



Department for  
Communities and  
Local Government

Please note:

This circular has been replaced by the following guidance:

**[Compulsory purchase process and the Crichel Down Rules](#)**

29 October 2015

# CIRCULAR FROM THE OFFICE OF THE DEPUTY PRIME MINISTER

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ODPM Circular 06/2004  
Office of the Deputy Prime Minister  
Eland House, Bressenden Place, London SW1E 5DU

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31 October 2004

## COMPULSORY PURCHASE *and* THE CRICHEL DOWN RULES

### INTRODUCTION

1. Part 1 of the Memorandum to this Circular provides updated and revised guidance to acquiring authorities in England on the use of compulsory purchase powers.
2. Part 2 of the Memorandum sets out revised Crichel Down Rules, with accompanying new guidance, on the disposal of surplus land in England acquired by, or under the threat of, compulsory purchase. The Rules are included for the convenience of local authorities and other statutory bodies, to whom they are commended.
3. The content of this Circular and the Memorandum has no statutory status, and is guidance only.

### CANCELLATIONS

4. ODPM Circular 02/2003 *Compulsory Purchase Orders* is cancelled except to the extent that it is applicable to earlier compulsory purchase orders to which Part 1 of the Memorandum to this Circular is not applicable<sup>1</sup>.
5. The version of the Crichel Down Rules published in 1992 by the Department of the Environment and the Welsh Office is superseded in England (and for certain land in Wales<sup>2</sup>) by the Rules set out in Part 2 of the Memorandum to this Circular.

### STAFFING AND FINANCIAL IMPLICATIONS

6. Action in accordance with this Circular and Memorandum will have no significant effect on central or local government staffing levels or expenditure.

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<sup>1</sup> See paragraph 9 of Part 1 of the Memorandum

<sup>2</sup> See Rule 2 of Part 2 of the Memorandum

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# MEMORANDUM

## PART 1 – COMPULSORY PURCHASE

### INTRODUCTION

1. Ministers believe that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.
2. The purpose of this Part of the Memorandum is to provide guidance to acquiring authorities in England making compulsory purchase orders to which the Acquisition of Land Act 1981 (as amended) applies. Its aim is to help them to use their compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory or administrative requirements, to ensure that orders progress quickly and are without defects. It is not, however, intended to be comprehensive<sup>1</sup>. It concentrates mainly on those policy issues, procedures and administrative requirements to which authorities need to have regard to assist the speedy handling of their orders by the relevant confirming Department, along with guidance on certain key elements of the implementation and compensation arrangements. For convenience, an Annex explaining the changes to compulsory purchase and compensation legislation made by Part 8 of the Planning and Compulsory Purchase Act 2004 is also included.
3. The main topics covered are:

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4. Appendices A to W to this Part are detailed supplementary explanatory notes, and relate to powers, procedural issues and allied matters including certificates of appropriate alternative development (see list on page 20).

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<sup>1</sup> More detailed guidance on managing the process is provided, for example, in *The Compulsory Purchase Procedure Manual*, available on subscription, price £250 including CD-ROM and access to dedicated Web-site, from The Stationery Office (TSO); telephone order line 0870 600 5522, quoting subscription category 700 30 95.

5. The content of this Part has no statutory status and is guidance only. The procedural guidance in the Appendices about submission of orders for confirmation should, however, be observed as closely as possible in the interest of avoiding delay incurred by the need to clarify details after submission.
6. The advice in this Part applies to orders which are to be confirmed by any one or more of the following:
  - the Deputy Prime Minister and First Secretary of State;
  - the Secretary of State for Transport;
  - the Secretary of State for Trade and Industry;
  - the Secretary of State for Culture, Media and Sport;
  - the Secretary of State for Health;
  - the Secretary of State for Work and Pensions;
  - the Secretary of State for the Home Department;
  - the Secretary of State for Education and Skills;
  - the Secretary of State for Environment, Food and Rural Affairs; or
  - the National Assembly for Wales (in respect of an order made for flood defence/land drainage purposes covering land in England and Wales, acting jointly with the Secretary of State for Environment, Food and Rural Affairs).
7. References in this Part to ‘the confirming Minister’ or ‘the Department’ should be read as referring to the Minister or Department responsible for confirmation. References to ‘the Secretary of State’ are clarified where they occur as necessary (NB, the Deputy Prime Minister acts in his formal capacity as First Secretary of State). In addition to the guidance in this Part, including any relevant Appendices, authorities should have regard to any particular requirements of the confirming Department and/or of the legislation granting the specific acquisition powers being exercised.

## TERMS USED

8. In this Part (including the Appendices and Annex), meanings are as follows:

'the 1961 Act'	Land Compensation Act 1961
'the 1965 Act'	Compulsory Purchase Act 1965
'the 1973 Act'	Land Compensation Act 1973
'the 1981 Act'	Acquisition of Land Act 1981
'the 1990 Act'	Town and Country Planning Act 1990
'the Listed Buildings Act'	Planning (Listed Buildings and Conservation Areas) Act 1990
'the 1993 Act'	Leasehold Reform, Housing and Urban Development Act 1993
'the 1998 Act'	Regional Development Agencies Act 1998
'the 2004 Act'	Planning and Compulsory Purchase Act 2004
'the 1990 Inquiries Procedure Rules'	Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 (SI 1990 No. 512)
'the 2004 Prescribed Forms Regulations'	Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595)
'the 2004 Written Representations Regulations'	Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004 No. 2594)
'acquiring authority'	meaning assigned by s7(1) of the 1981 Act

## TRANSITION

9. The amendments to the 1981 Act in sections 100 and 102 of the 2004 Act relating to the making and confirmation of an order do not apply to an order of which the newspaper notice under section 11 of the 1981 Act has been published before 31 October 2004 (the commencement date for those provisions). The provisions of this Part are only applicable to an order to which the amended provisions of the 1981 Act provided for in sections 100 and 102 apply. The amendments to section 226(1)(a) of the 1990 Act in section 99 of the 2004 Act are not applicable to an order made before the

date of commencement of section 99<sup>2</sup>, being 31 October 2004. Appendix A to this Part is only applicable to such orders made on or after that date. (See paragraph 3 of the Circular for cancellations.)

## **RELATED CIRCULARS**

10. DoE Circular 1/90 gives detailed guidance on the 1990 Inquiries Procedure Rules. Advice on the forms of orders to which the 1994 Regulations apply is given in Appendix U to this Part.

11. This Part should be read with the following:

DoE Circular 8/93: Award of costs incurred in planning and other (including compulsory purchase order) proceedings

DoT Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highways schemes and car parks for which the Secretary of State for Transport is the confirming authority; and

PPG 15 – orders affecting historic buildings and conservation areas.

## **POWERS**

13. An acquiring authority can only make use of the 1981 Act statutory procedures for the compulsory acquisition of land where an enabling power is provided in an enactment. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under that particular legislation and the types of acquiring authority by which it can be exercised.
14. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought; and that, in turn, will influence the factors which the confirming Minister will want to take into account in determining confirmation.
15. Authorities should look to use the most specific power available for the purpose in mind, and only use a general power where unavoidable<sup>3</sup>. Factors relevant to specific individual powers are considered in Appendices A to K. Those are intended to supplement, rather than to replace, the general guidelines set out in the following paragraphs.

## **JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER**

16. It is for the acquiring authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts. The following guidance indicates the factors to which a

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<sup>2</sup> See section 99(5) of the 2004 Act.

<sup>3</sup> For instance, although the courts have held that the planning compulsory purchase power in section 226(1)(b) of the 1990 Act may be used to acquire a house that has become dilapidated, the Secretary of State would normally expect such acquisitions to be made under Housing Act powers (see Appendix E).

confirming Minister may have regard in deciding whether or not to confirm an order, and which acquiring authorities might therefore find it useful to take into account.

17. A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.
18. The confirming Minister has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land it is proposed to acquire compulsorily. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Part is not intended to imply that the confirming Minister will require any particular degree of justification for any specific order. Nor will a confirming Minister make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required immediately in order to secure the purpose for which it is to be acquired.
19. If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Human Rights Act reinforces that basic requirement.

### **Resource implications of the proposed scheme**

20. In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required. It may be that the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.
21. The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could



be made available immediately to cope with any acquisition resulting from a blight notice<sup>4</sup>.

## **Impediments to implementation**

22. In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence.
23. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld. In particular, this means that, irrespective of the legislative powers under which the actual acquisition is being proposed, the provisions of section 38(6) of the 2004 Act require that the scheme which is the subject of the planning application should be in accordance with the development plan for the area unless material considerations indicate otherwise. Such material considerations might include, for example, the provisions of the local authority's Community Strategy or supplementary planning guidance (as defined in PPS12) which has been subject to public consultation as required by regulations<sup>5</sup>.

## **PREPARING AND MAKING AN ORDER**

### **Preparatory work**

24. Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.
25. Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings. Early negotiations with statutory undertakers and similar bodies may pay dividends later on. Likewise where railway lands or assets are likely to be affected by proposals including the

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<sup>4</sup> Blight notices under section 150 of the 1990 Act can only be served in the circumstances listed in Schedule 13 to that Act.

<sup>5</sup> The Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004 No. 2204).

use of compulsory purchase early consultation with the Strategic Rail Authority, Network Rail and the relevant Train Operating Company is advised.

### **Use of Alternative Dispute Resolution techniques**

26. In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to **alternative dispute resolution (ADR) techniques**. These should involve a suitably qualified independent third party and should be available wherever appropriate<sup>6</sup> throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed. The use of ADR can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. It also echoes the spirit of the Government's own pledge to settle legal disputes to which it is a party by means of mediation or arbitration wherever appropriate and the other party agrees<sup>7</sup>.

### **Other means of involving those affected**

27. Other actions which acquiring authorities should consider initiating during the preparatory stage include:
- providing full information about what the compulsory purchase process involves<sup>8</sup>, the rights and duties of those affected and an indicative timetable of events, all in a format accessible to those affected; and
  - appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.
28. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible. This means that the authority should be in a position to make, advertise and submit a fully documented order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the order is made correctly and under the terms of the most appropriate enabling power.

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<sup>6</sup> Bearing in mind that statutory objectors have a statutory right to be heard at an inquiry and claimants have a statutory right of recourse to the Lands Tribunal to determine compensation disputes.

<sup>7</sup> *Government pledges to settle legal disputes out of court*, Press Notice by Lord Chancellor's Dept, 117/01, 23 March 2001.

<sup>8</sup> To this end, authorities might find it helpful to offer copies of Booklet 1: *Compulsory Purchase Procedure* to anyone expressing concerns. It is published by ODPM as part of a series of five public information booklets on the compulsory purchase and compensation system, all of which are available on request, free of charge, from 'ODPM Free Literature', PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: odpm@twoten.press.net. Booklet 1 describes the other four booklets which are also available free of charge and which provide information on compensation relevant, respectively, to business owners and occupiers; agricultural owners and occupiers; residential owners and occupiers; and those likely to require mitigation works. Authorities may wish to acquire stocks of these to issue as required.

29. An acquiring authority may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Tribunal), including the basis on which disturbance costs would be assessed.

### **Making sure that the order is made correctly**

30. The confirming Minister has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed order (see paragraph 50 below). This means that the confirming Department has to check that no one has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing orders in conformity with the 2004 Prescribed Forms Regulations, including recording the names and addresses of those with an interest in the land to be acquired. This is particularly important in view of the extension by the 2004 Act of the category of interests in land which give a right to be served personal notices and have objections heard at an inquiry (see the Annex to this Part, paragraph 7).
31. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to an order. Errors or omissions may occasionally emerge after an order has been made and submitted. Authorities therefore need to bear in mind that a confirming Minister's power of modification in such cases (as in all other cases – see paragraphs 51-52 below) is limited by section 14 of the 1981 Act. This provides that an order can only be modified to include any additional land or interests if all the people who are affected give their consent.

### **Advice from the confirming Department**

32. Acquiring authorities are expected to seek their own legal and professional advice when making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed order, it may seek informal written comments from the confirming Minister by submitting a draft order for technical examination.
33. Experience suggests that such technical examination by the confirming Department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. Any response made by a confirming Department on a draft order will, however, inevitably be subject to the caveat that its comments are without prejudice to its consideration of any order which may subsequently be submitted for confirmation. The role of the confirming Department at that stage will be confined to giving the draft order a technical examination to check that it complies with the requirements on form and content in the statutes and the Regulations, with no consideration of its merits or demerits.

### **Documentation to be submitted with an order for confirmation**

34. Appendix Q provides a checklist of the documents to be submitted to the confirming Minister with an order. The explanatory notes in the Appendices should be consulted

when the order, the map and the supporting documents are being compiled. DoT Local Authority Circular 2/97<sup>9</sup> gives additional guidance on the preparation and submission of orders for highways schemes and car parks.

## **THE CONFIRMATION PROCESS**

### **Statement of reasons**

35. When serving notice of the making and effect of an order on each person entitled to be so served, the acquiring authority is **also** expected to send to each one a copy of the authority's *statement of reasons* for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. (See Appendix R on the contents of the statement.) This non-statutory statement of reasons should be as comprehensive as possible. It ought therefore to be possible for the acquiring authority to use it as the basis for the statement of case which is required to be served under Rule 7 of the 1990 Inquiries Procedure Rules where an inquiry is to be held (see paragraph 15 of DoE Circular 1/90.)
36. As the statement of reasons provides an early indication of the type of case, it will also help the Planning Inspectorate Agency (PINS) to consider possible manpower implications and whether the Inspector to be appointed for any inquiry or inquiries needs particular specialist skills.

### **Grounds of objection and objectors' statements of case**

37. Section 13(3) of the 1981 Act enables the confirming Minister to require every person who makes a relevant objection to state the grounds of objection in writing. The confirming Minister can also require remaining objectors, and others who intend to appear at an inquiry, to provide a statement of case. Although it has not hitherto been general practice to do so, experience has shown that requiring statements of case is a useful device for minimising the need to adjourn inquiries as a result of the introduction of new information, and greater use may be made in the future. Under Rule 7(5) of the 1990 Inquiries Procedure Rules, a person may be required to provide further information about matters contained in any such statement of case.

### **Supplementary information**

38. When considering the acquiring authority's order submission, the confirming Department may if necessary request clarification of particular points. Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices (see also Appendix T); and in such cases the information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs. Where further information is needed, the confirming Department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The Department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

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<sup>9</sup> Entitled *Notes on the Preparation, Drafting and Submission of Compulsory Purchase Orders for Highway Schemes and Car Parks for which the Secretary of State is the Confirming Authority.*

## **Consideration of objections**

39. Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice in paragraph 26 above, this should include employing such ADR techniques as may be agreed between the parties.
40. The 2004 Written Representations Regulations, made under section 13A of the 1981 Act, prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming Minister deems it appropriate, as an alternative to holding an inquiry. The procedure is summarised in paragraph 16 of the Annex to this Part. The First Secretary of State's practice<sup>10</sup> is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way.

## **Appointment of programme officer**

41. Acquiring authorities may wish to consider appointing a programme officer to assist the Inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the Inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

## **Timing of inquiry**

42. Practice may vary between Departments but, once the need for an inquiry has been established, it will normally be arranged by PINS in consultation with the acquiring authority for the earliest date on which an appropriate Inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission.
43. Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming Department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority needs more time to prepare its evidence, as the authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

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<sup>10</sup> The practice of other confirming authorities may vary.

## Scope for joint or concurrent inquiries

44. It is important to identify *at the earliest possible stage* any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, Minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a Minister) or an appeal against the refusal of planning permission. Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

## Inquiries Procedure Rules

45. The 1990 Inquiries Procedure Rules apply to non-Ministerial compulsory purchase orders made under the 1981 Act, and to compulsory rights orders<sup>11</sup>. Detailed guidance is given in DoE Circular 1/90<sup>12</sup>. Inquiries into Ministerial compulsory purchase orders which have been published in draft are governed by the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (SI 1994 No. 3264).

## Inquiry Costs & Written Representations Costs

46. Advice on statutory objectors' inquiry costs is given in Annex 6 to DoE Circular 8/93<sup>13</sup>. By virtue of this paragraph and paragraph 49 below, the principles of that advice will also henceforth apply to written representations procedure costs. When notifying successful objectors of the decision on the order under the 1990 Rules or the Written Representations Regulations, the First Secretary of State<sup>14</sup> will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs.
47. Acquiring authorities will normally be required to meet the administrative costs of an inquiry and the expenses incurred by the Inspector in holding it. Likewise, the acquiring authority will be required to meet the Inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming Minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the 1981 Act. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used<sup>15</sup>,

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<sup>11</sup> See rule 2 and section 29 of, and paragraph 11 of Schedule 4 to, the 1981 Act.

<sup>12</sup> Entitled *Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990*.

<sup>13</sup> Entitled *Awards of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings*.

<sup>14</sup> The practice of other Departments may vary.

<sup>15</sup> Section 13B(6) of the 1981 Act applies section 42(2) of the Housing & Planning Act 1986 to the written representations procedure if it were an inquiry specified in section 42(1) of that Act - which includes section 250(4) of the Local Government Act 1972.

is prescribed in the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000 (SI 2000 No. 237) made under the Housing and Planning Act 1986<sup>16</sup>.

48. There are some circumstances in which an award of costs may be made to an unsuccessful objector or to an acquiring authority because of unreasonable behaviour by the other party (unlikely with the written representations procedure). Further advice on this is given in Annex 6 to DoE Circular 8/93.
49. In applying paragraph 2 of Annex 6 to DoE Circular 8/93 to the written representations procedure, reference to a local inquiry should be read as consideration through the written representations procedure, attendance at an inquiry should be read as submission of a written representation, and being heard as a statutory objector should be read as having a written representation considered as that of a remaining objector.

### **Legal difficulties**

50. Whilst only the Courts can rule on the validity of a compulsory purchase order, the confirming Minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant Minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

### **Modification of orders**

51. The confirming Minister may confirm an order with or without modifications, (but see paragraph 31 above about the limitations imposed by section 14 of the 1981 Act). There is, however, no scope for the confirming Minister to add to, or substitute, the statutory purpose(s) for which it was made<sup>17</sup>. The power of modification is used sparingly and not to re-write orders extensively. There is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order. Some minor slips can be corrected, but not significant matters such as the substitution of a different, or insertion of an additional, purpose.
52. If it becomes apparent to an acquiring authority that it may wish the confirming Minister to substantially amend the order by modification at the time of any confirmation, the authority should write to him as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry<sup>18</sup>, and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the Inspector will normally wish to provide an opportunity for them to be debated.

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<sup>16</sup> This sum was £630 per day at the date of publication of this document, but may be subject to revision from time-to-time.

<sup>17</sup> *Procter & Gamble Ltd v Secretary of State for the Environment* (1991) EGCS 123.

<sup>18</sup> Such as any person required by the confirming authority to provide a statement of case.

## **Confirmation in stages**

53. Section 13C of the 1981 Act provides a general power for orders to which that Act applies to be confirmed in stages. Although this is a new power which can be applied irrespective of the powers under which an order is being made, it replaces similar powers previously available to Ministers confirming orders made under the enabling powers in the Welsh Development Agency Act 1975, the Local Government, Planning and Land Act 1980, the Highways Act 1980, the Housing Act 1988, the 1990 Act, the 1993 Act and the 1998 Act. As with those powers, it is designed to be used, at the discretion of the confirming Minister, where he is satisfied that an order should be confirmed for part of the order land but, because of some impediment, he is unable to decide for the time being whether it ought to be confirmed so far as it relates to any other such land<sup>19</sup>. Where an order is confirmed in part under this power, the remaining undecided part is to be treated as if it were a separate order, and the confirming Minister will set a deadline for consideration of that remaining part. (See also paragraphs 19-21 of the Annex to this Part.)
54. The power in section 13C is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order. Furthermore, the confirming Minister will normally need to be satisfied that the scheme for which the order is being made could proceed without the necessity to acquire the remaining land whose acquisition is subject to a postponed determination. If the confirming Minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded<sup>20</sup>, he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

## **Confirmation of an unopposed order by acquiring authority**

55. Section 14A of the 1981 Act provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if there are no unwithdrawn objections to it and certain other specified conditions are met (see paragraphs 23-27 of the Annex to this Part for a full description of the legislation).
56. A confirming authority will exercise its discretion under section 14A by serving a notice on the acquiring authority giving it the power to confirm the order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice will indicate that if it is decided to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person having authority to do so. The notice will suggest a form of words for the endorsement, refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 Act (Form 11 in the Schedule to the 2004 Prescribed Forms Regulations prescribes the notice of confirmation to be used by an acquiring authority which has confirmed its own order) and require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order. Circumstances may arise

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<sup>19</sup> For example, because further investigations are required to establish the extent, if any, of alleged contaminated land.

<sup>20</sup> For example, because it related to a separate project or scheme programmed for implementation at a later date.



where it is necessary for a confirming authority to revoke a notice giving authority to decide an order, eg. where a late objection is accepted, or where the acquiring authority fails to decide the order within a reasonable timescale. It is therefore essential that the acquiring authority should notify the confirming authority immediately once an order has been confirmed.

### **Notification of date of confirmation and date of section 19 certification**

57. Acquiring authorities are asked to ensure that in all cases the confirming Department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the 1981 Act. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 Act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of Schedule 3 to, the 1981 Act, the Department giving the certificate should be notified straight away of the date when notice is first published.

### **IMPLEMENTATION**

58. Unless it is subject to special parliamentary procedure<sup>21</sup>, an order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published in accordance with section 15 of the 1981 Act. The acquiring authority may then exercise the compulsory purchase power (subject to the operation of the order being suspended by the High Court). The advice in this Part is mainly directed towards the procedures leading to the confirmation of an order as those are the stages in which a confirming Minister is directly involved. The actual acquisition process is, however, clearly crucial for both the acquiring authority and those whose interests are being acquired. It is in the interests of both parties that it should be completed as expeditiously as possible.

### **Notice to treat**

59. The period allowed under section 4 of the 1965 Act for the service of a notice to treat following the advertising of the notice of confirmation of the order is three years, after which the notice to treat remains effective under section 5(2A) of the 1965 Act for up to a further three years. It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition by agreement where requested by an owner.
60. Although the whole acquisition process can be long and drawn-out, once the crucial stage of actually taking possession is reached, the acquiring authority is only required by section 11 of the 1965 Act to serve a notice giving not less than fourteen days notice of its intention to gain entry. Furthermore, although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry. Acquiring authorities are urged, however, to adopt a timetable which is more sympathetic to the needs of those being dispossessed, and even when that is not

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<sup>21</sup> See Appendix L.

possible, to give them as much notice as possible of proposed events. Thus, for example, it would be good practice to give owners an indication at the time of serving the notice to treat of the approximate date when possession will be taken, and to consider sympathetically the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession. Authorities should be aware that agricultural landowners/tenants may need to know the notice of entry date earlier than others because of crop cycles and the need to find alternative premises. Authorities should also be aware that short notice often results in higher compensation claims.

### **General vesting declaration**

61. As an alternative to the notice to treat procedure an acquiring authority may prefer to proceed by general vesting declaration<sup>22</sup>. This enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation<sup>23</sup>. It can therefore be particularly useful where some of the owners are unknown<sup>24</sup> or the authority wishes to obtain title with minimum delay in order, for example, to dispose of the land to developers.
62. A general vesting declaration may be made for any part or all of the land included in the order, but it will not be effective against interests in respect of which notice to treat has already been served and not withdrawn, minor tenancies, or long tenancies which are about to expire. Where, after reasonable inquiry, it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom preliminary notice<sup>25</sup> is to be served, service must be effected under the procedure described in section 6(4) of the 1981 Act. Where the same circumstances apply in relation to the notice which is required to be served after execution of the declaration<sup>26</sup>, the authority should comply with section 329(2) of the 1990 Act.
63. There is uncertainty as to whether the service of a notice under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 or the executing of a general vesting declaration under section 4 of that Act constitutes the commencement of the exercise of compulsory purchase for the purposes of section 4 of the 1965 Act<sup>27</sup>. An authority may therefore wish to ensure that it has executed a general vesting declaration within three years of the order becoming operative.

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<sup>22</sup> General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990 (SI 1990 No 497).

<sup>23</sup> But subject to any special procedures, eg in relation to purchase of commoners' rights: section 21 of, and Schedule 4 to, the 1965 Act).

<sup>24</sup> It is recommended as good practice that where unregistered land is acquired by general vesting declaration acquiring authorities should voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

<sup>25</sup> Under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981.

<sup>26</sup> Under section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981.

<sup>27</sup> In *Westminster City Council v Quereshi* [1990] P & CR 380, Aldous J. held that it was the former, whilst in *Co-operative Insurance Society Ltd v Hastings Borough Council* [1993] 91 LGR 608 Vinelott J. disagreed and ruled that it was the latter.

## COMPENSATION

64. The assessment of compensation is a complex and specialised field, governed by extensive case law. Both acquiring authorities and claimants will therefore normally require specialist advice. The following points relate to issues which have arisen in the context of the fundamental review<sup>28</sup> of compulsory purchase procedures and compensation and which are relevant to the operation of the system as it currently stands.
65. The compensation payable for the compulsory acquisition of an interest in land is based on the principle<sup>29</sup> that the owner should be paid neither less nor more than his loss. It thus represents the value of the interest in land to the owner, which is regarded as consisting of:
- the amount which the interest in land might be expected to realise if sold on the open market by a willing seller (open market value)<sup>30</sup>;
  - compensation for severance and/or injurious affection<sup>31</sup>; and
  - compensation for disturbance and other losses not directly based on the value of the land<sup>32</sup>.

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg. a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement<sup>33</sup>.

### The date to which the assessment of compensation should relate

66. Section 5A of the 1961 Act defines for the first time in statute a valuation date – referred to as the ‘relevant valuation date’ – see also paragraphs 30-32 of the Annex to this Part.
67. Under the terms of section 11 of the 1965 Act interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. It is therefore important that the date of entry is properly recorded by the acquiring authority.

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<sup>28</sup> See Compulsory Purchase Policy Review Advisory Group Final Report (July 1999); *Compulsory Purchase and Compensation: delivering a fundamental change* (consultation document, December 2001); and *Compulsory Purchase Powers, Procedures and Compensation: the way forward* (policy statement, July 2002), available at [www.odpm.gov.uk](http://www.odpm.gov.uk) or on request, free of charge, from ODPM Publications, PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: [odpm@twoten.press.net](mailto:odpm@twoten.press.net).

<sup>29</sup> Established by Lord Justice Scott in *Horn v Sunderland Corporation* [1941] 2 KB 26; [1941] All ER 480.

<sup>30</sup> Land Compensation Act 1961, section 5, Rule 2.

<sup>31</sup> Compulsory Purchase Act 1965, section 7.

<sup>32</sup> Land Compensation Act 1961, section 5, Rule 6.

<sup>33</sup> Land Compensation Act 1961, section 5, Rule 5.

## **Advance payments**

68. If the acquiring authority takes possession before compensation has been agreed, it is obliged under section 52 of the Land Compensation Act 1973, if requested, to make an advance payment on account of any compensation which is due for the acquisition of any interest in land. The amount payable is 90% of the acquiring authority's estimate of the compensation due or, if the amount of the compensation has been agreed, 90% of that figure; and it is due to be paid within three months of the claimant's written request. Authorities are urged to adopt a responsible approach towards making such payments, in terms of adhering to the three month statutory time limits and the requirement to pay 90% of their estimate or the agreed sum, in order to help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation. Prompt and adequate advance payments will also reduce the amount of the interest ultimately payable by the authority on the outstanding compensation due.
69. Acquiring authorities should also consider making earlier payments where justified to enable claimants to proceed with reinstatement. For example, an acquiring authority which is a local authority may be able to exercise its wide-ranging powers under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It may therefore see advantage in using the power to make payments before taking possession if that seems likely to encourage early settlement to the advantage of all parties. Furthermore, section 80 of the Planning and Compensation Act 1991 gives all acquiring authorities a discretionary power to make payments on account of the compensation and interest payable under any of the provisions referred to in that section or listed in Schedule 18 to that Act. Again, authorities are urged to adopt a sympathetic approach to using these powers to alleviate obvious hardship.
70. See also paragraphs 33-34 of the Annex to this Part on advance payments to mortgagees.

## **Professional fees**

71. Although there is no specific statutory basis for the payment of the fees incurred by a claimant in obtaining professional help in preparing and sustaining his claim for compensation, there is established case law<sup>34</sup> for the payment of such fees as 'any other matter' under Rule (6) of section 5 of the 1961 Act.
72. It is for the parties concerned to agree a reasonable basis for payment of professional fees. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of the more routine claims. This might make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.

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<sup>34</sup> For example, *Minister of Transport v Lee* [1965] 3 WLR 553, CA (confirming (1965) 16 P&CR 62).

# Appendices

<b>CPO Powers<sup>1</sup></b>	<b>Appendix</b>
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Orders made under section 20 of the Regional Development Agencies Act 1998	B
Orders made by English Partnerships under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993	C
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<b>ANNEX – Part 8 of the Planning and Compulsory Purchase Act 2004</b>	

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<sup>1</sup> This is not an exhaustive list of the CPO powers available to acquiring authorities - only those powers for which guidance is considered necessary or helpful are covered.

# Orders made under section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004)

## APPROPRIATE ACQUIRING AUTHORITIES

1. Section 226 of the 1990 Act enables a local authority as defined in section 226(8) (i.e. county, district or London borough council), a joint planning board<sup>1</sup> or a national park authority<sup>2</sup> to acquire land compulsorily for ‘planning purposes’ as defined by section 246(1). These are the only bodies to which the powers in section 226 and, hence, the advice to acquiring authorities in this appendix, apply.

## THE POWERS

2. The powers in section 226 as amended by section 99 of the Planning and Compulsory Purchase Act are intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can therefore be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. However, these powers should not otherwise be used in place of other more appropriate enabling powers<sup>3</sup>, and the statement of reasons should make clear the justification for using the Planning Act powers. In particular, the First Secretary of State (‘the Secretary of State’ in this Appendix) may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.
3. In preparing and submitting compulsory purchase orders under section 226, acquiring authorities with planning powers will need to have regard to the general advice in paragraphs 13 to 57 of this Part, including the guidance about planning requirements and the justification of the order in paragraphs 16 to 23. Authorities proposing to acquire land under section 226 should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. They should submit their orders for confirmation via the relevant regional Government Office.

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<sup>1</sup> section 244(1) of the 1990 Act.

<sup>2</sup> section 244A of the 1990 Act.

<sup>3</sup> eg. section 164 of the Public Health Act 1875, section 89 of the National Parks and Access to the Countryside Act 1949, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 239 of the Highways Act 1980, or section 17 of the Housing Act 1985. See also paragraph 8 of Appendix E, which explains that when land for housing development is being assembled under planning powers, the Secretary of State will have regard to the policies set out in that Appendix.

4. The Secretary of State takes the view that an order made under subsection (1) of section 226 should be expressed in terms of *either* paragraph (a) *or* paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

### **Section 226(1)(a)**

5. The power provided in the amended section 226(1)(a) enables acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development<sup>4</sup>, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. The use of the words ‘on, or in relation to’ means that the scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

### *The well-being power*

6. The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. The amended power in section 226(1)(a) will assist those authorities to whom the provisions of section 2 of the Local Government Act 2000 apply to fulfil their duties under that section to promote the economic, social and environmental well-being of their area. Acquiring authorities who do not have powers under the Local Government Act 2000 can also make use of section 226(1)(a). They will also need to be able to show that the purpose for which the land is being acquired will contribute to the well-being of the area for which they are responsible. The benefit to be derived from exercising the power is also not restricted to the area subject to the compulsory purchase order, as the concept is applied to the well-being of the whole (or any part) of the acquiring authority’s area.
7. In determining whether the purpose for which they propose to acquire land compulsorily under section 226(1)(a) can reasonably be expected to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, an acquiring authority may find it helpful to have regard to the statutory guidance issued by ODPM in 2001 concerning the interpretation of that power in the Local Government Act 2000<sup>5</sup>.

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<sup>4</sup> Under section 336(1) of the 1990 Act, ‘development’ has the meaning given in section 55 (including any special controls given by direction in relation to demolition and redevelopment (see DoE Circular 10/95: *Planning Controls over Demolition*)).

<sup>5</sup> Entitled *Power to promote or improve economic, social or environmental well-being*, and accessible on the ODPM website at: [http://www.odpm.gov.uk/stellent/groups/odpm\\_localgov/documents/page/odpm\\_locgov\\_605709.hcsp](http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605709.hcsp)

8. As that guidance explains, the Government's purpose in introducing the well-being power has been to relax the traditionally cautious approach adopted by many local authorities by encouraging innovation and closer joint working between local authorities and their partners to improve the quality of life of those living, working or otherwise involved in the community life of their area. As the guidance goes on to suggest, each authority will want to consider how the well-being power can be used to promote the sustainable development of its area by delivering the actions and improvements identified in its community strategy.
9. It is in this context that acquiring authorities may find the new section 226(1)(a) power useful. Section 39 of the 2004 Act requires regional and local plans to be prepared with a view to contributing to the achievement of sustainable development, and sections 1 and 17 require them to adopt a spatial planning approach. Further guidance on this is given in Planning Policy Statement 1: *Creating Sustainable Communities*<sup>6</sup>, which points out that spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.
10. That may well include policies relating to such issues as tackling social exclusion, promoting regeneration initiatives and improving local environmental quality. All such issues can have a significant impact on land use, for example by influencing the demands on or needs for development, but they are not necessarily capable of being delivered solely or mainly through the granting or refusal of planning permission. They may require a more proactive approach by the relevant planning authority including facilitating the assembly of suitable sites, for which the compulsory purchase powers in section 226(1)(a) may provide helpful support where such acquisitions can be justified in the public interest.
11. The re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the section 226(1)(a) power might be appropriate. For example, it is likely to be more appropriate than a Housing Act power if the need to acquire and demolish dwellings were to arise as a result of an oversupply of a particular house type and/or housing tenure in a particular locality. A greater diversity of housing provision may be needed to ensure that neighbourhoods are sustainable in the long term, and improved housing quality and choice may be necessary to meet demand. This may involve acquiring land to secure a change in land use, say, from residential to commercial/industrial or to ensure that new housing is located in a more suitable environment than that which it would replace. In urban areas experiencing market renewal problems, the outcome may be fewer homes in total.

### *Planning matters*

12. Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a) powers as a means of furthering the well-being of the wider area. Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes including with

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<sup>6</sup> Consultation draft published in February 2004 and accessible on the ODPM website at: [http://www.odpm.gov.uk/stellent/groups/odpm\\_planning/documents/page/odpm\\_plan\\_027494.pdf](http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_027494.pdf)



those whose property is directly affected. The Regional Spatial Strategy provides the regional planning context with which local development documents have to be in general conformity under section 24 of the 2004 Act and which will set out more detailed proposals. Where there is a conflict between policies in any of these documents section 38 provides that the conflict must be resolved in favour of the document most recently adopted, approved or published.

13. The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the Inspector, this will be given due weight.
14. Where the local plan is out-of-date and local development documents are still in preparation, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the local development framework at the appropriate time. Such proposals may relate, for instance, to accommodating the need for further growth in an area. Or they might be in the form of detailed proposals for handling the consequences of low housing demand. Such proposals might, for example, be in the form of masterplans or other detailed delivery mechanism prepared by the relevant local authority and giving a spatial dimension to the prospectuses of market renewal pathfinders. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order.
15. It is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it is acknowledged that it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end-use proposed for the particular areas of land included in any particular CPO. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

### *Confirmation*

16. Any decision about whether to confirm an order made under section 226(1)(a) of the 1990 Act will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:
  - (i) whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area or, where no such up-to-date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community;

- (ii) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;
- (iii) the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time-limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position;
- (iv) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its re-use. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.

### **Section 226(1)(b)**

17. Section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

### **Section 226(3)**

18. In addition to land to which section 226(1) applies ('the primary land'), section 226(3) provides that an order made under section 226(1) may also provide for the compulsory purchase of
- (a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or
  - (b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

### **Section 226(4)**

19. This subsection provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in subsections (1) or (3)(a) of section 226 should be

undertaken or achieved. In particular, the authority need not propose to undertake an activity or achieve a purpose themselves.

### **Section 245 of the 1990 Act**

20. Section 245(1) provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the development plan.
21. Sections 245(2) and (3) have been repealed and replaced by section 13C of the Acquisition of Land Act 1981 as inserted by section 100 of the Planning and Compulsory Purchase Act (see paragraphs 19 to 21 of the Annex to this Part).

### **INTERESTS IN CROWN LAND**

22. Sections 293 and 296 of the 1990 Act apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about the purchase of interests in Crown land is given in Appendix N.

### Orders made by Regional Development Agencies under section 20 of the Regional Development Agencies Act 1998

1. Regional Development Agencies (RDAs) were created throughout England by the Regional Development Agencies Act 1998 ('the 1998 Act'), and their purposes are set out in section 4 of that Act (listed in paragraph 5 below). Section 20(1) empowers an RDA to acquire land by agreement or compulsorily for its purposes or for purposes incidental thereto. 'New rights over land' as defined in section 20(8) may also be compulsorily acquired for such purposes under section 20(2). The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by an RDA is currently the Secretary of State for Trade and Industry (referred to as 'the Secretary of State' in this Appendix).
2. In preparing and submitting compulsory purchase orders, RDAs need to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. RDAs should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. RDAs should submit orders for confirmation via the relevant regional Government Office.
3. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables an RDA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling an RDA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers in the 1998 Act, and further advice is provided in paragraphs 28 to 29 of the Annex to this Part. Section 21(1) of the 1998 Act provides RDAs with rights of entry for the purposes of surveying land and estimating its value.
4. The Secretary of State previously had a power to confirm an order in two stages under paragraph 1 of Schedule 5 to the 1998 Act. However, this has now been replaced by a general power inserted as section 13C of the Acquisition of Land Act 1981 by section 100 of the 2004 Act, and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of another part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.

## **PURPOSES OF AN RDA**

5. The purposes of an RDA as set out in section 4 of the 1998 Act are:
  - to further the economic development and the regeneration of the area;
  - to promote business efficiency, investment and competitiveness in the area;
  - to promote employment in the area;
  - to enhance the development and application of skills relevant to employment in the area; and
  - to contribute to the achievement of sustainable development in the United Kingdom where it is relevant to its area to do so.

## **EXERCISING COMPULSORY PURCHASE POWERS**

6. It is for each RDA to decide how best to use its land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by their sponsoring Department. However, it seems likely that such powers will generally be of greatest value in fulfilling the economic development and regeneration purpose. The fact that the powers have been expressed in wide and general terms reflects the national importance of the task facing RDAs. It is also intended to assist with the practical problems of ensuring that land can speedily be turned to beneficial use. While RDAs should make every effort to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.
7. Most RDAs will have land within their areas which is not in effective use. This may be derelict and/or under-used, and will frequently include buildings in need of replacement or refurbishment. Such land is unattractive to existing or potential residents, developers or investors, and therefore needs the catalyst of public sector commitment to turn it round. The fact that the RDA takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to RDAs to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.
8. Examples of the reasons why an RDA might consider it appropriate to exercise its land acquisition powers include (but are not limited to):
  - the regeneration of worn out, vacant or derelict property;
  - the assembly of previously used land for new development to provide housing, employment, shopping, open space, leisure and other facilities;
  - the cleansing of contaminated land;

- the provision of infrastructure and services to encourage development;
  - the provision of sites for nationally important inward investment;
  - securing routes for major transport infrastructure<sup>1</sup>; and
  - the proper and effective management of land and the protection of investment.
9. It is often likely to be the case that RDAs will justify the use of their compulsory purchase powers by showing that such action will be of benefit to a regeneration priority area, although there may be other equally valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in the RDA's Regional Economic Strategy or in its corporate plan, preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen the RDA's case for compulsory acquisition, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes<sup>2</sup>.
  10. In some circumstances it may make sense for the RDA to make a compulsory purchase order so as to ensure a comprehensive approach to redevelopment and regeneration where this will generate a greater overall benefit than a piecemeal approach based on competing schemes from individual land owners. Such an approach will be strengthened if it has been formulated in a masterplan or development brief which has been adopted by the relevant local planning authority or authorities as one of their Local Development Framework (LDF) documents.
  11. As RDAs do not have planning powers, they will often need to work in partnership with the relevant local authorities. It will be for each RDA, in conjunction with its local authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which the RDA takes responsibility for land assembly are likely to be of greater regional significance than those promoted by local authorities. They are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of the RDA's purpose of regenerating its area.
  12. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, an RDA can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always be feasible or

<sup>1</sup> This might be appropriate, for example, to secure corridors for Light Rapid Transit routes which cross Local Authority boundaries.

<sup>2</sup> In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

sensible (for example, where time is of the essence) to wait for full planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with the RDA to demonstrate that there are no planning, or other, barriers to the scheme.

13. Furthermore, it may sometimes be appropriate in furtherance of its statutory purposes for an RDA to assemble land for which it has no specific detailed development proposals. It would be unusual for an RDA to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for an RDA to seek to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration and/or economic development proceeds. Nevertheless, the RDA will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its acquisition by the RDA is in the public interest.

## **CONFIRMATION**

14. In reaching a decision about whether to confirm an order made under section 20 of the 1998 Act, the Secretary of State will have in mind the statutory purposes of the RDA and will, amongst other things, consider:
  - (i) whether the RDA has established the basis and justification for its actions through its adopted strategy and any related action plan (including any reviews thereof) which should be in general accordance with regional and local planning policies;
  - (ii) whether the RDA has demonstrated that the land is in need of regeneration or is needed for such other purposes of the RDA as have been put forward as justification, or for purposes incidental thereto;
  - (iii) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the proposals advocated by the other parties may conflict with the RDAs proposals as regards the timing and nature of the regeneration of the wider area concerned;
  - (iv) whether regeneration (or such other purposes of the RDA as are given in the order) is, on balance, more likely to be achieved if the land is acquired by the RDA, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;
  - (v) whether, if the RDA intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development

or investment, and that the aims of the agency cannot be achieved by any other means;

- (vi) the condition of the land and its recent history; and
- (vii) the quality of, and proposed timetable for completing, both the proposals for which the RDA is proposing to acquire the land and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for an RDA to have specific proposals for the land concerned beyond any broad indications in its general framework for the area. Although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still, however, want to be reassured that there is a reasonable prospect of the project proceeding as proposed; and the RDA will need to be able to show that the proposed exercise of its compulsory purchase powers is clearly in the public interest.



### Orders made by English Partnerships (as the Urban Regeneration Agency) under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993

1. English Partnerships ('EP') in its present form was created administratively in May 1999 by bringing together the Commission for the New Towns ('CNT') and the national structure of the Urban Regeneration Agency ('URA'). EP is therefore able to utilise the powers compulsorily to acquire land and new rights over land given to the URA respectively by sections 162(1) and (2) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). The purpose for which those powers may be used is the achievement of the URA's objectives (or purposes incidental thereto). The confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by the URA is currently the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).
2. The objects of the URA (and therefore the purposes for which EP may exercise compulsory powers) are set out in section 159 of the 1993 Act and are to secure:
  - the regeneration of land in England which is within one or more of the following descriptions:
    - land which is vacant or unused;
    - land which is situated in an urban area and which is under-used or ineffectively used;
    - land which is contaminated, derelict, neglected or unsightly; and
    - land which is likely to become derelict, neglected or unsightly by reason of actual or apprehended collapse of the surface as the result of the carrying out of relevant operations which have ceased to be carried out (section 159(1)(a));
  - the development of land in England which the Agency (having regard to guidance and acting in accordance with any directions given by the Secretary of State under section 167 of the 1993 Act) determines to be suitable for development under the URA's powers and to which the Secretary of State consents (section 159(1)(b) and (3)).
3. The Government has outlined a new role for EP (Parliamentary statement of the Deputy Prime Minister – 24 July 2002). This identified EP as a key delivery agency in the Government's sustainable communities agenda to regenerate the towns, cities and rural areas of England and as the national catalyst for property led regeneration and

development. It is charged with delivering urban renaissance and helping the Government meet its targets for accommodating household growth on brownfield land. EP is clearly in a position to utilise the URA's compulsory powers to assist it in fulfilling this role.

4. In preparing and submitting compulsory purchase orders as the URA, EP needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. EP should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part. EP should submit orders for confirmation via the relevant regional Government Office.
5. The Secretary of State previously had a power to confirm an order in two stages under paragraph 2(1) of Schedule 20 to the 1993 Act. However, this has now been replaced by a general power inserted as section 13C of the 2004 Act and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of the other part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.
6. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables the URA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling the URA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers on the 1993 Act, and further advice is provided in paragraphs 28 and 29 of the Annex to this Part. Section 163(1) of the 1993 Act provides the URA with rights of entry for the purposes of surveying land and estimating its value.

## **EXERCISING COMPULSORY PURCHASE POWERS**

7. It is for EP to decide how best to use the URA's land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by its sponsoring Department. The fact that the powers have been expressed in wide and general terms, together with the Government's statement mentioned above, reflects the national importance of the task facing EP. While EP should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to use the URA's CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

8. EP is charged with securing the regeneration of types of land which may be unattractive to existing or potential residents, developers or investors, and therefore need the catalyst of public sector commitment to turn them round. The Government's statement identified EP as the *national* catalyst for this type of initiative. The fact that EP takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to the URA to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.
9. EP must justify the use of its URA compulsory purchase powers by showing that such action is in fulfilment of its statutory purposes, although there may be other additional valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in EP's Corporate Plan or other form of general framework (or in the development plan, local development frameworks, Community Plans, Supplementary Planning Guidance, Regional Planning Guidance, or in the RDA's Regional Economic Strategy or corporate plan), preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen EP's case for using the URA's compulsory acquisition powers, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes<sup>1</sup>.
10. EP's planning powers are restricted to those available to CNT under section 7 of the New Towns Act 1981 and Part III of the Town and Country Planning Act 1990 within parts of the Milton Keynes area, it will need to work in partnership with the relevant local authorities. It will be for EP, in conjunction with the relevant local planning authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which EP takes responsibility for land assembly are likely to be of greater regional or cross-regional significance than those promoted by local authorities. Indeed, the Government has identified a role for EP which makes it responsible for promoting strategic sites and sites of national importance, and hence the compulsory acquisitions necessary to assemble those sites are more likely to be undertaken by EP, using its URA powers, than by the RDAs. Sites are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of EP's objectives.
11. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, EP can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions under its URA powers, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always

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<sup>1</sup> In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

be feasible or sensible (for example, where time is of the essence), particularly for schemes of strategic or national importance, to wait for planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with EP to demonstrate that there are no planning, or other, barriers to the scheme.

12. Furthermore it may sometimes be appropriate in furtherance of the URA's statutory purposes for EP to assemble land which is in need of regeneration for which it has no specific detailed development proposals. It would be unusual for EP to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for EP to seek to pre-determine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds. Nevertheless, in exercising its compulsory purchase powers as the URA, EP will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its compulsory acquisition is in the public interest.
13. When assembling land for redevelopment, a URA may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the URA. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the URA.

## **CONFIRMATION**

14. In reaching a decision about whether to confirm an order made under section 162 of the 1993 Act the Secretary of State will have in mind the statutory purposes of the URA and will, amongst other things, consider:
  - i) whether EP has established the basis and justification for its actions through its Corporate Plan and any related action plan, (including any reviews thereof), which should be in general accordance with regional and local planning policies and other guidance referred to in paragraph 9 above;
  - ii) whether, where appropriate, EP has demonstrated that the land is in need of regeneration;
  - iii) any directions and guidance which may be given under section 167 and (in the case of development) any consent under section 159(3);
  - iv) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented, (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the

proposals advocated by the other parties may conflict with EP's proposals as regards the timing and nature of the regeneration of the wider area concerned;

- v) whether the proposed development or regeneration is, on balance, more likely to be achieved if the land is acquired by EP, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;
- vi) whether, if EP intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development or investment, and that the aims of the URA cannot be achieved by any other means;
- vii) the condition of the land and its recent history;
- viii) the quality of, and proposed timetable for completing, both the proposals for which EP is proposing to acquire the land under the URA's compulsory purchase powers and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for EP to have specific proposals for the land concerned beyond any broad indications in its Corporate Plan or other general framework, the RDA's Regional Economic Strategy or corporate plan, or in the development plan for the area. This would be the more so with projects of strategic or national importance where extremely rapid action may be essential. However, although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and EP will need to be able to show that the proposed exercise of its compulsory purchase powers as the URA is clearly in the public interest.

### Orders made by Urban Development Corporations under section 142 of the Local Government, Planning and Land Act 1980.

1. DoE Circular 23/88 *Compulsory Purchase Orders by Urban Development Corporations* was cancelled on 20 January 1998<sup>1</sup> following the winding-up of the last of the Urban Development Corporations (UDCs) originally designated under section 134 of the Local Government, Planning and Land Act 1980 ('the 1980 Act'). However, following the establishment of the first of a new generation of Urban Development Corporations (UDCs) at Thurrock on 29 October 2003 and London Thames Gateway on 26 June 2004 and, subject to Parliamentary processes, the establishment of a UDC for West Northamptonshire later this year, the need for guidance to UDCs on the exercise of their compulsory purchase powers has again become relevant. The following sets out an updated version of the original guidance. The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by a UDC is currently the Deputy Prime Minister and First Secretary of State ('the Secretary of State').

#### **PURPOSES OF A UDC**

2. A UDC is set up under section 135 of the 1980 Act with the object, as set out in section 136(1), of securing the regeneration of the relevant UDA. A UDA is likely to have been designated because it contains significant areas of land not in effective use. Some of these areas may have suffered extensive dereliction and include buildings in need of refurbishment. In this state, UDAs are unattractive to existing or potential residents, and to developers and investors. The acquisition of land and buildings, whether by compulsory purchase or other means, is one of the main ways in which a UDC can take effective steps to secure its statutory objectives.
3. Section 136(2) of the 1980 Act indicates that regeneration can be achieved particularly by
  - bringing land and buildings into effective use;
  - encouraging the development of existing and new industry and commerce;
  - creating an attractive environment; and
  - ensuring that housing and social facilities are available to encourage people to live and work in the area.

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<sup>1</sup> Paragraph 7 of DETR Circular 01/98.

## EXERCISING COMPULSORY PURCHASE POWERS

4. Subject to any limitations imposed under section 137 or 138, section 136(3) of the 1980 Act empowers a UDC to acquire, hold, manage, reclaim and dispose of land, and to carry out a variety of incidental activities. The compulsory purchase powers of a UDC are then set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the UDC's area.
5. It is for each UDC to decide how best to use its land acquisition powers to fulfil its purposes, having regard to any guidance which may be issued from time to time by its sponsoring Department. The compulsory purchase powers available to UDCs are expressed in wide and general terms, reflecting both the national importance of the task of urban regeneration and the practical problems of ensuring that wide areas of dereliction or under-use can speedily be returned to beneficial use. While a UDC should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary for a UDC to use its CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.
6. In pursuance of its objectives, it may in some instances be necessary for a UDC to assemble land for which it has no specific, detailed development proposals. UDCs do not generally carry out extensive building development themselves, as they are expected to achieve their objectives largely by stimulating and attracting greater private sector investment. It may, therefore, be counter-productive for a UDC to seek to predetermine what private sector development should take place. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration proceeds. Moreover, ownership by a UDC of land in an area can stimulate confidence that regeneration will take place, and in this way help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. UDCs will often best be able to bring about regeneration by assembling land and providing infrastructure over a wide area in order to secure or encourage its development by others.
7. In cases where existing users are affected by a compulsory purchase order relating to their premises, the UDC will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the UDA. Section 146(2) of the 1980 Act specifically encourages UDCs, so far as practicable, to assist persons or businesses whose property has been acquired, to relocate to land currently owned by the UDC.
8. When assembling land for redevelopment, a UDC may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the UDC. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the UDC.
9. In preparing and submitting compulsory purchase orders, a UDC needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23.

## CONFIRMATION

10. In reaching a decision on whether to confirm a section 142 order, the Secretary of State will have in mind the statutory objectives of the UDC set out in paragraph 3 above and will, amongst other things, wish to consider -
  - (i) whether the UDC has demonstrated that the land is in need of regeneration;
  - (ii) what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration;
  - (iii) whether regeneration is on balance more likely to be achieved if the land is acquired by the UDC;
  - (iv) the recent history and state of the land;
  - (v) whether the land is in an area for which the UDC has a comprehensive regeneration scheme; and
  - (vi) the quality and timescale of both the UDC's regeneration proposals and any alternative proposals.
11. The Secretary of State recognises that in the special circumstances in which UDCs operate, and given their specific duty to regenerate their areas, it will not always be possible or desirable for them to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and that therefore the detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where land is required for a defined end use, or for the provision of strategic infrastructure such as roads or sewers to facilitate regeneration, a UDC will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, it is accepted that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order; and this will not in itself be regarded as an impediment to the Secretary of State's consideration of the order.
12. Where a UDC does not advance detailed proposals for redevelopment, it will nevertheless be expected to demonstrate the case for acquisition in the context of its development strategy. The UDC needs to be able to show that the proposed exercise of its compulsory purchase powers is clearly in the public interest and the Secretary of State will want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will therefore expect the statement of reasons accompanying the submission of the order to him to include a summary of the broad framework for the regeneration of the UDA, and the UDC will need to be in a position to present evidence at the public inquiry to support its case for the proposed compulsory acquisition.
13. Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary to consider carefully whether such proposals are likely to be, or are capable of being, implemented. Factors



which the Secretary of State will need to consider include the planning position, how long the land has been unused, and the extent to which these alternative proposals may conflict with the UDC's proposals as regards the timing and nature of regeneration in the area concerned.

### Orders made under housing powers.

#### **INTRODUCTION**

1. This Appendix provides guidance to local authorities considering whether to make compulsory purchase orders under the Housing Acts. Such orders are subject to confirmation by the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix). This Appendix also provides guidance on the information which should be submitted in support of applications for the confirmation of housing orders in addition to the general requirements described in this Part of the Memorandum.
2. Housing compulsory purchase orders submitted for confirmation will be considered on their merits both in the light of any objections received and the general policy, described in this Part of the Memorandum, that orders should not be made unless there is a compelling case in the public interest. The further policies and requirements in this Appendix apply to compulsory purchase orders made under the Housing Acts.

#### **HOUSING ACT, 1985: PART II**

##### **Circumstances in which powers may be used**

3. Section 17 of the Housing Act 1985 ('the 1985 Act') empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
4. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, Housing Associations or owner-occupiers.

##### **Information to be included in Applications for confirmation of orders**

5. When applying for the confirmation of a compulsory purchase order made under Part II of the 1985 Act the authority should include in its statement of reasons for making the order information regarding needs for the provision of further housing accommodation in its area. This information should normally include the total number of dwellings in the district, unfit dwellings<sup>1</sup>, other dwellings in need of renovation and vacant dwellings; the total number of households and the number for which, in the authority's view, provision needs to be made. Details of the authority's housing stock, by type, may also be helpful, particularly where the case advanced for compulsory purchase turns on a need to provide housing of a particular type. Where a compulsory purchase order is made with a view to meeting special housing needs, such as those of single persons, the elderly, disabled or homeless, specific information about these needs should also be included.

6. The authority should also provide information about its proposals for the land or property it is seeking to acquire. Where, as will normally be the case, it proposes to dispose of the land or property concerned, the authority should submit where possible information regarding the prospective purchaser; the purchaser's proposals regarding the provision of housing accommodation; and when these will materialise. Information regarding any other statutory consents required for the proposals will also be relevant. It is recognised that in some cases it may not be possible to identify a prospective purchaser at the time a compulsory purchase order is made. Negotiations may be proceeding or the authority may propose to sell on the open market. In such cases the authority should submit information about its proposals to dispose of the land or property; its grounds for considering that this will achieve the provision of housing accommodation; and when the provision will materialise. Where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner.

### **Acquisition of land for housing development**

7. The acquisition of land for housing development is an acceptable use of compulsory purchase powers, including where it will make land available for private development, or development by Housing Associations. Section 17(4) of the 1985 Act provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years. The Secretary of State would not normally regard compulsory purchase as justified where development will not be completed within 3 years of acquisition.
8. Where an authority has a choice between the use of housing or planning compulsory purchase powers (referred to in Appendix A) the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power. Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this Appendix.

### **Acquisition of empty properties for housing use**

9. Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. When considering whether to confirm a compulsory purchase order the Secretary of State will normally wish to know how long the property has been vacant; what steps the authority has taken to encourage the owner to bring it into acceptable use; the outcome; and what works have been carried out by the owner towards its re-use for housing purposes. Cases may, however, arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only method of acquiring the land.

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<sup>1</sup> The Housing Bill which is before Parliament at the time of publication proposes to replace the housing fitness test with assessment under the Housing Health and Safety Rating System as the basis for action against unacceptable housing standards. On implementation of the proposed system the quantity of housing with Category 1 or 2 hazards would become relevant.

## Acquisition of sub-standard properties

### *(a) General use of Power*

10. Compulsory purchase of sub-standard properties may also be justified as a last resort in cases where a clear housing gain will be obtained; the owner of the property has failed to maintain it or bring it to an acceptable standard; and other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation. In considering whether to confirm a compulsory purchase order the Secretary of State will wish to know what are the alleged defects in the order property; what other measures the authority has taken to remedy matters (eg. service of a notice on the owner under section 215 of the Town and Country Planning Act 1990 requiring him or her to remedy the loss of amenity that such a property causes); the outcome; and the extent and nature of any works carried out by the owner to secure the improvement and repair of the property. The Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property.
11. The Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

### *(b) Houses in multiple occupation*

12. Cases may arise where an authority wishes to make a compulsory purchase order following a control order<sup>2</sup> under section 379 of the 1985 Act in respect of a house in multiple occupation. Guidance on the relevant statutory provisions is given in paragraphs 4.8.1 – 4.10.4 of the Memorandum accompanying DOE Circular 12/93 *Houses in multiple occupation: guidance to local authorities on managing the stock in their area*. It is recognised that a compulsory purchase order may be justified where there is no realistic possibility of returning a property to the owner at the expiry of the control order.
13. Where a compulsory purchase order is made under Part II of the 1985 Act within 28 days of the control order, Part IV of Schedule 13 provides that the authority need not prepare or serve a Management Scheme until it is notified of the Secretary of State's decision whether or not to confirm the compulsory purchase order. A compulsory purchase order may be made after the 28 day period has elapsed, but the authority will then remain under the duty to prepare a Management Scheme. It should also be borne in mind that where a property has been improved following a control order, there may be less justification for compulsory purchase to secure improved housing accommodation. Where the control order has been in force for a significant period of time, evidence of the previous management of the property, on which the case for compulsory purchase may have to depend, may no longer be current. Authorities who wish to resort to compulsory purchase may therefore find it advisable to do so as soon as possible after the control order has been made.

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<sup>2</sup> The Housing Bill before Parliament at the time of publication proposes that no new control orders (and management schemes) made under the provisions of the Housing Act 1985 should be permitted. Instead, in certain circumstances the authority will be required or permitted to make an Interim Management Order. The making of such an order will not affect an authority's power to make a compulsory purchase order under Part II of the Housing Act 1985.

14. Difficulties have arisen where authorities wishing to take advantage of the 28 day provision have prepared compulsory purchase documents hastily and then found the compulsory purchase order to be defective and incapable of confirmation. Therefore, in making a control order, an authority may at the same time want to anticipate the possible use of compulsory purchase procedures and prepare accordingly.

(c) *Limitations*

15. The Department is advised that the powers under Part II of the 1985 Act to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement in the case of *R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea* (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part II where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.
16. Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with Section 106A of the 1985 Act. The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

### **Acquiring authority undertakings not to implement compulsory purchase orders**

17. Where they are seeking to acquire compulsorily an empty and neglected property some acquiring authorities have adopted the practice of offering to the owner an undertaking that if he (or she) withdraws his objection and agrees to improve the property and bring it into acceptable use within a specified period, the confirmed order will not be implemented. Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order the subject of such an agreement will still be considered by the Secretary of State on its individual merits as described in paragraphs 9 and 10 above. The Secretary of State has no powers to confirm an order subject to conditions.

## **HOUSING ACT 1985: PART IX**

### **Clearance areas**

18. General guidance on clearance areas is given in Annex B to DoE Circular 17/96 *Private Sector Renewal: a Strategic Approach*<sup>3</sup>. Advice on use of clearance area compulsory purchase powers is set out below.

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<sup>3</sup> see footnote 1 on replacement of basis for action on unacceptable housing conditions. Declaration of a clearance area will remain an option, though this would be on the basis of risk assessment under the HHSRS. Draft HHSRS enforcement guidance for consultation was published in December 2003, which can be found on the ODPM website via [www.housing.odpm.gov.uk](http://www.housing.odpm.gov.uk)

19. Clearance area CPOs are made under section 290 of the Housing Act 1985. In addition to the general requirements set out in this Part of the Memorandum, an authority submitting a clearance area order will be expected to deal with the following matters in their statement of reasons:
- the declaration of the clearance area and its justification, having regard to the Code of Guidance for dealing with unfit premises in Annex G to the Housing Renewal Guidance.
  - the unfitness of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are unfit as required by Rule 22(2) in the 1990 Inquiries Procedure Rules;
  - the justification for acquiring any added lands included in the order;
  - proposals for re-housing and for re-locating commercial and industrial premises affected by clearance; and
  - the proposed after-use of the cleared site. Where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning consent will not materialise.
20. Authorities promoting clearance area orders will need to demonstrate that they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that.

## **LOCAL GOVERNMENT AND HOUSING ACT 1989: PART VII**

### **Renewal areas**

21. General guidance on renewal areas is given in Annex E and appendix 1 to ODPM Circular 05/2003 *Housing Renewal Guidance*. Annex E, Appendix 1 gives guidance on acquisition of land and property in relation to renewal areas, and for ease of reference is reproduced at paragraphs 22-28 below.
22. Section 93(2) of the Local Government and Housing Act 1989 (the 1989 Act) empowers authorities to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair; their effective management and use; or the well-being of residents in the area. They may provide housing accommodation on land so acquired.
23. Section 93(2) of the 1989 Act also provides that authorities may acquire by agreement or compulsorily properties for improvement, repair or management by other persons. Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner-occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area (RA).

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<sup>4</sup> see footnote 3.

24. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall RA strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg. manpower) resources available to them and to other bodies concerned.
25. Section 93(4) of the 1989 Act empowers authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in an RA. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Where projects involve the demolition of properties, regard should be had to any adverse effects on industrial or commercial concerns.
26. The powers in sections 93(2) and 93(4) of the 1989 Act are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in RAs.
27. The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.
28. As explained in this Part of the Memorandum, compulsory purchase orders are considered on their merits but should not be made unless there is a compelling case in the public interest. Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the 1989 Act, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the RA. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the RA; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made

## **OTHER HOUSING POWERS**

29. Compulsory purchase orders made by local authorities under other Housing powers (sections 29 and 300 of the 1985 Act and section 34 of the Housing Associations Act 1985) fall to be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this Appendix where applicable.

# Orders made under Part VII of the Local Government Act 1972 for purposes of other powers

## INTRODUCTION

1. Some of the powers in legislation for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase. The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with such powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.
2. Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the 1972 Act. Section 120 provides a general power for a principal council<sup>1</sup> to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power (see examples at paragraph 9 below), or where land is intended to be used for more than one function.
3. The normal considerations in relation to making and submission of a compulsory purchase order, as described in this Part of the Memorandum, would apply to orders relying upon section 121. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.
4. Section 125 of the 1972 Act (as amended by section 43 of the Housing and Planning Act 1986) is a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.
5. The confirming authority for orders under Part VII of the 1972 Act is the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).

## ACQUISITION AND ENABLING POWERS

6. When an order is made by a principal council under section 121 of the 1972 Act, or by a district council on behalf of a parish council under section 125 of that Act, paragraph 1 of the order should cite the relevant acquisition power and state the purpose of the order, by reference to the Act ('enabling Act') under which the purpose may be achieved.
7. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the 2004 Regulations). For example -

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<sup>1</sup> defined in section 270 of the 1972 Act as a county, district, or London borough council.



‘..... the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of .....] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.’

8. As mentioned above, authorities should note that sections 121 and 125 of the 1972 Act are subject to some constraints. Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121. These are as follows:-
- (a) for the purposes specified in section 120(1)(b), ie. the benefit, improvement or development of their area
  - (b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or
  - (c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg. section 9(a) of the Open Spaces Act 1906.

There are similar limitations in section 125(1) in relation to orders made by district councils on behalf of parish councils.

9. An enabling power (see paragraph 1) may or may not also contain a power to acquire land. Section 164 of the Public Health Act 1875 (public walks and pleasure grounds) is an example of a power to acquire land which itself has no provision for the use of compulsion, but which can be exercised in conjunction with the power of compulsory purchase at section 121.
10. Other powers which do not include a land acquisition power (see paragraph 2) but which can be used in conjunction with sections 120 and 121 of the 1972 Act to achieve compulsory purchase include the following:
- (i) public conveniences – section 87, Public Health Act 1936;
  - (ii) cemeteries and crematoria – section 214 of the 1972 Act (see also paragraph 15 below);
  - (iii) recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976 (used in the example in paragraph 7 above);
  - (iv) refuse disposal sites – section 51, Environmental Protection Act 1990; and
  - (v) land drainage – section 62(2), Land Drainage Act 1991.

## **ORDERS MADE ON BEHALF OF PARISH COUNCILS**

11. If a parish council have been unable to acquire by agreement and on reasonable terms, they may make representations to the district council to make an order under section 125. The district council should have regard to this and to all the other matters set out in section 125, some of which are mentioned in paragraph 13 below.

12. A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg. section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8) of section 226).
13. Section 125 does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 Act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that Act.
14. If the district council refuse to make an order under section 125, or do not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order. Where an order is made by the Secretary of State in such circumstances, section 125 and the 1981 Act apply as if the order had been made by the district council and confirmed by the Secretary of State.

### **JOINT ORDERS AND MIXED PURPOSES**

15. A single order may be made under section 121 of the 1972 Act by more than one council and, as mentioned in paragraphs 1 and 2 above, for more than one purpose. Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments (or departments and relevant Government Office, as appropriate), involving concerted action by them. Where an inquiry is required or is considered to be appropriate, the Inspector's report will be submitted to each of them simultaneously and the decision will be given by the relevant Ministers acting together.
16. A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council. (See also paragraph 10(ii) above.)

### **COSTS AND COMPENSATION**

17. A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This involves the administrative expenses and costs of the inquiry; the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part (see also paragraphs 46-49 of this Part of the Memorandum); statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or any compensation for injurious affection payable to adjoining owners who may be entitled to claim.
18. When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

## Orders made under section 89(5) of the National Parks and Access to the Countryside Act 1949

1. Section 89(5) of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') includes powers for a local planning authority to acquire land compulsorily in order to:
  - plant trees to preserve or enhance the natural beauty of their area (section 89(1)); or
  - carry out works to enable land in their area which appears to them to be (a) derelict, neglected or unsightly, or (b) is likely to become so by reason of actual or apprehended collapse of the surface as the result of underground mining operations (other than coal mining) (section 89(2) as amended), to be reclaimed or improved or brought into use.
2. The confirming authority for orders under section 89(5) is the Secretary of State for Environment, Food, and Rural Affairs (referred to as 'the Secretary of State' in this Appendix).
3. If an authority doubts whether the powers under section 89 should be used, or where various uses are proposed, it is open to them to consider acquisition under section 226 of the Town and Country Planning Act 1990 (see Appendix A). The various other powers under which local authorities can acquire and develop land for particular purposes, such as for housing or public open space, can also be exercised in relation to land which is derelict, neglected or unsightly.
4. When considering whether to make an order under section 89(5) of the 1949 Act, or when preparing their case in support of such an order, authorities may find it helpful to have the Secretary of State's view about the meaning of the words 'derelict, neglected or unsightly' for these purposes.
5. The phrase 'derelict, neglected or unsightly' is used in connection with the specific powers of reclamation given to a local authority under section 89(2) of the 1949 Act. There are no statutory definitions of these words and so they are to be given their natural, common-sense meaning. It is preferable, where possible, to consider the words taken together, as there is a considerable overlap between all three words. The word 'unsightly' is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be 'neglected' without having been the subject of any operations by man (such as building, dumping or excavating), but it may be inappropriate to describe such land as 'derelict'.
6. It may be that land is being put to some slight use but is still properly described as 'derelict' or 'neglected' when its condition is considered in the light of the potential use of the land. It is not the purpose of section 89, however, to enable a local authority to

carry out works or to acquire land compulsorily solely because they consider that they have a better use for the land than the present one.

### Orders for educational purposes, and for public libraries and museums

#### **EDUCATION – LOCAL EDUCATION AUTHORITIES’ COMPULSORY PURCHASE POWERS**

1. Section 530 (as amended) of the Education Act 1996 (‘the 1996 Act’) gives power to the local education authority (LEA) to acquire compulsorily land which is required for the purposes of its functions, including the purposes of any LEA-maintained or assisted school or institution.
2. Orders made by LEAs under section 530 of the 1996 Act should be submitted for confirmation to the Secretary of State for Education and Skills (‘the Secretary of State’ in paragraphs 1-9 of this Appendix) at the address given in Appendix W. LEAs may seek guidance, if necessary, from that Department on the form of draft orders where there is doubt about a particular point.
3. Before making an order under section 530 of the 1996 Act, the LEA should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.

#### **THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998**

4. The LEA may wish to acquire land compulsorily in conjunction with proposals under section 28 or 31 of the School Standards and Framework Act 1998 (‘the 1998 Act’). In such circumstances the LEA should publish the 1998 Act proposals before making and submitting any compulsory purchase order under section 530 of the 1996 Act.
5. The relevant school organisation committee or adjudicator will consider the application for approval of the 1998 Act proposals on its merits and independently from consideration by the Secretary of State of the case for confirming the compulsory purchase order. Where the relevant body is minded to approve the proposals, it should do so conditionally under regulation 9(1)(b) of the Education (School Organisation Proposals) (England) Regulations 1999 (as amended) on condition that the relevant site is acquired. The LEA will be informed of the decision so that it may then make and submit the order. If the Secretary of State decides to confirm the order he will seal it and return it to the LEA. When the purchase of the site has been effected, the condition of the approval is thereby met and the approval of the proposals becomes final with no further action required.
6. If the decision is to reject the 1998 Act proposals, however, the LEA should not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

## **THE EDUCATION ACT 2002**

7. Sections 70 and 72 of the Education Act 2002 introduce new arrangements for the publication of proposals for additional secondary schools, and for the Learning and Skills Council for England to publish proposals for the restructuring of school sixth form education. The final decision on whether to approve both categories of proposals will be made by the Secretary of State. The need for a compulsory purchase order will be taken into account by the Secretary of State when he considers the statutory proposals, and any decision to approve them will be conditional upon the acquisition of the site. The LEA will be informed of the decision on the proposals so that it may then make and submit the necessary compulsory purchase order. The Secretary of State will consider the order separately. If the order is confirmed, the proposals will be fully approved when the site purchase is completed. If the order is not confirmed the proposals will fall when the condition is not met.

## **VOLUNTARY AIDED SCHOOLS**

8. Where compulsory purchase orders are made for voluntary aided schools, the following documents, additional to those specified in Appendix Q, should accompany, or be submitted as soon as possible after, the order:
  - (a) a completed copy of form SB1 (obtainable from Department for Education and Skills at the address in Appendix W); and
  - (b) a qualified valuer's report.

## **EDUCATION – SECRETARY OF STATE'S COMPULSORY PURCHASE POWERS**

9. Paragraph 3 of Schedule 35A to the Education Act 1996 gives power to the Secretary of State to acquire compulsorily land which is required by an Academy. The Secretary of State may exercise this power where the LEA has disposed of land, without prior consent, which has been used wholly or mainly for the purposes of a county or community school at any time in the period of eight years ending with the day on which the disposal was made. On completion of the purchase the Secretary of State must transfer the land to the person concerned with the running of the Academy.

## **PUBLIC LIBRARIES AND MUSEUMS**

10. Land for public libraries and museums may be acquired compulsorily under section 121 of the Local Government Act 1972 in conjunction with an appropriate enabling power (see also Appendix F). Orders for these purposes should be submitted to the Secretary of State for Culture, Media and Sport at the address given in Appendix W. Such orders should be accompanied by the following additional documents:
  - (a) a completed copy of form CP/AL1 (obtainable from the Department for Culture, Media and Sport, Libraries Division); and
  - (b) a qualified valuer's report.

11. Authorities are reminded of the general advice in paragraph 7 of this Part of the Memorandum that all orders should be made having due regard to statutory requirements and to any guidance from the relevant Department.

### Orders for airport Public Safety Zones

1. Department for Transport Circular 1/2002 *Control of Development in Airport Public Safety Zones* includes a policy on the purchase of property within the 1 in 10,000 individual risk contour. The nature of the area within this contour is such that the annual individual third party risk of being killed as a result of an aircraft accident exceeds 1 in 10,000.
2. The Secretary of State for Transport's policy is that there should be no occupied residential properties or all-day workplaces within the 1 in 10,000 contour. He therefore expects airport operators to offer to purchase such property by agreement, with compensation being payable under the Compensation Code. Although Public Safety Zones are a non-statutory designation, if purchase by agreement is not possible the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.
3. The airport operator will need to demonstrate that the property to be acquired falls into the categories described above and that it has not been possible to purchase by agreement.
4. When acquired, airport operators will be expected to demolish any buildings and to clear the land.
5. Compulsory purchase orders made for this purpose should be sent to the Secretary of State for Transport at the address given in paragraph 8 of Appendix W.



### Orders made under section 47 of the Listed Buildings Act – Listed Building in need of repair

1. Sections 47, 48 and 50 of the Listed Buildings Act relate to the compulsory acquisition by the appropriate authority of a listed building in need of repair; service on the owner of a repairs notice; and inclusion in the order of a direction for minimum compensation.
2. At least two months before making an order under section 47 of the Listed Buildings Act the acquiring authority must, under section 48, serve a repairs notice on the owner as defined in section 91(2) of the Listed Buildings Act. Advice about repairs notices is found in Chapter 7 of PPG 15.
3. In order to comply with regulation 4 of the 2004 Prescribed Forms Regulations all personal notices must include additional paragraphs 3 and 5 of Form 8 in the Schedule to the Regulations. If the acquiring authority have included a direction for minimum compensation under section 50 of the Listed Buildings Act, they must also insert additional paragraph 4 of Form 8.
4. Optional paragraph 4 of Form 1 in the Schedule to the 2004 Prescribed Forms Regulations sets out the terms for a minimum compensation direction. This paragraph can instead be incorporated into orders drafted using Form 2 or 3 as appropriate to the circumstances of the order.
5. Note (p) to Form 8 in the Schedule to the Regulations states that the Notice should refer to a place (eg. 'below' or 'in the attached note') where the meaning of the direction is explained, as required by section 50(3). The explanation should normally include the text of subsections (4) and (5) of section 50.
6. When an order made under section 47 of the Listed Buildings Act is submitted to the Secretary of State for Culture, Media and Sport for confirmation, a copy of the repairs notice served in accordance with section 48 must be included with all the supporting documents listed in Appendix Q to this Part of the Memorandum.
7. A local authority which has made an order under section 47 of the Listed Buildings Act should notify the Department for Culture, Media and Sport immediately they become aware of any application to a magistrates' court either under section 47(4) or section 50(6). Depending on the circumstances, it may be necessary to hold the order in abeyance until such time as the court has considered the application.

### Exercise of compulsory purchase powers at the request of the community

1. From time to time, authorities may receive requests from the community (by petition or otherwise) to acquire community assets that are in danger of being lost to the detriment of that community. If the owner is unwilling to sell, the implication is that the community would ask the authority to use its compulsory purchase powers to acquire the asset.
2. Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.
3. As with any compulsory purchase, local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the Compulsory Purchase Order process either from their own resources, or with a partial or full contribution from the requesting organisation (see paragraphs 20 – 23 of Part 1 of the Memorandum to this Circular).
4. In order to assess whether there is a compelling case in the public interest for compulsory acquisition, local authorities should ask those making the request for such information that is necessary for them to do so. This could include the value of the asset to the community; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed. This list is not exhaustive, but the level of detail required should be tailored to the circumstances.

## Special kinds of land

1. Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by provision that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure<sup>1</sup>. The ‘special kinds of land’ are those set out in Part III of, and Schedule 3 to, the 1981 Act (see also Appendix U, paragraph 17):
  - (a) land acquired by a statutory undertaker (as defined in section 16 of the 1981 Act) for the purposes of their undertaking (section 16 and Schedule 3, paragraph 3);
  - (b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers (as defined in section 17 of the 1981 Act) for the purposes of their undertaking (section 17 and Schedule 3, paragraph 4);
  - (c) land held by the National Trust inalienably (section 18 and Schedule 3, paragraph 5); and
  - (d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and Schedule 3, paragraph 6).

### Structure of this Appendix

2. Section 1 of this Appendix covers orders to which paragraphs (a) and (b) above apply, section 2 provides guidance on orders which include National Trust land held inalienably or land forming part of a common, open space etc. (paragraphs (c) and (d)), and Section 3 contains some basic details concerning special parliamentary procedure.
3. Unless stated otherwise:
  - advice in this Appendix about the compulsory purchase of the special kinds of land mentioned in Part III of the 1981 Act also applies to the compulsory acquisition of new rights over such land and to the corresponding paragraph, or paragraphs, in Part II of Schedule 3;
  - any reference to statutory undertakers’ land means land which has been acquired by statutory undertakers for the purposes of their undertaking.

## SECTION 1

### Statutory undertakers

4. Section 8(1) defines ‘statutory undertakers’ for the *general* purposes of the 1981 Act. Paragraphs 10 and 11 below explain the effects of section 17, for the purposes of which

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<sup>1</sup> see paragraphs 29-30.

other bodies (eg. housing action trusts) may be defined as, or deemed to be, statutory undertakers. Gas transporters, electricity licence holders who can exercise compulsory purchase powers, the Environment Agency, Regional Development Agencies, English Partnerships and water and sewerage undertakers are deemed to be statutory undertakers for the purposes of the 1981 Act. British Telecom are not statutory undertakers for the purposes of the Act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the Act. Where their operations are carried out under the specific authority of an Act, however, such operators will fall within the definition in section 8(1) of the 1981 Act.

### **Protection for statutory undertakers' land**

5. Sections 16 and 17 provide protection for statutory undertakers' land. In both cases, the land must have been acquired for the purposes of the undertaking and these provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate Minister under section 16, or an objection in respect of land to which they think section 17 applies (but see paragraphs 10 and 11 below), undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant Act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg. a redundant, manufactured gas works. In the circumstances, the land is not held for the purpose of the statutory provision namely the conveyance of gas through pipes to any premises or to a pipe-line system operated by a gas transporter.

### **Section 16 of the 1981 Act**

6. Under section 16, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate Minister'. This is the Minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Trade and Industry<sup>2</sup>. Such representations must be made within the period stated in the public and personal notices, ie. not less than twenty-one days, as specified in the Act.
7. A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual Minister'). Where the appropriate Minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate Minister would also be the confirming authority where, for example, an airport operator under Part V of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

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<sup>2</sup> DTI have prepared a guidance note about section 16 representations by gas and electricity undertakers, which is available from the address given in Appendix W.

8. Subject to advice in paragraph 9 below about orders to which section 31 applies, where a section 16 representation is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a Minister) so as to include the interest owned by the statutory undertakers unless the appropriate Minister gives a certificate in the terms stated in section 16(2). These are either (16(2)(a)) that the land can be taken without serious detriment to the carrying on of the undertaking, or (16(2)(b)) that if taken it can be replaced by other land without serious detriment to the undertaking.

### **Joint confirmation**

9. By virtue of section 31(2) of the 1981 Act, an order made under any of the powers referred to in section 31(1) may still be confirmed where a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused, if that confirmation is undertaken jointly by the appropriate Minister and the usual Minister.

### **Section 17 of the 1981 Act**

10. Section 17(2) provides that for an order acquiring land owned by a local authority or statutory undertaker, in the event that such an authority or undertaker objects, any confirmation would be subject to special parliamentary procedure. Section 17(3), however, excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore be very limited.
11. The Secretary of State may by order under section 17(4)(b) extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:
  - (a) a housing action trust – Housing Act 1988, section 78 and Schedule 10, paragraph 3;
  - (b) Regional Development Agencies – Regional Development Agencies Act 1998 section 20(4) and Schedule 5, paragraph 2; and
  - (c) English Partnerships (the Urban Regeneration Agency) – Leasehold Reform, Housing and Urban Development Act 1993 section 169 and Schedule 20, paragraph 3.

## **SECTION 2**

### **Section 18 of the 1981 Act**

12. Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section 18(3)), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

## Section 19 of the 1981 Act

13. Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the 1981 Act:
  - ‘common’ includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green<sup>3</sup>. The definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965;
  - ‘open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and
  - ‘fuel or field garden allotment’ means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.
14. An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17) gives a certificate under section 19 indicating his satisfaction that either:
  - section 19(1)(a) – exchange land is being given which is no less in area and equally advantageous as the land taken; or
  - section 19(1)(aa) – that the land is being purchased to ensure its preservation or improve its management; or
  - section 19(1)(b) – that the land is 250 sq yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary.
15. Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under Schedule 3, paragraph 6. See Appendix M paragraphs 10-14.
16. As to the form of order, see Appendix U, paragraphs 17 to 24 and Appendix M, paragraphs 13 to 16.

## Application for a section 19 certificate

17. An acquiring authority which will require a certificate from the relevant Secretary of State under section 19 and/or Schedule 3, paragraph 6, should apply as follows:
  - common land – the Secretary of State for Environment, Food and Rural Affairs (Countryside (Landscape and Recreation) Division, see Appendix W for details);
  - open space – Deputy Prime Minister/First Secretary of State, at the appropriate regional Government Office (see Appendix W for addresses);

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<sup>3</sup> Where rights of common are extinguished by an order, acquiring authorities should also consider the need to seek consent under section 22 of the Commons Act 1899. Further information can be obtained from the DEFRA address given in Appendix W, paragraph 5.

- fuel or field garden allotments – Deputy Prime Minister/First Secretary of State, Office of the Deputy Prime Minister (LSC Division, see Appendix W for details)

Applications for certificates should be made when the order is submitted for confirmation (or, in the case of an order prepared in draft by a Minister, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

18. The land, including any new rights, should be described in detail, by reference to the compulsory purchase order, and all the land clearly identified on an accompanying map. This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land. The acquiring authority should also provide copies of the order, including the Schedules, and order map. For a particularly large order, they may provide: (a) copies of the order and relevant parts or sheets of the map; and (b) a copy, or copies, of the relevant extract or extracts from the order Schedule or Schedules, which include the following:
  - (i) the plot(s) of common, open space etc. which they propose to acquire or over which they propose to acquire a new right ('the order land'); and
  - (ii) any land which they propose to give in exchange ('the exchange land').

(Where Schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute 'the rights land' and 'the additional land' for the definitions given in (i) and (ii) above, respectively.)

19. When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 Act or of paragraph 6(4) of Schedule 3 to that Act.
20. It must be specified under which sub-section(s) an application for a certificate is made – eg. section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.
21. In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:
  - the name of the common or green involved (including CL/VG number);
  - the plots numbers and their areas, in square metres;
  - details of any rights of common registered, or rights of public access, and the extent to which they are exercised;
  - the purpose of the acquisition;

- details of any special provisions or restrictions affecting any of the land in the application; and
  - any further information which supports the case for a certificate.
22. In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the Inspector at the inquiry into the compulsory purchase order.
23. Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the Inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the Inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an Inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.
24. The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.<sup>4</sup>

### **Exchange land**

25. Where a certificate would be in terms of section 19(1)(a), the exchange land must be **no less** in area than the order land; and must be equally advantageous to any persons entitled to rights of common or to other rights, and to the public. Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the Schedule to the 2004 Regulations.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exist at that date. Other issues may arise involving questions of the respective merits of order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be

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<sup>4</sup> [1994] J. P. L. 607.



disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg. pending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

### **Meaning of the ‘the public’ in section 19**

26. With regard to exchange land included in an order, the Secretary of State takes the view that ‘the public’ means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

### **Section 19(1)(aa)**

27. In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be ‘improvement’ within the sense of section 226(1)(a) of the 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Appendix G), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie. where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

*NB Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Appendix U, paragraph 24.*

### **Section 19(1)(b)**

28. A certificate can only be given in terms of section 19(1)(b) where the Secretary of State concerned is persuaded that both the criteria set out in paragraph 14 third bullet are met. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

## **SECTION 3**

### **Special parliamentary procedure**

29. In the event that an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965. The confirming authority will give full instructions at the appropriate time.
  
30. Described briefly for information, special parliamentary procedure is as follows: following the confirming authority's decision to confirm, the order is laid before Parliament, after giving 3 days notice in the London Gazette. If a petition of general objection or amendment is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve. If no petition is lodged, the confirmation is usually approved without such referral.

### Compulsory purchase of new rights and other interests

1. This appendix gives some general advice<sup>1</sup> about the compulsory acquisition of new rights over land where full land ownership is not required eg. the compulsory creation of a right of access.
2. Such compulsory acquisition of rights over land by creation of new rights is, by virtue of section 28 of the 1981 Act, subject to the provisions of Schedule 3 to that Act. It can only be achieved using a specific statutory power. Powers include (with the bodies by whom they may be exercised) the following:
  - (i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities);
  - (ii) Highways Act 1980, all highway authorities may acquire rights under Part XII by virtue of section 250. (Guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97.);
  - (iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers); Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency);
  - (iv) Leasehold Reform, Housing and Urban Development Act 1993 section 162(2) (English Partnerships);
  - (v) Regional Development Agencies Act 1998, section 20(2) (regional development agencies);
  - (vi) Electricity Act 1989, Schedule 3 (electricity undertakings); and
  - (vii) Gas Act 1986, Schedule 3 (gas transporter undertakings).

#### **ORDER HEADING**

3. For an order which relates solely to new rights, the order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981. For an order which includes new rights and land to be acquired for other purposes, the order heading should refer to the appropriate enabling Act, any other Act(s), and the 1981 Act, as required by the Regulations. See Note (b) to Forms 1, 2 and 3 in the Schedule to the 2004 Prescribed Forms Regulations.

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<sup>4</sup> Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is referred to within this appendix as an example. Where in practice a different power is used, eg section 250 of the Highways Act 1980, the authority should take into account any special requirements which may apply to the use of that power.

## ORDERS SOLELY FOR NEW RIGHTS

4. Where an order relates solely to new rights and does not include other interests in land which are to be purchased outright, paragraph 1 of the order should identify the purpose for which the rights are required, eg. 'for the purpose of providing an access to a community centre which the Council are authorised to provide under section 19 of the 1976 Act'.

## ORDERS FOR NEW RIGHTS AND OTHER INTERESTS

5. Where an order relates to the purchase of new rights and of other interests in land under different powers, paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes. Where the purpose is the same for both new rights and other interests, it may be relatively straightforward. For example:

' . . . . . the acquiring authority is hereby authorised to compulsorily purchase

- (a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
- (b) under section 13 of the said Act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose.

*[etc., as in Form 1 of the Schedule to the Regulations].*

6. Where also the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made. For example:-

' . . . . . the acquiring authority is hereby authorised to compulsorily purchase

- (a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and
- (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the above-mentioned land for [*the authority*] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.

7. The acquiring authority's statements of reasons and case should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority are also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

## **SCHEDULE AND MAP**

8. The land over which each new right is sought should be shown as a separate plot in the order Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg. where there are a number of new rights, they could be shown together in the Schedule with appropriate cross-referencing between the related plots.
9. The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See Note (g) to Forms 1, 2 and 3 or Note (d) to Forms 4, 5 and 6.)

## **SPECIAL KINDS OF LAND (see also Appendices L and U)**

10. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc.). The order will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17 of Appendix L) gives a certificate, in the relevant terms, under paragraph 6(1) and (2).
11. A certificate may be given in the following circumstances:
  - paragraph 6(1)(a) – the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or
  - paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land (but see paragraph 13 below); or
  - paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the Act; or
  - paragraph 6(1)(c) -
    - (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or,
    - (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway,and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.
12. The same compulsory purchase order may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of

such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

13. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Appendix U, paragraph 24; and Appendix L, paragraph 27.
14. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the Schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Appendix U, paragraphs 20 and 21 and Appendix L, paragraph 18.)
15. Where additional land which is not being acquired compulsorily is to be vested in the owners) of the rights land, the additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the order. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.
16. An order which does not provide for the vesting of additional land but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired, should comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also paragraph 13 above.)

# Appendix N

## Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

### GENERAL POSITION

1. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land . If it is proposed to include such land in an order, careful consideration should be made of the enabling legislation.

### EXCEPTIONS TO GENERAL POSITION

2. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land. Section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 Act – including the compulsory purchase powers – shall apply to the Crown. Section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that Act to apply to Crown land with the consent of the ‘appropriate authority’ .
3. The enactments listed below also provide that interests in Crown land **which are not held by or on behalf of the Crown** *may* be acquired compulsorily if the appropriate authority agree:
  - section 296 of the Town and Country Planning Act 1990;
  - section 83 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - section 25 of the Transport and Works Act 1992; and
  - section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part III of the Housing Act 1988 and Part VII of the Local Government and Housing Act 1989).

### ISSUES FOR CONSIDERATION

4. From the foregoing, therefore, a Crown interest in land should generally not be included in an order unless -

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<sup>1</sup> Under various provisions, eg s283(1) of the Town and Country Planning Act 1990 and s83(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is ‘Crown land’.

<sup>2</sup> As appropriate, the Government Department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

<sup>3</sup> This is not an exhaustive list.

- (a) there is an agreement under section 327 of the Highways Act 1980 which provides for the use of compulsory purchase powers; or
  - (b) the order is made under a power to which the provisions mentioned in paragraph 3 above relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land.
5. Where (b) above applies, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.
6. Where the appropriate authority have entered into an agreement with a highway authority so as to permit the inclusion in a compulsory purchase order of the Crown's interest or interests, the land may be included and described as for any privately owned land. Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order Schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order Schedule should specify that 'all interests' in [*describe the land*] except the interest(s) held by [*the relevant Crown body*]' are being acquired. (See also Appendix U, paragraph 14).



## Land Compensation Act 1961

### Certificates of appropriate alternative development

#### **INTRODUCTION**

1. Part II of the Land Compensation Act 1961 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, sections 14-16 of the 1961 Act provide for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.
2. Where, however, existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part III of the 1961 Act provides a mechanism for indicating the kind of development (if any) for which planning permission can be assumed by means of a so called 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

#### **CERTIFICATE SYSTEM**

4. Section 17(1) of the 1961 Act provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Circumstances in which certificates may be required include:
  - (a) where there is no adopted development plan covering the land to be acquired;
  - (b) where the adopted development plan indicates a 'green belt' or 'area of special landscape value' or leaves the site without specific allocation; and
  - (c) where the site is allocated in the adopted development plan specifically for some public purpose, eg. a new school or open space.
5. The local planning authority is required to respond by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(4) requires the certificate to state either:
  - planning permission would have been given for development of one or more specified classes and for any development for which the land is to be acquired, but would not have been granted for any other development (a 'positive certificate'); or

- planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development (a ‘nil’ or ‘negative’ certificate).

Where the planning authority consider that permission would only have been granted subject to conditions or at a future time, or both, they are required to specify those conditions and/or that future time, as the case may be. ‘Classes’ here merely means types of development and is not limited to development within the classes listed in the Town and Country Planning (Use Classes) Order 1987. Planning authorities are not restricted to consideration of the classes specified by the applicant.

6. The applicant must state whether or not he considers that there are any classes of development which either immediately or at a future time would be appropriate for the land if it were not being acquired by an authority possessing compulsory purchase powers. If the applicant considers that there are such classes of development he must say what they are and when they would be appropriate. An applicant must give his grounds for the opinions expressed in his application, ie, the onus is on the applicant to substantiate the reasons why he considers certain alternative development to be appropriate. Acquiring authorities are able to apply for a ‘nil’ certificate indicating that no development would have been permitted.
7. The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers. That event is defined in section 22(2) of the 1961 Act, and so the relevant date will be:
  - (i) **acquisition by private or hybrid Parliamentary Bill**—the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;
  - (ii) **acquisition by compulsory purchase order** – the date of notice of making of the order (or date of publication of the draft compulsory purchase order, if the acquiring authority is a Government Department);
  - (iii) **acquisition by Transport and Works Act order** – the date of notice of the making of the order;
  - (iv) **acquisition by blight notice or a purchase notice** – the date on which ‘notice to treat’ is deemed to have been served;
  - (v) **acquisition by agreement** – the date of the written offer by the acquiring authority to negotiate for the purchase of the land; or
  - (vi) **vesting in the Urban Regeneration Agency (English Partnerships)** – the date the draft vesting order is laid before Parliament.

Thereafter application may be made at any time, except that after a case has been referred to the Lands Tribunal an application may not be made unless both parties agree, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

8. The First Secretary of State ('the Secretary of State') considers it important as far as possible that the certificate system should be operated on broad and common-sense lines; it should be borne in mind that a certificate is not a planning permission but a statement to be used in ascertaining the fair market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Secretary of State would expect the local planning authority to exercise its planning judgement, on the basis of the absence of the scheme, taking into account those factors which would normally apply to consideration of planning applications eg. the character of the development in the surrounding area, any general policy of the development plan, and national planning policy along with other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard. Only those forms of development which for some reason or other are inappropriate should be excluded. Local planning authorities will note from section 17(7) that their certificate can be at variance with the use shown by the development plan for the particular site.
9. Where there is no adopted development plan, regard should be had to the draft plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development.

#### **MAKING AN APPLICATION FOR A CERTIFICATE**

10. The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 5 and 6 of the Land Compensation Development Order 1974 (SI 1974 No. 539) as amended (by SI 1986 No 435). Article 3(3) of the order requires that if a certificate is issued otherwise than for the class or classes of development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal to the Secretary of State (see paragraph 15 below). Article 3(4) requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued:
11. Attention is drawn to the following points-
  - (a) acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly;
  - (b) it may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some

development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie. in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world'); and

- (c) a certificate once issued must be taken into account in assessing compensation for the compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

### **ADDITIONAL INFORMAL ADVICE**

- 12. In order that the valuers acting on either side may be able to assess the fair open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. For example, they may be asked to assist in interpreting the relevant provisions of the development plan in a case falling within section 16. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should -
  - (a) give any such advice to both parties to the negotiation;
  - (b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.

### **DISREGARDING THE ACQUISITION AND THE UNDERLYING SCHEME (THE 'NO SCHEME WORLD')**

- 13. As referred to in paragraph 5 above, section 17(4) of the 1961 Act requires the local planning authority (or the Secretary of State in relation to an appeal) to certify the alternative development (if any) for which planning permission would have been granted 'in respect of the land in question, *if it were not proposed to be acquired by an authority possessing compulsory purchase powers*'. For this reason, the purpose for which land is being acquired must always be disregarded, as must any other purpose involving public acquisition. It is not sufficient to ignore the fact of acquisition—the underlying public purpose of the scheme must also be disregarded. This principle was settled by the House of Lords in *Grampian Regional Council and others -v- Secretary of State for Scotland and others* [1983] 1 WLR 1340. The approach to be adopted is considered at paragraph 18 below.
- 14. Section 17(7) of the 1961 Act provides that a certificate may not be refused for a particular class of development solely on the grounds that it would be contrary to the relevant development plan. The purpose of this provision is to avoid the whole purpose of the certificate system being defeated, where land is allocated in the development plan

for the use for which it is being acquired. It follows that the local planning authority (or the Secretary of State as the case may be) must ignore development plan policies with no function beyond the acquisition scheme—for example, policies that earmark land for a road or school. But the decision maker may take account of broader policies—for example, Green Belts and countryside protection policies—if these imply that the classes of alternative development suggested by the applicant or appellant would not have been acceptable in the ‘no scheme world’.

## **APPEALS**

15. The right of appeal against a certificate under section 18 of the 1961, exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the Secretary of State<sup>1</sup>. He may confirm, vary or cancel it, or cancel it and issue a different certificate in its place, as he considers appropriate. Before determining an appeal he must, if required by either party, give both parties and the local planning authority an opportunity to be heard. Article 4 of the Land Compensation Development Order 1974, as amended, requires that written notice of an appeal must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a ‘nil’ or ‘negative’ certificate had been issued. The Secretary of State has no power to extend the appeal period. After notice of appeal has been given, however, the appellant has a further month to provide the Secretary of State with a copy of the application to the planning authority, a copy of the certificate issued (if any) and a statement of the grounds of appeal. The Secretary of State does have the power to extend this period, but only if he receives the request to do so before it expires. If the required documentation is not received within the required time scale, the appeal has to be treated as withdrawn. Any person aggrieved by the Secretary of State’s decision on the appeal may challenge its validity in the High Court within a period of six weeks from the date of the decision.

## **RELEVANT DATE FOR APPRAISAL OF APPLICATIONS AND APPEALS**

16. As can be concluded from the foregoing, there are three main issues in reaching a decision on any application or appeal—
  - (a) the physical considerations—that is, the state of the land and the area in which it is situated;
  - (b) the current and reasonably foreseeable planning policies; and
  - (c) identifying and disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.

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<sup>1</sup> Appeals should be addressed to him at the Planning Inspectorate Special Appeals and Call-ins Branch, 3/17 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

17. Case law, as established by the judgement of the House of Lords in *Fletcher Estates (Harlescott) Ltd -v- the Secretary of State for the Environment and the Secretary of State for Transport and The Executors of J V Longmore -v- the Secretary of State for the Environment and the Secretary of State for Transport* [2000] 11 EG 141, determined that all these issues must be considered at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers – the section 22(2) event as described at items (1)-(6) of paragraph 7 above.
18. For issue (c) in paragraph 16 above, the consequences of the scheme underlying the acquisition should be disregarded as they stood at the section 22(2) date, as if the scheme had been cancelled at that date (rather than as if it had never existed at all). And if the method of acquisition changes during the life of the scheme, the relevant date is that of the earliest section 22(2)(a) event.

## Check list of documents to be submitted to the confirming authority<sup>1</sup>

The following documents should be submitted to the confirming authority with the compulsory purchase order for confirmation:

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
<b>Orders and maps</b>		
	sealed order	1
Appendix V	sealed map	2
	unsealed order	2
	unsealed map	2
<b>Certificates</b>		
Appendix T	general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: <ul style="list-style-type: none"> <li>- an order made on behalf of a parish council;</li> <li>- Church of England property; or</li> <li>- a listed building in need of repair.</li> </ul>	1
Appendix S	protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in paragraph 3 of Appendix S (except for orders under section 47 of the Listed Buildings Act).	1

<sup>1</sup> See also paragraph 34 of this Part of the Memorandum.

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
<b>Statements</b>		
Appendix R	Statement of Reasons sent by acquiring authority with personal notices, enclosures to the statement of reasons, and wherever practicable any other documents referred to therein. Statement of Reasons must include a statement concerning the planning position (see paragraphs 22-23 of this Part of the Memorandum).	2
<b>Notices</b>		
Appendix J	Where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990), a copy of the repairs notice served in accordance with section 48	1



## Preparing the statement of reasons

The statement of *reasons* (see paragraphs 35-36 of this Part of the Memorandum) should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):

- (i) a brief description of the order land and its location, topographical features and present use;
- (ii) an explanation of the use of the particular enabling power (see paragraphs 13-15 of this Part of the Memorandum);
- (iii) an outline of the authority's purpose in seeking to acquire the land;
- (iv) a statement of the authority's justification for compulsory purchase, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human rights, and Article 8 if appropriate (see paragraphs 16-18 of this Part);
- (v) a description of the proposals for the use or development of the land (see paragraph 19 of this Part);
- (vi) a statement about the planning position of the order site (see paragraphs 22-23 of this Part and, for planning orders, Appendix A);
- (vii) information required in the light of Government policy statements where orders are made in certain circumstances, eg. as stated in Annex E where orders are made under the Housing Acts (including a statement as to unfitness<sup>1</sup> where unfit buildings are being acquired under Part IX of the Housing Act 1985); or such information as may be required by any of the other documents mentioned in paragraph 11 of this Part;
- (viii) any special considerations affecting the order site, eg. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc;
- (ix) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented, eg. need for a waste management licence;
- (x) details of any views which may have been expressed by a Government department about the proposed development of the order site;

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<sup>1</sup> see footnotes to Appendix E concerning Housing Bill proposals to replace housing fitness test with Housing Health and Safety Rating System assessments.

- (xi) any other information which would be of interest to persons affected by the order, eg. proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained;
- (xii) details of any related order, application or appeal which may require a co-ordinated decision by the confirming Minister, eg. an order made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application; and
- (xiii) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place.

### Protected assets certificate and related information

1. Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.
2. Every order submitted for confirmation (except orders made under section 47 of the Listed Buildings Act<sup>1</sup>) should therefore be accompanied by a protected assets certificate which includes for each category of buildings or assets protection referred to in paragraph 3 **either**:

a nil return for that category of protection

**or**

a positive statement in the appropriate format set out in paragraph 3 (or any combination, as required) **and** the additional details described in paragraph 4.

3. The forms of positive statement to be submitted are as follows (numbers in brackets refer to the Notes at the end, \* = delete as appropriate):-

(a) **Listed buildings (1)**

The proposals in the order will involve the demolition/alteration/extension\* of the following building(s) which has/have been\* listed under section 1 of the Listed Buildings Act [*insert order reference, list reference, address*].

(b) **Buildings subject to building preservation notices**

The proposals in the order will involve the demolition/alteration/extension\* of the following building(s) which is/are\* the subject(s)\* of (a) building preservation notice(s) made by the.....[*insert name of authority*] .....on.....[*insert date(s) of notice(s)*].

(c) **Other buildings which may be of a quality to be listed**

The proposals in the order will involve the demolition/alteration/extension\* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in Planning Policy Guidance Note 15, *Planning and the Historic Environment* 'PPG 15'.

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<sup>1</sup> For such orders, which are submitted to DCMS for confirmation, only a copy of the repairs notice under section 48 of the Listed Buildings Act is required - see Appendix J.

(d) **Buildings within a conservation area (2)**

The proposals in the order will involve the demolition of the following building(s) which is/are\* included in a conservation area designated under section 69 (or, as the case may be, section 70) of the Listed Buildings Act.

(e) **Scheduled Monuments**

The proposals in the order will involve the demolition/alteration/extension\* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be\* submitted to the Department for Culture, Media and Sport.

(f) **Registered parks/gardens/historic battlefields**

The proposal in the order will involve the demolition/alteration/extension\* of the following park(s)/garden(s)/historic battlefield(s)\* which is/are\* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

*Notes*

(1) *This refers to buildings listed by the Secretary of State for Culture Media and Sport only (not other forms of listing).*

(2) *A direction of the Secretary of State, currently in paragraph 31 of Department of the Environment, Transport and the Regions Circular 01/2001 applies for the purposes of sections 74 and 75 of the Listed Buildings Act. The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 3(d) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of an article 4 direction, the permitted development right has been withdrawn and a planning application required.*

4. Any positive statement under paragraph 3 above should also be accompanied by the following details:
  - particulars of the asset or assets;
  - any action already taken, or action which the acquiring authority propose to take, in connection with the category of protection, eg. consent which has been, or will be, sought; and
  - a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available.
5. Where a submitted order entails demolition of any building which is subsequently included in a conservation area, the confirming authority should be notified as soon as possible.

## General certificate in support of order submission<sup>1</sup>

The certificate should be submitted in the following form:

THE ..... COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered.....in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues<sup>2</sup> of the ..... dated ..... 20.... and ..... 20.... The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was..... 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on ..... 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being ..... 20....
2. Notices in the Form numbered ..... in the said Regulations were duly served on
  - (i) every owner, lessee, tenant and occupier of all land to which the order relates;
  - (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and
  - (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry.<sup>3</sup>

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was ..... 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [*Where the order includes land in unknown ownership*] Notices in the Form numbered ..... in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of

<sup>1</sup> This certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures - see paragraph 38 of this Part of the Memorandum.

<sup>2</sup> The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the Department.

<sup>3</sup> For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.

the notices was not less than 21 days and the last date is/was ..... 20.... .

4. A copy of the order and of the map were deposited at ..... on ..... 20.... and will remain/remained available for inspection until .....
5. (1) A copy of the authority's statement of reasons for making the order has been sent to:
  - (a) all persons referred to in paragraph (i), (ii) and (iii) above (see paragraph 35 of this Part of the Memorandum);
  - (b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.
- (2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.
6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

*NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a 'faculty') is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)*

### Preparing and serving the order and its associated notices.

#### **PRESCRIBED FORM**

1. The order and Schedule should comply with the relevant form as prescribed by regulation 3 of, and shown in the Schedule to, the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595). In accordance with the notes to the prescribed forms, the title and year of the Act authorising compulsory purchase must be inserted. Each acquisition power must be cited and the purpose(s) clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. (See Appendices A and M for examples of how orders made under certain powers may be set out. Appendix F contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

#### **TITLE OF ORDER**

2. The Regulations require that the title of the order should be at the head of the order, before the titles and years of the Acts. The order title should begin with the name of the acquiring authority, followed in brackets by the general area within which the order land is situated (note (a), to Forms 1-6) (see also paragraph 7 below). The title to an order should include the current year, ie. the year in which the order is actually made and not the year in which the authority resolved to make it, if different.

#### **PLACE FOR THE DEPOSIT OF THE MAPS**

3. A certified copy of the order map should be deposited for inspection at an appropriate place within the locality, eg. the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps are forwarded to the offices of the confirming authority (see Appendix Q).

#### **INCORPORATION OF THE MINING CODE**

4. Parts II and III of Schedule 2 to the 1981 Act, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the Act applies. The incorporation of both Parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

- 5 Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence. The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code. In areas of coal working notified to the local planning authority by the Coal Authority under paragraph (j) of article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (GDPO), authorities are asked to notify the Coal Authority<sup>1</sup> and relevant licensed coal mine operator if they make an order which incorporates the mining code.

## **EXTENT, DESCRIPTION AND SITUATION OF LAND SCHEDULED**

6. The prescribed order formats require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore the area of each plot, eg. in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the 1981 Act prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.
7. Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map. (See notes to prescribed Forms 1 to 6 and paragraph 2 above.)
8. Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as 'pasture land' or 'arable land'; agricultural and non-agricultural afforested areas may be described as 'woodland' etc.; and, if necessary, be related to some well-known local landmark, eg. 'situated to the north of School Lane about 1 km west of George's Copse'.
9. Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.
10. Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly

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<sup>1</sup> The Coal Authority, 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG,  
e-mail: thecoalauthority@coal.gov.uk



identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

## **COMPULSORY ACQUISITION OF NEW RIGHTS**

11. See Appendix M.

## **COMPULSORY ACQUISITION WHERE AUTHORITY ALREADY OWNS INTERESTS**

12. Except for orders made under highway land acquisition powers in Part XII of the Highways Act 1980, to which section 260 of that Act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [*describe the land*] except interests already owned by the acquiring authority'. The remaining columns should be completed as described in sub-paragraphs (l) to (n) in paragraph 16 below. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg. a Regional Development Agency might decide it wishes to exclude its own interests *and* local authority interests from an order.
13. Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a General Vesting Declaration (see this Part of the Memorandum, paragraphs 61-63). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming Minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.
14. A similar form of words to that described in paragraph 12 above may be appropriate where the acquiring authority wish to include in the order Schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Appendix N.

## **SCHEDULED INTERESTS**

15. The Schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2) of the 1981 Act and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is –
  - (i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the 1981 Act);
  - (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the 1981 Act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry<sup>2</sup> (section 12(2B) of the 1981 Act).

16. The following points should be noted in connection with service of notice and the compilation of the order Schedule:

(a) the Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, eg. persons who have entered into a contract to purchase a freehold or lease;

(b) the names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agree that service may be upon a person whom they designate to accept service on their behalf. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain;

(c) service should be effected on the Secretary or Clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie. as owner, lessee etc. (section 6(2) and (3) of the 1981 Act);

*NB Under Company Law requirements, notices served on a company should be addressed to the Secretary of the company at its principal or registered office.*

(d) individual trustees should be named and served;

(e) in the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the Secretary;

*NB The land may be vested in the trustees and not the Secretary, but the trustees may be somewhat remote from the running of the club etc.; and since communications should normally be addressed to its Secretary, it is considered to be reasonable that the Secretary should also be served. However, service solely on the Secretary of such a body is not sufficient unless it can be shown that the Secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.*

(f) in the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees;

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<sup>2</sup> See paragraph 16(p) below.

- (g) where land is ecclesiastical property, ie. owned by the Church of England, notice of the making of the order must be served on the Church Commissioners<sup>3</sup> as well as on the owners etc. of the property (see section 12(3) of the 1981 Act);
- (h) where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as 'English Heritage'), or the County Archaeologist, according to the circumstances shown below:
  - (1) in respect of a *scheduled* ancient monument – English Heritage, Fortress House, 23 Savile Row, London W1S 2ET; or
  - (2) in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist.

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission;

- (i) where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify, respectively, the Countryside Agency or English Nature;
- (j) when an order relates to land being used for the purposes of sport or physical recreation, the appropriate Regional Office of Sport England should be notified of the making of the order;
- (k) where a person is served at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown;
- (l) owners or reputed owners (column (3) of Table 1) – where known the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order may include covenants or restrictions which amount to interests in land and which can, therefore, be acquired or extinguished compulsorily. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, where the owner or occupier of the land and the person benefiting

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<sup>3</sup> The Church Commissioners for England, 1, Millbank, Westminster, London, SW1P 3JZ.

from the right would not normally have been shown in the order Schedule, either (a) the Schedule should include the relevant owner or occupier, or (b) the statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest. Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the Schedule should refer to the right etc. and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority have no interest to acquire.

- (m) lessees, tenants, or reputed lessees or tenants (column (3) of Table 1) – where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown;
- (n) occupiers (column (3) of Table 1) – the sub-column should be completed in all cases. Where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly.
- (o) Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in section 12(2A) and (2B) set out in paragraph 15(ii) and (iii) above should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order Schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire<sup>4</sup> which they are seeking to exercise. Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order Schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.
- (p) In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry<sup>5</sup>. An acquiring authority does not have any statutory power under section 5A of the 1981 Act to requisition information about land other than that which it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 Act provides an additional means

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<sup>4</sup> An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Nature Conservancy Council to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.

<sup>5</sup> Popplewell J. in *R v Secretary of State for Transport ex parte Blackett* [1992] JPL 1041

of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

### **SPECIAL CATEGORY LAND (see also appendices L and M)**

17. Land to which sections 17, 18 and 19 of the 1981 Act apply, (or paragraphs 4, 5 and 6 of Schedule 3 to the 1981 Act in the case of acquisition of a new right over such land) should be shown both in the order Schedule and in the list at the end of the Schedule, in accordance with the relevant Notes. But in the case of section 17 of the 1981 Act (or, for new rights, Schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of Schedule 3 (see also Appendix L paragraph 10). In the event that an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming Minister may need to consider whether confirmation should be refused as a result.

### **COMMONS, OPEN SPACES ETC.**

18. An order may provide for special category land to which section 19 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.
19. The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg. in green) on the order map and described in Schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in Schedule 3. See paragraph 22 below.
20. When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg. where the acquiring authority already own some of the exchange land.
21. In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (s)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:
  - (a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or
  - (b) where the order land is all the land being acquired, the land which is 'described'.

But if the acquiring authority seek a certificate under paragraph 6(1)(b) of Schedule 3 to the 1981 Act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate paragraph 6(2) of the Form (see Note (s)). Paragraph 6 becomes

paragraph 5 if only new rights are to be acquired compulsorily. (See Appendix M paragraph 14 in relation to additional land being given in exchange for a new right.)

22. Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both Schedules may apply, eg. the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.
23. Paragraph 5 of Form 3 should identify the order land, by referring to either:
  - (a) paragraph 2, where the order land is all the land being acquired; or
  - (b) specific, numbered plots in the Schedule, where the order land is only part of the land being acquired.

This Form may also be used if new rights are to be acquired but additional land is not being provided. An order in this Form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

24. An order may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of Schedule 3 to the 1981 Act. (See also Appendix L, paragraph 27 and Appendix M, paragraph 13.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

## **SEALING, SIGNING AND DATING**

25. All orders should be made under seal, duly authenticated and dated at the end (after the Schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure that this is achieved.

## The order map(s)

1. The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words ‘map referred to in [*order title*]’ should be included in the actual heading or title of the map(s).
2. Land may be identified on order maps by colouring or any other method (see Note (g) to Forms 1, 2 and 3 and, in relation to exchange land, Note (q) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.
3. The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master ‘location plan’ should indicate how the various sheets are interrelated.
4. Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked ‘Map referred to in... ‘in accordance with the prescribed form<sup>1</sup>, a location map might be marked ‘Location plan for the Map referred to in...’ Such a location plan would not form part of the order and order map, but be merely a supporting document.
5. It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order Schedule or Schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.
6. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order Schedule(s). (For orders which include new rights, see paragraphs 8 and 9 of Appendix M.) Land which is delineated on the map but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.

<sup>3</sup> see Form 1 in the Schedule to the 2004 Prescribed Forms Regulations 2004.

7. There should be no discrepancy between the order Schedule(s) and the map or maps, and no room for doubt on anyone's part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.



### Addresses to which orders, applications and objections should be sent

1. Most compulsory purchase orders should be submitted to the Government Offices (GOs) for the Regions at the addresses shown in paragraph 3 below. The special cases mentioned in paragraphs 4-12 below should, however, be noted.

#### **ORDERS FOR WHICH THE DEPUTY PRIME MINISTER AND FIRST SECRETARY OF STATE IS THE CONFIRMING AUTHORITY:**

2. Where the Deputy Prime Minister and First Secretary of State is the confirming authority, the correspondence should be addressed 'The Deputy Prime Minister and First Secretary of State, Government Office for the [*region concerned*]' at the relevant address shown in paragraph 3, and identified by '(Planning)' or '(Housing)', as appropriate.
3. The Government Offices' addresses are-

##### **North East**

Citygate, Gallowgate, Newcastle upon Tyne NE1 4WH

##### **North West**

Sunley Tower, Piccadilly Plaza, Manchester M1 4BE

##### **Yorkshire and Humberside**

City House, New Station Street, Leeds. LS1 4US

##### **West Midlands**

77 Paradise Circus, Queensway, Birmingham. B1 2DT

##### **East Midlands**

The Belgrave Centre, Stanley Place, Talbot Street, Nottingham. NG1 5GG

##### **South West**

2 Rivergate, Temple Quay, Bristol BS1 6ED

##### **East**

Eastbrook, Shaftesbury Road, Cambridge CB2 2DF

##### **South East**

Bridge House, 1 Walnut Tree Close, Guildford, Surrey. GU1 4GA

##### **London**

Riverwalk House, 157-161 Millbank, London. SW1P 4RR

## **SECTION 19 CERTIFICATES**

4. Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981, should be addressed to the Deputy Prime Minister and First Secretary of State at the Government Office (Planning) to which a compulsory purchase order would normally be sent for decision.
5. Applications for certificates relating to common land, town or village greens should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Countryside (Landscape and Recreation) Division, Common Land Branch, Zone 1/05, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB.
6. Applications for certificates relating to fuel or field garden allotments should be sent to the Deputy Prime Minister and First Secretary of State, Office of the Deputy Prime Minister (ODPM), Liveability and Sustainable Communities Division Branch C, Zone 4/G5, Eland House, Bressenden Place, London SW1E 5DU.

## **HIGHWAYS AND ROAD TRAFFIC ORDERS**

7. Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984 should be addressed to the Secretary of State for Transport at the Government Office for the North East, Local Authority Orders Section, at the address given in paragraph 3. above.

## **AIRPORTS, AIRPORT SAFETY ZONES, AND CIVIL AVIATION ORDERS**

8. Airports, and airport Public Safety Zones orders should be addressed to the Secretary of State for Transport at Airports Policy Division, Zone 1/26, Great Minster House, 76 Marsham Street, London SW1P 4DR. Civil aviation orders under the Civil Aviation Act 1982 and the Airports Act 1986 should be addressed to the Secretary of State for Transport at Civil Aviation Division, Department for Transport, Zone 1/22 Great Minster House, at the same address.

## **WASTE DISPOSAL ORDERS**

9. Orders for *waste disposal* purposes should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Waste Strategy Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

## **WATER & SEWERAGE UNDERTAKER ORDERS**

10. Orders made by *water or sewerage* undertakers should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Water Supply and Regulation Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

## **LOCAL AUTHORITY SEWERAGE OR FLOOD DEFENCE ORDERS AND DRAINAGE BOARD ORDERS**

11. Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and Orders made by internal drainage boards under section 62(1)(b) of that Act, should be sent to the

Department for Environment, Food and Rural Affairs, Flood Management Division,  
Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

## **FLOOD DEFENCE ORDERS AND COAST PROTECTION ORDERS**

12. Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work, should be sent to the Secretary of State for Environment, Food and Rural Affairs, Flood Management Division, Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

## **OTHER CONFIRMING AUTHORITIES**

13. For other confirming authorities (see also paragraph 6 of this Part of the Memorandum) the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful:

Department	Address
Department for Education and Skills	Schools Assets Team, Mowden Hall, Staindrop Road, Darlington, Co. Durham DL3 9BG
Department of Health	(for NHS), NHS Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE (for civil estate, occupied by DH), Richmond House, 79 Whitehall, London SW1A 2NS
Home Office	50 Queen Anne's Gate, London SW1H 9AT
Department for Culture, Media & Sport	2-4 Cockspur Street, London SW1Y 5DH
Department for Work and Pensions	(for Benefits Agency), BA Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AB
Department of Trade and Industry	(electricity and gas undertakings), Onshore Electricity Development Consents. Licensing and Consents Unit, Bay 2123, 1 Victoria Street, London SW1H 0ET. (See guidance in Appendix B, paragraph 2 on submitting RDA orders)

## Planning and compulsory purchase act 2004

### Part 8: Compulsory purchase

#### INTRODUCTION

1. Part 8 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') came into force on 31 October 2004<sup>1</sup>. For non-Ministerial compulsory purchase orders, it makes changes to the statutory provisions governing compulsory purchase and compensation which fall into three broad categories:
  - changes to the planning compulsory purchase power in section 226(1)(a) of the 1990 Act – section 99 of the 2004 Act;
  - changes to the procedures for authorising compulsory purchase in the 1981 Act – sections 100<sup>2</sup>, 102 and 105 of the 2004 Act; and
  - changes to compensation arrangements – definition of the valuation date in section 104 and provisions for a new 'loss payment' regime in sections 106 -109 of the 2004 Act.
2. Section 110 of the 2004 Act provides that the Secretary of State can by order amend certain enactments so that they correspond with the provisions in Part 8 of the Act or apply any such provisions or corresponding provisions. These enactments are those providing for the compulsory acquisition of an interest in land, for the interference with, or otherwise affecting, any right in relation to land, and for the compensation payable as a result. The provision is intended to cover enactments to which the procedure in the 1981 Act does not apply. Section 111 in Part 9 of the 2004 Act then provides that amendments made by, or by virtue of, Part 8 apply to the Crown to the extent that the enactments amended so apply.

#### CHANGES TO SECTION 226(1)(A) OF THE TOWN AND COUNTRY PLANNING ACT 1990

3. Section 99 of the 2004 Act amends section 226(1)(a) of the 1990 Act to substitute a new power for the compulsory acquisition of land for planning purposes. Under the new power, local authorities, joint planning boards and National Park authorities can acquire land compulsorily for the purposes of development, redevelopment or improvement if they think that –
  - the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, that land; and

<sup>1</sup> SI 2004 No. 2593.

<sup>2</sup> Section 101 makes similar changes to those in section 100 for orders published in draft and then made by Ministers (and the National Assembly for Wales).

- the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area.

These provisions do not affect any order made before 31 October 2004. *Appendix A provides additional guidance on the application of this power.*

## **PROCEDURES FOR THE MAKING AND CONFIRMATION OF NON-MINISTERIAL COMPULSORY PURCHASE ORDERS UNDER THE 1981 ACT**

### **Procedure for orders made by non-Ministerial authorities**

4. Section 100 of the 2004 Act amends the procedure for the making and confirmation of non-Ministerial compulsory purchase orders. Amendments and insertions are made to sections 6, 11, 13 and 15 of the 1981 Act and sections 13A, 13B and 13C are inserted. It only applies to orders for which the newspaper notices required under section 11 of the 1981 Act are published after 31 October 2004.

#### *Service of notices to unknown owners*

5. Section 6(4) of the 1981 Act provides that order documents can be regarded as having been properly served where it has not been possible to identify the name or address of an owner, lessee, or occupier by addressing them to the ‘owner’, ‘lessee’, or ‘occupier’ and delivering them to some person on the land, or by leaving them on or near the land. Section 100(2) of the 2004 Act extends this provision to apply to *unidentified tenants* by addressing the documents to the ‘tenant’. This is necessary because the category of persons who qualify to be served with a notice of the making of an order has been extended under section 100(5) (see paragraph 10 below).

#### *Site notices of making of orders*

6. Section 100(4) of the 2004 Act inserts subsections (3) and (4) into section 11 of the 1981 Act requiring notices of the making of an order to be fixed on or near the order land and maintained there for a minimum of 21 days. These notices repeat the matters required to be included in the newspaper notices, giving at least twenty one days from the date of fixing the notice during which objections can be made to the confirming Minister.

#### *Entitlement to receive notices and have objections heard*

7. Section 100(5) of the 2004 Act amends section 12 of the 1981 Act to extend the categories of persons who are entitled to be served with notice of the making of an order. Such a person is referred to as a qualifying person. In addition to an owner, lessee and occupier, a qualifying person includes:
  - a tenant whatever the period of the tenancy;
  - a person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give notice to treat; and

- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry.
8. An objection made by a qualifying person is defined by section 13(6) of the 1981 Act as a relevant objection, subject to an exception. If a person is a qualifying person by virtue only of the provisions of the last bullet point of the last paragraph above, but the confirming Minister thinks that he is not likely to be entitled to make a claim under section 10 of the 1965 Act, any objection he makes will not be a relevant objection.
  9. If a relevant objection is neither withdrawn nor disregarded, it will be a remaining objection (section 13A(1) of the 1981 Act). If a person has made a remaining objection, the confirming Minister must either hold a public inquiry or give every person who has made a remaining objection the opportunity of being heard by a person appointed to hear representations (section 13A(3) of the 1981 Act).
  10. The categories of persons entitled to be served with notice of the making of an order has been extended to enable all those with an interest in the land to be acquired to have a right to have their objections heard. However, not all such persons may be identifiable by an acquiring authority after diligent inquiry, for instance, those who may claim to enjoy prescriptive rights across the land. The new requirements in section 11(3) and (4) of the 1981 Act to affix site notices therefore provide an additional means of informing those likely to have relevant interests.

#### *Confirmation of orders*

11. Section 100(6) amends sections 13 and 15 of the 1981 Act, setting out the procedure for confirming an order and giving notice of confirmation. In summary, these amended sections together with sections 13A, 13B and 13C of the 1981 Act provide that :
  - objections to an order can be considered by means of a written representations procedure to be prescribed by regulations, as an alternative to an inquiry or hearing, where all those with remaining objections give their consent;
  - awards of costs can be made where the written representations procedure is followed;
  - confirmation of orders can be made in stages; and
  - notice of confirmation of an order is also to be given by fixing a notice on or near the order land.

#### *Unopposed orders*

12. The amended subsections (1) and (2) of section 13 of the 1981 Act provide for the appropriate Minister to confirm an unopposed order with or without modifications so long as he is satisfied that the notice requirements have been complied with and either:
  - no relevant objection is made; or

- every relevant objection made is withdrawn or disregarded (as defined in new section 13(7)).

Section 102 of the 2004 Act inserts section 14A of the 1981 Act which enables the acquiring authority to exercise the power to confirm an unopposed order in certain limited circumstances where the confirming Minister has notified it to that effect. These provisions are described in more detail in paragraphs 23 to 27 below.

### *Opposed orders – written representations procedure or inquiry*

13. The new section 13A of the 1981 Act applies to the confirmation of a compulsory purchase order where there is at least one remaining objection which has not been either withdrawn or disregarded.
14. Section 13A(2) provides that the confirming Minister can proceed under the written representations procedure where everyone who has made a remaining objection consents in the prescribed manner. There are, however, exceptions. The order must not be subject to special parliamentary procedure (for example, where open space or common land is being acquired without providing other equivalent land in exchange). Nor, unless a certificate relating to statutory undertaker's land has been given under section 16(2) of the 1981 Act, can an order to which section 16 applies<sup>3</sup> be determined by written representations. This is because, if no such certificate has been given, there may need to be a joint inquiry with the Minister responsible for sponsoring the statutory undertaker's business in order to consider the issue of taking the undertaker's operational land.
15. Section 13A(3) provides that in cases where the written representations procedure cannot be used, or the confirming Minister decides that it would be inappropriate, a public local inquiry must be called. Alternatively, every person with a remaining objection can be given an opportunity to be heard in person by someone appointed by the confirming Minister for that purpose<sup>4</sup>. Whichever procedure is followed, section 13A(5) gives the confirming Minister the power to confirm an order, with or without modification, after he has considered any objections and the report arising from an inquiry or hearing.
16. Section 13A(6) enables a written representations procedure to be prescribed. Such a procedure is now set out in the Compulsory Purchase of Land (Written Representations)(Ministers) Regulations 2004 (SI 2004 No [2595]). In summary, these regulations provide that, once the confirming Minister has indicated that the procedure will be followed (following the consent of all remaining objectors), the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its Statement of Reasons. Once these have been copied to the objectors, they will also have 15 working days to make representations to the confirming Minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.

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<sup>3</sup> Where the land concerned had been acquired by a statutory undertaker for the purposes of its undertaking and that undertaker makes representations to the appropriate Minister objecting to the compulsory acquisition.

<sup>4</sup> However, hearings are not normally used to consider objections to compulsory purchase orders because objectors are normally entitled to be heard in a public forum.

17. The Inspector then considers all the evidence, including these various representations, and makes his report to the confirming Minister. The confirming Minister can decide to call an inquiry at any time during this process. Objectors cannot withdraw their consent to the written procedure once it has been given, but they can request the confirming Minister to exercise his discretion to call an inquiry instead. More detailed information about the written representations procedure is given in 'Compulsory Purchase Procedure' (see footnote 10 to Part 1 of the Memorandum).
18. Where the written representations procedure is followed, section 13B of the 1981 Act gives the confirming Minister the power to make orders as to the costs of the parties making those representations, specifying which parties must pay the costs. A costs order can be made a rule of the High Court on the application of anyone named in the order to enable those costs to be recoverable as a civil debt. The acquiring authority can be required to pay the confirming Minister's costs if so directed, in which case the amount certified by the confirming Minister is recoverable as a civil debt.

### *Confirmation in stages*

19. Section 13C of the 1981 Act provides a general power for a compulsory purchase order to be confirmed in relation to part only of the land included in it. This replaces similar powers applicable to specific types of acquiring authorities<sup>5</sup>, which have been repealed.
20. To confirm in part, the confirming Minister will need to be satisfied that the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless as to whether the remainder of the order is ever confirmed. In addition, the confirming Minister has to be satisfied the statutory requirements for the service and publication of notices have been followed. A Minister may confirm part of an order prior to holding a public inquiry or following the written representations procedure but, to be able to do so, there must be no remaining objections relating to the part to be confirmed.
21. The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The remaining part is then treated as if it were a separate order. The notices of confirmation of the confirmed part of the order, which have to be published, displayed and served in accordance with section 15 of the 1981 Act, must include a statement indicating the effect of that direction.

### *Notices after confirmation of an order*

22. Section 100(7) of the 2004 Act amends section 15 of the 1981 Act dealing with notices of the confirmation of an order. In addition to the existing provisions, section 15 now requires the confirmation notice to state that a person aggrieved by the order may apply to the High Court for it to be quashed<sup>6</sup>. This is not a new right, but the requirement to refer to it in the confirmation notice has been added in order to ensure that all those

<sup>5</sup> Section 245 of the 1990 Act; paragraph 2 of Schedule 4 to the Welsh Development Agency Act 1975; Schedule 28 to the Local Government, Planning and Land Act 1980 (re urban development corporations); section 259 of the Highways Act 1980; paragraph 2 of Schedule 10 to the Housing Act 1988 (re housing action trusts); Schedule 20 to the Leasehold Reform Housing and Urban Development Act 1993 (re Urban Regeneration Agency); and paragraph 1 of Schedule 5 to the Regional Development Agencies Act 1990 (re RDAs)

<sup>6</sup> as provided for in section 23 of the 1981 Act



with an interest in the land are made aware of it. The other new requirement is for a confirmation notice to be fixed on or near the land covered by the compulsory purchase order. This is to be addressed to persons occupying or having an interest in the land and must, so far as is practicable, be kept in place by the acquiring authority for six weeks beginning with the date on which the order becomes operative<sup>7</sup>.

### **Confirmation by an acquiring authority**

23. Section 14A of the 1981 Act (inserted by section 102 of the 2004 Act) enables an acquiring authority to exercise the power to confirm an order if the confirming Minister has notified the acquiring authority to that effect, and such notice has not been revoked. The confirming Minister may only give such notice if there are no objections at all to the order and certain other conditions are met. There is no obligation on the confirming Minister to issue such a notice if he considers that it would be inappropriate to do so. It is intended to help to speed up the confirmation of unopposed orders, and should be particularly helpful where, as part of a wider land assembly exercise, an acquiring authority needs to exercise its compulsory purchase powers in order to acquire title to land in unknown ownership. This power is only exercisable in respect of compulsory purchase orders for which the newspaper notices required under section 11 of the 1981 Act were published after 31 October 2004.
24. The power of the confirming Minister to issue such notice is excluded in cases where either:
  - the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the Minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking<sup>8</sup>; or
  - the land to be acquired forms part of a common, open space, or fuel or field garden allotment<sup>9</sup>.

The reason for this is that confirmation of an order in these circumstances is contingent on other ministerial decisions.

25. The confirming Minister must also be satisfied that all the statutory requirements as to the service and publication of notices have been complied with; there are no outstanding objections to the order; and it is capable of being confirmed without modification<sup>10</sup>. These limitations avoid the acquiring authority having to decide potentially contentious matters on which it may not be in a wholly impartial position.
26. The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the

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<sup>7</sup> The operative date is defined in section 26 of the 1981 Act as the date on which the confirmation notice is published. The need for the notice to remain visible for six weeks from that date relates to the period specified in section 23(4) of the 1981 Act during which an application can be made to the High Court to quash the order.

<sup>8</sup> Section 16(1) of the 1981 Act

<sup>9</sup> Section 19 of the 1981 Act

<sup>10</sup> This might not be possible if, for example, the acquiring authority has made mistakes in preparing the map or schedule accompanying the order.

acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming Minister to revoke the notice given under these provisions.

27. An acquiring authority exercising the power to confirm must notify the confirming Minister as soon as reasonably practicable of its decision. Until such notification is received, the confirming Minister can revoke the acquiring authority's power to confirm. Such revocation might be necessary, for example, if the confirming Minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable time and those affected by the order were to make representations to the confirming Minister about the delay.

### **Power to obtain information on interests in land to be acquired**

28. Section 105 of the 2004 Act inserts sections 5A and 5B into the 1981 Act. These ensure that acquiring authorities with statutory powers to acquire land compulsorily (to which the 1981 Act applies) can obtain the information about ownership and occupation which they may need in order to proceed with negotiations for the purchase of such land by agreement and/or compulsorily. Some types of acquiring authorities already have powers to do this<sup>11</sup> and, as these alternative powers have not been repealed, any authority needing to obtain information will need to make sure that they quote the correct powers and the correct penalties pertaining to those powers. The new powers are aimed mainly at ensuring that the Regional Development Agencies, Urban Development Corporations and English Partnerships (as the Urban Regeneration Agency) are no longer hampered by the fact that they have not hitherto enjoyed such powers.
29. Section 5A enables acquiring authorities to require details of the names and addresses of any person believed to be an owner, lessee, tenant or occupier, or believed to have an interest in the land which they are seeking to acquire. The persons from whom the acquiring authority can require such information are restricted to the occupier of the land; anyone having an interest in the land as a freeholder, mortgagee or lessee; anyone who receives rent for the land, whether directly or indirectly; and anyone who is authorised to manage the land or its letting by an agreement with someone having an interest in the land. Section 5B makes failure to provide such information without reasonable excuse or knowingly to provide false information an offence subject to a fine on level 5 on the standard scale.

## **CHANGES TO COMPENSATION ARRANGEMENTS**

### **Section 103 of the 2004 Act – Assessment of compensation: valuation date**

30. Section 103 of the 2004 Act inserts section 5A into the Land Compensation Act 1961. This new section establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that

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<sup>11</sup> Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 empowers local authorities to requisition for such information with a view to performing a function conferred on them by any enactment. Local planning authorities have similar, but not identical, powers under section 330 of the 1990 Act exercisable for the purpose of enabling them to perform functions under that Act. Highways authorities have powers to require information under section 297 of the Highways Act 1980.

such a valuation is to be based on market values prevailing as at the valuation date and on the condition of the relevant land and any structures on it on that date.

31. Where an acquiring authority is following the notice to treat procedure, the relevant valuation date is the date on which the acquiring authority enters and takes possession of the land. Alternatively, where title to the land is being vested in the acquiring authority automatically by means of a general vesting declaration, the relevant valuation date is the date on which title to the land vests in the authority (the 'vesting date'). The only statutory variation from these dates arises if the compensation payable has already been determined by the Lands Tribunal before either such trigger date has been reached. In such a case, the date on which the compensation is determined by the Lands Tribunal becomes the relevant valuation date. It also remains open to the person whose land is being acquired to agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.
32. Section 5A(5) of the 1961 Act makes it clear that the relevant valuation date for the *whole* of the land included in any single notice of entry is to be the date on which the acquiring authority first takes possession of any *part* of that area of land. This means that compensation becomes payable to the claimant for the whole site from that date; and section 5A(6) gives him the right to receive interest on the compensation due to him in respect of the value of the whole site from that date until full payment is actually made.

### **Advance payments of compensation to mortgagees**

33. Section 104 of the 2004 Act amends sections 52 and 52A of the Land Compensation Act 1973 and inserts sections 52ZA, 52ZB and 52ZC into that Act. Their effect is that, once possession has been taken and so long as certain conditions are fulfilled, a claimant mortgagor can require the acquiring authority to make advance payments of compensation direct to his mortgagee. Advance payments relating to the amount owing to the mortgagee can only be made direct to the mortgagee, and can only be made with his consent. Payments can be made to more than one mortgagee, but no payment can be made to any mortgagee until the interest of any other mortgagee whose interest has priority has been released.
34. Section 52ZA enables an acquiring authority to make an advance payment to a claimant's mortgagee where the total amount of the mortgage principal outstanding does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB applies where the principal exceeds 90% of the total estimated compensation due to the claimant. The conditions relating to both types of payments are complex and, in order to protect the interests of all three parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgagee(s) in determining the amount of the advance payable.

### **Loss payments**

35. Sections 106-109 of the 2004 Act insert sections 33A to 33K into the Land Compensation Act 1973 to provide a new statutory scheme which, with certain exclusions, provides for 'loss payments' to be paid to those with an interest in a property being compulsorily acquired and who are not already entitled to receive payments under

the home loss scheme in sections 29 to 33 of the 1973 Act. Loss payments are additional to the compensation due on the basis of the value of the claimant's interest in the land being acquired, any compensation due for severance and injurious affection and compensation to cover disturbance costs.

36. The new regime applies both to compulsory acquisitions and, by virtue of section 33J, to situations where the land is being acquired by agreement by an authority which has the power to acquire it compulsorily. The intention behind this is to provide an additional incentive to encourage early voluntary negotiations between acquiring authorities and landowners, possibly even avoiding the need to initiate the statutory acquisition procedures. Loss payments can only be made in respect of the compulsory acquisition of any interest in land resulting from a compulsory purchase order made<sup>12</sup> after 31 October 2004. In the case of voluntary acquisitions, though, such payments can be made in respect of any acquisition agreed from that date.

#### *Repeal of farm loss payments*

37. As the new loss payments regime includes compensation for the loss of agricultural land, the farm loss payments scheme under sections 34 to 36 of the 1973 Act has been repealed from 31 October 2004.

#### *Basic loss payments*

38. Section 33A of the 1973 Act provides for the payment of a *basic loss payment* to any person who has a qualifying interest in land being acquired under compulsory purchase powers and in respect of which he or she is not entitled to receive a home loss payment. This payment is assessed at the rate of 7.5% of the value of the claimant's interest in the property to be acquired, subject to a maximum of £75,000. This means that the maximum becomes payable where the value of the claimant's interest in the property being acquired is £1 million. No minimum sum is specified.
39. If any part of a claimant's interest is a dwelling for which he is entitled to receive a home loss payment, the value of that dwelling (as assessed for entitlement to a home loss payment) has to be subtracted from the value of the entire interest before calculating the basic loss payment due for the remainder.
40. Where a claimant's compensation has been assessed on the basis of equivalent reinstatement, the open market value is deemed to be nil. This means that no basic loss payment is payable. Nevertheless, the claimant would be entitled to claim an occupier's loss payment (referred to below) if in occupation.

#### *Occupiers' loss payments*

41. Section 107 inserts sections 33B and 33C into the 1973 Act providing for *occupier's loss payments* to be made to any person who satisfies the conditions for the basic loss payment and has also occupied the land to be acquired for the qualifying period.
42. Section 33B provides for occupier's loss payments in respect of *agricultural land* and section 33C provides for occupier's loss payments in respect of *other land*. Subject to a

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<sup>12</sup> made in draft in the case of a Ministerial compulsory purchase order (or a compulsory purchase order made by the National Assembly for Wales).

maximum of £25,000, the occupier's loss payment is assessed either on the basis of 2.5% of the value of the claimant's interest in the land being acquired or, where to do so would be more advantageous to the claimant, on the basis of one of two alternative formulae. One of these relates to the area of *land* being taken and the other to the floor space of the *building* from which the claimant is being displaced. Whichever of these three alternative approaches is adopted, the maximum amount payable for an occupier's loss payment is £25,000. This means that the maximum TOTAL loss payment to an owner-occupier is £100,000<sup>13</sup>.

#### *Occupier's loss payments – land amounts*

43. Where it is advantageous to the claimant to calculate his entitlement to a loss payment on the basis of the area of land being taken, section 33B(8) specifies that for agricultural land, this is to be £100 per hectare for the first 100 hectares taken, and then £50 per hectare for the next 300 hectares or part of a hectare. A minimum payment of £300 is also specified to benefit those whose land-take is less than 3 hectares.
44. Where land other than agricultural land is being taken, section 33C(8) specifies that the land amount is to be £2,500 or, if it would yield a higher amount, £2.50 per square metre (or part of a square metre). This is substantially higher than the land amount payable in respect of agricultural land to reflect the differential in the range of typical values between agricultural and other land. The minimum threshold of £2,500 is intended to ensure that a claimant whose interest is not very valuable will still receive a meaningful sum to compensate for the upset and inconvenience caused by being displaced. Hence, if only part of a claimant's land is being taken so that he is not being displaced, section 33C(9) stipulates that the minimum payable is to be £300.

#### *Occupier's loss payments – buildings amounts*

45. Section 33B(9) specifies that the basis for calculating the alternative buildings amount for agricultural land is to be £25 per square metre (or part of a square metre) of the external gross floor space of any buildings on the land. This is identical to the buildings amount for the occupiers' loss payments in respect of other land, as provided for in section 33C(10), as the upset and inconvenience caused by being displaced from operational buildings is likely to be similar whatever the purpose to which they are being put.

#### *Exclusions from entitlement to loss payments*

46. Section 108 of the 2004 Act inserts section 33D into the 1973 Act to specify exclusions from entitlement to loss payments where the compulsory acquisition has been triggered by the owner's failure to comply with the terms of one of the statutory notices or orders specified in that section. This is aimed at persons who have either deliberately or neglectfully allowed their property to deteriorate to the point where, following their failure to comply with a statutory requirement to remedy the situation, it has to be compulsorily purchased in order to bring it into beneficial use. The section includes a regulation-making power to enable the Minister to add any new statutory remedial actions which may be created in the future and to delete any of the current remedial powers if they were to be repealed.

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<sup>13</sup> £75,000 for the basic loss payment plus an occupier's loss payment of £25,000.

# PART 2 – THE CRICHEL DOWN RULES

## RULES AND PROCEDURES

1. This Part of the Memorandum sets out the revised non-statutory arrangements ('Crichel Down Rules') under which surplus Government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the Annex to this Part below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this Part all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are Government Departments, including Executive Agencies, other non-departmental public bodies ('NDPBs'), local authorities or other statutory bodies. See paragraphs 3 and 4 below. The Annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the Department, the Rules apply in a mandatory manner.
2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK Government Department. Similar rules have been issued by the National Assembly for Wales. Departments disposing of land in Scotland should follow the procedures set out in circular SODD 38/1992: *Disposal of Surplus Government Land – The Crichel Down Rules* and in Northern Ireland they should follow the guidance produced by the Central Advisory Unit of the Valuation and Lands Agency.
3. Detailed guidance on the general procedures to be followed when disposing of surplus land are set out in Annex 24.2 to Chapter 24 of Government Accounting 2000 (Disposal of land and buildings and other land transactions on the open market). Disposing departments should, where appropriate, also have regard to the advice in *Revised Guidance on Securing the Better Use of Empty Homes* issued in August 1999 by the Department of the Environment, Transport and the Regions.
4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.
5. It is the view of the Government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of PFI/PPP projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the PFI/PPP contract.
6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water

Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

### **THE LAND TO WHICH THE RULES APPLY**

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.
8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter II in Part VI of, and Schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.
9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

### **THE GENERAL RULES**

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have ‘materially changed’ where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.
11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

### **INTERESTS QUALIFYING FOR OFFER BACK**

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.
13. In these Rules ‘former owner’ may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. ‘Successor’ means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner’s will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

## **TIME HORIZON FOR OBLIGATION TO OFFER BACK**

14. The general obligation to offer back will not apply to the following types of land:

- (1) agricultural land acquired before 1 January 1935;
- (2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;
- (3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

## **EXCEPTIONS FROM THE OBLIGATION TO OFFER BACK**

15. The following are exceptions to the general obligation to offer back:-

- (1) Where it is decided on specific Ministerial authority that the land is needed by another department (i.e. that it is not, in a wider sense, surplus to Government requirements).
- (2) Where it is decided on specific Ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.
- (3) Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile.
- (4) Where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.
- (5) Where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:-
  - (i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947;
  - (ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those Acts, and which is resold for private industrial use;
  - (iii) where dwellings are bought for onward sale to a Registered Social Landlord (RSL);



- (iv) sites purchased for redevelopment by English Partnerships or a regional development agency (RDA).
- (6) Where a disposal is in respect of either:-
  - (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings;  
or
  - (ii) a site which consists partly of land which has been materially changed in character and part which has not;

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (i.e. its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

- (7) Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible Minister.
- 16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.
  - 17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

#### **DWELLING TENANCIES**

- 18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this Part) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

#### **PROCEDURES FOR DISPOSAL**

- 19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

### **Where former owner's address is known**

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

### **Where address is unknown**

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.
22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:-
  - (a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site;
  - (b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

### **Responses to invitation to purchase where address is unknown**

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.
24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

## **SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED**

25. The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

## **TERMS OF RESALE**

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell houses to tenants with the right to buy.
27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

## **RECORDING OF DISPOSALS**

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.

# Appendix A

*(see paragraph 18 of the Rules)*

## **SITTING TENANTS**

1. In the context of the Rules, the expression 'sitting tenant' was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department's requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.
2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:-
  - (a) a regulated tenancy under the Rent Act 1977, (i.e. a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or
  - (b) an assured tenancy under the Housing Act 1988, (i.e. a tenancy begun on or after that date, but excluding an assured shorthold tenancy).
3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:-
  - (a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or
  - (b) an assured shorthold tenancy under the Housing Act 1988.
4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

## Appendix B

*(see paragraph 25 of the Rules)*

### **SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED**

- (a) Each former owner will be asked whether he or she wishes to acquire any land.
- (b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.
- (c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.
- (d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.
- (e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

## Guidance for departments

### CHANGES FROM THE 1992 RULES

1. Several changes have been made to the Rules following the recommendations in the research report 'The Operation of the Crichel Down Rules' (Gerald Eve with the University of Reading, DETR July 2000), the comments received on them and in response to the ODPM consultation exercise of September 2003. A significant change is the provision of this guidance, which is intended to provide clarification even where the terms of a particular Rule remained unaltered.
2. Substantive changes have been made to the following Rules:-
  - **Rule 2** a new Rule to set out the territorial application of the revised Rules;
  - **Rule 3** updated references to guidance on the general procedures to be followed when disposing of surplus land;
  - **Rule 4** revision of the former Rules 3 and 4 dealing with the application of the Rules to local authorities, statutory bodies and certain bodies in the private sector;
  - **Rule 5** a new rule dealing with land transfers from public bodies to other bodies, PFI/PPP projects;
  - **Rule 8** formerly Rule 6, dealing with land acquired under blight provisions;
  - **Rule 9** formerly Rule 7, this applies the Rules to leasehold disposals;
  - **Rule 10** formerly Rule 9, the references to 'agricultural land' and 'urban site' have been deleted;
  - **Rule 12** formerly Rule 11, clarification of the arrangements for offering back land that at the time of acquisition was subject to a long lease;
  - **Rule 14** formerly Rule 13, defines the date of acquisition as the date of conveyance, transfer or vesting declaration;
  - **Rule 15** formerly Rule 14, clarifies the handling of transfers of land between bodies with compulsory purchase powers, the treatment of small areas of land, provides examples where the offer back would be inconsistent with purpose of the original acquisition, the treatment of consortia and competing bids;

- **Rule 16** new Rule dealing with the notification of former owners if any of the exceptions to the Rules apply;
- **Rules 17 & 18** formerly Rules 15 and 16 the application of Rule 17 to sitting tenants is clarified and references to ‘house’ and ‘tenanted house’ amended;
- **Rule 22** rationalises the arrangements for advertisements;
- **Rule 28** new Rule dealing with the maintenance of records.

### **BODIES TO WHICH THESE RULES APPLY (RULE 2)**

3. These Rules apply to all Government Departments, executive agencies and NDPBs in England and other organisations in England (such as NHS Trusts) which are subject to a power of direction by a Minister. They also apply to land in Wales acquired and still owned by a UK Government Department.

### **APPLICATION OF THE RULES BY LOCAL AUTHORITIES AND STATUTORY BODIES (RULE 4)**

4. Local authorities and other statutory bodies which are not subject to a Ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK Minister, such as the Secretary of State for Trade and Industry. The previous practice amongst such authorities has been very variable, but the Government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires Government Departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.
5. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon Ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the Chairman. For disposals at the end of PPP/PFI agreements, departments may wish to seek legal advice in order to take account of the Rules.

### **THE THREAT OF COMPULSION (RULE 7)**

6. A ‘threat of compulsion’ should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively ‘threatened’ to use them for this Rule to apply. It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority could use its powers

under the Highways Act 1980 to make a CPO. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

### **WHAT CONSTITUTES A DISPOSAL? (RULE 9)**

7. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting PFI/PPP projects do not fall within the Rules, see Rule 5. Government Accounting makes it clear that sale is normally preferable to lease but there may be cases where a short-term lease is appropriate if there is little prospect of an early sale. See paragraph 6 of Annex 24.2 to Chapter 24 of Government Accounting 2000.

### **WHAT IS A MATERIAL CHANGE OF CHARACTER? (RULE 10)**

8. The Rules refer to a 'material change in character' to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, 'material change' was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

### **LAND SUBJECT TO A LONG LEASE (RULE 12)**

9. If neither the former freeholder or former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

### **WHO IS A SUCCESSOR? (RULE 13)**

10. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification 'otherwise than by purchase' may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

### **WHEN IS THE DATE OF ACQUISITION? (RULE 14)**

11. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.



## **WHAT ARE 'REASONS OF PUBLIC INTEREST'? (RULE 15(2))**

12. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See *R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler*, The Times 4 August 2000).

## **SMALL AREAS OF LAND (RULE 15(3))**

13. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

## **WHEN IS IT INCONSISTENT WITH THE PURPOSE OF THE ORIGINAL ACQUISITION TO OFFER LAND BACK? (RULE 15(5))**

14. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by English Partnerships or a regional development agency (RDA) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

## **TRANSFER TO THE PRIVATE SECTOR**

15. Rule 14(6) of the 1992 Rules, (which would have been Rule 15(6) in these Rules) has been deleted as such transfers are now dealt with by Rule 5, which makes it clear that land transferred to another body for the same functions is not surplus.

## **DWELLING TENANCIES (RULE 18)**

16. For the purposes of the Rules a 'dwelling' includes a flat.

## **PROCEDURES FOR DISPOSAL (RULES 19-24)**

17. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

## **MARKET VALUE AND THE DATE OF VALUATION (RULE 26)**

18. For the purposes of the Rules, 'market value' means 'the best price reasonably obtainable for the property'. This is equivalent to the definition of 'market value' in the RICS Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (i.e. any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). Full guidance is available in Annex 24.2 to Chapter 24 of Government Accounting 2000. 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

## **MAINTENANCE OF RECORDS (NEW RULE 28)**

19. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.





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ISBN 011753928 7

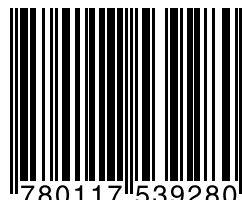
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