Scottish Law Commission
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RESPONSE FORM

DISCUSSION PAPER ON COMPULSORY PURCHASE

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

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Summary of Questions and Proposals

PART 1: INTRODUCTORY AND GENERAL

Chapter 1 Introduction

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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.

(Paragraph 1.14)

Comments on Proposal 1

We agree. The discussion paper amply demonstrates the scope and scale of the confused state of compulsory purchase legislation and we believe this can only be rectified by a replacement Statute.

Chapter 2 General issues

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

(Paragraph 2.56)

Comments on Proposal 2

We agree with the definition as specified (the "2010" definition) including the wider rights identified and discussed in paragraphs 2.46 to 2.55.

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

(Paragraph 2.70)

Comments on Proposal 3

We see the potential benefit for the acquiring authority and importantly, the landowner, of extending new rights over land through compulsory purchase. We support the possibility therefore of using compulsory purchase to acquire new rights where appropriate, for example to apply new real burdens or other restrictions. Our view is that if compulsory purchase is to operate efficiently and effectively then it requires flexibility as well as the protection of rights.

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

(Paragraph 2.70)

Comments on Proposal 4

No comments further to our answer to Proposal 3.

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

(Paragraph 2.73)

Comments on Proposal 5

Yes, we support this proposal. Again this could add to the flexibility of CPOs for an acquiring authority while at the same time guaranteeing appropriate protection for the landowner, as well as providing the landowner with surety of retaining ownership of the asset which could be important in the context of their individual commercial circumstances.

Chapter 3 Human rights

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

(Paragraph 3.51)

Comments on Proposal 6

We agree strongly. It is vital that this is enshrined in the new legislation if the good respect with which UK and Scottish property investment is regarded is to be supported by the new Statute. The importance of this provision is summarised in the quotation provided by the Discussion document on p.28, attributed to Lord Denning.

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

(Paragraph 3.87)

Comments on Proposal 7

We do – however it will be important that the further provisions relating to compensation are transferred to the new Statute appropriately, including issues surrounding disturbance

compensation or injurious affection.

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

Chapter 5 Procedure for obtaining a CPO

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

(Paragraph 5.5)

Comments on Proposal 8

We agree that local authorities seeking compulsory purchase should use the standard procedure. This may help to empower local authorities to make greater use of compulsory purchase.

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

(Paragraph 5.18)

Comments on Proposal 9

No comments.

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

(Paragraph 5.18)

Comments on Proposal 10

No comments

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

(Paragraph 5.20)

Comments on Proposal 11

We have no views from members to the contrary. We support the case for costs associated with surveys to be reclaimed by landowners and therefore we support the retention of this

procedure within the new Statute.

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

(Paragraph 5.24)

Comments on Proposal 12

No comments.

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

(Paragraph 5.25)

Comments on Proposal 13

We do not support the proposition that only landowners of a certain proportion should be allowed to insist upon a hearing or inquiry where they are subject to compulsory purchase of their land/property ownership.

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

(Paragraph 5.26)

Comments on Proposal 14

Yes it is important that some certainty of timescales is established for the affected landowner where Scottish Ministers seek to refer a case to the DPEA. This is after all a matter of personal rights being withdrawn which suggests the need for a stricter timescale than is the case with planning matters that are referred to the DPEA. The discussion paper amply captures this difference under later paragraph 5.30.

15. Should the DPEA have discretion over the process for determining objections to a CPO similar to that which they have in relation to planning matters?

(Paragraph 5.30)

Comments on Proposal 15

No, for the reasons previously provided in our answers to Proposals 13 and 14. The compulsory acquisition by the state/public authority of a private property/land is much more

important to an individual concerned, possibly involving their forced relocation in certain circumstances, than the success or failure of a planning application.

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

(Paragraph 5.32)

Comments on Proposal 16

We agree that this is appropriate as it allows greater flexibility for altering timescales in the light of experience.

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

(Paragraph 5.41)

Comments on Proposal 17

Although it is attractive to consider alternative methods for confirming CPOs we agree with the sentiment expressed at the top of page 70 of the discussion paper – this is essentially about the acquisition of private property by the state and even if in the public interest this is compulsion – therefore we agree that 'Such a decision is essentially a political one.' We believe that CPOs must therefore continue to be confirmed by Scottish Ministers and within a reasonable timescale in order to provide certainty for the acquiring authority and the landowner.

18. Are the current requirements for advertisement and notification of the making or confirming of a CPO satisfactory and, if not, what changes should be made, and why?

(Paragraph 5.42)

Comments on Proposal 18

Technology has clearly overtaken the existing requirements. However, we believe that a requirement to add notifications to appropriate websites (particularly local authority ones) should be additional to existing notification requirements.

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

(Paragraph 5.46)

Comments on Proposal 19

We accept that there should be an ability to revoke a CPO but appropriate compensation must be afforded to the landowner.

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

(Paragraph 5.46)

Comments on Proposal 20

Of the options outlined we would suggest the specific consent of Scottish Ministers. A restriction on the ability of an acquiring authority to make a further CPO order is attractive in the sense that the landowner will already have suffered from the making of the first CPO and will be blighted with the prospect of a second, but on balance it would appear to be too restrictive to propose an appropriate time interval before a second CPO could be laid. For example, it could be that the acquiring authority has genuinely discovered new information which led to the need for a CPO to be revoked in order for a more appropriate Order to be made.

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

(Paragraph 5.47)

Comments on Proposal 21

We believe this is a fair suggestion.

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

(Paragraph 5.50)

Comments on Proposal 22

This is an appropriate measure and will help the Scottish Government to assess the use and application of the CPO power.

23. Should there be a new Register of CPOs, or should an entry be made in the Land Register?

(Paragraph 5.50)

Comments on Proposal 23

This is an encouraging proposal – but not all land is yet registered and therefore to make such a proposal statutory could cause additional procedures and expense for acquiring authorities that is not particularly the intent of the new Statute. We suggest that while this may become an attractive idea once the land register is more complete and once other forms of legislation begin to be embedded in the responsibilities of the Keeper then it may be a better time to call for a formal Register of CPOs with the Registers of Scotland.

We would agree that eventually it should be the case that CPOs are registered and recorded within the national land register – this will help to move Scotland's Land Register more towards a Norwegian style National Land Information System. In time having CPOs and other information more centrally accessible will save costs for investors, government and individuals as it will make the process of land and property searches more up to date and efficient.

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

(Paragraph 5.59)

Comments on Proposal 24

On balance we think three years is appropriate.

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

(Paragraph 5.59)

Comments on Proposal 25

While tempting to agree with this proposal it is likely that each proposal will need to be judged on its own merits. CPOs are a significant commitment by acquiring authorities and we doubt that such a process will be entered into without due cause for thinking the wider project will take place. However, if tied to a wider development project involving other partners, possibly from the private sector, there will be elements of uncertainty that may be difficult to completely eradicate. Therefore so long as the rights of compensation, including for 'blight' and of the 'offer back' principle (Crichel Down rules) can be securely prescribed in the new Statute and its subordinate legislation, we feel that again this might be a restriction too far for acquiring authorities and that it may deter local and other public authorities from making use of CPOs.

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

(Paragraph 5.64)

Comments on Proposal 26

Yes – this is too prescriptive.

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

(Paragraph 5.64)

Comments on Proposal 27

This could broaden the scope of the inquiry unnecessarily so we would suggest that if the inquiry is solely about the right of way then this is what it should stick to.

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

(Paragraph 5.65)

Comments on Proposal 28

No comments.

Chapter 6 Challenging a (confirmed) CPO

29. Should the proposed new statute make it clear that objections to a CPO, on the basis of allegations of bad faith on the part of those preparing the Order, are not competent under whatever provision will replace paragraph 15 of Schedule 1 to the 1947 Act?

(Paragraph 6.38)

Comments on Proposal 29

No comments.

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

(Paragraph 6.38)

Comments on Proposal 30

No comments.

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

(Paragraph 6.39)

Comments on Proposal 31

No comments.

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

(Paragraph 6.44)

Comments on Proposal 32

This may not necessarily be required to be made clear on the face of the Bill but it could be helpful for Ministers to confirm during the legislative process (of the new Statute) that challenges on the grounds of the Convention should be made during the initial six week period for challenging confirmed CPOs.

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

(Paragraph 6.45)

Comments on Proposal 33

There could be exceptional circumstances where an owner feels they have not been able to exercise their rights under the Convention's articles – possibly through some serious illness for example incapacitating the owner. Although unusual it may be necessary to at least leave the possibility of an opportunity to challenge a confirmed CPO at a later date than the six week period, albeit in the event of exceptional circumstances.

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

(Paragraph 6.48)

Comments on Proposal 34

Where the Court believes that the circumstances of the procedural failure, balancing the public interest of the CPO, expense to the taxpayer and the rights of the individual merit a remedy less than absolute quashing of a CPO then yes, we would accept this is a pragmatic proposal. The onus must be on the acquiring authority however to prove it is appropriate for the CPO to have another go at completing due process.

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

(Paragraph 6.51)

Comments on Proposal 35

We support the flexibility to 'stop the clock' for CPO validity where court challenges are invoked against the CPO.

Chapter 7 Implementation of a CPO

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

(Paragraph 7.9)

Comments on Proposal 36

We agree with the proposal to restate these measures, modernised and enhanced as appropriate.

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

(Paragraph 7.15)

Comments on Proposal 37

Yes it would be helpful for the new statute to specify the known persons to whom they should serve the Notice to Treat. It will also be helpful perhaps for the Scottish Government to clarify during the consultative/legislative process that lessees of less than one year are not required to be served with a Notice to Treat. The Statute should also enable Ministers to update the list as required from time to time by way of subordinate legislation.

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

(Paragraph 7.19)

Comments on Proposal 38

It is only fair that there should be a right for landowners to receive compensation in the event of a failure to serve a notice to treat. We agree with this proposal.

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

(Paragraph 7.19)

Comments on Proposal 39

The important issue will be to determine whether there is a genuine claim for compensation or not. However, it may be that a generous time limit should be applied for the sake of closing off potential and unexpected liabilities for the acquiring authority.

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

(Paragraph 7.25)

Comments on Proposal 40

Yes – we see this as a matter of best practice, particularly where individual householders are concerned.

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

(Paragraph 7.29)

Comments on Proposal 41

The intentions of the Schedule are clear enough but it will require robust interpretation to make a fair assessment of the landowner's actions.

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

(Paragraph 7.29)

Comments on Proposal 42

This will depend upon the circumstances and we refer to our previous answer to Proposal 41 – some works may be necessary for maintenance purposes but it will be important to guard against moves to enhance value and consequently compensation levels.

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

(Paragraph 7.40)

Comments on Proposal 43

Three years appears to be appropriate, subject to particular circumstances (such as agreements or on-going tribunal or legal processes).

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

(Paragraph 7.51)

Comments on Proposal 44

The acquiring authority and landowner both need certainty. In the case of the authority then if the valuation of compensation exceeds estimates to an unviable level then they need to withdraw, with appropriate compensation made to the landowner. The landowner also deserves the opportunity to assess and appropriately identify the true value of their land based upon a successful CAAD (or simply strong valuation). If this exceeds the acquiring authority expectations and the authority then withdraws it is only right that appropriate compensation is made for the opportunity-cost of the time taken by the authority in blighting the land in question through CPO.

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

(Paragraph 7.51)

Comments on Proposal 45

Taking our response to Proposal 44 further, it would seem to us that there must be the flexibility to allow the authority to withdraw where they have begun works, but that the costs of compensation outweigh the cost of not completing the development in question.

46. Should the period after which entry can proceed, following a notice of entry, be extended to, say, 28 days?

(Paragraph 7.67)

Comments on Proposal 46

The discussion paper is clearly dissatisfied with the idea of an individual homeowner having only two weeks to decide upon a counter-notice. It could be that the new Statute could allow an extended period of Notice of Entry while retaining the ability to submit a two week notice for entry in urgent circumstances only.

47. Alternatively, should it be competent for a landowner to serve a counter-notice within a set time limit following service of a notice of entry, whether or not the acquiring authority have entered on to the land?

(Paragraph 7.67)

Comments on Proposal 47

Yes – there could be a number of reasons for the acquiring authority not to have entered the land which will have nothing to do with the landowner. Subject to time constraints therefore yes we believe it is right for a landowner to be able to issue a counter-notice under certain circumstances where an acquiring authority has not entered the land in question.

In relation to our previous answer to proposal 46 therefore it seems to us that there are good grounds for enabling both approaches and that guidance from Scottish Ministers should establish the circumstances relevant to these different approaches to safeguarding the rights of the landowner while enabling the acquiring authority the ability to proceed with their purchase effectively.

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

(Paragraph 7.73)

Comments on Proposal 48

Under particular circumstances the notice of entry will lead to uncertainty and distress for a householder or business – therefore it should not be left open indefinitely. That said there must be a reasonable period of time allowed where an acquiring authority suffers unforeseen delays to their ability to enter the land. We believe that further consultation around the draft Bill will inform the SLC/Scottish Government about the appropriate length of time for a notice of entry to remain in force before it lapses. We suspect a reasonable period of time may be longer than 28 days however.

49. Should the acquiring authority be required to serve notice of their intention to make a GVD on holders of a short tenancy or a long tenancy with less than one year to run?

(Paragraph 7.78)

Comments on Proposal 49

The effect of a GVD upon a short leaseholder or a long leaseholder with less than a year to remain is nonetheless the same as for a longer term leaseholder or property owner - they are required to quit the premise and relocate. We do not see the justification for their exclusion therefore.

On practical grounds we would allow that for lessees of less than 12 weeks tenure then it would be inefficient to require notification however, bearing in mind the process of the GVD and Notice of Entry.

50. Where a GVD applies to part only of a house, factory, park or garden, do the current provisions adequately safeguard the interests of the acquiring authority and the landowner and, if not, what alterations should be made?

(Paragraph 7.86)

Comments on Proposal 50

Ideally, the acquiring authority and landowner will have effectively communicated ahead of such a notice being required – but the Statute cannot depend on this of course. We believe the counter notice for severance is effective for the landowner but we have reservations about the timescale of 28 days. This is a short time to secure appropriate advice and to lodge the relevant notice for severance. This period of notice is limited somewhat by the two month notice of the GVD. Possibly a six week period for a severance notice to be made to the acquiring authority is a reasonable compromise.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

Comments on Proposal 51

There should be appropriate direction and guidance from UK and Scottish Ministers to acquiring authorities on the appropriate method of implementing a CPO. This should act to counter the concerns raised by the discussion paper on the relatively short length of timescale involved with a GVD.

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

(Paragraph 7.89)

Comments on Proposal 52

In our answer to proposal 51 we suggest an amended timescale for implementing a GVD – on this basis our answer must therefore be 'no'.

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

(Paragraph 7.97)

Comments on Proposal 53

We agree – no further comments.

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

(Paragraph 7.98)

Comments on Proposal 54

We agree - no further comments.

55. In a situation falling within section 12(5) of the 1963 Act, the date upon which compensation should be assessed, and the date from which interest on the compensation should run, should be the date upon which reinstatement of the building on another site could reasonably be expected to begin.

(Paragraph 7.99)

Comments on Proposal 55

To be consistent with proposals 53 and 54 we believe this is the correct approach.

56. Should the proposed new statute confer upon the LTS a discretion to fix the valuation date at a date different from any of those mentioned above, where it appears to the LTS to be in the interests of justice?

(Paragraph 7.101)

Comments on Proposal 56

Yes.

57. Where an acquiring authority are in genuine doubt as to whether or not they own a particular part of a parcel of land which they intend to acquire, where title is in the Register of Sasines, they should be able to:

(a) use a GVD in relation to the whole of the land, and

(b) register the GVD in the Land Register.

(Paragraph 7.106)

Comments on Proposal 57

We concur with this proposal which we believe is important in the context of completing the land register as well as necessary and effective for the acquiring authority.

58. The provisions of sections 84 to 86 of the 1845 Act should be repealed and not replaced.

(Paragraph 7.114)

Comments on Proposal 58

No comments.

59. What, if any, alterations should be made to the time limits for the various steps involved in the implementation of a CPO?

(Paragraph 7.115)

Comments on Proposal 59

No further comments at this stage to answers previously supplied.

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

(Paragraph 7.120)

Comments on Proposal 60

It appears to us that the separate methods of implementing a CPO have arisen as a result of

multi-various legislation intended to deliver compulsory purchase. The opportunity of a new Statute intended to clarify and codify the CPO process seems to us to be an ideal opportunity to take the best features of the two processes and to weld them into a streamlined and better understood process. We support this key proposal therefore.

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

(Paragraph 7.120)

Comments on Proposal 61

Our only comment at this point is to highlight the issue of severance as an important point to be considered as part of the new procedures at the implementation stage.

Chapter 8 Conveyancing procedures

62. Where there has been a confirmed CPO the land can be transferred to the acquiring authority by means of an ordinary disposition registered in the Land Register.

(Paragraph 8.39)

Comments on Proposal 62

No comments.

63. Do consultees agree that, if the GVD procedure is retained, the current rules on transfer of the land should continue, namely that:

(a) title to the land will vest in the acquiring authority at the end of the period specified in the GVD allowing the authority to take entry to the land, and

(b) registration in the Land Register will be required for the acquiring authority to obtain the real right of ownership?

(Paragraph 8.40)

Comments on Proposal 63

See our response to proposal 64.

64. The existing methods of transferring the land following a notice to treat should be replaced with a unitary method, to be known provisionally as a Compulsory Purchase Notice of Title. This would be executed by the acquiring authority.

(Paragraph 8.42)

Comments on Proposal 64

The underlying objective must be to inform the Land Register – accordingly we agree that if Notice to treat and GVDs remain as distinctive options for CPO implementation then we agree that CPNT should be considered.

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

(Paragraph 8.43)

Comments on Proposal 65

We agree.

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

(Paragraph 8.45)

Comments on Proposal 66

Yes.

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

(Paragraph 8.46)

Comments on Proposal 67

Yes – this could be important for wider reasons including the introduction of Community Right to Buy / possible introduction of compulsory sales of land through the Scottish Land Reform Bill. In addition to the general need for an accurate record of land transfer, if the Crichel Down rules are to be made statutory as asked by this discussion paper proposal 160, then it will be important for appropriate records of compulsory purchase to be retained with the Keeper.

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

(Paragraph 8.54)

Comments on Proposal 68

We agree.

69. The acquiring authority may serve a notice to treat on any liferenter and bring the liferent to an end in return for compensation.

(Paragraph 8.57)

Comments on Proposal 69

We agree.

70. It should be made clear that, on the acquiring authority becoming owner of the land, any subsisting securities would be extinguished.

(Paragraph 8.65)

Comments on Proposal 70

It will be important to purify the title, with appropriate compensation to the security holder – we agree.

71. Do the 1997 Act section 194 and the 2003 Act sections 106 and 107 require reform or consolidation?

(Paragraph 8.75)

Comments on Proposal 71

No comments.

72. It should be competent to acquire new rights subordinate to ownership by means of a CPNT or GVD or equivalent.

(Paragraph 8.81)

Comments on Proposal 72

This proposal, if enacted by Parliament, will enhance the flexibility and consequently the effectiveness of the CPO process. We agree strongly with this proposal therefore.

Chapter 9 The Mining Code

73. Should provision along the lines of the Code be included in the proposed new statute and, if so, should any additions or deletions be made?

(Paragraph 9.26)

Comments on Proposal 73

No comments.

PART 3: COMPENSATION

Chapter 11 Valuation of land to be acquired – basic position

74. The concept of "value to the seller" should continue to reflect any factors which might limit the price which the seller might expect to receive on a voluntary sale.

(Paragraph 11.30)

Comments on Proposal 74

We agree.

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

(Paragraph 11.34)

Comments on Proposal 75

It should be acceptable for the valuation of the acquired and retained land to be taken on the basis of the whole land which may have been previously and explicitly assembled by the landowner for the purpose of development as a whole. The landowner may well be subject to various financial covenants predicated on the value of the land as a whole and it would be unjust for a valuation to fall short of this on the grounds of severance.

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

(Paragraph 11.42)

Comments on Proposal 76

There appears to be some uncertainty on this matter of compensation in the circumstances of negative equity. It is possibly an area where the discussion paper encroaches upon a matter of public policy for it would be UK and Scottish Ministers who will ultimately need to take a view on the right approach to compensation in these circumstances.

Clearly there is a question of fairness whereby a property owner, who happens to be in negative equity because of fluctuations in the property market and economy, is compulsorily purchased and therefore potentially left in severe financial hardship because of the actions of the acquiring authority.

The law appears to be somewhat deficient in this area. One view could be that the landowner and security holder should be protected from financial loss caused by the timing of a CPO unless there is an overwhelming public interest not to do so.

77. Provision along the lines of rules 2, 4 and 5 should be included in the proposed new statute.

(Paragraph 11.53)

Comments on Proposal 77

We agree.

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

(Paragraph 11.55)

Comments on Proposal 78

We would resist the temptation to be overly specific in designing the test to be incorporated into the new Statute. The paper notes the Law Commission's suggestion of 'adapted and normally used' – this appears to allow a better interpretation than 'devoted to a purpose'.

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

(Paragraph 11.58)

Comments on Proposal 79

No comments.

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

(Paragraph 11.66)

Comments on Proposal 80

No comments.

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

81. How should the "scheme" be defined?

(Paragraph 12.78)

Comments on Proposal 81

The discussion paper is uncomfortable with the status of rule 3 and its basis in public policy. We do not comment here and suggest that until the views of Ministers are known on what is and is not acceptable grounds for compensation as a result of the scheme in question, then it seems to us to be difficult for the SLC to make firm proposals to achieve the level of transparency in the new Statute that would be deemed to be welcome by improving on the current status of Rule 3.

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

(Paragraph 12.78)

Comments on Proposal 82

No comments.

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

(Paragraph 12.78)

Comments on Proposal 83

No comments.

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

(Paragraph 12.78)

Comments on Proposal 84

No comments.

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

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

(Paragraph 13.14)

Comments on Proposal 85

Insofar as this feeds into the deemed market price, then yes.

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

(Paragraph 13.19)

Comments on Proposal 86

We agree this should form part of the consideration.

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

(Paragraph 13.22)

Comments on Proposal 87

This should be considered in the context of a unitary approach to CPO implementation. However, where a planning permission is successful in the short period between a GVD or Notice to Treat being submitted and their effective date, then the successful planning permission ought to be taken into account for it represents the material loss suffered by the landowner for which he may have invested considerable resource to achieve.

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

(Paragraph 13.30)

Comments on Proposal 88

The difference in context for the private landowner and the acquiring (public) authority are important here. We suspect in most cases the relevance of assuming planning permission for the acquiring authority proposals will be unhelpful to the landowner seeking compensation for their land. But this may not always be the case. We suspect the answer for the new statute will be to find a mechanism for accepting the planning permission assumption where appropriate for the landowner, in order to protect their rights but to be able to disregard the assumption where this would infringe upon the rights of a landowner.

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

(Paragraph 13.30)

Comments on Proposal 89

We have no further comments to our answer to proposal 88.

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

(Paragraph 13.34)

Comments on Proposal 90

We agree that this provision is outdated. Therefore we agree with the proposal not to reinstate it into the new Statute.

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

(Paragraph 13.36)

Comments on Proposal 91

We see no need for a statutory assumption to be implanted into the new Statute along these lines.

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

(Paragraph 13.40)

Comments on Proposal 92

Again the introduction of a unitary approach to CPO implementation will need to take this consideration. The dates of making a Notice to treat or GVD would appear to be correct though in advance of any proposal for a unitary approach to CPO implementation.

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

(Paragraph 13.59)

Comments on Proposal 93

We agree.

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

(Paragraph 13.61)

Comments on Proposal 94

We agree.

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

(Paragraph 13.68)

Comments on Proposal 95

We agree as well with the logic of the Law Commission report.

We agree with this proposal therefore.

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

(Paragraph 13.76)

Comments on Proposal 96

We believe these provisions should be reviewed before any decision on repeal is made. There could be a case for compensation where land has been alternatively used by an acquiring authority and for whatever reason, not used for the purpose intended at the time of the CPO, with planning permission granted subsequently to the landowner for planning permission that would have added value to their investment. We suspect the situations will be very rare and unusual however so we would not rule out repeal further to a review of the provision.

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

(Paragraph 13.76)

Comments on Proposal 97

This question should form part of the review previously suggested. With the time for extant planning permission reduced to three years in Scotland we feel that allowing ten years for successful planning permission subsequent to a CPO is probably overly generous and a five year period is probably more sensible, should the provision remain.

Chapter 14 Valuation of land to be acquired - CAADs

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

(Paragraph 14.6)

Comments on Proposal 98

The answer is probably yes, and it should be done fairly expeditiously to avoid undue uncertainty for the acquiring authority and the landowner over the level of compensation due.

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

(Paragraph 14.12)

Comments on Proposal 99

No – this needs to be reviewed.

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

(Paragraph 14.19)

Comments on Proposal 100

We agree.

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

(Paragraph 14.30)

Comments on Proposal 101

To ensure consistency of approach we agree.

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

(Paragraph 14.30)

Comments on Proposal 102

Yes.

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

(Paragraph 14.30)

Comments on Proposal 103

To support consistency – yes.

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

(Paragraph 14.31)

Comments on Proposal 104

No comments.

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

(Paragraph 14.33)

Comments on Proposal 105

We feel that the right to insist upon an inquiry is an important right for the claimant – it is in examination that key factors will often be brought to light that are not otherwise explored and therefore where CPO is concerned we feel it is important to safeguard this right to be heard.

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

(Paragraph 14.36)

Comments on Proposal 106

We believe that one month should be sufficient – we would wish to avoid extending the process much further. On a point of consistency we observe that the discussion paper refers to different periods of time in several places and it would be helpful if the new statute could introduce some consistency of approach – i.e. to use days or weeks instead of months and years. This would aid consistency as well as accuracy for the subsequent users of the legislation.

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

(Paragraph 14.53)

Comments on Proposal 107

The new statute should at least be clear that the reference to the Scottish Ministers will in practice mean the DPEA.

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

(Paragraph 14.53)

Comments on Proposal 108

If the LTS is identified in the new Statute then yes – but our feeling is that appeals should still be to Scottish Ministers because the wielding of CPOs is frequently a political decision, or inspired by a political imperative. As with our previous answer however it should be clear that reference to Scottish Ministers will mean in practice the DPEA.

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

(Paragraph 14.64)

Comments on Proposal 109

No comments

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

(Paragraph 14.64)

Comments on Proposal 110

No comments.

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

(Paragraph 14.64)

Comments on Proposal 111

No comments.

Chapter 15 Consequential loss – retained land

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

(Paragraph 15.18)

Comments on Proposal 112

It is important to acknowledge the whole effect of a CPO upon a landowner – so yes, we agree with this proposal.

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

(Paragraph 15.25)

Comments on Proposal 113

This would a clear and transparent purpose to the new Statute for the assessment of compensation as well as better representing the loss to a landowner. On this basis, we support this proposal.

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

(Paragraph 15.37)

Comments on Proposal 114

This would seem to be necessary in light of our support for proposal 113 – we support proposal 114 therefore.

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

(Paragraph 15.44)

Comments on Proposal 115

We respect the fact that an acquiring authority will wish to avoid duplication of compensation, however, we have previously argued that compensation should be assessed based on the whole effect of a CPO and its consequences for retained land in particular. We have reservations about limiting the basis for compensation for injurious affection therefore. Should this proposal be taken forward however it will be important to ensure that the opportunity for full disturbance loss to be represented in compensation is supported.

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

(Paragraph 15.49)

Comments on Proposal 116

We accept this proposal – there needs to be flexibility to allow such arrangements and it ought to be in the interests of both parties to find a suitable agreement for accommodation works where they are required.

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

(Paragraph 15.59)

Comments on Proposal 117

No comments.

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

(Paragraph 15.70)

Comments on Proposal 118

We do not believe that betterment should be required to be set off but it could form part of an overall agreement on compensation with the landowner. The narrow term of requiring betterment to be set off should therefore not be reinstate din the new Statute.

Chapter 16 Consequential loss - disturbance

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

(Paragraph 16.30)

Comments on Proposal 119

We agree – the analysis of loss for market value of land and of disturbance are two different disciplines and should not be merged.

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

(Paragraph 16.34)

Comments on Proposal 120

This must form a part of the new Statute if rights are to be properly preserved.

121. Should the principle of causation in relation to disturbance compensation be set out in the proposed new statute?

(Paragraph 16.38)

Comments on Proposal 121

No comments.

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

(Paragraph 16.44)

Comments on Proposal 122

We agree.

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

(Paragraph 16.45)

Comments on Proposal 123

We agree.

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

(Paragraph 16.47)

Comments on Proposal 124

We believe that this should be the case if it can be proven.

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

(Paragraph 16.50)

Comments on Proposal 125

We think that this should be the case – it appears to us to be unfair that an investor cannot fully claim compensation for loss of return where CPO is concerned.

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

(Paragraph 16.57)

Comments on Proposal 126

No comments.

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

(Paragraph 16.69)

Comments on Proposal 127

No comments.

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

(Paragraph 16.77)

Comments on Proposal 128

No comments.

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

(Paragraph 16.78)

Comments on Proposal 129

The claimant is not the person causing the CPO – we have reservations with the proposal to impose a duty to mitigate loss therefore – after all what appears to be reasonable actions to mitigate to an acquiring authority may not be reasonable to a claimant in terms of disrupting their normal business in order to mitigate the loss associated with a CPO that they did not instigate.

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

(Paragraph 16.88)

Comments on Proposal 130

Yes – this should be possible where it is appropriate.

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

(Paragraph 16.92)

Comments on Proposal 131

We feel that it will be difficult to fully capture the appropriate checks and balances implied in the discussion on disturbance loss. The factors applicable can greatly vary between strong and weak economic environments, market sectors and the circumstances of the business in question.

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

(Paragraph 16.99)

Comments on Proposal 132

We believe that a broader period of time than the valuation date is probably correct but there needs to be a cut-off point at some stage for the loss to be finalised. Subject to further review we think that a point of one year following the relocation of the business should be sufficient to provide evidence of impact of disturbance where a claim is brought forward by the dispossessed landowner.

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

(Paragraph 16.99)

Comments on Proposal 133

Yes.

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

(Paragraph 16.101)

Comments on Proposal 134

We agree.

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

(Paragraph 16.104)

Comments on Proposal 135

Yes.

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

(Paragraph 16.104)

Comments on Proposal 136

We are unsure that the LTS would be the right body to make a proper assessment upon appeal of a disturbance loss – this may therefore need to be returned to the courts.

Chapter 17 Non-financial loss

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

(Paragraph 17.14)

Comments on Proposal 137

We are not convinced that the current system of compensation fully addresses the loss and inconvenience caused to a homeowner or farm owner. We suspect this is again an area where further review is required which will ultimately require a political view to be taken on a number issues. For the purposes of this discussion paper we have at this point no further comments in this area.

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

(Paragraph 17.21)

Comments on Proposal 138

No comments further to our answer to proposal 137.

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

(Paragraph 17.21)

Comments on Proposal 139

No further comments to our answer to proposal 137.

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

(Paragraph 17.21)

Comments on Proposal 140

No further comments to our answer to proposal 137.

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

(Paragraph 17.28)

Comments on Proposal 141

No comments.

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

(Paragraph 17.33)

Comments on Proposal 142

We believe there should be some statutory compensation for disturbance and non-financial loss.

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

Chapter 18 Process for determining compensation

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

(Paragraph 18.4)

Comments on Proposal 143

We agree.

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

(Paragraph 18.17)

Comments on Proposal 144

No comments.

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

(Paragraph 18.19)

Comments on Proposal 145

We agree.

146. Should it be made clear, in the proposed new statute, that a six-year time limit to claim compensation runs from the date of vesting (or from the date when the claimant first knew, or could reasonably have been expected to have known, of the date of vesting)?

(Paragraph 18.22)

Comments on Proposal 146

We support improving the clarity of time limits for compensation claims and the new Statute offers an appropriate opportunity to deliver this clarity.

147. Should it be made clear, in the proposed new statute, that the same time limit operates for any claim of disputed compensation, regardless of whether it follows a notice to treat or a GVD?

(Paragraph 18.22)

Comments on Proposal 147

Yes.

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

(Paragraph 18.23)

Comments on Proposal 148

Six years is a time limit and not a target for compensation to be agreed. We are drawn to the idea of a three year limit to be set.

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

(Paragraph 18.23)

Comments on Proposal 149

Yes.

150. Should the current rules on expenses be amended to allow the LTS a wider discretion to award claimants all of their reasonable expenses in some situations, even if they are ultimately awarded a smaller sum than had been offered?

(Paragraph 18.26)

Comments on Proposal 150

We support enabling discretion for the LTS but it is important that the landowner has the right to seek the appropriate level of compensation.

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

(Paragraph 18.27)

Comments on Proposal 151

A Protective Expenses Order is likely to be required in circumstances where expenses could become unmanageable for claimants. It should be borne in mind that the claimant is only claiming because of a CPO that is being imposed on them. However, we share the misgivings that PEOs can encourage frivolous claims and therefore their award must be rigorously scrutinised.

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

(Paragraph 18.29)

Comments on Proposal 152

There should be a prescribed form to ensure consistency - we agree with this proposal.

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

(Paragraph 18.31)

Comments on Proposal 153

Yes, we believe the burden of compensation should lie with the acquiring authority rather than homeowners and businesses that will typically have less access to finance and are being placed in a potential situation of hardship.

154. Should it be competent for the LTS to provide an enforceable valuation figure for an advance payment?

(Paragraph 18.33)

Comments on Proposal 154

When enforcement is required we would support the case for the LTS to be employed.

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

(Paragraph 18.34)

Comments on Proposal 155

No comments.

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

(Paragraph 18.36)

Comments on Proposal 156

We agree.

157. Should the LTS have discretion to:

(a) provide for interest from a date earlier than its award, and

(b) increase the rate of interest where it finds that there has been unreasonable conduct by an acquiring authority?

(Paragraph 18.38)

Comments on Proposal 157

No comments.

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

(Paragraph 18.50)

Comments on Proposal 158

No comments

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

(Paragraph 18.50)

Comments on Proposal 159

No comments.

Chapter 19 Crichel Down Rules

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

(Paragraph 19.5)

Comments on Proposal 160

We support the case for putting the Rules onto the statute book in order to achieve consistency and transparency.

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

(Paragraph 19.9)

Comments on Proposal 161

We believe that on balance if land has been subject to compulsion then yes, its former owners should have a right of pre-emption.

162. Should the obligation to offer back land continue to be limited to cases where the land has undergone no material change since the date of acquisition?

(Paragraph 19.11)

Comments on Proposal 162

The scope of the Rules should be reviewed although at this stage we do not wish to suggest,

ahead of a review, any particular widening or further restrictions.

163. Are the current provisions setting out the interests which qualify for an offer to buy back land satisfactory?

(Paragraph 19.12)

Comments on Proposal 163

We believe this should be subject to review.

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

(Paragraph 19.15)

Comments on Proposal 164

Again the detail of the rules should be subject to review before they are placed on a statutory footing. However, we support the notion that the different characteristics of land make it unlikely that the same time limit is appropriate for all types of land.

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

(Paragraph 19.15)

Comments on Proposal 165

No comments.

166. Should the seven exceptions to the obligation to offer back, currently provided for in the Rules, be retained and are there other exceptions which should be included?

(Paragraph 19.16)

Comments on Proposal 166

No comments.

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

(Paragraph 19.17)

Comments on Proposal 167

No comments.

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

(Paragraph 19.21)

Comments on Proposal 168

No comments at this stage.

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

(Paragraph 19.24)

Comments on Proposal 169

The discussion paper makes the point that this provision is analogous to the rights of landowners to seek compensation for a period of time for potential planning permission – therefore we suspect that it will be appropriate for these two time limits to be linked so if the landowner's rights are limited to a shorter time period then so should be the time period available to the relevant public (or successor) authority.

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

(Paragraph 19.26)

Comments on Proposal 170

We agree.

Chapter 20 Miscellaneous issues

171. Should section 89 of the 1845 Act be repealed and not re-enacted?

(Paragraph 20.4)

Comments on Proposal 171

No comments.

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

(Paragraph 20.5)

Comments on Proposal 172

We agree.

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

(Paragraph 20.10)

Comments on Proposal 173

We believe the opportunity for some harmonisation is welcome while respecting the loss incurred on holders of short leases, or of leases with less than a year to expire, may experience.

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

(Paragraph 20.18)

Comments on Proposal 174

Yes, there should be cognisance taken of the likelihood of renewal and the consequent loss of this expectation for the parties involved.

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

(Paragraph 20.23)

Comments on Proposal 175

We agree.

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

(Paragraph 20.27)

Comments on Proposal 176

Yes, we believe that this is equitable. Again, it is not the landowner's fault that the tax is crystallised at this stage to a probably disadvantageous degree to their personal circumstances.

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

(Paragraph 20.29)

Comments on Proposal 177

We have no further comments.

General Comments

It has been the view of the SPF that CPOs are a vital part of the development and regeneration toolkit that until recently have been little utilised. In recent years there appears to be a greater willingness of Scottish local authorities to once again make use of CPO powers. We suspect that this will become an increasing requirement as public authorities take a greater lead in regeneration initiatives. In addition the continual requirement for infrastructure investment and the return of complicated mixed-use development projects in urban centres covering significant layers of land titles makes this a particularly important time to overhaul, clarify and modernise Scottish CPO legislation.

In addition the introduction in Scotland of enhanced or additional policies of compulsory sale of land (Community Empowerment Bill and the land reform Bill respectively) suggests that a number of features of CPOs and, by extension, the non-statutory 'Crichel Down' rules require that we take the opportunity to improve our compulsory purpose powers and its associated processes of valuation and compensation in particular.

The Scottish Property Federation will be pleased to continue to support this important SLC initiative.

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