Law Commission Compulsory Purchase Consultation Paper

Response on Behalf of The Compulsory Purchase Association

(March 2025)

The Compulsory Purchase Association (**CPA**) is a not-for-profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers. The CPA has circa 800 members and spans a range of professional disciplines involved in the compulsory purchase process, including chartered surveyors, solicitors, barristers, forensic accountants, planners and land referencing agents. It is a non-partisan organisation that neither supports nor opposes specific public works schemes.

The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. It seeks to promote the highest professional standards amongst practitioners at all levels, and to ensure that the legal framework for compulsory purchase and compensation is clear, fair and effective. Its members represent both acquiring authorities as well as landowners and occupiers affected by compulsory acquisition.

The CPA is regularly asked to comment on proposed changes to the compulsory purchase and compensation system and welcomes the opportunity to respond to the Law Commission's Consultation on Compulsory Purchase (the **Consultation**).

In advance of preparing this response, the CPA established two working groups dealing respectively with procedural matters and compensation matters. The working groups engaged with the Law Commission to assist in the information gathering exercise that informed the Consultation, along with information gathered by the Law Commission from other stakeholders. This involved providing commentary and technical knowledge on various procedural and compensation themes, following on from the Commission's 2004 Report. The working groups met to discuss these questions and also initiated a call for evidence by way of a survey of the CPA membership, specifically looking at questions around the use of the Notice to Treat procedure. The results of that survey, along with the views of the working groups have been provided to the Law Commission.

Members of the sub-working groups were also asked to consider specific questions from the Commission, such as questions around abortive orders, which were not previously dealt with at a working group level.

The procedural working group represented a mix of different technical disciplines (legal, surveying, land referencing and confirmation authority), though focussed on parties with specific CPO promotion experience who have in-depth experience of the nuances of the procedural aspects of CPO. The compensation working group comprised legal and surveying experts, with specific note in the field of CPO compensation.

The working groups fully discussed and debated the draft answers at length, particularly where there were differing opinions between working group members. There was also liaison and discussion between the two working groups where there were questions that spanned both procedural and compensation matters.

Further discussion was undertaken, and amendments made to draft answers, as a result of points discussed at the CPA Reform Lecture on 13 February 2025. These revised answers then progressed through a peer review process, and comments, queries and amendments from the peer review groups were fed back to the respective working groups. Following this, further discussion took place at working group level and amendments to the response made, as necessary.

The resultant document has, therefore, been thoroughly considered, discussed and peer reviewed, and we have sought to give reasoned answers as appropriate to assist the Commission's deliberation. There were several questions where there were differing views of the working group members, but the answers landed upon have been reached on balance of consideration of those views, in light of the overall process outlined and in the context of the Commission's terms of reference.

It is acknowledged that the statements made in this response paper reflect the consensus views of the respective working groups and the CPA Board in light of the process noted above but may not represent the views of all of the CPA's members.

The CPA and its established working groups remain keen to work with and assist the Commission going forward.

CHAPTER 1

Consultation Question 1
16.1 We invite consultees' views as to whether they are aware of:

(1) any circumstances in which the provisions of the Lands Clauses Consolidation Act 1845 are still relied on? (If so, please provide details of the circumstances and the specific provisions); or
(2) any other reasons why the repeal of the 1845 Act might prove to be problematic?

Paragraph 1.16

As to (1), as far as we are aware, there is no comprehensive list of statutes granting compulsory purchase powers. Appendix 2 in the Commission's report, reproduced from the "*Law of Compulsory Purchase*" (Bloomsbury), was prepared by the then authors when the work was first published (and subsequently updated). The authors believed that they had identified all such powers in Public and General Acts although it was not possible to give an assurance that the list is 100% comprehensive. It is also conceivable that an unknown Local Act also refers to the LCCA 1845. It will be observed from the right-hand column of Appendix 2 that only one statute in that list refers to the LCCA 1845 – the Military Lands Act 1892.

As to (2), we are not aware of any other reasons. We note that the Commission's 2004 report §1.14 recorded ODPM's then view that repeal of the 1845 Act could give rise to significant and unforeseen consequences, but 20 years later we are not aware of anyone having identified what those consequences might be.

Consultation Question 2
16.2 We invite consultees to provide data and evidence-based views on the likely impacts (economic and social) of the provisional proposals in this consultation paper.

Paragraph 1.64

There are various proposals which may have a financial impact, either on the acquiring authority or on landowners. These are addressed in response to the specific questions posed.

Consultation Question 3
16.3 We invite consultees to tell us if they believe or have evidence or data to suggest that any of our provisional proposals could result in advantages or disadvantages to certain groups whether or not these groups are protected under the Equality Act 2010.

Paragraph 1.67

Please see our response in relation to question 29, which considers fairness, equality and human rights implications. We consider that the proposal put forward by the Commission in that question (i.e., to extend the untraced owner unilateral deed poll provisions through to unwilling, sick and / or other circumstances) could potentially result in advantages or disadvantages to certain groups.

CHAPTER 2

Consultation Question 4
We provisionally propose that any future consolidation of compulsory purchase legislation should state expressly that a compulsory purchase order should not be authorised unless there is a compelling case in the public interest for the compulsory acquisition.
Do consultees agree?

Paragraph 2.25

There are different views within the CPA on this question. The question posed relates to whether the authorisation of a compulsory purchase order should embody that such authorisation must comply with there being a compelling case in the public interest. The authorisation may, effectively, be made by a Minister as a confirming authority, an inspector appointed by that Minister, or by a promoting authority who becomes the authoriser of an unopposed compulsory purchase order.

We are not aware of any occasion where the lack of an express statutory statement within the relevant part of the authorising legislation that a compulsory purchase order must have a compelling case in the public interest, has resulted in any misunderstanding by any CPO promoter or authorising body that there is such a requirement, nor that it has resulted in any other negative consequence.

We have considered whether, were legislation to be amended, a definition of "compelling case in the public interest" would be required. It is anticipated that it would be difficult, if not impossible, to provide a definition of "compelling case in the public interest" suitable for all circumstances. We consider that it would also introduce a further risk of legal challenge as to whether the relevant authority had erred in making that decision correctly against that statutory test. However, we note that the compelling need provisions in section 122(3) of the Planning Act 2008 are not considered to cause an issue, even though there is no definition of the compelling case, nor related commentary in the 2008 Act's explanatory notes.

We further note that the compelling case criterion has been an unchallenged part of our law for many years, but in case law rather than statute. It will turn on the facts of each case and the rule has operated satisfactorily for decades without a legal definition.

On balance therefore, we agree that an express provision in legislation that a compulsory purchase order should not be authorised unless there is a compelling case in the public interest would not cause any additional burden or prejudice. National guidance assists in understanding the compelling case and it is well understood by both promotors and confirming authorities.

Consultation Question 5
We provisionally propose that the separate procedures for the authorisation of compulsory purchase orders (in Part II of, and Schedule 1 to, the Acquisition of Land Act 1981) relating to orders made by Ministers and orders made by other bodies, should be amalgamated. Do consultees agree?

Paragraph 2.31

Yes, we agree. The current statutory separation of procedures for making compulsory purchase orders by Ministers and by other authorities is unnecessary duplication of what is essentially the same procedural discipline. This is potentially confusing for authorities seeking to exercise their powers and we see no merit in maintaining this separation. We believe that the legislation could be simplified by amalgamating the two procedures and harmonising any current differences.

We further agree that any such amalgamation and harmonisation should read through to amendments to The Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004[1], to produce a single, updated and harmonious set of Regulations with a single set of prescribed forms for both types of acquiring authority.

Consultation Question 6
We invite consultees' views as to the most appropriate terminology to be used in future consolidated legislation to describe the stages in the authorisation process for a compulsory purchase order. In particular, would it be best to describe an order as being:

(1) first "prepared in draft" and then "made" (as ministerial orders currently are);
(2) "made" and then "confirmed" (as non-ministerial orders currently are);
(3) "applied for" and then "made" (as development consent orders and Transport and Works Act orders currently are); or
(4) something else, and if so, what?

Paragraph 2.38

We agree that the current terminology for non-ministerial CPOs ("made" and "confirmed") leads to confusion, particularly for those affected by the order who are unfamiliar with the terminology. Proposals to adopt language which better reflects the status of an order, and is more easily understood, is welcomed.

The key point to reconcile from a legal perspective is not necessarily what the terminology is, but what stage in the process it represents. For example, "made" in the context of a non-ministerial CPO is the first stage of a two-stage authorisation process as the proposer of a CPO, whereas "made" in the context of a Ministerial CPO described the second stage of authorisation. As such, though this terminology is the same, it represents two distinctly different stages of the authorisation procedure. It must be right that any understandable confusion flowing from this should be avoided.

Our preferred terminology to replace "making" as the first stage of the process is "submission". For the second stage of the process, we consider that "confirmed" is the correct term. We

[1] For the purposes of the response to this question, we assume that the Commission refers to the 2004 Regulations in their form *as amended* by the 2017 and 2024 Regulations.

consider that these two terms will be most easily understood by those less familiar with the compulsory purchase process. We agree that the same terminology should apply to both Ministerial and non-ministerial CPOs. We consider that any wording including "draft" would potentially cause more confusion to the lay public due to the iterative nature of developing a CPO and the many drafts that precede the final order that is eventually submitted for confirmation.

We acknowledge that, if adopted, such changes will result in inconsistent terminology with other order processes, notably development consent orders and highways orders. However, on balance, we suggest it preferable that the opportunity is taken to clarify the language used within the compulsory purchase process so that it is clearly understood by those affected by an order.

Consultation Question 7
We invite consultees' views as to whether a non-ministerial compulsory purchase order should be executed, as now, when it is "made", or whether it should be executed at the end of the authorisation process, once the order has been modified (if applicable) and confirmed by the confirming authority.

Paragraph 2.46

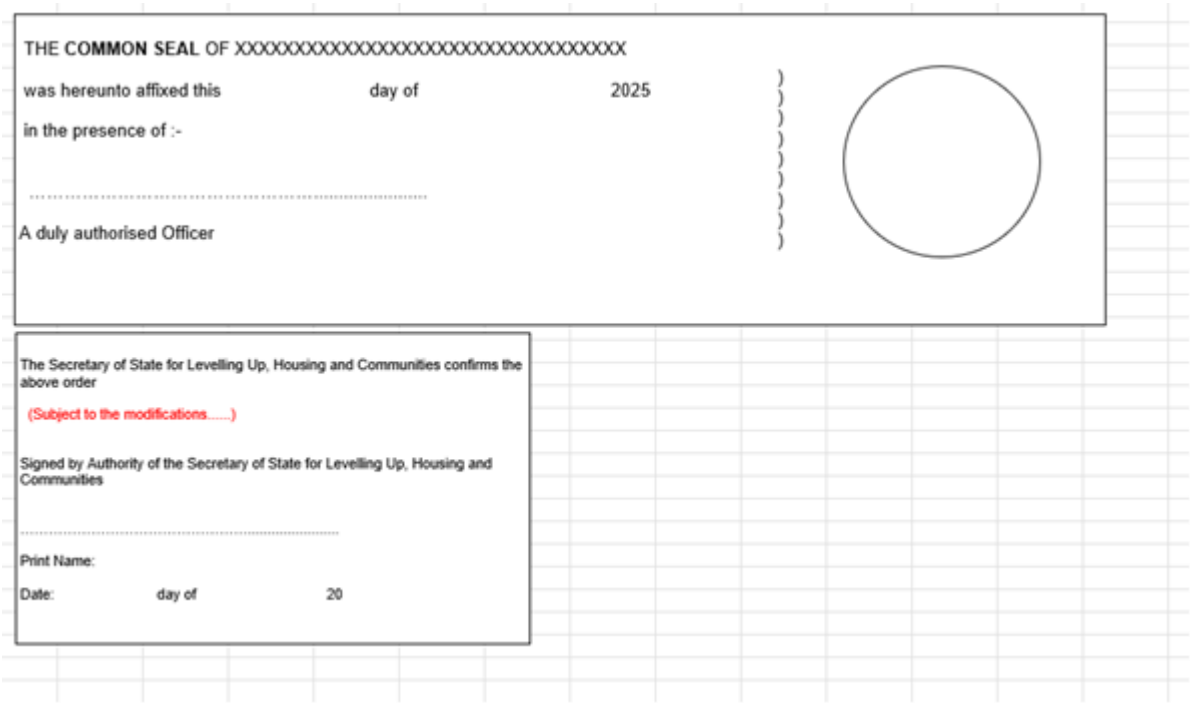
We agree that sealing and dating an order at the point at which it is made risks confusion for those unfamiliar with the compulsory purchase process as to whether the CPO is operative from the date of the seal. We also agree that those seeking a copy of an order may be confused by earlier copies of the made order which doesn't reflect modifications applied at the point of confirmation.

That said, the sealing process provides a level of clarity for decision making within the promoting authority. Numerous iterations of orders are produced during the preparation of an order, and sealing assists in avoiding confusion as to which version has been approved by the authority to go forward for confirmation. Absent a seal, alternative means would be needed to clarify the date on which other statutory provisions, which are triggered upon the making of an order, come into effect, e.g. section 25 of the Acquisition of Land Act 1981.

However, we have concerns that a requirement to seal the order at the point of confirmation risks an additional layer of authorisation for the promoting authority; the point at which authority is given to submit the order for confirmation, and again at the point of sealing. This ought to be capable of resolution through the promoting authority seeking delegated authority from its members which allows officers to seal the order, if confirmed, without the need to first return the decision to members. However, this may not be followed in practice, particularly where the making and confirmation of the order straddle an election period. Sealing at the point of confirmation would insert a level of delay and complexity to the process which is not currently present.

It is therefore suggested that the requirement to seal the order at the point of making is retained, although the prescribed form of order be modified to clarify that the order does not become operative at the point of affixing the seal. This could be as simple as a second box on the face of the order which needs to be completed and dated by the confirming authority at the point that the order is confirmed. This would effectively incorporate the confirmation endorsement wording now applied by confirming authorities. Any prescribed form could not anticipate who the authorising body was to be at that time, so it would naturally have gaps for

the completion of that information by the confirming authority. We provide an example of this below[2], though we are sure that there are various forms that would deliver the same outcome:



It is key to note that this would not carry across to analogous orders, which require their own specific terms of confirmation and declaration, for example, Side Roads Orders under the Highways Act 1981.

Thought has been given as to whether, if promoting authorities continue to seal at the point that the order is made, there is an alternative and better way to clearly show any modifications to an order at the point of confirmation. It is accepted that handwritten amendments appear to be an outdated approach. Further, the need for the promoting authority to wait for receipt of a hard copy modified version of the confirmed order can delay the start of the statutory notice of confirmation process. However, it is felt that there remains benefit in all parties being able to see the changes that have occurred between the date of making the order and its confirmation, which would be lost if the confirmed version was re-executed in a clean copy format. It would also raise the question as to whether the confirmed copy of the order needs to be resealed (and the complications inherent in that as described above).

It is therefore our preference that the current approach of handwritten amendments to a sealed order is retained, although we see merit in amending the prescribed form of order to clarify that an order which only carries a seal, and is not also endorsed as confirmed, is not operative. We suggest that the same approach apply to maps which, in our experience and despite statements to the contrary in §2.41 and §2.43 of the Consultation Paper, are also subject to handwritten amendments where required.

[2] Please note that this example does include a confirming authority in the endorsement box, but this is purely by way of example.

Consultation Question 8
We provisionally propose that when publicising the making of a compulsory purchase order by site notice, there should be an express obligation upon acquiring authorities (so far as reasonably practicable) to keep the notice in place for the duration of the objection period. Do consultees agree?

Paragraph 2.51

Yes, we agree.

Ensuring that site notices of the making of an order remain in situ for the duration of the objection period is already best practice and required in guidance. Section 15 of the CPO Guidance sets out the general certificate requirements when making an order and submitting for confirmation. Paragraph 216.1 of the Guidance notes that the general 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*." The general certificate is set out in paragraph 26.1 of the Guidance as a document required to be submitted to the confirming authority. The form of general certificate in Section 15 confirms that:

"A notice in the same Form 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...."

There are similar provisions in relation to general certificates for related Highways Act orders and schemes also.

We see no reason not to mirror the provisions in respect of notices of confirmation of an order pursuant to section 15(2)(a) of the 1981 Act. We consider that mirroring this express statutory requirement in relation to notices of making provides clarity for those involved in promoting an order. We see merit in certainty as to the period during which the notices are to be maintained.

However, we consider that it would be of assistance if the nature of the obligation could be specified sufficiently clearly in legislation or accompanying guidance, to remove doubt as to the required standard. We note the reference in the question to "so far as is reasonably practicable"[3] and agree that it must not be an absolute requirement, as notices are often removed, damaged or can blow away. Checking can be a lengthy exercise so we consider that it should be acceptable for checking to be undertaken on a weekly basis, which is the industry standard in any event.

If the checking requirement is clarified, we consider that the form of general certificate would need to be amended to enable confirmation that the checking exercise took place on a specified timeframe.

[3] Replicated in section 15(2)(a) of the 1981 Act

Consultation Question 9
We invite consultees' views as to whether the lack of an express role in section 16 of the Acquisition of Land Act 1981 for the confirming authority causes problems in practice.

Paragraph 2.66

The purpose of section 16 of the ALA 1981 is to enable the Minister responsible for supervising the statutory undertaker's functions to decide whether the land in question can be taken without serious detriment to the statutory undertaker.

This is quite different from the role of the confirming Minister who must decide whether the need for the land to be acquired is greater than the detriment to the landowner. It is a policy decision, beyond the scope of this consultation, as to whether statutory undertakers should be protected as provided by s.16(2). However, if so, it seems logical that the Minister responsible for supervising the statutory undertaker's functions be party to the decision as to whether the land in question can be taken without serious detriment to the statutory undertaker.

However, please see further the response to Question 10 below.

Consultation Question 10
We provisionally propose that section 31 of the Acquisition of Land Act 1981, which contains a power for the "appropriate Minister" to authorise (jointly with the confirming authority) the acquisition of a statutory undertaker's land without a certificate under section 16, should be repealed.
Do consultees agree?

Paragraph 2.70

Section 31 of the Acquisition of Land Act 1981 provides a mechanism by which the need for a public project can be weighed against the impact on the undertaker. In an appropriate case, an undertaker's land can be acquired notwithstanding serious detriment being caused to the undertaking. If section 31 were to be repealed, there would be no mechanism by which land which was essential to a public project could be acquired if serious detriment would be caused to a statutory undertaker. The effect of this repeal would not be resolved by giving the confirming Minister a role in section 16 of the Acquisition of Land Act 1981 as it stands, because the only question under section 16 is whether serious detriment would be caused.

We suggest that sections 16 and 31 be amalgamated and re-drafted to achieve the following effect: if land used by a statutory undertaker is included within a compulsory purchase order, and if the undertaker makes an objection to the effect that the taking will cause serious detriment to the undertaking, the order should not authorise acquisition of the undertaker's land unless it is confirmed in relation to that parcel by both the confirming Minister and the Minister responsible for that undertaker.

Commentary received during discussions on this question suggest that Government departments responsible for statutory undertakers can find it difficult to engage with their role under the existing sections 16 and 31, and tend to see their role as fighting the undertaker's corner in a somewhat partisan manner. The solution to that problem lies partly in simplifying and clarifying the law as proposed above and partly in providing guidance which enables all respective departments to clearly understand what the role of their department is.

Further, if Section 31 is to remain, either as currently drafted or in an amended form as suggested above, consideration should be given as to whether it should, equitably, be amended to widen its effect further than those Acts listed at section 31(1) in order that the same benefits apply to other forms of authorisation of compulsory purchase powers.

Consultation Question 11
We provisionally propose that section 17 of the Acquisition of Land Act 1981, which requires an order acquiring statutory undertakers' or local authorities' land to be subject to special parliamentary procedure in certain circumstances, should be repealed.
Do consultees agree?

Paragraph 2.77

We agree that the comprehensiveness of the exclusions at section 17(3) of the 1981 Act means that the potential for future use of the special parliamentary procedure in relation to the acquisition of land held by either statutory undertakers or local authorities is low to none and that there is no discernible benefit in retaining section 17 of the 1981 Act.

Further reasons for repealing the special parliamentary procedure provisions within section 17 include:

(i) the inequality as to why the orders of some promoting authorities may be subject to special parliamentary procedure (e.g. promoting authorities that are neither local authorities, nor statutory undertakers, but who benefit from compulsory purchase powers) but not others; and
(ii) the delay and cost burden on a promoting authority's proposals of an order being taken through the special parliamentary process, where the unwithdrawn objection may have little or no merit.

Repealing this provision would provide clarity and improve fairness and accessibility. We therefore agree with the proposal that section 17 be repealed.

Consultation Question 12
We invite consultees' views as to whether the provisions of section 19 of the Acquisition of Land Act 1981 for the protection of common land etc. cause any problems in practice.

Paragraph 2.82

It is a policy decision as to the level of protection from compulsory purchase that should be afforded to particular categories of land. However, we note that, in respect of open space, common land and field garden allotments in particular, there is no certainty that loss of such land will be included within an objection to an order and so see merit in such land continuing to benefit from particular consideration by the confirming authority as part of its decision making.

We agree that reference to special parliamentary procedure in respect of common land, open space and field garden allotments is an unnecessary complication and of little practical use. We would therefore support a proposal to remove the presumption that the order be subject to special parliamentary procedure unless a section 19 certificate is granted. However, removal of the special parliamentary procedure 'opportunity' where a section 19 certificate is not granted also removes the position for Parliament providing authorisation to a CPO where there might be an overriding case of justification for the CPO. It is a political/policy decision

how this will manifest itself in legislation. If section 19 remains and the special parliamentary procedure is removed, then in such a non-certificate circumstance the CPO would simply be rejected by inability to comply with the certificate criteria.

Difficulties are regularly encountered with the statutory definition of "open space", with uncertainty over what land is and is not covered by this definition. Such uncertainty often drives behaviours which are of little benefit to any party. For example, it is often the approach in practice to amend the scheme, where possible, so that the land falls into one of the section 19 exemptions; or it is removed from the scope of the order altogether; or it is appropriated under section 122 Local Government Act 1972 away from that purpose (where already Council owned), to go through the notification procedure under the LGA 1972, which does not cause a Public Inquiry to be held. Such appropriation cannot, however, take place until any related CPO is confirmed as it would not pass the statutory requirements under section 122 until the land is "no longer required for the purpose for which it is held", which would only be true if the scheme necessitating the land comes forward.

Alternatively, the response to the ambiguity is to take an overly cautious and inclusionary approach of land, which in reality serves little or no public benefit. This in turn can result in an unnecessary onerous burden to provide an equivalent area of exchange land, with no weight given to the quality of new open space being provided versus that which is to be acquired. Improved clarity over the categories of land which are included within the statutory definition of "open space" would be welcomed.

We also question the ongoing relevance of the legislation as it applies to allotments, noting that the increasing number of commercial allotments makes the application of section 19 less clear than it used to be.

While we are not aware of any particular difficulties encountered with the process for obtaining a section 19 certificate, it adds a layer of process administration and complexity with corresponding impacts on accessibility. We have considered whether removal of the certification process would be supported, allowing the same matters to be addressed by the confirming authority as part of their overall decision making. Notification and publicity requirements could be amalgamated with the current publicity at the point of making a CPO, allowing a single route of objection for affected parties.

However, removal of the certificate procedure under section 19 and the same criteria being instead applied by the confirming authority in taking its decision, leads to two matters:

i) The confirming authority, would need to bring those criteria into its confirmation endorsement of the CPO, and on which basis/category it was determining the Order;

(ii) This would remove the role of the Appropriate/Sponsor Minister for the type of open space concerned, from having any say in the matter.

For all matters common land, that would be the Secretary of State for Environment, Food and Rural Affairs and for all matters concerning open space, including fuel and field garden Allotments, the Secretary of State for Housing, Communities and Local Government.

Similar to section 16, if the section 19 certificate process was to be abandoned as a principle, then the relevant Secretary of State might see themselves with a role in the matter, by way of joint confirmation of the CPO. Similarly, if the criteria of section 19 were not met, joint

confirmation in the case of a compelling case might still occur. Either way, we find it unlikely that the relevant Secretaries or State might step away from the matter altogether.

Consultation Question 13
We have identified three possible options for reform (or not) of the statutory review procedure in Part IV of the Acquisition of Land Act 1981. These are:

(1) **Option 1 (no change – leave the existing ambiguity)**: do nothing to the existing statutory framework and allow any further development in the law to be undertaken through decisions of the courts.
(2) **Option 2 (impose greater clarity on the existing framework as we understand it)**: any challenge to *the validity of a compulsory purchase order* should be made under the statutory review procedure, and no such challenge may be made by judicial review. The law should be changed to allow an application for statutory review to be lodged once a compulsory purchase order has been made. Judicial review could only be used to challenge decisions made *prior to the making of the order*.
(3) **Option 3 (our 2004 recommendation)**: any challenge to *the validity of a decision to confirm a compulsory purchase order* should be made pursuant to the statutory review procedure, and no such challenge may be made by way of judicial review. Any challenge to earlier stages in the process, *up to submitting the order for confirmation*, should be made by judicial review. We invite consultees' views on their preferred option and the reasons for their preference.

Paragraph 2.102

We agree that clarification of the correct route of legal challenge for any aspect of the compulsory purchase process would be welcome. We therefore do not favour Option 1.

However, we are keen to ensure that any clarification does not build in additional points of uncertainty that may hinder or delay the funding or delivery of development. For this reason, we agree with the Commission that Option 3 is to be preferred over Option 2.

Both Option 2 and 3 would allow the validity of a compulsory purchase order to be challenged between making and confirmation. The only difference is that under Option 2, the procedure for challenge would be statutory review whereas under Option 3 it would be judicial review before confirmation and statutory review after confirmation.

We believe that judicial review should be preferred as the procedure is more flexible, requires permission and could allow the acquiring authority the opportunity to remedy the alleged invalidity. The Law Commission should note that when the Government responds to Lord Banner KC's Report on the Independent Review into Legal Challenges Against Nationally Significant Infrastructure Projects (28 October 2024), it is possible that there may be something relevant to this question.

Consultation Question 14
We invite consultees' views as to whether the statutory review procedure in Part IV of Acquisition of Land Act 1981 should be amended so that "persons aggrieved" by a decision to *refuse* to confirm a compulsory purchase order must use that procedure, instead of judicial review.

Paragraph 2.107

There are clear benefits, as stated in the Consultation Paper, in providing a definite cut-off date for challenges to a decision to confirm a CPO. We acknowledge that there is limited rationale for why the same decision has two different routes of challenge dependent on which way that decision went. We also see that providing an express statutory provision as to the route of challenge to a refusal to confirm a CPO would provide clarity and, accordingly, would improve accessibility to the law.

The Consultation Paper does not clarify whether a statutory review of a decision to refuse to confirm a CPO would enjoy the same flexibility as is set out in section 24(2) and (3) of the Acquisition of Land Act 1981 (i.e., the Court could decide to either quash the order or to instead only quash the *decision* to confirm the order) but we have assumed that this is what is proposed.

However, we also agree with the suggestion made by the Commission that, in the case of a refusal, timing is less of a priority and there may be advantages in the flexibility of the judicial review process.

Further, while the Commission's question relates to the Acquisition of Land Act 1981 and compulsory purchase, any decision taken on this point will invariably impact other associated orders which may have been taken forward concurrently with a compulsory purchase order, e.g. Highways Act orders, which would likely have seen the same rejection alongside a refused CPO. To avoid introducing new complexities into the confirmation and challenge process, any changes to the challenge process to compulsory purchase orders would need matching amendments within the legislative provisions for those other orders often promoted together with a CPO.

Accordingly, to avoid this complexity, our preference is for the process to challenge a refusal to confirm a CPO to remain as judicial review.

Though we note that this is outside of the remit of this Consultation and as an aside, we question whether the power to bring a challenge against refusal (whether by way of amendment to Part IV of Acquisition of Land Act 1981 or, indeed, through the current judicial review process) should logically sit only as a power for the promoter of the CPO. This is not intended to remove a challenge opportunity, but a practical conclusion that it is only the CPO promoter who can decide if they would want to pursue/fight on to achieve authorisation of previously rejected proposals, if the Court saw fit to resurrect the CPO to its pre-*decision* position. A successful challenge should not become a forced edict upon the promoting authority for the CPO that it must continue with it, when it might otherwise have taken its own constructive decision against the background of the former refusal that it no longer intends to take forward the scheme and CPO. However, we note that if the procedural position on the CPO was restored to the point that it had reached before the decision was taken, it would be open to the promoter to withdraw the CPO.

CHAPTER 3

Consultation Question 15
We provisionally propose that an acquiring authority, when it serves a notice to treat, must have made a clear decision to proceed with the purchase of the subject land. A corollary of this is that, where an acquiring authority has not made such a decision, it may *not* serve a notice to treat merely to extend its power to compulsorily acquire land beyond the initial time limit for implementation.
Do consultees agree?

Paragraph 3.75

We agree that if any Notice to Treat is to be served, the acquiring authority must have made a clear decision to proceed with the purchase of the subject land. We also agree that where the Notice to Treat procedure is being used deliberately and without justification to extend the lifespan of compulsory purchase powers where there is no intention to deliver the scheme, we consider that this goes against the spirit of the legislation. We see that the underlying theme of this question is to address misuse, or perceived misuse, of the current legislation to artificially prolong the life of a CPO. It must be noted, however, that there are often genuine reasons for delay that cannot necessarily be foreseen, such as funding issues, extraordinary inflation and pandemics.

An acquiring authority will have gone through the process of identifying and narrowing the land needed to deliver the relevant scheme, whilst following the requirements of statute and guidance. They will have made numerous decisions throughout the process of promoting a CPO around the need to proceed with the compulsory acquisition of the land in question, and will have explained the reason for the acquisition of land in the Statement of Reasons, as well as any Statement of Case. This will, in all likelihood, also have set out an intended programme for the delivery of the scheme in the event that the CPO is successful. The various decisions made, particularly if looking at local authorities, will in all likelihood have resolved in the resolution for making of a CPO that all onward matters are also authorised through delegated powers – the promotion of the CPO through the statutory process, the ability to negotiate for land acquisition and the payment of compensation, and the ability to implement confirmed powers as necessary. This is not a question of the need for the land, but a question of whether there is a need to utilise compulsory purchase powers to *achieve* the acquisition of that land.

We would not, therefore, be supportive of any *additional* requirement for an acquiring authority to take a *further* positive decision post-confirmation of a CPO to purchase land, if such decisions have already been taken and remain in place. Such a necessity would add a further level of governance that could cause material delay to the delivery of a scheme and impact scheme viability. We do agree that if there has *never* been any decision in place then one should be required, but such a failure would and should mean that the CPO itself would fail on the basis of the lack of the compelling case being made out.

We consider that the answer to this question is intrinsically linked to the answer to question 98, in that we would be supportive of a requirement for a decision to be taken if there is *no intention* to acquire land, so as to ensure that impacted landowners and the wider public are aware of the acquiring authority's intentions at the earliest opportunity.

Further, if there is uncertainty about the extent of the need for land[4] and additional time is required to refine this, we consider that this should be properly communicated, should only be permitted with the agreement of the landowner and should require an additional decision to be taken. We consider that this will prevent acquiring authorities from using this mechanism solely to extend their compulsory acquisition powers beyond the initial time limits, a practice which could clearly otherwise lead to unnecessary uncertainty for landowners and potential delays in the acquisition process.

We consider that acquiring authorities who do not intend to deliver a scheme would, if well advised, make a public statement to that effect largely because a failure to do so will put them at risk of continued statutory blight claims being made.

Consultation Question 16
We provisionally propose that:

(1) the currently alternative procedures for implementing a compulsory purchase order (notice to treat and the general vesting declaration) should be replaced by a single unified procedure; and
(2) the single unified procedure should be based on the more modern general vesting declaration procedure, with suitable modifications. (Consultation Question 17 below asks about what modifications are suitable).

Do consultees agree?

Paragraph 3.109

Yes, we agree that there should be a single unified procedure and that the single unified procedure should be based on the more modern general vesting declaration procedure, with suitable modifications. A well-executed transition to a single system has the potential to enhance clarity, fairness, and efficiency in compulsory purchase law.

The benefits to acquiring authorities and practitioners of a single unified process are also clear. A single procedure ensures uniform treatment for all parties, avoiding inconsistencies and nuances that can arise currently when authorities are choosing between Notice to Treat and general vesting declaration procedures. The need for duplicative training, documentation and decision-making procedures is also removed, minimising the potential for procedural errors that might arise as a result of navigating two distinct systems. Many acquiring authorities now favour the general vesting declaration process due to its efficiency at securing title and clarity on compensation entitlement. Basing the unified procedure on the general vesting declaration process reflects current, adopted mainstream practice in the exercise of compulsory purchase powers.

§3.51 of the Consultation identifies 6 potential reasons for why Notices to Treat may still be used, some of which we consider would need to be taken into account as modifications in any amalgamated process. We address each of these in turn:

[4] The confirming authority must be satisfied as to the need for the land, but we accept that in some cases there is a refinement of land that may only be capable at a later stage. However, we consider that this proposal, and the reason(s) for it, should be made clear by the acquiring authority during the promotion of the CPO and should not be used as a means to avoid addressing the question of need completely.

Extension of time - We consider that such modifications of the general vesting declaration procedure should include the provision of some of the flexibility around timing and negotiation, which can be found through the Notice to Treat process[5].

Temporary use - We consider that the flexibility perceived through the Notice to Treat process could largely be addressed by commencement of the temporary possession powers contained within the Neighbourhood Planning Act 2017. We address this further in our answer to Question 17.

Precision as to the area of land - We acknowledge that there are circumstances where the refinement of land is to benefit of both the acquiring authority and the impacted landowner. However, we revert to our answer to Question 15.

Withdrawal - We consider that there are two opposing aspects to this reasoning. The first is where there is a genuine intention to acquire the land but a programme for taking possession of the land needs to be adhered to. It is often the case that negotiations are advancing positively but there is simply not the time within the programme for delivery of a scheme to delay taking possession of the land whilst documentation is legally completed. This may result in a situation where a Notice to Treat and Notice of Entry are served to commence the statutory 3-month minimum period but allows for such notices to be withdrawn by agreement between the parties if such private acquisition can be achieved during that period. We consider that this is a flexibility that is beneficial to be retained. Contrast that with the service of a Notice to Treat where there is simply uncertainty about whether a scheme will actually be delivered, or where it is undecided whether the land will be needed at all (rather than a refinement of the land down to a more precise area). In relation to this, please see our answer to Question 15 and Question 17(5).

Minor tenancies - Please see our answer to Question 17(3).

New rights acquisition - Please see our answer to Question 90. If there is a failure to properly describe new rights to be acquired with precision, the GVD process does not then allow any negotiation of such a right and it can have the effect of leaving a landowner unclear about the full extent of a right over land. Here the Notice to Treat procedure comes with the advantage of subsequent transactional property documentation, which can provide a mechanism to certainty not found within the drafting of the CPO.

It is our view that the general vesting declaration process could be modified effectively without a full re-write. The success of this proposal, however, will depend on the nature of the modifications made to address any limitations of the general vesting declaration process and ensure that the unified procedure meets the needs of all stakeholders.

[5] Even if such flexibility is by way of an unintended loophole that provides an avenue to the misuse of that procedure, the misuse itself indicates a need that the legislation does not currently address.

Consultation Question 17
We invite views from consultees on whether the unified single procedure which we propose above should contain suitable modifications aiming to retain the flexibility and other features currently driving the use of the notice to treat procedure in a minority of acquisitions. In particular, some options include:

(1) having a vesting period of anywhere between three months and three years after the execution of a general vesting declaration to mirror the three-year default expiry period of a notice to treat;
(2) permitting acquiring authorities to bring forward the vesting date, by agreement with the landowner (as section 8A of the Compulsory Purchase (Vesting Declarations) Act 1981 currently only permits the date to be postponed by agreement);
(3) introducing an alternative statutory notice procedure to acquire minor or long tenancies which are about to expire, replicating the effect of section 9(2) of the Compulsory Purchase (Vesting Declarations) Act 1981;
(4) commencing the temporary possession provisions in sections 18 to 31 of the Neighbourhood Planning Act 2017 either generally or to the extent that they relate to the implementation of CPOs; and
(5) making provision for the withdrawal of a general vesting declaration, applying some or all of the provisions in section 31 of the Land Compensation Act 1961 that apply to notices to treat.

We welcome consultees' views on these, or any other options for retaining the flexibility driving the use of the notice to treat procedure in a minority of acquisitions.

Paragraph 3.110

Using the numbering adopted in the question, we respond as follows on the specific proposals referenced by the Commission retaining flexibility in the unified procedure:

(1) We support this modification. It provides acquiring authorities with the necessary flexibility for project planning, whilst ensuring that landowners receive timely certainty of programme and the need to acquire their land. We consider that providing a mechanism to prevent undue delay in acquisitions is essential. Any wording would need to be mindful of the provisions of section 13D of the Levelling Up and Regeneration Act 2023 and the ability for a period longer than 3 years to be specified. We considered the impact of delays to funding decisions that sit outside of the control of acquiring authorities causing delay to implementation of CPO but consider that the conditional confirmation powers in section 13D of the Levelling Up and Regeneration Act 2023 may assist in addressing this issue.

(2) We support this modification. Providing an ability to bring forward the vesting date by agreement would mirror the provisions now in force under Section 8A of the Compulsory Purchase (Vesting Declarations) Act 1981, enabling a vesting date to be extended by agreement with the relevant landowner. The interests of landowners would need to be clearly safeguarded if a vesting date were to be brought forward by agreement. It will be necessary to allow sufficient time for affected landowners to take independent legal advice before agreeing to an earlier vesting date, noting the implications of vesting upon them.

(3) We support this modification.

(4) We are supportive of the proposal for the prompt introduction of the temporary possession powers in s18-31 of the Neighbourhood Planning Act 2017, insofar as they relate to implementation of CPO powers. They must be brought into force as soon as possible to ensure that temporary land use is managed through appropriate statutory mechanisms rather than via misuse of the Notice to Treat process.

Earlier in the consultation document (§§3.81–3.89), the Commission discusses flexibility in defining the precise area of land required, including making reference to "limits of deviation". We disagree that "limits of deviation" is common parlance in CPOs, save for maybe in relation to rail schemes (this is common to DCOs but not a usual occurrence in CPO). As the Commission identifies, there is a requirement to justify the need for the entirety of the land through the CPO process.

To the extent that the Notice to Treat procedure is being incorrectly used to allow for flexibility in the *area* of land to be acquired to be determined after construction (as is common in DCOs), we do not consider that temporary possession powers under the Neighbourhood Planning Act 2017 would be a solution for the following reasons:

- Although landowners would be entitled to compensation for any area of land temporarily impacted (in accordance with the Compensation Code), the actual determination of compensation for the land to be acquired would be deferred until a later date once the land areas are finalised, long after possession has been taken.

- While this arrangement might suit some landowners, it would be detrimental to others who prefer an immediate buyout to reinvest in alternative premises.

Though we agree that there may be benefit to refinement of an area (see our answers to Questions 15 and 16), we do not consider that temporary possession powers is the answer to this.

The much more common usage of Notice to Treat – and the main reason for its misuse - is to replicate the yet to be commenced temporary possession powers, rather than to allow for flexibility in area of land take. For example, a construction compound must be identified in a CPO as pink land to be acquired due to the exclusive use of the land by the acquiring authority and resultant impact on the landowner, but the very nature of a construction compound is inherently a use that is only required for a temporary period. This would be wholly resolved through the commencement of the temporary possession powers.

(5) Yes, we support the proposal on the basis that it mirrors the drafting of section 31 and provides some flexibility to the general vesting declaration process, which is not currently offered. Withdrawal rights should include safeguards to ensure landowners are compensated for any losses or uncertainty caused by the initial declaration and its subsequent withdrawal, but it is clear that this flexibility would prevent acquiring authorities from being unnecessarily locked into acquisitions while protecting landowner interests.

CHAPTER 4

Consultation Question 18
We provisionally propose that the consolidated compulsory purchase legislation should set out clearly those persons who are entitled to receive a notice to treat. We think that (as now), the authority should be required (where necessary for its scheme to proceed) to serve notice on any:

(1) owner of a freehold interest;
(2) owner of a leasehold interest (other than a "short tenancy" as defined by section 20(1) of the Compulsory Purchase Act 1965);
(3) mortgagee (whether legal or equitable); and
(4) any person entitled to the benefit of a contract for a freehold or leasehold interest (including an option or right of pre-emption).

Do consultees agree?

Paragraph 4.14

Yes, we agree that this codification would provide helpful clarity to the practices undertaken by acquiring authorities. In relation to (2), we would suggest that clarity would be helpful to identify that this includes all leasehold interests (other than short tenancies) rather than only registered leases.

Consultation Question 19
We invite consultees' views as to whether acquiring authorities should be under any additional obligation to serve notice to treat (or other form of notification) on other interest holders or occupiers when initiating implementation of a compulsory purchase by the notice to treat method.

Paragraph 4.19

We consider that some form of notification should be served on all those who have some other form of interest, such as easements and restrictive covenants, and also on licensees and lawful occupiers in order to inform them that the compulsory purchase is being implemented. This is something that practitioners are advising acquiring authority clients to undertake in any event, and a reflection in statute of a requirement to notify would seem to be more consistent with the requirements to notify at order making and order confirmation stages.

We consider that one possibility is that an acquiring authority could have two lists of persons, a statutory list and a non-statutory list of persons who should be notified as they are more generally impacted by the scheme. There is clearly a benefit to Table 2 interests being made aware. All Table 2 interests are required to be served with documentation earlier in the process (order making and order confirmation), but it is strange that those interests do not necessarily have any notice of implementation of the scheme. At the moment, the system does not provide for a general notification system for all Table 2 interested parties and it is agreed that this would be beneficial and in the public interest.

However, any notice in this context should not be called a Notice to Treat. A CPO does not automatically acquire or eliminate easements etc, it merely results in any infringement giving rise to a right to compensation rather than an injunction to enforce. Some may continue to be capable of operation/use after the CPO, and so this distinction in terminology is important. We consider that this might be termed a "notice of possession" to tell section 10 claimants etc that entry has been taken by the acquiring authority. However, we would suggest that

legislation should make it clear that if a party is missed, the failure would not invalidate the taking of possession.

Consultation Question 20
We invite consultees' views as to whether there should be changes to the form or content of a notice to treat. In particular:

(1) Should there be a prescribed form of notice to treat? If so, what should be the consequence if an acquiring authority fails to use the prescribed notice?;
(2) Should a notice to treat set out *all* the heads of compensation that may be available to the landowner? (The current requirement, in section 5(2)(c) of the Compulsory Purchase Act 1965, only refers to the purchase of the land and to compensation for damage sustained by reason of the execution of the works.)

Paragraph 4.24

In relation to (1), though we agree that it would be preferable to ensure consistency and clarity wherever possible, we do not consider that there should be a prescribed form. We take this view on the basis that a failure to follow the form precisely might give rise to grounds for challenging the validity of the notice to treat later.

We also note that §4.22 considers the applicability of "*substantially to the same effect*" wording. We would draw the Commission's attention to comparative case law on statutory blight notices (*Gennard v Bridgnorth District Council* [2004] LT BNO/14/2004), where this wording is in legislation and became a point that required testing judicially.

We consider that there should be a model form of notice to treat, rather than a prescribed form, which would avoid these issues and serve to achieve the Commission's aims of simplifying legislation.

CPO practice is passed down internally from practitioners with their own banks of precedents that they have worked up over the years, which may serve to block newcomers into the industry. With a model form, more people could understand and get involved in the CPO process. In practical terms, notices to treat are broadly in the same form but really everyone should be able to use a model form. We consider that the same approach should be adopted for notices of entry.

This would also be consistent with the approach of having a model compensation claim form for the subsequent stage procedural stage. In devising a model form, it should be remembered that laypersons often find the terminology of statutory notices very difficult to understand, and we find that if such notices are not accompanied by a helpful covering letter explaining the process in layperson's terminology, the notices often will not be read at all.

In relation to (2), we consider that it is for the claimant, together with its advisors, to formulate the legal basis for a claim in compensation and not the place of a notice to treat to specify heads of claim. However, it might usefully provide a link to the Government's compensation guidance and/or a recommendation that expert advice from a surveyor be sought. In practice, most acquiring authorities do this already in the covering letters that are sent with notices to treat (and, indeed, with statutory notices of GVD).

Consultation Question 21
We invite consultees' views on the use in practice of the counter-notice procedure (requiring possession to be taken on a specified date) in section 11B of the Compulsory Purchase Act 1965, and whether they have encountered any difficulties with it. If so, please explain the facts of the case and the nature of the difficulty.

Paragraph 4.29

As the counter-notice procedure was only introduced in the Housing and Planning Act 2016, it is unlikely that there will yet be much evidence of usage of the procedure, and the CPA does not have any direct experience of such usage. Having recently legislated to introduce the provision, however, we consider it unlikely that the Government would agree to abandon it for an alternative unless there is evidence that it is problematic.

In our experience, the counter-notice procedure is infrequently utilised, as it is a complex and unknown area of law for most people and most landowners want to keep hold of much land as they can.

Consultation Question 22
We provisionally propose that Schedule 5 (forms of conveyance) to the Compulsory Purchase Act 1965 should be repealed.
Do consultees agree?

Paragraph 4.38

Yes, we agree. We have no direct experience of the use of the forms contained within Schedule 5 and, instead, we routinely see the use of standard transactional property documentation. Indeed, conveyances of land that result from compulsory acquisition often include reference to compensation provisions in the wording of the transfer itself (if a separate settlement agreement is not required), so the flexibility to draft a suitable transfer document is welcomed.

Consultation Question 23
We provisionally propose that section 23 (cost of conveyances etc) of the Compulsory Purchase Act 1965 should be repealed and replaced by a simple provision stating that the acquiring authority should pay all reasonable costs in connection with the compulsory conveyance of land.
Do consultees agree?

Paragraph 4.42

Yes, we agree.

Consultation Question 24
We invite consultees' views as to whether the costs of the compulsory conveyance of land should be assessed by:

(1) a costs judge of the High Court; or
(2) a judge or member of the Upper Tribunal (Lands Chamber).

Paragraph 4.46

We consider that given the relatively simple nature of the costs of a conveyance as a result of compulsory acquisition, the Upper Tribunal would be well placed to assess this.

Consultation Question 25
We provisionally propose that section 28(2) (stamp duty) of the Compulsory Purchase Act 1965 should be repealed without replacement.
Do consultees agree?

Paragraph 4.56

Yes, we agree.

Consultation Question 26
We invite consultees' views regarding the effect and continuing relevance of section 28(3) of the Compulsory Purchase Act 1965 and the reference therein to section 7(4) of the Law of Property Act 1925. Can section 28(3) be safely repealed?

Paragraph 4.57

We have no experience of this section and so cannot comment on whether there would be unintended consequences if repealed.

Consultation Question 27
We invite consultees' views as to whether the deed poll procedure in the Compulsory Purchase Act 1965 presents any issues in practice, in particular, whether it creates difficulties for acquiring authorities seeking to obtain title.

Paragraph 4.60

We do not consider that the legislative procedure itself causes issues in practice, but the administrative burden of compiling the deed poll, having the deed poll registered and paying monies into court is poorly guided, takes a long time, is not well understood by the Court Funds Office.

There is no prescribed form of deed poll, at least that we are aware of, and when utilising the deed poll procedure, we have used template forms that are contained in the Compulsory Purchase Encyclopaedia; however, significant adaptations needed to be made to the form to make it workable. It would be useful if Government could issue a model deed poll in the same way as there is a model compensation claim form, for example.

§4.58 poses the question *"what happens if the limitation period expires before such a reference is made?"* We have no experience of this scenario occurring, but it is our view that

it is incumbent on an acquiring authority to ensure that it keeps a record of possession dates so that limitation dates can be calculated, and that it should be incumbent on an acquiring authority to make a reference to the Tribunal to have compensation determined, to allow title to the land to be acquired.

However, if such an act is mistakenly (rather than intentionally) missed, we consider that it is correct that the acquiring authority should have a procedure available to it to take title to the land that it has already physically taken possession of, and that parties with a compensatable interest should be compensated and part with the liability for the land. It should be noted that the effect of the expiry of limitation is not an ability for the acquiring authority to avoid payment of compensation, but an expiry of the ability for the level of compensation to be determined by the Tribunal, where not agreed. We consider, therefore, that if limitation inadvertently expires without a reference being made, the deed poll procedure could be extended to allow for this transfer of title to take place with deposit of the acquiring authority's assessment of compensation with the Court Funds Office.

This does potentially present an unfair situation to claimants who may not be properly advised and so we consider that any such extension to the deed poll procedure must also come with a statutory requirement to notify of the expiry of the limitation period at the outset. We consider that this could be incorporated into the requirements of Section 5(2) of the Compulsory Purchase Act 1965 and, therefore, into any model form of Notice to Treat (and Notice of Entry).

For principles of fairness, we consider that a statement as to the expiry of limitation must also be included in the prescribed form of statutory notice of vesting, though this would obviously not have the same impact in relation to deed poll provisions and would be informative only.

Notwithstanding the suggestions above, we do not agree with the base principle proposed in §4.59 that there may be *"no effective machinery for finalising the purchase"*. We have significant experience of acquiring authorities making a reference prior to the limitation period expiring to have the compensation determined by the Upper Tribunal. Once it is determined, the acquiring authority can execute a deed poll.

Consultation Question 28
We invite consultees' views as to whether:

(1) Schedule 1 to the Compulsory Purchase Act 1965 should be repealed without replacement; or
(2) Schedule 1 should be replaced by a simpler provision, stating that where the owner of an interest in land has limited power to deal with that land, the acquiring authority may apply to the Upper Tribunal:
    a. to appoint an independent surveyor to determine (after allowing submissions by the authority and the owner) the compensation to be paid in respect of the interest; and/or
    b. to make an order empowering the owner to dispose of their interest to the authority on such terms as the Upper Tribunal considers appropriate (including as to the manner of payment of compensation).

Paragraph 4.71

We consider that Schedule 1 should be replaced by a simpler provision and agree with (2) above.

Consultation Question 29
We provisionally propose that the procedure in Schedule 2 (absent and untraced owners) to the Compulsory Purchase Act 1965 should not be restricted to situations where owners are absent from the United Kingdom or are untraceable. The procedure should be available where the owner is:

(1) untraceable;
(2) unwilling to deal with the acquiring authority; or
(3) unable to deal with the authority by reason of illness, absence or other circumstance.

Do consultees agree?

Paragraph 4.78

We do not agree that the procedure in Schedule 2 should be extended. We also do not agree with the Commission's assessment in §4.75(1) that the qualifying criteria is unduly narrow.

We consider that the categories of owner in (1) are already covered by Schedule 2, as are absent owners within category (3). In relation to the categories in (2) and the remainder of (3), we consider that law already provides for these categories in section 9 of the Act.

We have direct and recent experience of utilising section 9 where sellers were failing and / or refusing to engage and so essentially deemed unwilling to convey land. We encountered no issue with using this procedure, save for that it takes a little longer than the untraced owner procedure, because it follows the directions of a reference and so requires expert evidence.

In our experience, however, the Upper Tribunal is very keen to allow parties a number of opportunities to engage in the process before they prevent the landowner from further involvement in the reference. We assume that this is driven by considerations of fairness, equality and human rights implications. Even when such orders are issued suspending the landowners' involvement due to lack of engagement, the parties are given an opportunity to apply to be reinstated within a specified time period. On the basis of the Upper Tribunal's approach to this, it is suggested that the scenarios suggested in parts (2) and (3) of the question are not matters that should permit the unilateral transfer of land without the ability for landowners to change their mind when faced with proceedings and be involved. The current procedure strikes the correct balance between the rights of owners and the needs of public bodies.

We would add, however, that if an owner is untraceable and therefore unknown then it would now be significantly more likely that the general vesting declaration procedure would be used. The experience that we have of utilising the provisions of Schedule 2 related to compulsory purchase powers implemented by way of Notice to Treat at the time when this gave an added advantage of 14-day entry onto land. Given that there is a requirement to undertake diligent inquiry in relation to land referencing, if an owner was now unknown, we cannot see any good reason why the Notice to Treat procedure would be followed, therefore negating the use of Schedule 2 in relation to such land interests.

Consultation Question 30
We provisionally propose that, where an acquiring authority takes possession of land without having served a valid notice to treat on someone with a relevant estate or interest in the land, the acquiring authority should be required to serve a notice to treat and notice of entry on the omitted party. The current requirement in section 22 of the Compulsory Purchase Act 1965, which is "to purchase" the land within the time limit set out in the section, should be amended.
Do consultees agree?

Paragraph 4.88

We agree with the proposal in principle but would suggest a variation. Given the practical reality of entry onto land already having occurred, any notice to treat and notice of entry should be deemed so that the landowner's right to pursue a claim for compensation is available as soon as it is learnt that the acquiring authority has entered onto the land, and the payment of compensation is not delayed whilst procedural irregularities are rectified.

Consultation Question 31
We invite consultees' views on whether the present rules for rectifying accidental omissions under section 22 of the Compulsory Purchase Act 1965 (other than the requirement for the acquiring authority "to purchase" the omitted interest) are appropriate. If consultees believe the rules are inappropriate, we invite views about how they should be amended or replaced.

Paragraph 4.89

We have limited experience of section 22 through the case of *Kent County Council v Union Railways (North) Ltd* [2009] EWCA Civ 363, [2009] RVR 146 (referenced in footnote 82). We consider that the general approach of section 22 is correct and what is needed is simply a tidying up and modernising of the procedure. The general approach is to allow the acquiring authority to remain in possession of the land so long as it proceeds to pay compensation, and we consider that this is correct. However, we consider that the time limit in section 22(3) is probably inappropriate and should allow sufficient time for settlement of compensation (or reference to the Tribunal where compensation is disputed).

Consultation Question 32
We invite consultees' views as to whether there should be a mechanism for payment into court where a general vesting declaration has been used to acquire the land.

Paragraph 4.98

Yes, we consider that there should be an equivalent mechanism for compensation to be paid into court in relation to a general vesting declaration where the party being compensated is unknown, untraceable or otherwise unwilling to engage.

The provisions of sections 9, 25, 26 of and Schedule 2 to the 1965 Act relate to the ability to pay money into court following the use of the deed poll procedure, due to the need for the acquiring authority to take legal title to the land. However, the transfer of title is not a concern of a general vesting declaration. In that case then, any payment into court would merely be the deposit of compensation, rather than a mechanism to secure title.

Until such time as a claim for compensation is made, an acquiring authority will often not pay compensation and if no claim is made, they may not make any payment. This begs the question as to whether this principle is correct in terms of fairness when the alternative deed poll procedure for Notice to Treat implementation would require the payment of compensation regardless and, indeed, it is much more common to have unknown owners in a general vesting declaration context.

If an owner is known then they will have had opportunity through the service of statutory notices during the procedural life of a CPO, and again following statutory notice of a GVD, to make a claim for compensation. If they fail to do so, they will eventually become statute barred from referring disputed compensation to the Tribunal, but this should not mean that the acquiring authority then avoids the need to pay compensation at all. We consider that where a party to be compensated is known and has been engaging, then following the expiry of the limitation period without a reference being made, an acquiring authority may pay its assessment of compensation to the party if sufficient detail is known (i.e., solicitor or claimant bank details) and, if not, then into court.

If an owner is unknown, they will have had the opportunity through unknown owner notices erected on the land and statutory notices in the press and on site to make their interest known. However, if the owner is not proximate to the scheme, then this procedure may not be fruitful, and it may be some period before the party becomes aware of the interest that it has lost. Should that interest be brought to the attention of the acquiring authority after the date of a GVD when legal title to the land has already transferred to the acquiring authority, that party will still be able to bring a claim providing that they are able to prove title to the land, and the provisions as above will apply. If it is within the limitation period, it can make a reference and, if not, or if no unknown owner comes forward at all, then the acquiring authority should still be required to pay its assessment of compensation into court.

We acknowledge that this may result in additional administrative burden and additional cost, but the latter should not be the case as it remains incumbent upon an acquiring authority to compensate for loss of land, regardless of who the recipient is.

Consultation Question 33
We provisionally propose that section 29 of the Local Government (Miscellaneous Provisions) Act 1976 (relating to refunding of unclaimed compensation to local authorities) should be extended to cover all forms of acquiring authority.
Do consultees agree?

Paragraph 4.99

We do not have direct experience of the use of this section that would allow us to provide useful comment.

Consultation Question 34
We provisionally propose that notices after execution of a vesting declaration, required by section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981, should additionally be served on all those whose interest will vest in the acquiring authority as a result of the declaration.
Do consultees agree?

Paragraph 4.107

We see no harm in making this clear but, in practice, the notice will already be served on all parties whose interest will vest. The return of information provision is, to our understanding, directed to other landowners / interests that may not be known or have been discovered through the order making diligent inquiry process, and respond only at confirmation stage, which then gives them an entitlement to be served with a statutory notice of general vesting declaration.

We note that footnote 103 refers to the "preliminary notice" and the repeal of the same by virtue of the Housing and Planning Act 2016. Whilst this is correct, the "preliminary notice" is now a prescribed element of the statutory notice of confirmation (section 15(4)(e) of the Acquisition of Land Act 1981), reiterating that all parties named in the CPO will have already been told about the effect of any general vesting declaration.

Consultation Question 35
We provisionally propose that section 8(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 be amended to make clear that any rights included in a general vesting declaration will vest in the acquiring authority on the vesting date, along with the ability to enter upon the subject land to exercise those rights. As a consequence, the vesting of rights in the authority should not be subject to any minor tenancy or long tenancy which are about to expire, and the provisions of section 9 of the 1981 Act will not apply.
Do consultees agree?

Paragraph 4.117

We do not necessarily agree with the statement in §4.114 that *"…they are not relevant where the authority is only exercising a right which it has vested in itself; in that case the tenancy can continue to subsist subject to the exercise of the authority's right."* This assumes that all new rights are consistent with the tenanted use of the land, whereas this is often not the case. For example, new rights may include works to lay new pipes, or enter and maintain land, and for some tenants, this would interfere with their land occupation (even if only sporadically, or on a short-term basis).

However, we do agree that section 8(1) should make it clear that land includes new rights over land. We would be at pains to reiterate that is the acquisition of new rights, rather than the acquisition of rights (which should be read as those that already subsist and would be acquired outright when vesting the land interests).

Consultation Question 36
We invite consultees' views on whether, and how, the prescribed forms of general vesting declaration and notice after execution of general vesting declaration should accommodate a situation where the acquiring authority is seeking to acquire rights over land, rather than acquire the land outright.

Paragraph 4.122

It is unclear from the explanatory text preceding this question whether when referring to The Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017, the Commission is referring to the 2017 Regulations as enacted or as amended by The Compulsory Purchase of Land (Vesting Declarations and Land Compensation Development Order) (England) (Amendment) Regulations 2024, which replaced the prescribed forms referred to.

For the purposes of the response to this question, we assume that the Commission refers to the 2017 Regulations in their form *as amended* by the 2024 Regulations. In light of this very recent amendment, we doubt that any proposal to amend the prescribed forms again would be high on the Government's list of priorities.

However, we agree that a new prescribed form for the acquisition of new rights (again, using the wording "new rights" and not just "rights") could be created. We question, however, whether this is necessary as statutory notices of making of a GVD will come under a covering letter that specifies the specific interest impacted and would usually identify where this is a new right. In our experience, the content of letters is understood more easily by landowners than the content of statutory notices, which are often difficult to follow.

We would also question whether this creates an additional administrative burden for the acquiring authority. Whilst a new prescribed statutory notice of GVD could be tailored to deal with new rights alone, and could flow from a single GVD that combined the acquisition of both land and new rights, a new form of GVD to deal with new rights (as opposed to an amendment to the current prescribed form) would mean that acquiring authorities would have to execute different GVDs dependent on whether they dealt with the acquisition of land or of new rights.

Consultation Question 37
We provisionally propose that section 12 (unauthorised entry) of the Compulsory Purchase Act 1965 should be repealed without replacement.
Do consultees agree?

Paragraph 4.131

We agree that claims brought by civil action in the ordinary way provide a more effective and substantial remedy in the event of lapses in behaviour by the acquiring authority and that, consequently, section 12 should be repealed without replacement.

Consultation Question 38
We provisionally propose that the procedure (in section 13 of the Compulsory Purchase Act 1965) allowing the acquiring authority to issue a warrant to obtain possession of land be retained, with the following changes:

(1) the warrant should be executable only by the High Court enforcement officer and references to the sheriff should be removed; and
(2) it should be made clear that the costs of the enforcement process are to be borne initially by the acquiring authority (whilst remaining payable ultimately by the landowner).

Do consultees agree?

Paragraph 4.138

We agree that the language of sheriff is outdated and that the High Court enforcement officer is the appropriate terminology. We also agree that the costs of warrant of entry proceedings and enforcing warrants granted via those proceedings should initially be borne by the acquiring authority, but ultimately payable by the landowner.

Consultation Question 39
We invite consultees to tell us about any instances in which the warrant-based enforcement procedure in section 13 of the Compulsory Purchase Act 1965 has caused problems in practice. If so, please explain the facts and the nature of the problem.

Paragraph 4.139

We do not have specific experience of section 13.

Consultation Question 40
We invite consultees' views as to whether the Upper Tribunal (Lands Chamber) should have jurisdiction to decide whether the sum claimed by the acquiring authority as costs of enforcement (under section 13 of the Compulsory Purchase Act 1965) is reasonable in all the circumstances of the case.

Paragraph 4.140

We agree that the costs incurred in enforcement should not be extravagant or disproportionate and that the landowner should only be liable to meet such costs as are reasonable in the circumstances. We also agree that the Upper Tribunal would be the most appropriate forum for costs to be reviewed and determined, particularly in light of the costs being deducted from compensation payable, which of course sits within the remit of the Upper Tribunal.

CHAPTER 5

Consultation Question 41
We provisionally propose that the terms used in the legislation to refer to the counter-notice procedure under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 and Schedule 2A of the Compulsory Purchase Act 1965 should be amended so that they are more descriptive and link more directly to the purpose of the notice.
Do consultees agree?

Paragraph 5.17

We agree.

Consultation Question 42
We provisionally propose that a counter-notice under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (and Schedule 2A of the Compulsory Purchase Act 1965) should be in a prescribed form, specifying the extent of the claimant's interest in the land and the land that the claimant requires to be purchased by the acquiring authority.
Do consultees agree?

Paragraph 5.22

We acknowledge that the onus of proof should be on a claimant wishing to rely on the "material detriment" provisions to require an acquiring authority to acquire more land than it needs for its project to prove that the criteria in the statute are met. We see the merit of a prescribed form and specifying the information which should be provided. However, we would be concerned if the legislation were to be drafted in a way which would completely prevent a claimant from relying on the material detriment provisions unless the prescribed form is used and/or unless the prescribed information is fully provided within 28 days (or such other time limit as is adopted).

Consultation Question 43
We provisionally propose that, under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981, a counter-notice must be served within 28 days of service of the notice required by section 6 (notices after execution of declaration) of the 1981 Act.
Do consultees agree?

Paragraph 5.33

We agree that the procedure under the 1965 Act and the 1981 Act needs to be harmonised. However, we would be concerned if the legislation were to be drafted in a way which would prevent a claimant from relying on the material detriment provisions if all the necessary information is not provided within 28 days (or such other time limit as is adopted). In most cases, a claimant would need to take legal advice, and the adviser would need to gather information to assess whether the divided land provisions potentially apply, and then complete and serve the prescribed form. All those steps can take time and can be the subject of delay without the claimant being at fault. We note from §5.30 that the Courts may "read down" the time limit in exceptional circumstances but we consider that there should be built into the legislation:

(i) scope for the claimant and the acquiring authority to agree an extension of time; and
(ii) (in the absence of agreement) for the claimant to apply to the Tribunal for an extension of time, in exceptional circumstances.

Consultation Question 44
We provisionally propose that the Upper Tribunal must make an order specifying a new vesting date for the land proposed to be acquired if, under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981:
(1) the acquiring authority refers the counter-notice to the Upper Tribunal;
(2) the acquiring authority has not specified a new vesting date for the land proposed to be acquired under paragraph 12(2); and
(3) the Upper Tribunal determines that the authority does not need to purchase any of the additional land.
Do consultees agree?

Paragraph 5.38

We agree.

Consultation Question 45
We provisionally propose that there should be an express mechanism for the claimant to withdraw a counter-notice in Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981. The mechanism should make provision for a new vesting date of the original land in the general vesting declaration upon withdrawal of a counter-notice.
Do consultees agree?

Paragraph 5.41

We agree.

Consultation Question 46
We provisionally propose that the categories of land which qualify for the divided land procedure, in Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (and Schedule 2A of the Compulsory Purchase Act 1965), are simplified and modernised. The divided land procedure should be available where the acquiring authority proposes to acquire part only:
(1) of any building; or
(2) of any land belonging to a building.
(For the avoidance of doubt, we interpret these conditions so that they would be satisfied where an authority acquires a building without the land which belongs to it, or the land belonging to a building without the building.)
Do consultees agree?

Paragraph 5.46

We agree subject to one qualification. The Commission has adopted the phrase “belonging to” because it is used in the Housing and Planning Act 2016 (where it is not defined). We consider that this phrase lacks clarity and should be defined.

In addition, the Commission §5.45 draws attention to a recommendation made in 2004, and supported by Government policy, which has not been acted on about a category of land not covered by the existing provisions. No recommendation is made now about this because it is thought to be outside the Commission's current terms of reference. We consider that the 2004 recommendation should be taken into account when the new legislation is drafted.

Consultation Question 47
We provisionally propose that the material detriment and amenity and convenience tests should continue to apply where the acquiring authority refers a counter-notice under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (or Schedule 2A of the Compulsory Purchase Act 1965) to the Upper Tribunal (Lands Chamber). The Tribunal shall determine:

(1) in the case of a partial acquisition of a building and the land which belongs to it, whether the part proposed to be acquired can be taken without material detriment to the remainder; or
(2) in the case of a partial acquisition of the land belonging to a building (without acquiring any part of the building), whether the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the building.

Do consultees agree?

Paragraph 5.54

Subject to our answer to Question 48 (below), we agree.

Consultation Question 48
We invite consultees' views as to whether the amenity and convenience test plays an important role in practice where authorities are pursuing the partial acquisition of a house with a park or garden. We also invite views about whether the amenity and convenience test could be abolished, so that the only question for the Upper Tribunal would be whether the partial acquisition of a building and/or land belonging to a building would cause material detriment to the remainder.

Paragraph 5.55

We are conscious that any change in terminology raises the question whether the law has changed, and for that reason, there is an argument for retaining both phrases. However, we consider that the term "material detriment" could include serious affect on amenity or serious inconvenience. Consequently, it would be possible to use the term "material detriment" for all purposes.

Consultation Question 49
Based on our research, we suspect that section 8(2) of the Compulsory Purchase Act 1965 (divided land provision for small parcels of rural land) is rarely used. We provisionally propose that it should be repealed.
Do consultees agree?

Paragraph 5.58

We have no information about the frequency of use of s.8(2) but it must have been enacted to respond to what was regarded as a real possibility. We can see no harm in retaining it.

Consultation Question 50
Are there any other points consultees might wish to draw to our attention (not covered in their answers to any other questions) relating to the procedures for the authorisation of compulsory purchase orders or to the procedures for the implementation of a compulsory purchase?
Paragraph 5.60

All points in addition to specific questions have been raised in answer to related questions.

CHAPTER 6

Consultation Question 51
We provisionally propose that compensation for a compulsory purchase of land should no longer be regarded as a "single global figure". Compensation should be assessed in accordance with each of the four heads of compensation. In particular, it should be made clear in legislation that compensation for disturbance (and any other matter not directly based on the value of land) is a separate and distinct head of compensation, not part of the value of the land acquired.
Do consultees agree?

Paragraph 6.14

We agree with §6.13 that the concept of compensation as a single figure is anachronistic and is confusing both to parties and practitioners. In principle we support the proposal; however, it should be made clear whether a claimant is obliged to refer their whole claim to the Tribunal or is able to make separate claims for disturbance and land value. We would favour the latter as it is often problematic to assess disturbance / consequential losses until some time after dispossession (for example, where a business has relocated but the impact of the relocation on profitability is not yet clear). Section 1 of the 1961 Act states that "…*any question of disputed compensation*…" may be referred to the Tribunal. If separate claims are to be allowed, we suggest that it would be helpful to amend section 1 of the 1961 Act to make it clear that the Tribunal will have jurisdiction to determine *any* dispute relating to compensation, even if the dispute relates to only a part of the claim (although we note that at §6.37, the Commission says that the jurisdiction and procedures of the Tribunal are not the focus of the current review).

Consultation Question 52
We invite consultees' views as to whether or not the principle of equivalence ought to be given statutory expression in any newly codified and consolidated compulsory purchase legislation.

Paragraph 6.23

We agree with §6.19 that references to "fairness" introduces an element of vagueness and imprecision to what is otherwise a well-established and well-understood principle. We consider that the principle still has an important role as described by Lewison LJ in Curzon, cited in §6.20 of the Commission's report. In addition, it is an important guide in assessing rule 6 claims (proposed to become "consequential loss"). Nothing should be said which detracts from these roles currently fulfilled by the principle; however, we agree that the principle of equivalence should not be given statutory expression for the reasons given in §6.20-6.21 of the Commission's report.

Consultation Question 53
We provisionally propose that, subject to any other rule to the contrary, the interests giving rise to a right to compensation are those in existence at the valuation date (rather than the date of the notice to treat). The nature and extent of those interests (e.g., what other interests they are subject to; the length of any unexpired term etc.) is to be taken as the nature and extent at that date.
Do consultees agree?

Paragraph 6.32

We agree. For the avoidance of doubt, on a related but separate point, we wish to emphasise that section 4 of the Acquisition of Land Act 1981 (which is not mentioned in §§6.24-6.31 but enables the Tribunal to disregard interests created and works undertaken with a view to increase the compensation) should be retained.

Consultation Question 54
We provisionally propose that section 4 of the Land Compensation Act 1961 (costs of proceedings in the Upper Tribunal) should be repealed without replacement.
Do consultees agree?

Paragraph 6.42

We agree.

CHAPTER 7

Consultation Question 55
We invite consultees' views as to whether there are any issues in practice with compensation for a compulsory acquisition assessed under rule (2) of section 5 of the Land Compensation Act 1961.

Paragraph 7.10

The valuation of land under Rule 2 is well understood by practitioners and is broadly aligned with other established definitions of market value. It might, however, be helpful to make it clear that both purchaser and vendor are willing and hypothetical entities, and that the entity whose land is compulsorily acquired can be considered to be a part of the market for that land. While that position is well-established in case law (e.g., *Gray v Inland Revenue Commissioners*), it is not necessarily widely understood by practitioners and this can lead to problems in some cases where the owner of the land would be the only entity interested in purchasing it or would outbid the rest of the market. This is particularly important if the heads of compensation are to be separated, as envisaged by question 51, and therefore the "value to owner" approach will no longer apply. Two examples illustrate the issue:

(a) a small parcel of the land is acquired from a farm for a linear project (road or rail). The parcel has no access apart from across the retained land. It is inconceivable that, if offered on the open market, it would attract a purchaser apart from the actual owner who (after the compulsory purchase) still owns the retained land (the rest of the farm). On this basis, if one excludes the actual owner then the value would be nil or nominal. If one takes account of the *actual* owner, the value would be the pro-rata value (per acre) of agricultural land in the area. On that basis, the rule 2 value would reflect the existing agricultural use. On the basis of existing case law, in this example, we think the actual owner could be taken into account, but it is not 100% clear.

(b) A parcel of land with existing buildings occupied by a very successful business (possibly the leader in the field for that type of business) is acquired compulsorily. The land was in an excellent location for that type of business. If offered on the open market, there would have been demand from competitors of the occupying business. If the actual owner could be taken into account as a potential purchaser, he might be expected to outbid his competitors. The decision in a rent review case is usually cited as authority for not taking the actual owner into account: *Cornwall Coast Country Club v Cardgrange Ltd* [1987] 1 EGLR 146.

The text which precedes Question 55 also raises the question as to whether compensation could be less than nil (i.e. requiring the former owner to pay the acquiring authority).

It is possible for land to have a negative value where the liabilities that will be incurred in holding it exceed any benefits it might provide. We consider that under both the current and any amended definition of market value for compulsory purchase, a negative value should be possible in the same way it is with other market value definitions. However, we agree with §7.8 of the consultation document that if land does have a negative value, there should be no requirement for the owner to pay the acquiring authority and compensation should simply be assessed as nil given that the acquisition is compulsory. In our experience, this is the approach that is currently adopted and we are not aware of any circumstances where an owner has been required to make a payment to an authority. We do not think, however, that compulsory purchase should have the effect of eliminating / removing the owner's

responsibilities for civil or criminal liabilities that had accrued prior to the land being acquired. Otherwise, the possibility of an eventual CPO may be an incentive to delay remedying a problem.

Consultation Question 56
We invite consultees' views on whether equivalent reinstatement requires further definition in legislation and, if so, how it should be defined.

Paragraph 7.24

Whilst we agree with the view that rule (5) has worked reasonably well in practice (§7.20), it is unclear whether this is because of the current legislation or in spite of it.

We consider that equivalent reinstatement requires further definition in legislation. The wording of Rule 5 in its current form is anachronistic and ambiguous. While case law has provided some further clarity, there is still considerable uncertainty as to when rule (5) applies (some practitioners consider it could be applied more widely, including some forms of commercial premises), how compensation should be assessed, and what equivalent reinstatement actually is.

While we agree that a degree of flexibility should be retained, it is not satisfactory that there should be doubt over the type of question raised at §7.22 of the Consultation Paper. It should not be the case that the only recourse to resolution is an expensive and protracted reference to the Upper Tribunal, which could require an entity that should be reinstated to cease in its operation for a period until the case is heard. It must also be borne in mind that many of the organisations that can claim compensation for equivalent reinstatement will have limited resources to fund a Tribunal reference which may, in part, explain why relatively few Rule 5 cases are litigated.

In terms of how we consider equivalent reinstatement should be defined, we consider that in principle, equivalent reinstatement would be met by providing replacement premises equivalent to the premises to be acquired. That is to provide a replacement which accommodates the purpose to be reinstated to the same extent that it is accommodated in the existing premises. In the context of §7.22, that would be a building with a maximum occupancy of 200 individuals. Due to modern Building Regulations, it may be that the new premises will have a larger overall floor area than the existing premises but, essentially, the existing and new buildings' ability to achieve their purpose should be equivalent. It is an equivalent reinstatement of the purpose. We suggest that the definition provided by the Tribunal in Sparks (set out at §7.15) could be adopted in setting the tests for entitlement.

Consultation Question 57
We provisionally propose that for equivalent reinstatement, there should be no provision for betterment deductions.
Do consultees agree?

Paragraph 7.32

We agree that compensation should not be reduced because the new building is better where the only way of reinstating the previous use is through the construction of a modern building meeting current Building Regulations etc. However, where replacing a church which accommodates 200 people, for example, the law should be worded in such a way that the

claimant organisation cannot choose to build a church for 300 people unless it is prepared to pay for the difference in size. This is consistent with the value for money principle adopted by the Tribunal in (for example) *Tamplins Brewery v Brighton County BC* (1971) 22 P & CR 746.

Consultation Question 58
We consider that under the existing law, compensation for severance and injurious affection (under section 7 of the Compulsory Purchase Act 1965) is assessed solely by reference to diminution in market value of the retained land. We therefore provisionally propose that this rule is codified in any future consolidated legislation.
Do consultees agree?

Paragraph 7.44

We agree.

Consultation Question 59
We provisionally propose that express provision be made to allow for assessment of severance and injurious affection (under section 7 of the Compulsory Purchase Act 1965) based on a "before and after" valuation, if the parties agree or the Upper Tribunal so determines.
Do consultees agree?

Paragraph 7.54

We agree.

CHAPTER 8

Consultation Question 60
We provisionally propose that any newly consolidated compulsory purchase legislation should positively state the entitlement to, and explain the assessment of compensation for, disturbance. It should largely codify the existing body of case law:
(1) that there must be a causal connection between the compulsory acquisition and the loss in question;
(2) that the loss must not be too remote; and
(3) that the loss must have been reasonably incurred.
Do consultees agree?

Paragraph 8.16

We agree. This is an area which gives rise to many fraught negotiations between parties in relation to compensation for disturbance in cases which often do not reach the Tribunal because of the limited size of the claim. It is therefore important that the wording of the provision should be as clear as possible.

Consultation Question 61
Rule (6) of section 5 of the Land Compensation Act 1961 currently refers to compensation for "disturbance or any other matter not directly based on the value of land". We provisionally propose that the terminology used for this head of compensation is replaced and modernised with the general term "consequential loss". We think that this would make clear that compensation under this head encompasses losses on the part of owners whether or not they are in occupation of the land.
Do consultees agree?

Paragraph 8.25

We agree. The term "consequential loss" is likely to be better understood by the wider public, though we consider that it would need to be made clear that this refers to loss as a consequence of the acquisition of the claimant's interest in land. The clarification that Rule (6) would apply to claims by owners not in occupation is also welcomed.

Consultation Question 62
We invite consultees' views as to whether there is an advantage to retaining section 10A of the Land Compensation Act 1961 (expenses of owners not in occupation) in the interests of certainty. (For clarity, this would be without prejudice to the general rule that consequential losses of landowners not in occupation are allowable under the second limb of rule (6) of section 5 of the 1961 Act.)

Paragraph 8.30

Section 10A does not work well in practice because the one-year time limit for purchasing a replacement property precludes a claim where the payment of compensation is delayed, or the amount of compensation is in dispute. Section 10A was inserted into the 1961 Act at a time when it had not been established that a claimant need not be in occupation to claim under rule (6). Now that it is so established, we consider that section 10A serves no useful purpose and should be removed. It might be helpful if legislation made it clear that a claimant need

not be in occupation to claim consequential losses (subject to the usual tests of causation, remoteness and mitigation).

Consultation Question 63
We invite consultees' views on the operation of section 10A of the Land Compensation Act 1961 (expenses of owners not in occupation) in practice. In particular, we invite views on the one-year time limit under the provision.

Paragraph 8.31

Please see our response to question 62 above. However, if the Commission takes the view that a time limit of some sort should be retained, then we consider that the time should run from payment of compensation for the land acquired (once agreed or determined). To determine otherwise may result in the claimant not having the funds to re-invest and it is unreasonable to expect a claimant to replace an asset until receipt of payment for the asset taken.

Consultation Question 64
We provisionally propose that consequential losses incurred after the notice of the making of a compulsory purchase order should be recoverable. Exceptionally, earlier losses may be recovered where there is a prior agreement with the acquiring authority or where the Upper Tribunal (Lands Chamber) has determined that, having regard to the special circumstances of the case, it would be unfair to refuse compensation.
Do consultees agree?

Paragraph 8.36

We agree, save that we do not see the need for the qualifiers "exceptionally" and "special circumstances". It is quite often the case that parties will seek to reach agreement for the transfer of land prior to the making of a CPO and such agreement may leave some or all of the compensation / consideration to be agreed at a later date, applying the Compensation Code and with any dispute to be determined by the Tribunal. Such an approach is consistent with the Government's guidance that acquiring authorities should seek to acquire land by agreement prior to (or instead of) making a CPO. Paragraph 2.7 of the Guidance states that where they do so, they "*may pay compensation as if it [the land] had been compulsorily purchased*".

Even where an agreement is not in place, a business may reasonably require a long lead in time for relocation and it should be open to the Tribunal to consider whether that business had expended costs reasonably in anticipation of a CPO being made and confirmed.

Consultation Question 65
We invite consultees' views as to whether any codification of disturbance rules should make specific provision to include costs reasonably incurred in replacing buildings, plant or other installations needed for a business, if attributable to the acquisition and not adequately reflected in other heads of compensation.

Paragraph 8.44

We think it is difficult to try to anticipate every form of consequential loss in legislation. We agree with §8.42 that, in principle, such costs may be recoverable as 'consequential loss' as long as there is no duplication with other heads. Although the Commission recommended in 2003 that express reference should be made to replacing buildings, we are inclined to the view that this is not necessary. To the extent that there is entitlement to claim for the costs in replacing buildings, plant etc it should be subject to the value for money principle referred to above in the response to question 57. We consider that it might be helpful to set out that principle in statute.

CHAPTER 9

Consultation Question 66
We provisionally propose that it should be expressly stated in legislation that the valuation date for injury to retained land (i.e., land which is held with the land acquired) is the same as that for the land acquired.
Do consultees agree?

Paragraph 9.15

We agree with this proposal, which provides much needed clarity on the point. Please also see our response to question 67 below.

Consultation Question 67
We invite consultees' views as to whether post-valuation date evidence should be taken into account in the assessment of compensation for injury to retained land. If so, should it be subject to any limitations or conditions?

Paragraph 9.24

Bearing in mind the Commission's provisional recommendations that (i) compensation for severance and injurious affection be the diminution in market value of the retained land, and (ii) this should be assessed when the land compulsorily acquired is taken (the valuation date), post-valuation date evidence should not, as a general proposition, be taken into account save to the extent that it establishes an objective fact as at the valuation date (see *Bishopsgate Parking (No 2) Limited v Welsh Ministers* [2012] UKUT 22 (LV) at paragraph 63) because to do so would be inconsistent with the concept of "market value" on a specific date.

However, the legislation should provide for a carefully defined exception for the purposes of assessing severance or injurious affection in order to allow evidence to be taken into account about works carried out as part of the scheme, or works previously anticipated but not carried out, between the valuation date and the date of assessment. This exception should be limited to works carried out / not carried out as part of the scheme and should not include other factors, such as changes in market conditions.

Consultation Question 68
We provisionally propose that where the date of possession precedes the date of assessment, the valuation date for rule (6) of section 5 of the Land Compensation Act 1961 may differ from the valuation date for rule (2). Items of consequential loss that are incurred after the date of possession (but before the date of assessment) may be assessed as actual, rather than anticipated, losses.
Do consultees agree?

Paragraph 9.35

We agree subject to the following qualifications:

(a) that account should be taken of losses incurred before the date of possession (e.g., where a claimant has relocated in anticipation of the acquisition); and

(b) some items of consequential loss may still be anticipated as at the date of assessment, so the reference should be to "actual losses incurred up to the date of assessment and to losses anticipated after that date".

It may be the case that anticipated future losses have to be assessed on the basis of what is known at the valuation date and cannot take into account changes to the design of the scheme which were not anticipated at the assessment date, but we do not think that is an issue that can be overcome easily.

Consultation Question 69
We provisionally propose that the valuation date for equivalent reinstatement is put on a statutory footing in accordance with the rule in *Birmingham Corporation v West Midland Baptist (Trust) Association* (that it is the date on which commencement of the work of reinstatement became, or is expected to become, reasonably practicable).
Do consultees agree?

Paragraph 9.37

We agree.

Consultation Question 70
We invite consultees' views as to whether any reforms could usefully be made to the statutory rule (in section 4 of the Acquisition of Land Act 1981) that new interests or enhancements (where not reasonably necessary and undertaken with a view to obtaining more compensation) are to be disregarded in the assessment
of compensation.

Paragraph 9.43

Our view is that the only test should be whether the new interests or enhancements were undertaken solely with a view to obtaining compensation or more compensation. There is no certainly as to whether a CPO will be implemented by an acquiring authority and powers can be in force for 5 or more years. The property owner should be able to do what they want with their property in the meantime without having to ask themselves whether the action taken was "reasonably necessary".

Consultation Question 71
We provisionally propose that section 50 of the Land Compensation Act 1973 (compensation where occupier is rehoused) should be retained and simplified in any future consolidated compulsory purchase legislation.
Do consultees agree?

Paragraph 9.47

We agree.

Consultation Question 72
We provisionally propose that it is made clear in legislation that the rule against compensation for uses that are contrary to law (currently in rule (4) of section 5 of the Land Compensation Act 1961) applies to all heads of compensation.
Do consultees agree?

Paragraph 9.53

We agree.

Consultation Question 73
We provisionally propose that rule (4) of section 5 of the Land Compensation Act 1961, whereby increased value caused by illegal use is to be disregarded in the assessment of compensation, should be re-cast to make it clear that only breaches of the criminal law or the law as contained in statute fall within the scope of this provision.
Do consultees agree?

Paragraph 9.61

We agree.

Consultation Question 74
We invite consultees' views as to whether the "detrimental to health" limb of rule (4) of section 5 of the Land Compensation Act 1961 should be retained.

Paragraph 9.62

We do not believe that this limb should be retained. The first limb should be sufficient to provide an objective test as to whether a use is detrimental to health. We would also note that §§9.63 – 9.64 deal with exceptions to rule (4) of section 5 and draw attention to the 2003 recommendation that the Tribunal be given a small degree of discretion (see the 2003 report §5.16). This recommendation seemed eminently sensible and fair. §9.64 now says that to recommend such an exception would involve a substantive change outside the Commission's terms of reference; however, we would urge the Commission to make express reference to its previous recommendation on this point in its final report.

Consultation Question 75
We provisionally propose that the principle in *Horn v Sunderland Corporation*, that claims under the different heads of compensation must be mutually consistent, is codified in legislation.
Do consultees agree?

Paragraph 9.71

We agree.

Consultation Question 76
We provisionally propose that the duty to mitigate loss caused by the compulsory acquisition should be expressly stated in legislation. It should make it clear that the burden of proof in demonstrating a failure to mitigate lies with the acquiring authority.
Do consultees agree?

Paragraph 9.77

We agree. In its final report, we would ask the Commission to draw attention to its earlier recommendation on the claimant's personal circumstances (§§9.78 – 9.80), even if it is not repeating the recommendation

CHAPTER 10

Consultation Question 77
We invite consultees' views on the operation of the no-scheme rule in sections 6A-6E of the Land Compensation Act 1961 and whether there are any issues with these provisions in practice.

Paragraph 10.9

So far as we are aware, no cases have been decided by the Tribunal or the Courts which have dealt with these provisions. We do consider that section 6E is difficult to understand and it would be helpful if thought were given to refining the wording to make it more comprehensible to the layperson.

Consultation Question 78
We invite consultees' views as to whether rule (3) of section 5 of the Land Compensation Act 1961 serves any independent purpose that would not be covered by the newly codified no-scheme rule in sections 6A-6E of the 1961 Act.
Can rule (3) be safely repealed?

Paragraph 10.19

We consider that the function of rule (3) is covered by sections 6A-6E of the 1961 Act and, consequently, that rule (3) could safely be repealed.

Consultation Question 79
In the no-scheme rule cancellation assumption of section 6A(4) of the Land Compensation Act 1961, the cancellation date for the acquiring authority's scheme is the valuation date of the subject land. In the cancellation assumption for planning assumptions in section 14(5)(a) of the 1961 Act, the cancellation date is the launch date for the scheme.
We invite consultees' views as to:
(1) whether this discrepancy gives rise to any difficulties; and
(2) whether the cancellation dates should be harmonised to be the valuation date.

Paragraph 10.39

We agree with §10.37 that the Government's reasoning in the extract from the 2016 consultation paper cited in §10.36 is inconsistent, and that it would be more logical if the assumed cancellation is taken to have occurred on the valuation date for both planning assumptions and the no-scheme rule. §10.37 notes that the Government did not give a reason for saying that the launch date is appropriate for planning assumptions, and perhaps the Government should be requested to state its reason before the Law Commission finalises its recommendation. We are not aware of any cases in the Tribunal or the Courts in which this discrepancy has been an issue.

CHAPTER 11

Consultation Question 80
We invite consultees' views on how well the amendments to the provisions on advance payments, introduced by the Housing and Planning Act 2016 to require and enable earlier payment by acquiring authorities, are working in practice. Have they led to payments being made early enough to be of practical use to claimants?
If not, why not?

Paragraph 11.14

Only one material change in the Housing and Planning Act 2016 relating to advance payments has been brought into force. This is the reduction in the time required for a payment to be made from three months to two months. Anecdotally, it appears that compliance with that time limit varies. It remains the case that there is no penalty for failing to comply with the time limit, no means of enforcing and no penalty for the acquiring authority underestimating the compensation.

Those issues could be resolved if s.196(3) of the Housing and Planning Act 2016 (which enacted a new s.52B of the 1973 Act) was to be brought into force so as to increase the statutory interest payable for late or inadequate advance payments. There is some concern that acquiring authorities may seek to delay compliance with the time limit by asking questions. Payment should be delayed only where information is genuinely required to enable the authority to make an assessment and has not yet been provided. That will rarely be the case in relation to a rule (2) claim.

Consultation Question 81
We invite consultees' views as to whether the model claim form introduced by Government in 2017 has helped to improve the quality of information provided to acquiring authorities sufficient to enable proper consideration of advance payment requests.

Paragraph 11.19

The model claim form is useful as a checklist of information which an acquiring authority may require in order to process a claim, but, for a range of reasons, it is not universally used. The CPA has made representations to MHCLG about improvements which could be made to the form. We have no information which directly answers Question 81. For a variety of reasons, we would oppose making the form mandatory.

Consultation Question 82
We invite consultees' views as to whether there are any problems with the operation of basic and occupier's loss payments in the Land Compensation Act 1973.

Paragraph 11.53

We are not aware of any problems.

Consultation Question 83
We provisionally propose that individuals without a compensatable interest who are disturbed from agricultural land should be eligible for a mandatory disturbance payment rather than merely a discretionary payment.
Do consultees agree?

Paragraph 11.58

We agree.

Consultation Question 84
Currently, interest runs from the date when the subject land vests in the authority or, if earlier, the date when the authority takes possession of the land. We provisionally propose that for losses other than market value of the subject land and severance or injurious affection, the Upper Tribunal (Lands Chamber) should have a discretion to determine a different date from which interest runs (if not agreed between the parties).
Do consultees agree?

Paragraph 11.69

We agree.

Consultation Question 85
We invite consultees' views on problems arising with the operation of the existing arrangements for interest in the context of compensation for compulsory purchase.

Paragraph 11.74

We are concerned generally that the statutory rate of interest does not compensate claimants adequately for being kept out of their money and is not consistent with the principle of equivalence. This is very prejudicial if there is significant delay between the date of possession and the date of payment of compensation.

We also note that there is often inconsistency in application and understanding of the statutory interest provisions contained within The Acquisition of Land (Rate of Interest after Entry) Regulations 1995, particularly Regulations 2(2) and 2(7). These provisions identify that the triggers for change in interest rates to be applied are made only on the reference days as defined - 31 March, 30 June, 30 September and 31 December – and that adjustment to these reference days must be made to reflect business days. Though we note that faulty application of these provisions is unlikely to make a significant difference to the overall interest due, it does result in disparate statutory interest calculations, identifying that there is a failing in the comprehension of the law in this regard.

We are also concerned about delays in the making of advance payments because there is little incentive for an acquiring authority to make a significant advance payment (or an offer in settlement) when the funds held for payment can obtain a higher return than the interest payable to the claimant. As noted above (Question 80), this issue would be resolved by bringing into force section 52B of the Land Compensation Act 1973.

Consultation Question 86
Are there any other points consultees might wish to draw to our attention (not covered in their answers to any other questions) relating to the rules governing the assessment of compensation for a compulsory purchase?

Paragraph 11.76

We note that the Commission (§§6.33-6.36) is not minded to reverse the decision in *Rugby Joint Water Board,* but considers that the decision leads to unfair consequences. In our view, the issue could be satisfactorily resolved by amending section 47 of the Land Compensation Act 1973 (substituted by the Neighbourhood Planning Act 2017, to remedy a similar issue in relation to business tenancies) so that it applies to agricultural as well as business tenancies.

CHAPTER 12

Consultation Question 87
(Assuming that both the notice to treat and general vesting declaration procedures are retained) we provisionally propose that section 20 of the Compulsory Purchase Act 1965 should be modified to make it consistent with the analogous provisions of the Compulsory Purchase (Vesting Declarations) Act 1981. In particular:

(1) Section 20 of the 1965 Act should adopt the definitions of "minor tenancy" and "long tenancy which is about to expire" which appear in the 1981 Act; and
(2) If the acquiring authority wishes to terminate such a tenancy before it is entitled to do so under the terms of the tenancy, it should be required to serve a notice to treat and a further notice requiring possession (as it is required to do by the 1981 Act).

Do consultees agree?

Paragraph 12.18

We agree.

Consultation Question 88
We provisionally propose that compensation for the compulsory acquisition of short tenancies should be assessed according to the same rules that apply to compensation for greater interests. The special compensation rules in section 20 of the Compulsory Purchase Act 1965 should therefore be repealed.
Do consultees agree?

Paragraph 12.20

We agree. Our experience is that, in practice, compensation under section 20 is already normally assessed in line with the general rules of compensation that apply to greater interests.

Consultation Question 89
We provisionally propose to retain the provisions relating to mortgages and rentcharges in sections 14 to 18 of the Compulsory Purchase Act 1965 (subject to restatement in modern language).
Do consultees agree?

Paragraph 12.31

We agree. There is no reason to change the existing procedures as they are clearly defined. Acquiring authorities have the option to pay the principal and interest and there are provisions to deal with settlement of under-recovery for the mortgagor via Tribunal. There is the issue of negative equity and triggering an insolvency event, but it is noted[6] that the Commission do not make any provisional proposals about negative equity and so the CPA have not addressed this issue at length.

[6] §12.29 of the Consultation paper

However, there is a practical issue encountered frequently where the mortgagor fails to engage in the process. These are often negative equity cases and CPOs for vacant properties that have fallen into disrepair. The mortgagee is often left in a position where it is unable to recover the mortgage debt due to it (to the extent covered by compensation) because the legislation requires that the mortgagor agree the compensation with the acquiring authority. The only solution for the mortgagee then becomes potentially costly Tribunal reference proceedings. Acquiring authorities often determine the compensation to be no more than the sum achieved at auction following CPO, and this does not always reflect the Compensation Code[7]. It would be helpful to have legislation that accounts for a situation where there is negative equity and a mortgagor that cannot be traced or is unwilling to engage to allow for the mortgagee to step into the shoes of the landowner and agree compensation. Often, the requirements for becoming a mortgagee in possession are not met, so the mortgagee cannot resolve the issue through these means, particularly if the acquiring authority has already exercised powers.

Consultation Question 90
We invite consultees views about whether any additional improvement should be made to the legislation regarding the process of acquiring new rights (aside from specific issues concerning compulsory acquisition of new rights that are addressed in other questions).

Paragraph 12.35

There is disparity between how acquiring authorities and advisors treat this power. The view of the CPA is that the acquisition of new rights should not be used, for example, for a new construction compound where the land is only required temporarily; however, we are certainly aware of occasions where inexperienced or poorly advised acquiring authorities have adopted this view and see blue "new rights" land as an equivalent to temporary land, conflating the two issues and acquiring new rights to use the land for a construction compound for a considerable period of time.

Clarification would be welcomed that new rights and temporary land take are not one and the same thing. This could be resolved with the commencement of the temporary possession powers.

We also consider that there should be guidance issued, or amendment to legislation, to govern the way in which rights are described in CPOs to ensure that they are described with sufficient precision. The CPA has experience of very detailed rights wording, which demonstrates that the acquiring authority has properly contemplated the reason for acquisition and can be translated through to implementation, but we also have experience of rights wording that contains little to no detail and so leaves the precision of rights to a later point in time.

The CPA is of the view that whichever method of implementation is used, there should be an expectation that rights should be sufficiently precise in their drafting and that this should be made clear in the CPO itself (i.e., in the Table 1 plot description, by cross-reference to a preceding Table of New Rights in the CPO preamble). However, we acknowledge that acquiring authorities may fail to do this and that this issue may not be properly tested by an

[7] It is acknowledged that in the case of buildings in disrepair, the post-acquisition sale price may be the only way of establishing the value and can be an appropriate basis of assessing the compensation, subject to adjusting for the date if necessary

Inspector in Inquiry (and in any decision-making of the relevant Secretary of State), with the result that Orders may be confirmed with imprecise rights.

We also acknowledge the tension between what is known at the time of CPO making and what may be developed through detailed design, and the desire of some acquiring authorities to therefore define rights in the broadest possible terms. However, we consider that whilst there may be limited circumstances in which rights need to have some flexibility in their drafting pending detailed design, communication with landowners around this uncertainty is key. In these circumstances, the implementation of new rights by way of Notice to Treat allows the flexibility for the intricacies of such rights to be defined as required and should be retained, provided that this flexibility is not misused. Conversely, there is no ability to do this through the general vesting declaration procedure and, therefore, any failure to precisely denote rights in the order carries through to the implementation also.

As a consequence, any limitation to be placed on post valuation date knowledge being applied where rights are broadly defined at the valuation date may have the effect of increasing compensation, as 'worst case' assumptions could be asserted.

If the two processes are to be amalgamated, the descriptions of new rights must be such that landowners are aware from the outset what the implication will be for their land, and acquiring authorities and their contractors are aware of the limitations of what they can and cannot do.

Consultation Question 91
Unless otherwise specified in the power being used to compulsorily acquire a new right, we think that the assessment of compensation for such an acquisition should be consistent across acquiring authorities. We provisionally propose that where the interest acquired is a new right over land, compensation shall be assessed having regard to:

(1) any depreciation in the market value of the land over which the right is acquired;
(2) any depreciation in the market value of other land held with that land, caused by the acquisition of the right; and
(3) any consequential loss (applying the principles of rule 6 of section 5 of the Land Compensation Act 1961, with appropriate modifications).

Do consultees agree?

Paragraph 12.41

We agree.

Consultation Question 92
We invite consultees' views as to whether the power to override rights in sections 203 to 205 of the Housing and Planning Act 2016 has given rise to any practical difficulties, including difficulties in interpretation. If so, please explain the facts and the nature of the difficulty. In particular, we seek views on:

(1) how authorities have sought to establish that they "could acquire the land compulsorily" under section 203(2)(c); and
(2) how parties have sought to assess compensation for overridden rights under section 204(2).

Paragraph 12.58

In our experience, the key issue with section 203 is the lack of guidance on point (1), with the unfortunate result that different authorities take different views and apply the legislation with

significant degrees of variance. Some adopt the narrow view of requiring nothing more than the demonstration of an applicable enabling power available to the authority, whilst others go much further and seek to show what is essentially a compelling case. We do not feel that the narrow approach could have been the intention of the legislation. The consideration of the provisions as set out in the PLC Article Overriding easements and other rights may prove useful to the Commission's consideration of this issue also.

Overriding third party rights is essentially akin to acquisition under a CPO; though it is not acquisition of the right itself and, instead, removal of the ability to enforce the right, the practical impact is the loss of the benefit of the right for the life of the development for which the right is overridden. The fact that the legislation refers to the ability to acquire compulsorily and that it is being considered in the same Consultation paper would support this view and suggests that a compelling case should be made. We do not consider that the case needs to be made to the same level and detail as for a CPO, but it does require proper consideration of, for example, the need for the land over which the rights to be overridden exist, the public benefits of the scheme, the nature of the rights that exist and whether they need to be overridden, and the impact on the beneficiary of those rights being overridden. We consider that such consideration should be properly documented, recorded and authorised in a decision at a Cabinet (or other appropriate) level.

Further, we consider that the nature of rights over land, and the overriding of them, is likely to engage Article 1 of the First Protocol: Protection of Property. This states that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Given that the exception within the wording of Article 1 is explicitly addressing the public interest, it is our view that such public interest needs to be proven when seeking to override third party rights, and the compelling case is the demonstration of that.

However, we are not aware of any case authority in which this issue has been considered or determined and agree that the legislation should make the meaning of "could acquire compulsorily" clear. We consider that this is of particular importance in order to avoid abuse of the section 203 power for the benefit of commercial operators in joint venture with, for example, local authorities, where there is not necessarily a significant public benefit to the scheme underlying the reason for the desire to engage section 203.

With respect to the second issue (§12.57), we consider that compensation should be assessed under section 7. This was the view of the Tribunal in its recent decision in *Kitchen v Kent CC* [2024] UKUT 370 (LC), but it would be helpful if this were made clear.

We have also considered when the relevant valuation date should be. We have determined that due to the differing routes to satisfaction of the conditionality in section 203(2)(b) and the varying application of authorities to the level and nature of governance undertaken, the relevant date should be the date on which the injury first takes place (i.e., when the right etc that is to be overridden is first interfered with). If it were to be an earlier date, significantly more clarity would be required around the procedural steps that an authority must follow to engage section 203. In either event, the position should be made clear in statute.

CHAPTER 13

Consultation Question 93
We provisionally propose that section 10 of the Compulsory Purchase Act 1965 (along with the *McCarthy* Rules) and Part 1 of the Land Compensation Act 1973 be amalgamated into a single code dealing with compensation for loss due to public works (where no land is taken from the claimant).
Do consultees agree?

Paragraph 13.38

We agree with §§13.32-13.37, which summarise how we have arrived at the present situation with (i) a nineteenth century right to compensation limited to the physical effects of executing works authorised by statute and (ii) a relatively modern right to compensation for the effects of the use of public works. We agree that the time has come to rationalise this situation. We agree that s.10 of the 1965 Act (which largely re-enacted s.68 of the 1845 Act) should be completely re-written, whether or not its existing scope is retained or extended. We agree that the right provided by s.10 to compensation for the execution of works should be amalgamated with the right provided by Part 1 of the 1973 Act to compensation for the use of public works. This was proposed by the Commission in 2003 and received support then from consultees.

Consultation Question 94
We invite consultees' views as to whether compensation for loss caused by *execution* of public works (as opposed to their *use*) should continue to be payable only to the extent that a claim against the authority would have succeeded at common law apart from the immunity conferred by the statute.

Paragraph 13.51

S.10 of the 1965 Act has been interpreted to provide a right to compensation for injury, which would be actionable at common law apart from the statutory powers authorising the works. At present, a claim in common law for non-physical effects caused by the execution of public works would succeed only if the claimant could prove that such works had been carried out in a manner which was unreasonable, or that reasonable steps had not been taken to minimise such effects. Putting it another way, while the law allows an individual whose property has sustained physical damage from the execution of public works to claim compensation, where there is no physical damage then there is no remedy, even if the value of the property is affected. The only exception to this is where it can be proven that the works had been carried out in a manner which was unreasonable or that reasonable steps had not been taken to minimise such effects.

In §13.48, the Commission says that it is not convinced that individuals affected by works undertaken by a public authority should be put in a better position than those affected by construction undertaken by a neighbouring private developer, especially given the implications for the public purse. We acknowledge the logic of this view but consider that it fails to recognise:

(i) the difference in the nature, scale and timing of most public works compared to a neighbour's building project, such as that considered in *Andrea v Selfridge*; and

(ii) the difficulty faced by an individual affected by complex major public works in proving that those works had been carried out in a manner which was unreasonable or that reasonable steps had not been taken to minimise the effects.

We note that when this topic was last considered by the Commission in 2003, CPPRAG expressed the view that the scale of many public works made it inappropriate to apply the same criteria (2003 report on Compensation, §11.20). This has since been particularly acute with projects like HS2, where the works in a locality may take place over many years. The Commission was sympathetic to that view but rejected it on the ground that it would change the nature of the right. Yet, in the next sentence in §11.20 of the 2003 report, the Commission recognised that the introduction of Part 1 of the 1973 Act did have the effect of creating a new right.

Consequently, our answer to Question 94 is that we agree with CPPRAG in 2003 and consider that, ideally, the opportunity should be taken to put the right to claim compensation for both the execution of works and the use of works onto a similar footing with a set of clear rules as in Part 1 of the 1973 Act. However, if the view is taken that compensation for the execution of works should remain as at present, then at the very least a mechanism should be put in place to make it easier for an individual affected by the execution of public works to prove that works had been carried out in a manner which was unreasonable, or that reasonable steps had not been taken to minimise such effects. We recognise that the Commission may consider that devising such a mechanism may not be within its terms of reference, nevertheless it seems to us that it would be a necessary corollary to retention of the existing law.

Consultation Question 95
Assuming that section 10 of the Compulsory Purchase Act 1965 and Part 1 of the Land Compensation Act 1973 are brought together into a unified code for compensation where no land is taken, we invite consultees' views as to whether:

(1) the restriction of compensation to depreciation of existing use value only, applicable at present to claims under Part 1 of the 1973 Act for use of public works, should also be made applicable to claims for execution of public works;
(2) there should be no such restriction for claims relating to either the use or execution of public works; or
(3) as now, the restriction should be applicable to claims relating to use of public works, but not their execution.

Paragraph 13.61

We consider that the correct answer is (2): there should be no such restriction for claims relating to either the use or execution of public works. Compensation should be paid for any diminution in the market value of land. The market value includes, by definition, any potentialities recognised by the market.

We note that, in §13.52-13.56, the Commission discusses whether compensation should be limited to diminution in the market value of land and concludes (§13.56) that it should be so limited. However, Question 95 which follows that discussion does not ask consultees whether they agree. We wish to record that, in our view, compensation for the execution of works should include for consequential loss, as the Commission recommended in 2003 (2003 report §11.23). This is because losses (especially business losses) caused by temporary works can be significant and those losses will not be reflected in an assessment of the reduction in the rental value of the affected property.

Consultation Question 96
Assuming that section 10 of the Compulsory Purchase Act 1965 and Part 1 of the Land Compensation Act 1973 are brought together into a unified code for compensation where no land is taken, we invite consultees' views as to whether the rateable value limit, applicable at present only to claims under Part 1 of the 1973 Act, should apply:

(1) to all claims under the unified code; or
(2) to no claims under the unified code.

Paragraph 13.64

We favour option (2) and consider that the rateable value limit should be abandoned altogether. We endorse §11.14 of the 2003 report, which concluded that the rateable value limit should be abandoned while recognising that this would be a policy decision. The only purpose of the rateable value limit is to limit the amount of compensation payable, which can impose unfairness when the consequences of works may be equally or more serious for those above an arbitrary rateable value limit as for those below it.

We are not aware of any study of the costs implications of removing or changing the rateable value limit. We agree with §13.63 that the third option would not be viable. We also note that the majority of Part 1 claims relate to residential properties, which are not subject to a rateable or other limit.

Consultation Question 97
We provisionally propose that the £50 threshold for claims should be uprated to take account of inflation and that it should apply to claims for depreciation in the value of land caused both by the execution and use of public works (assuming that section 10 of the Compulsory Purchase Act 1965 and Part 1 of the Land Compensation Act 1973 are brought together into a unified code for compensation where no land is taken).
Do consultees agree?

Paragraph 13.67

We agree.

CHAPTER 14

Consultation Question 98
We provisionally propose that the powers of acquiring authorities to withdraw a compulsory purchase order should be clearly set out in statute. A compulsory purchase order should be capable of being formally withdrawn (whether in relation to the whole or part only of the subject land) by an acquiring authority during the following periods:

(1) from the date of the notice of the making of the order until the date on which it is submitted to the confirming authority for confirmation; and
(2) from the date on which notice of its confirmation is first published until the date on which notice to treat is served or the date on which a general vesting declaration is executed.

Do consultees agree?

Paragraph 14.38

Partial Withdrawal

A CPO can be withdrawn at any time following its making up to the date of decision. However, a CPO cannot be withdrawn in relation to *part* only of the subject land. Any desire on the part of the acquiring authority not to pursue a CPO in relation to *part* of the subject land contained within the Order is a matter for modifications and not a matter for withdrawal. Though it may be possible for the law to be altered to allow a request for partial withdrawal to be made, we struggle to see how this could be practically achieved. A withdrawal of a CPO results in a formal non-confirmation decision and though it is within the power of a confirming authority to confirm a CPO in part (i.e., with modifications to, for example, remove land), the actual decision must be on the *whole* of the CPO at one point in time. Withdrawal of part of the land would essentially require that there is a two-stage decision and would risk causing significant confusion about the CPO that is going forward for the later determination. As such, we strongly disagree with any proposal concerning withdrawal of anything less than the *entire*ty of a CPO.

(1) Period for Withdrawal

Though we see no need for the period within which a CPO may be withdrawn to be set out in statute or curtailed between the two periods mentioned, in relation to point (1), we agree but subject to:

- a requirement to notify landowners,
- no ability to withdraw a CPO partially, and
- an extension of the period of time to apply formalised withdrawal powers from the point of *making* through to the point at which a *decision* is made by the confirming authority.

Though we agree with the statement in §14.40 that there is no express statutory requirement that, once made, a CPO must then be submitted for confirmation, it is important to consider the procedural stages followed, the practical realities and the implications of them.

- *Governance* - The usual resolutions of acquiring authorities permitting the making of a CPO will also include a requirement to submit the CPO to the relevant Secretary of State for confirmation as expediently as possible, and to pursue the CPO through the statutory process. Any legislation governing withdrawal would therefore need to reflect a sufficient period for an acquiring authority to take the required internal governance steps to "undo" the decision to make the CPO. The Constitutions of most authorities will require that whatever decision level is used for a positive

decision, the same level must be utilised to essentially reverse that decision. For most authorities, this will be a Cabinet level decision and the usual period of time to organise the appropriate governance requirements is at least 3 months (save for calling a special Cabinet out of sequence) due to forward plan requirements or, for example, where decisions need to be taken during recess periods over summer.

- *The Compelling Case* - the compelling case put forward in the Statement of Reasons is likely to diminish with time and so there is a practical desire to submit for confirmation as soon as possible after the making of an Order

- *Notice of Making* - There is a statutory requirement under sections 11 and 12 of The Acquisition of Land Act 1981 to give notice of making, which requires a statement that the CPO is about to be submitted for confirmation (s11(2)(a) and s12(1)(b)). The notice of making specifies that the last day for objections must be given (s11(2)(d) and 12(a)(c)) and this runs from the first publication (s11(1)(b)). Due to this, even if the CPO is not submitted for confirmation, once the requirements of sections 11 and 12 have been complied with, an objection period has commenced, and the relevant casework team will make a request for submission of the CPO, particularly if they receive objections. If that submission is not forthcoming because the acquiring authority no longer wishes to pursue the CPO, then this would still result in a formal non-confirmation decision from the relevant Secretary of State, regardless of whether the CPO itself was ever submitted.

- *Costs* - Where a notice of making has been served and then a CPO is withdrawn, the confirming authority will indicate to statutorily affected parties (i.e., statutory objectors) who had raised an objection, that they would or may qualify for an award of costs based on having made an objection to a quickly withdrawn CPO, which then removed an initial threat of compulsory purchase from their land.

For all of these reasons, if there is going to be legislation clarifying withdrawal, then it must extend the period to be from *notice of making* right through to *pre-decision,* so that it covers the most common period for withdrawal, which is post submission for confirmation but pre-confirmation decision. This is the period during which most withdrawals occur and the period during which there is arguably most uncertainty for landowners.

It would be our proposal that rather than prescribing any timing for submission for confirmation, the more appropriate time limit to impose here is to amend section 11 of The Acquisition of Land Act 1981 to prescribe a specific period for the notice of making to have been served within. We would suggest that this is a 6-week period.

(2) "Withdrawal" Post-Confirmation

In relation to point (2) we do not agree that this is necessary, appropriate or within the powers of the acquiring authority. It is key to note the difference between withdrawal from a statutory process, and the practical abandonment of a scheme.

We note that the underlying basis for this question in §14.32 is to set own in statute the "…*various circumstances giving rise to unilateral withdrawal by the acquiring authorit*y." Once an order has been confirmed, is not within the power of any acquiring authority to unilaterally withdraw and, indeed, also not within the power of the Secretary of State to withdraw, unless statutorily challenged.

The withdrawal of an Order is the withdrawal from the statutory process of *promoting an Order through to confirmation*. Promotion can only be pursued by the acquiring authority. The

confirmation of an Order can only be given by the confirming authority (save for the limited circumstances of an acquiring authority confirming its own Order in section 14A of the Acquisition of Land Act 1981) and this results in a decision that has the effect (subject to challenge) of *ending* the confirmation process. As such, we do not consider that "withdrawal" would be the appropriate terminology for the period of time posed in limb (2) of the question, when the order has already been confirmed.

Legislation already provides that an unimplemented order will lapse following the expiry of the operative period. We consider that this full period should be available to acquiring authorities, particularly if the issue for delay in any implementation following confirmation is due to financial decisions, many of which are taken by third parties where the acquiring authority has no control over timing (e.g., central Government funding decisions). Outside of this period, an Order would simply lapse due to effluxion of time without implementation. There is, rightly, no obligation on an acquiring authority to implement a confirmed CPO, noting that the duty to use compulsory purchase powers is matter of last resort. A confirmed CPO provides the ability to use powers rather than a compulsion to do so.

However, we do agree with the statement in §14.34 that "*Landowners also ought to have official confirmation when an order is no longer proceeding, so that they may have confidence and certainty in making alternative plans for their property*." We consider that acquiring authorities should be making open statements to the public wherever possible about the status of schemes with confirmed CPOs, where powers have not been implemented and land has not been acquired through private negotiation.

Further, if an acquiring authority for some reason decides that it does not want / need to implement the Order, it should not just let it expire by effluxion of time. We consider that in such circumstances where there is abandonment of a scheme, there should be a clear and specific step to terminate the effect of the order. However, we consider that this is more properly a Cabinet level (or equivalent) decision not to implement the Order. It is certainly an action for the promoter, and not for the confirming authority, whose role in the matter has ended.

Consultation Question 99
We provisionally propose that a compulsory purchase order should be deemed withdrawn (whether in relation to the whole or part only of the subject land) in the following circumstances:

(1) the acquiring authority fails to submit the order to the confirming authority for confirmation within six weeks of the date of the notice of the making of the order;
(2) the confirming authority refuses to confirm the order (and the refusal decision is not successfully challenged through the courts);
(3) where, after publication of the notice of confirmation, the acquiring authority fails to serve notice to treat or execute a general vesting declaration within the prescribed time limit; or
(4) where a notice to treat ceases to have effect pursuant to section 5(2A) or 5(2B) of the Compulsory Purchase Act 1965 (and the prescribed time limit for implementation of the order has itself already expired).

Do consultees agree?

Paragraph 14.47

(1) We do not agree. Linking to submission for confirmation complicates matters by begging the question of what constitutes "submission" and if withdrawal were linked to

this, “submission for confirmation” would require its own definition in legislation. Submission will often be electronic but with hard copy documents (at-scale plans, usually) sent thereafter, and some documents that are required cannot be satisfied until a later date (for example, the submission of the general certificate). Further, there are different submission requirements depending on the enabling power used. As such, we think that a legislative requirement for submission within a specified period of time would inherently create more problems than it resolves.

Though we agree that there is no positive legislative requirement to submit for confirmation, that position fails to give due regard to the practical reality that the Notice of Making will trigger a submission for confirmation and hands the decision-making process over to the confirming authority. As such, we strongly disagree with the proposition in §14.40 that a CPO *“…not submitted for confirmation…may remain in existence indefinitely*.” If that proposition were to be true, that would naturally mean that there must have been a failure to comply with sections 11 and 12 of the Acquisition of Land Act 1981, and so it is that provision which should be tightened up.

We consider, therefore, that the more logical route to achieve the same end would be to amend sections 11 and 12 to ensure that the requirement to serve a Notice of Making is satisfied within 6 weeks. It is the Notice of Making that triggers the objection period commencing and so becomes a submission in default whether or not it has been formally sent to the confirming authority.

(2) We do not agree. A non-confirmed order is not a withdrawn order; it is an *unsuccessful* order and this has direct implications for the recovery of costs. Akin to the determination of a planning application, a withdrawal is an action taken by the applicant whereas a refusal is an action taken by the confirming authority. The more appropriate way to address the end that is sought to be achieved here is for section 15 of the Acquisition of Land Act 1981 to be amended and / or supplemented to require a notice of non-confirmation to be given, mirroring the requirement to give a notice of confirmation.

(3) Though we do not consider that the legislation is deficient, we agree that it may be helpful to members of the public and landowners for legislation to be clearer that a CPO that has expired due to cessation of the operational period no longer has any effect.

Again, we do not consider that “deemed withdrawal” is the appropriate wording and would suggest, alternatively, that section 4 of the 1965 Act and section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 are supplemented to make it clear that failure to take these actions within the prescribed period in relation to any parcel of land would result in the CPO in relation to that parcel no longer having any legal effect.

(4) Though we do not consider that the legislation is deficient, we agree that it may be helpful to members of the public and landowners for legislation to be clearer. We consider that the more appropriate way to address this is for section 5 of the 1965 Act to make it clear that a Notice to Treat that has lapsed by virtue of the operation of time if none of the provisions of (2A) or section 5(2B) of the 1965 Act have been fulfilled, will have no continued effect.

Consultation Question 100
We provisionally propose that where an acquiring authority formally withdraws (or is deemed to have withdrawn) a compulsory purchase order (whether in whole or in part), it should be required to give notice of withdrawal to all persons on whom notice of the making of the order was served.
Do consultees agree?

We invite consultees' views as to whether any such notice of withdrawal be in a prescribed form.

Paragraph 14.52

We agree that there should be a requirement to notify of withdrawal, but the proposal assumes that a withdrawal of an Order is only made once a Notice of Making has been served. This does not account for a situation where an acquiring authority makes an Order and has not yet served statutory notices of making, but realises that the order was, for example, wrong and wants to withdraw it prior to formally notifying and submitting for confirmation. This is partially linked to our response to question 98 above, where we suggest than rather than prescribing any timing for submission for confirmation, we would suggest that the more appropriate time limit to impose here is to amend sections 11 and 12 of the Acquisition of Land Act 1981 to prescribe a specific period for the notice of making to have been served within. We would suggest that this is a 6-week period and that if the requirements of sections 11 and 12 are not fulfilled within this time period, the Order is deemed to be withdrawn.

If this was followed, it would then be better that the requirement to notify of withdrawal was linked to being "*on all persons on whom the notice of the making of the order was served or, in the absence of such notices having yet been served, on all parties named in the Order*."

We do not agree that the notice of withdrawal should be in a prescribed form. Withdrawal may occur for a number of reasons and, dependent on the stage of withdrawal, it will be formulated differently. For example, a submitted order that results in a formal non-confirmation decision would have different content than an Order withdrawn prior to submission.

In addition, §14.53-14.56 refer to the 2004 recommendation that compensation should be payable for withdrawal of a CPO. Though it is noted that the Law Commission states that this is outside of its terms of reference, we support the 2004 recommendation and consider that fairness requires compensation to be paid (e.g., for consequential loss when a claimant has taken reasonable steps to respond to the CPO and at least for professional costs).

Consultation Question 101
We provisionally propose that (except by agreement with the landowner) withdrawal of a notice to treat under section 31(1) of the Land Compensation Act 1961 should be prohibited if the acquiring authority has already entered into possession of the land.
Do consultees agree?

Paragraph 14.62

Yes, we agree.

CHAPTER 15

Consultation Question 102
We provisionally propose that there should be an official Government-sanctioned list of all general powers to acquire land compulsorily should be published and maintained by the Government.
Do consultees agree?

Paragraph 15.32

We agree that this would be helpful and would provide clarity and improve accessibility to the CPO process.

Consultation Question 103
We seek consultees' views about whether there are any potential omissions or anomalies in the various powers of compulsory purchase provided for by public general Acts. Is there any clear need for a new power of compulsory purchase where one does not exist at present?

Paragraph 15.36

None that have been brought to our attention as part of this Consultation response.

Consultation Question 104
We invite consultees' views on whether there ought to be a basic and standardised ancillary power to acquire rights over land which would apply wherever a primary power to compulsorily purchase land exists.

Paragraph 15.44

We cannot see any disadvantages to the proposal for a basic, standardised ancillary power to acquire rights over land wherever a primary power to compulsorily purchase land exists. We agree that there remains a need for certain additional, specific powers, to continue to apply where needed and where these are not covered by the basic, standardised ancillary power. We do not see that this detracts from the merits of the proposal.

Consultation Question 105
We invite consultees' views on whether and (if so) how any ambiguity in the definition of "acquiring authority" in section 172 of the Housing and Planning Act 2016 (Right to enter and survey land) ought to be resolved.

Paragraph 15.53

We agree that the ambiguity in the definition of "acquiring authority" in section 172 of the Housing and Planning Act 2016 ought to be clarified. Our preference is for this to be via a wider definition, which includes both those entities which benefit from general powers of compulsory acquisition (as currently drafted) and those entities which would be entitled to apply for either a Transport and Works Act Order or a Development Consent Order.

Consultation Question 106
We provisionally propose that section 11(3) of the Compulsory Purchase Act 1965 should be repealed, but its effect should be retained by amending section 172 of the Housing and Planning Act 2016 to allow surveys after confirmation of a compulsory purchase order (as well as "in connection with a proposal").
Do consultees agree?

Paragraph 15.58

There are circumstances where it can be necessary for a promoting authority to carry out a survey post confirmation of a compulsory purchase order. The effect of section 11(3) of the Compulsory Purchase Act 1965 should, therefore, be retained. However, we agree that this can be achieved through repealing section 11(3) of the Compulsory Purchase Act 1965 and amending section 172 of the Housing and Planning Act 2016 in order that it applies both post confirmation of a CPO, and also at the earlier stages "in connection with a proposal" to acquire an interest in or right over land.

Submitted on behalf of the
Compulsory Purchase Association
4a Woodside Business Park
Whitley Wood Lane
Reading, UK
RG2 8LW
cpa@compulsorypurchaseassociation.org