new rights [not reproduced here]***

### ***32 Power to extinguish certain public rights of way [not reproduced here]***

### ***Schedule 3 Part I New rights: general [not reproduced here]***

<sup>42</sup> 1945 (9 & 10 Geo 6) (c 18).

### **(6) COMPULSORY PURCHASE (VESTING DECLARATIONS) ACT 1981**

#### **1 Application of Act [not reproduced here]**

#### **2 Interpretation ('land', 'long tenancy', 'minor tenancy')**

(1) In this Act—

"land", in relation to compulsory acquisition by an acquiring authority, has the same meaning as in the relevant enactments,

"long tenancy which is about to expire" has the meaning given by subsection (2) below,

"minor tenancy" means a tenancy for a year or from year to year, or any lesser interest...

(2) In this Act "long tenancy which is about to expire", in relation to a general vesting declaration, means a tenancy granted for an interest greater than a minor tenancy, but having on the vesting date a period still to run which is not more than the specified period (that is to say, such period, longer than one year, as may for the purposes of this definition be specified in the declaration in relation to the land in which the tenancy subsists).

In determining for the purposes of this subsection what period a tenancy still has to run on the vesting date it shall be assumed –

(a) that the tenant will exercise any option to renew the tenancy, and will not exercise any option to terminate the tenancy, then or thereafter available to him,

(b) that the landlord will exercise any option to terminate the tenancy then or thereafter available to him.

#### **3 Preliminary notices [not reproduced here]**

#### **4 Execution of declaration [not reproduced here]**

#### **5 Earliest date for execution of declaration [not reproduced here]**

#### **6 Notices under execution of declaration**

(1) As soon as may be after executing a general vesting declaration the acquiring authority shall serve—

(a) on every occupier of any of the land specified in the declaration (other than land in which there subsists a minor tenancy or a long tenancy which is about to expire), and

(b) on every other person who has given information to the acquiring authority with respect to any of that land in pursuance of the invitation published and served under section 3(1) above,

a notice in the prescribed form specifying the land and stating the effect of the declaration.

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- (2) [Section 329 of the Town and Country Planning Act 1990] (service of notices) shall apply as if this section formed part of that Act.

### **7 Constructive notice to treat [not reproduced here]**

### **8 Vesting, and right to enter and take possession [not reproduced here]**

### **9 Minor tenancies and tenancies about to expire**

- (1) This section applies where any land specified in a general vesting declaration is land in which there subsists a minor tenancy or a long tenancy which is about to expire.
- (2) The right of entry conferred by section 8(1) above shall not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the acquiring authority have served on every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of such period as is specified in the notice (not being less than 14 days) from the date on which the notice is served, they intend to enter upon and take possession of such land as is specified in the notice, and that period has expired.
- (3) The vesting of the land in the acquiring authority shall be subject to the tenancy until the period specified in a notice under subsection (2) above expires, or the tenancy comes to an end, whichever first occurs.

## **Schedule 1**

### **Part I Buildings and Gardens etc**

#### **1 Interpretation of Part 1**

In this Part of this Schedule—

"notice of objection to severance" means a notice under paragraph 2(1) below,

"land proposed to be severed" means land in respect of which notice of objection to severance is served.

#### **Objection to severance**

2. (1) If a general vesting declaration comprises part only of—

- (a) any house, building or factory, or
- (b) a park or garden belonging to a house,

any person who is able to sell the whole of the house, building, factory, park or garden may by notice served on the acquiring authority require them to purchase his interest in the whole.

- (2) Except as provided by paragraph 10 below, a notice under this paragraph shall not have effect if it is served more than 28 days after the date on which notice under section 6 of this Act is served on the person giving notice under this paragraph.

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(3) Section 8(1) of the Compulsory Purchase Act 1965 (which makes other provision for objection to severance of buildings, gardens etc.) shall not apply to land in respect of which a general vesting declaration is made.

**3.** Where notice of objection to severance is served within the time allowed in accordance with paragraph 2(2) above then notwithstanding section 8 of this Act—

- (a) the interest in respect of which the notice is served shall not vest in the acquiring authority, and
  - (b) if he is entitled to possession of the land, the acquiring authority shall not be entitled to enter upon or take possession of it,
- until the notice has been disposed of in accordance with the following provisions of this Schedule.

### **Response by acquiring authority to objection to severance**

**4.** (1) Within 3 months after a person has served on an acquiring authority a notice of objection to severance, the authority shall either—

- (a) serve notice on him withdrawing the notice to treat deemed to have been served on him in respect of his interest in the land proposed to be severed, or
  - (b) serve notice on him that the general vesting declaration shall have effect, in relation to his interest in the land proposed to be severed, as if the whole of that land had been comprised in the declaration (and in the compulsory purchase order, if part only of that land was comprised in that order), or
  - (c) refer the notice of objection to severance to the Lands Tribunal and notify him that it has been so referred.
- (2) Sub-paragraph (1)(a) above has effect notwithstanding section 7(3) of this Act.

**5.** If the acquiring authority do not take action in accordance with paragraph 4 above within the period allowed by that paragraph then at the end of that period they shall be deemed to have acted in accordance with sub-paragraph (1)(a) of that paragraph.

**6.** Where in accordance with paragraph 4 or paragraph 5 above the notice to treat deemed to have been served in respect of a person's interest in the land proposed to be severed is withdrawn, or is deemed to have been withdrawn—

- (a) that interest shall not vest in the acquiring authority by virtue of the general vesting declaration, and
- (b) If he is entitled to possession of that land, the acquiring authority shall not be entitled by virtue of that declaration to enter upon or take possession of it.



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7. Where an acquiring authority take action in accordance with paragraph 4(1)(b) above, the general vesting declaration (and, where applicable, the compulsory purchase order) shall have effect as mentioned in that sub-paragraph, whether apart from this Part of this Schedule the acquiring authority could have been authorised to acquire the interest in question in the whole of the land proposed to be severed or not.
8. (1) Where in accordance with paragraph 4(1)(c) above an acquiring authority refer a notice of objection to severance to the Lands Tribunal, and on that reference the Tribunal determines that the part of the land proposed to be severed which is comprised in the general vesting declaration can be taken—
- (a) in the case of a house, building or factory, without material detriment, or
- (b) in the case of a park or garden, without seriously affecting the amenity or convenience of the house,
- paragraph 3 above shall thereupon cease to have effect in relation to that notice.
- (2) In making a determination under this paragraph in any of the cases in sub-paragraph (1)(a) or (b) above the Tribunal shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.
9. (1) If on such a reference the Lands Tribunal does not make a determination in accordance with paragraph 8 above, the Tribunal shall determine the area of that land (being the whole of it or a part of it which includes the part comprised in the general vesting declaration) which the acquiring authority ought to be required to take; and the general vesting declaration shall have effect, in relation to the interest in that area of the person who served the notice of objection to severance, as if the whole of that area had been comprised in the general vesting declaration, whether apart from this Part of this Schedule the acquiring authority could have been authorised to acquire that interest in the whole of that area or not.
- (2) Where sub-paragraph (1) above applies, and part of the area determined by the Lands Tribunal was not comprised in the compulsory purchase order, the general vesting declaration shall have effect as mentioned in that sub-paragraph as if the whole of that area had been comprised in the compulsory purchase order as well as in the declaration.

### **Late service of notice of objection to severance**

10. (1) Where in accordance with paragraph 2(1) above a person is entitled to serve a notice of objection to severance, and it is proved—

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- (a) that he never received the notice required by section 6 of this Act to be served on him, or received that notice less than 28 days before, or on or after, the date on which the period specified in the general vesting declaration expired, and
  - (b) that a notice of objection to severance served by him was served not more than 28 days after the date on which he first had knowledge of the execution of the general vesting declaration, that notice shall have effect notwithstanding that it is served after the time allowed in accordance with paragraph 2(2) above has expired.
- (2) Where in the circumstances specified in sub-paragraph (1) above, a person serves a notice of objection to severance after the end of the period specified in the general vesting declaration,–
- (a) paragraphs 3 and 6 above shall not have effect in relation to that notice.
  - (b) paragraph 4 above shall have effect in relation to that notice as if sub-paragraph (1)(a) of that paragraph were omitted,
  - (c) paragraph 5 above shall have effect in relation to that notice with the substitution, for the words "sub-paragraph (1)(a)", of the words "sub-paragraph (1)(b)", and
  - (d) paragraph 8 above shall not have effect in relation to that notice, but without prejudice to the making by the Tribunal of any such determination as is mentioned in that paragraph.

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### **(7) TOWN AND COUNTRY PLANNING ACT 1990**

#### **329 Service of notices**

- (1) Any notice or other document required or authorised to be served or given under this Act may be served or given either—
  - (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or
  - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—
  - (a) it is addressed to him either by name or by the description of “the owner” or, as the case may be, “the occupier” of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or
  - (b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and—
    - (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or
    - (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.
- (3) Where—
  - (a) the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land, and

## APPENDIX 2

(b) it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied,

the notice or document shall be taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to “the owners and any occupiers” of that part of the land (describing it) and is affixed conspicuously to some object on the land.

[(4) This section is without prejudice to section 233 of the Local Government Act 1972 (general provisions as to service of notices by local authorities).]

### **330 Power to require information as to interests in land**

- (1) For the purpose of enabling the Secretary of State or a local authority to make an order or issue or serve any notice or other document which, by any of the provisions of this Act, he or they are authorised or required to make, issue or serve, the Secretary of State or the local authority may by notice in writing require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to give in writing such information as to the matters mentioned in subsection (2) as may be so specified.
- (2) Those matters are—
  - (a) the nature of the interest in the premises of the person on whom the notice is served;
  - (b) the name and address of any other person known to him as having an interest in the premises;
  - (c) the purpose for which the premises are being used;
  - (d) the time when that use began;
  - (e) the name and address of any person known to the person on whom the notice is served as having used the premises for that purpose;
  - (f) the time when any activities being carried out on the premises began.
- (3) A notice under subsection (1) may require information to be given within 21 days after the date on which it is served, or such longer time as may be specified in it, or as the Secretary of State or, as the case may be, the local authority may allow.
- (4) Any person who, without reasonable excuse, fails to comply with a notice served on him under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Any person who, having been required by a notice under subsection (1) to give any information, knowingly makes any misstatement in respect of it shall be guilty of an offence and liable on summary conviction to a fine not exceeding

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the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

[(6)This section shall have effect as if the references to a local authority included references to a National Park authority.]

## **APPENDIX 3 ACKNOWLEDGEMENTS**

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## **APPENDIX 4**

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