

Canada

The Canadian jurisdiction contains public works legislation both at federal and state level. Also important is the Canadian Bill of Rights which guarantees basic freedoms although it could fairly be described as a weaker constitution than that of the United States.

In common with the other jurisdictions the authority to expropriate land is generally conferred by a special statute. The regulation of powers of expropriation and compensation is generally consolidated within an umbrella statute both at state and at federal level. In order to determine the extent of powers of expropriation and the purposes for which they may be used it is necessary to consult with the specific empowering act. For rules as to how the powers may be used and the result of such use the umbrella Act which provides a code in respect of those matters. The Canadian jurisdiction contains a number of federal statutes in addition to the principal legislation which confer powers of expropriation on various ministries, government agencies and utility companies.

As with New Zealand issues have arisen in respect of the expropriation of native land.

The modern Canadian public works legislation is closely linked to the development of English public works law. However there has been considerable reform and revision over the years to reduce a perception that the Canadian system of expropriation was too arbitrary and to modernise it. This drive has been largely successful.

The Canadian legislation contains few restrictions upon disposal of expropriated land.

Though the Canadian system is similar to the system in the United Kingdom in terms of acquisition procedures and the use of the public inquiry prior to confirmation of the expropriation order the Canadian system does not appear to have become as bogged down as the United Kingdom with its inefficiencies and elongated time frames in respect of planning matters.

The Canada Expropriation Act 1985 (The Canada Act) was based on the Ontario Expropriation Act 1968-69 (now 1990), and these statutes provided the basis for other state laws, e.g. Manitoba, Nova Scotia, New Brunswick, Alberta and British Columbia. The Northwest Territory's legislation is also very similar to the Canada Act.

The right to be free of arbitrary confiscation is set out in the Canadian Bill of Rights 1960.

"Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press. "

a) Acquisition and compensation provisions

i the general principles adopted when land is required by the state for a public purpose;

Some expropriation codes confer powers of expropriation. See the Canada Act, s4. Note that for the purposes of the Act Minister is defined as:

"Minister"

- (a) in relation to the provisions of this Act other than Part II, means the Minister of Public Works and Government Services or, for such periods and in relation to such matters to which the powers, duties and functions of the Minister under this Act extend as may be specified in any instrument of delegation signed by the Minister of Public Works and Government Services and published in the Canada Gazette, such other Minister described in paragraph (b) as is named in the instrument, and
- (b) in relation to Part II, means a Minister presiding over a department named in Schedule I to the Financial Administration Act;

"Authority to expropriate

- 4. (1) Any interest in land, including any of the interests mentioned in section 7, that, in the opinion of the Minister, is required by the Crown for a public work or other public purpose may be expropriated by the Crown in accordance with the provisions of this Part."

North Western Territories Expropriation Act s3(a)

"3. Any interest in land, including any interest referred to in subsection 5(3), that

- (a) in the opinion of the Legislature is required by the Government of the Northwest Territories for a public work or other public purpose, or
 - (b) in the opinion of an expropriating authority, other than the Commissioner, is required for the lawful purposes of the authority,
- may be expropriated by the Commissioner or other expropriating authority, as the case may be, in accordance with this Act."

Yukon Territory Expropriation Act s2(1)

"Executive Council Member may expropriate

- 2.(1) Subject to this Act, the Executive Council Member may, without the consent of the owner, enter upon and expropriate any land that he deems necessary for the public purposes of the Yukon or at the request of any municipality for the public purposes of any municipality."

New Brunswick Expropriation Act s 4:

"4. The Lieutenant-Governor in council or a Minister of the Crown may expropriate where he considers it desirable for establishing or carrying out

- (a) any work or enterprise that he considers to be in the public interest;
- (b) any public purpose, or
- (c) any commercial, industrial or utility purpose. "

The legislation in respect of Nova Scotia (s 10) Newfoundland, (ss 3, 4) and Prince Edward Island (s 3) also contain similar powers.

However, other provincial codes do not confer these powers. See Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan. In these provinces, powers are found in provincial enabling statutes. For instance in Ontario there are over 8000 individual authorities with expropriation powers. The resulting plethora of bodies with such far reaching powers has been the subject of criticism. Also, many federal Acts confer powers on ministries, government and quasi-governmental agencies, railway and pipeline companies, and private utility type enterprises. In respect of each body it is necessary to interpret the relevant statute to determine the extent of the powers, and the purposes for which they have been granted. By contrast the matters of procedure are consolidated in the various expropriation Acts. In some cases the power to expropriate is not expressed as such but is intended by the use of other, imprecise wording. The onus of showing that a power to expropriate was intended by the legislature is on the acquiring authority. See *Simpson v South Staffordshire Water Works Co* (1865) 34 LJ Ch. 380, 46 ER. The power to expropriate will never be implied however where there is no mention of acquisition at all. See *Pleadwell v Brennan* (1857) 1 PEI 147.

The Procedure:

The details of procedure vary between provinces, but the Acts do have common features:

1. Notice of intention to expropriate
2. Public hearing/inquiry provisions
3. Confirmation/approval of intention to expropriate
4. Registration of confirmation or approval
5. Abandonment of intention to expropriate
6. Entry for survey

1. Notice of intention to expropriate

Canada Act: ss 5, 8, 9, 10(11)

"5. Notice of intention to expropriate

- (1) Whenever, in the opinion of the Minister, any interest in land is required by the Crown for a public work or other public purpose, the Minister may request the Attorney General of Canada to register a notice of intention to expropriate the interest, signed by the Minister, setting out
 - (a) a description of the land;
 - (b) the nature of the interest intended to be expropriated and whether the interest is intended to be subject to any existing interest in the land;
 - (c) an indication of the public work or other public purpose for which the interest is required; and
 - (d) a statement that it is intended that the interest be expropriated by the Crown.

- (2) Registration of notice - On receiving from the Minister a request to register a notice of intention described in this section, the Attorney General of Canada shall cause the notice, together with a plan of the land to which the notice relates, to be registered in the office of the registrar for the county, district or registration division in which the land is situated, and, after causing such investigations and searches to be made respecting the state of the title to the land as appear to him to be necessary or desirable, the Attorney General of Canada shall furnish the Minister with a report setting out the names and latest known addresses, if any, of the persons appearing to have any right, estate or interest in the land, so far as he has been able to ascertain them.
- (3) Further indication of public purpose - Where, in the opinion of the Minister, the interest to which a notice of intention described in this section relates is required by the Crown for a purpose related to the safety or security of Canada or a state allied or associated with Canada and it would not be in the public interest further to indicate that purpose, a statement in the notice to the effect that the interest is required by the Crown for such a purpose is sufficient compliance with paragraph (1)(c) without further indication thereof.
- (4) Idem - Subject to subsection (3), the Minister shall, for the purposes of sections 9 and 10 and to the extent that it appears to him to be practicable and in the public interest to do so, make available to any person on request any additional information that is available to the Minister with respect to the public work or other public purpose for which the interest to which a notice registered under this section relates is required by the Crown.

"8. Sending of copies and publication of notice

- (1) Where a notice of intention to expropriate an interest in land has been registered, the Minister shall cause a copy of the notice
 - (a) to be published in at least one issue of a publication, if any, in general circulation within the area in which the land is situated, within thirty days after the registration of the notice, and
 - (b) to be sent to each of the persons whose names are set out in the report of the Attorney General of Canada referred to in subsection 5(2), as soon as practicable after the registration of the notice,
 and forthwith after causing a copy thereof to be sent by registered mail to each of the persons referred to in paragraph (b), shall cause the notice to be published in the Canada Gazette.
- (2) When notice deemed given - A notice of intention shall be deemed to be given on the day on which it is published in the Canada Gazette under subsection (1), and where any notice so published contains an omission, mis-statement or erroneous description, a corrected notice may be published in the Canada Gazette, which shall be deemed to relate back to the day the original notice was published therein.
- (3) Statement re right to object - There shall be included in any notice or copy thereof published or sent as described in subsection (1) a statement of the provisions of section 9 as that section applies to the intended expropriation of the interest to which the notice relates.

R.S., c. 16(1st Supp.), s. 6. Objections

"9. Objections

Any person who objects to the intended expropriation of an interest in land to which a notice of intention relates may, within thirty days after the day the notice is given, serve on the Minister an objection in writing stating the name and address of that person and indicating the nature of the objection, the grounds on which the objection is based and the nature of the interest of that person in the matter of the intended expropriation.

"10. Public hearing

- (1) Forthwith after the expiration of the period of thirty days referred to in section 9, the Minister shall, if the Minister has been served with an objection under that section, order

that a public hearing be conducted with respect to the objection and any other objection to the intended expropriation that has been or may be served on the Minister.

.....

- (11) Order where possession by Crown urgently required - Where, before a notice of intention is registered, the Governor in Council is of the opinion that the physical possession or use by the Crown of the land to the extent of the interest intended to be expropriated is, by reason of special circumstances, urgently required and that to order that a public hearing be conducted with respect thereto would occasion a delay prejudicial to the public interest, the Governor in Council may direct that no order be made by the Minister under subsection (1) with respect to the intended expropriation and, in which case, a statement to that effect shall be included in the notice of intention."

In the provinces, the power of expropriation is usually conferred by particular statutes on particular authorities. The McRuer Report¹ noted that in Ontario, over 8000 authorities had powers of expropriation. Modern provincial legislation provides for the service of notices of expropriation:

New Brunswick Expropriation Act s 6:

- "6. Every expropriating authority seeking to expropriate shall file with the Officer a notice of intention to expropriate setting forth
- (a) the name of the expropriating authority,
 - (b) a description of the land sufficient to identify it,
 - (c) a general description of the state of the land,
 - (d) the nature of the interest intended to be expropriated and whether such interest is intended to be subject to any existing interest in the land,
 - (e) a statement of the purpose for which the expropriation is required, and
 - (f) a statement that it is intended that the land be expropriated by the expropriating authority, which shall be accompanied by
 - (g) a plan of survey or a tentative plan of survey of the land, and
 - (h) a statement setting out the names of all known owners of the land together with such evidence as is sufficient to satisfy the Officer that reasonable steps have been taken to ascertain the owners of the land.
- 1973, c.6, s.6; 1975, c.21, s.3; 1983, c.31, s.4. "

Manitoba Expropriation Act s 4/ Sch A, ss 1, 2, 3

- "4(1) **Declaration of expropriation** - The declaration shall be in the prescribed form, and shall be signed by or on behalf of the authority and shall set forth
- (a) the legal description of the land to be expropriated or in which an interest is to be expropriated;
 - (b) the interest to be acquired in the land by the expropriation and whether it is to be subject to any existing interest in the land;
 - (c) a reference to the provisions of the authorizing Act pursuant to which the land is to be expropriated; and
 - (d) where all or part of the land to be expropriated is for a highway, a statement
 - (i) that upon registration of the declaration in the land titles office, the land being acquired for a highway is thereby opened and dedicated to the public use as a highway, or
 - (ii) that the land is not thereby opened or dedicated as a highway.

¹ First Report of the Royal Commission Inquiry into Civil Rights, February 1968.

- (2) **Plan of expropriated land** - The description of the land required to be given in the declaration may be given by reference to a plan prepared by a Manitoba Land sufficiently indicating the land to be expropriated, and in that case the plan shall form a part of the declaration for all purposes.
- (3) **Plans required for highways and drains** - Where the land is being acquired by the authority for a highway or a drain, the description of the land shall be given by reference to a plan prepared by a Manitoba Land Surveyor which shall form part of the declaration for all purposes, and there may be shown on the plan any lands owned by the authority which are to be opened as part of the highway or used as a drain.
- (4) **Notice on certificate of title** - Forthwith upon a declaration being signed, the authority shall cause a notice of the intended expropriation to be filed in the land titles office sufficiently indicating the lands intended to be affected and stating that an application for a confirming order is pending, and the district registrar of the land titles shall thereupon cause the notice to be entered on each certificate of title or abstract of title appearing to be affected thereby but he is not required to give any further notice thereof to any person, but subject to section 24, the notice lapses upon the expiration of six months after the date of its filing.
- (5) **Where notice of intention not required** - Where the authority and all registered owners of the lands to be acquired have agreed on the settlement of the due compensation, subsection (4) does not apply.

"SCHEDULE A

"Notice of intended expropriation

- 1 Within 30 days of the signing of a declaration of expropriation the expropriating authority shall
- (a) serve notice of the intended expropriation upon all owners of the land so far as they may be ascertained from the records of the land titles office and the latest revised realty assessment roll on which the land is entered;
 - (b) publish notice of the intended expropriation in a newspaper having general circulation in the locality in which the land is situate; and
 - (c) submit the declaration to the confirming authority having jurisdiction together with proof of the service and the publication of the notice.

Contents of notice

2 The notice shall include a statement of the provisions of section 3 of this Schedule applicable thereto, giving the name and address of the confirming authority having jurisdiction.

Notice of objection

3 The owner of any interest in the land who objects to the intended expropriation may, within 30 days from the date notice of the intended expropriation is served upon him or within 30 days from the date publication is made pursuant to section 1 of this Schedule, whichever is the later, serve upon the Minister of Justice and the confirming authority a notice of his objection in writing stating his name and address, the nature of his objection and the grounds upon which it is based, and the nature of his interest in the matter of the intended expropriation.

S.M. 1993, c. 48, s. 64."

British Columbia Expropriation Act s 6

"6. Expropriation notice

- (1) An expropriating authority that intends to expropriate land must
 - (a) serve an expropriation notice on the approving authority and on each owner
 - (i) whose land is to be expropriated, and
 - (ii) whose interest in that land is recorded in the land title office, other than persons having an interest referred to in section 23 (2) (b) or (c),
 - (b) serve on each owner referred to in paragraph (a) a copy of this Act,
 - (c) post or erect, on the land to be expropriated, a sign containing a copy of the expropriation notice or a summary of its contents, and
 - (d) file a copy of the expropriation notice in the land title office.

- (2) If the land to be expropriated is located outside of a municipality, the expropriating authority may, instead of posting or erecting the sign, publish a copy of the expropriation notice or a summary of its contents in a newspaper circulating in the area of the land affected.
- (3) If the owner is an individual, the expropriation notice must be served personally or by registered mail.
- (4) The expropriation notice must contain
 - (a) the name and address of the expropriating authority and the approving authority,
 - (b) subject to paragraph (c), a plan of the land to be expropriated that is sufficient, in the opinion of the registrar, to identify the land in the records of the land title office,
 - (c) if the fee simple interest in the whole of a parcel is being expropriated, a legal description of the parcel,
 - (d) the purpose for which the expropriation is required,
 - (e) if
 - (i) the land being expropriated is required for a limited time, or
 - (ii) a limited estate, right, title or interest in the land is required,
 the time period, or the nature of the limited estate, right, title or interest that is being taken,
 - (f) a description of any charge in respect of which the expropriating authority intends to make a directive under section 23 (2) (c), and
 - (g) other prescribed information.
- (5) If a person on whom a notice is required to be served under subsection (1) cannot be located, the expropriating authority may apply to the Supreme Court for an order for substituted service.
- (6) The expropriating authority must serve a copy of the expropriation notice on all persons who have, at the time the expropriation notice is filed under subsection (1) (d), registered a caveat or a certificate of pending litigation against the land to which the expropriation notice relates."

Ontario Expropriations Act 1968-69: See s 6(1)

Alberta Expropriation Act 1974: See s 8

Some of the older statutes, (e.g. Newfoundland s 4(1)(g)) require that expropriating authorities secure some authorisation, consent or approval for the exercise of their powers. However, the requirement may amount to nothing more than a *pro-forma* application to the Lieutenant-Governor in Council, to which the affected owner is not privy and concerning which there is no entitlement to voice objections.

2. Public Hearing/Inquiry Procedures

Under the Canada Act within 30 days of gazetting the notice, **any** person can object (s9). This is significantly different to Australia for example where only an affected person (being those holding interests in land) can apply. It reflects a view that a public work may indirectly affect individuals in other non proprietary ways. If objections are received, the Minister must order a public hearing (s10). The right to a public hearing is considered fundamental and in accordance with the requirements of natural justice. This is particularly the case given that the decision to expropriate has been taken without the owners consent and without a hearing to that point. The public inquiry is designed to ensure that expropriations reflect consideration for the rights of owners of property and produce better plans.

"9. Objections

Any person who objects to the intended expropriation of an interest in land to which a notice of intention relates may, within thirty days after the day the notice is given, serve on the Minister an objection in writing stating the name and address of that person and indicating the nature of the objection, the grounds on which the objection is based and the nature of the interest of that person in the matter of the intended expropriation."

"10. Public hearing

- (1) Forthwith after the expiration of the period of thirty days referred to in section 9, the Minister shall, if the Minister has been served with an objection under that section, order that a public hearing be conducted with respect to the objection and any other objection to the intended expropriation that has been or may be served on the Minister.

Appointment of hearing officer

- (2) Where the Minister orders that a public hearing be conducted with respect to an objection or objections, the Minister shall immediately request the Attorney General of Canada to appoint a hearing officer to conduct the hearing and the Attorney General of Canada shall thereupon appoint a suitable person, who is not a person employed in the Public Service as defined in subsection 3(1) of the Public Service Superannuation Act, to be a hearing officer for that purpose.

Remuneration and expenses

- (3) A hearing officer appointed under this section shall be paid such remuneration and expenses as may be fixed by the Attorney General of Canada with the approval of the Treasury Board.

Duties of hearing officer

- (4) A hearing officer appointed under this section shall
 - (a) as soon as possible after the appointment of the hearing officer and in any case not later than seven days after the date thereof, fix a suitable time and place for the public hearing and cause notice of the time and place to be given by publishing it in at least one issue of a publication, if any, in general circulation within the area in which the land is situated and by sending it to each of the persons whose names are set out in the report of the Attorney General of Canada referred to in subsection 5(2) and each other person who served an objection on the Minister;
 - (b) at the time and place fixed for the public hearing, provide an opportunity to be heard to each person appearing thereat who served an objection on the Minister or such of those persons as the hearing officer deems necessary in order to report to the Minister on the nature and grounds of the objections;
 - (c) make such inspection of the land as the hearing officer deems necessary and receive and consider any written representations filed with the hearing officer before or at the hearing by any person who served an objection on the Minister; and
 - (d) within thirty days after the appointment of the hearing officer, prepare and submit to the Minister a report in writing on the nature and grounds of the objections made.

Idem

- (5) A hearing officer is not required to give any notice, hold any hearing or take any other action required by subsection (4) with respect to any objection served on the Minister under section 9 and may at any time disregard any such objection if it appears to the hearing officer that the objection is frivolous or vexatious or is not made in good faith.

Right to counsel

- (6) Any person who may be heard at a public hearing under this section may be represented by counsel at the hearing.

Conduct of hearing

- (7) A public hearing under this section shall, subject to this section, be conducted in such manner as may be determined by the hearing officer.

Extension of time for report

- (8) At the request of any hearing officer, the Attorney General of Canada may extend, for a period not exceeding thirty days, the time limited by this section for preparing and submitting to the Minister a report.

Costs of asserting objections

- (9) A hearing officer shall, in any report submitted by him to the Minister under this section, fix such amount, if any, as the hearing officer deems reasonable, not exceeding such maximum amount as may be authorized by any tariff of costs prescribed by the Governor in Council for the purpose of this section, in respect of the costs of any person who served an objection on the Minister that were incurred by that person in asserting the objection, and on the certificate of the Minister the Minister of Finance shall, out of the Consolidated Revenue Fund, cause to be paid to that person the amount so certified in respect of those costs.

Failure to conduct or report hearing

- (10) Where, for any reason, a hearing officer appointed to conduct a public hearing under this section fails to do so or to prepare and submit to the Minister a report as and when required by this section, the Minister shall so notify the Attorney General of Canada who shall immediately appoint another hearing officer for that purpose.

Order where possession by Crown urgently required

- (11) Where, before a notice of intention is registered, the Governor in Council is of the opinion that the physical possession or use by the Crown of the land to the extent of the interest intended to be expropriated is, by reason of special circumstances, urgently required and that to order that a public hearing be conducted with respect thereto would occasion a delay prejudicial to the public interest, the Governor in Council may direct that no order be made by the Minister under subsection (1) with respect to the intended expropriation and, in which case, a statement to that effect shall be included in the notice of intention.

Exception

- (12) Subsection (11) does not apply in respect of land described in subsection 4(4) or (5), but the Yukon first nation concerned or the Gwich'in Tribal Council, as the case may be, may agree to waive the requirement for a public hearing and, if it does so before a notice of intention is registered, a statement of the waiver shall be included in the notice of intention.

R.S., 1985, c. E-21, s. 10; 1994, c. 43, s. 85."

In the provinces, Ontario, Manitoba, New Brunswick, British Columbia and Alberta provide for an inquiry officer to hold a public hearing. However, there are significant differences to the provisions in the Canada Act.

In the case of British Columbia the inquiry can be dispensed with where the development is a linear project such as road, railway or hydro or electricity transmission line or pipeline. An inquiry may also be avoided by the executive on the grounds of urgency, emergency or to avoid prejudicial delay or in the public interest. The decision is a political one made by the Minister and may be based on broad grounds of public policy. This significantly erodes procedural protections of the land owner. In that regard s 1 defines an "approving authority": (a) the minister charged with the administration of the Act under which the expropriating authority is given the power to expropriate, unless, in respect of any particular expropriation, the Lieutenant Governor in Council has designated another member of the executive council as the approving authority for that expropriation...The Act specifies that the Minister of Municipal Affairs and Housing and the Minister of Education, Skills and Training may be designated as approving authorities in certain cases.

The relevant provisions are set out below:

Manitoba Expropriation Act: Sch A

"SCHEDULE A

"Notice of intended expropriation

- 1 Within 30 days of the signing of a declaration of expropriation the expropriating authority shall
- (a) serve notice of the intended expropriation upon all owners of the land so far as they may be ascertained from the records of the land titles office and the latest revised realty assessment roll on which the land is entered;
 - (b) publish notice of the intended expropriation in a newspaper having general circulation in the locality in which the land is situate; and
 - (c) submit the declaration to the confirming authority having jurisdiction together with proof of the service and the publication of the notice.

"Contents of notice

2 The notice shall include a statement of the provisions of section 3 of this Schedule applicable thereto, giving the name and address of the confirming authority having jurisdiction.

"Notice of objection

3 The owner of any interest in the land who objects to the intended expropriation may, within 30 days from the date notice of the intended expropriation is served upon him or within 30 days from the date publication is made pursuant to section 1 of this Schedule, whichever is the later, serve upon the Minister of Justice and the confirming authority a notice of his objection in writing stating his name and address, the nature of his objection and the grounds upon which it is based, and the nature of his interest in the matter of the intended expropriation.
S.M. 1993, c. 48, s. 64."

"Confirming authority's action

- 4(1) Forthwith after the expiration of the period of 30 days referred to in section 3 of this Schedule, the confirming authority shall
- (a) if it has not been served with a notice of objection, confirm the declaration, or
 - (b) if it has been served with a notice of objection, request the Minister of Justice to appoint an inquiry officer.

"Appointment of inquiry officer

4(2) The Minister of Justice, on receipt of the request, shall appoint a suitable person who is not an officer or employee or member of the council (if any) of the expropriating authority to be the inquiry officer.

"Costs of inquiry officer

4(3) The expropriating authority is liable to pay and shall pay to the inquiry officer the remuneration and expenses approved by the Minister of Justice by his certificate forthwith upon the delivery of the certificate to the expropriating authority.

"Legal costs of owner

4(4) Every owner of land described in the declaration of expropriation is entitled to legal costs reasonably incurred by him in preparing and filing any notice of objection given under section 3 of this Schedule and in attending and participating in the inquiry, which shall be paid by the expropriating authority.

"Taxing of legal costs

4(5) Where there is a dispute as to the legal costs reasonably incurred to which an owner of land is entitled under subsection (4), the expropriating authority may apply to the taxing officer of the court to tax the legal costs of the owner on a solicitor and client basis and, in that case, the owner is also entitled to his legal costs reasonably incurred in respect of the taxation of the costs.

S.M. 1993, c. 48, s. 64.

"Notice of public hearing

5(1) The inquiry officer shall fix a suitable time and place for a public hearing and cause notice thereof to be given by publication in at least one issue of a newspaper having a general circulation in the area in which the land is situate and by sending a notice thereof to the expropriating authority, to each person who has been served with the notice of the intended expropriation pursuant to section 1 of this Schedule and to each other person who has served a notice of objection on the confirming authority.

"Two or more matters dealt with at one inquiry

5(2) The inquiry officer may, with the approval of the Minister of Justice, conduct two or more related inquiries as one inquiry, but by his report shall deal separately with each intended expropriation.

S.M. 1993, c. 48, s. 64.

"Parties to inquiry

6(1) The expropriating authority and each person who has served a notice of objection shall be parties to the inquiry.

"Duties of inquiry officer

6(2) At the public hearing the inquiry officer shall inquire into whether the intended expropriation is fair and reasonably necessary for the achievement of the objectives of the expropriating authority, and for that purpose the inquiry officer

- (a) shall require the expropriating authority to attend at the hearing and to produce such maps, plans, studies and documents as he deems necessary for his inquiry;
 - (b) may add any owner whose land would be injuriously affected by the intended expropriation, or by the work for which the intended expropriation is required, as a party to the inquiry;
 - (c) shall give each party to the inquiry a reasonable opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent; and
 - (d) may inspect the lands intended to be expropriated or the lands of an owner referred to in clause (b), either with or without the presence of the parties;
- and in his inquiry he shall not be bound by any technical or legal rules of evidence.

"Restrictions on inquiry

6(3) In an inquiry conducted under this Schedule, an inquiry officer shall not consider any matter or question relating to

- (a) the due compensation that would be payable if the expropriation is continued; or
- (b) the advisability, expediency, legality or necessity of the objectives of the expropriating authority for the achievement of which the land to be expropriated is being acquired.

"Revoking appointment of inquiry officer

7 When the inquiry officer is unable to, or fails to, carry out his duties in accordance with this Schedule, the Minister of Justice shall immediately revoke his appointment and appoint another inquiry officer in his place.

S.M. 1993, c. 48, s. 64.

"Report of inquiry officer

8 The inquiry officer shall within 30 days from the date of his appointment make and deliver to the confirming authority his report in writing setting forth

- (a) a summary of the evidence and of the arguments of the parties;
- (b) his determination of the facts;
- (c) his opinion on the question in issue; and
- (d) such other matters as he considers expedient and in the public interest.

"Action after report

9(1) The confirming authority shall consider the report of the inquiry officer and make its order in respect of the declaration of expropriation; and, where the order is not in accordance with the opinion of the inquiry officer, it shall state its reasons for making the order.

"Copies of report to parties

9(2) Forthwith after delivering his report to the confirming authority, the inquiry officer shall send a copy of the report to each party to the inquiry."

New Brunswick Expropriation Act ss 9-17

"9(1) An objection to a proposed expropriation may be made by

(a) in the case of a notice of intention, any owner of the land to be expropriated or of land that, in the opinion of the Officer, may be injuriously affected by the proposed expropriation, or

(b) in the case of an application for an expropriation, any person,

and such objection may be made by filing a notice of objection with the Officer within thirty days of the date of the registration of a notice in the registry office in accordance with paragraph 8(1)(c).

9(2) A notice of objection shall be in a form prescribed by regulation and shall contain a summary of the reasons for the objection and shall state the nature of the interest of the objector in the matter of the proposed expropriation.

9(3) Repealed: 1983, c.31, s.7.

9(4) The Officer shall forthwith, and not later than the date stipulated for notice in subsection 11(3), serve copies of all notices of objection filed with respect to a proposed expropriation upon the expropriating authority or applicant proposing the expropriation.
1973, c.6, s.9; 1983, c.31, s.7.

"10(1) Where a notice of objection is filed with the Officer by a person authorized by this Act to object to a proposed expropriation and has not been withdrawn, the Officer shall, if subsection 8(4) has been complied with and if the Officer is satisfied as to the sufficiency of the information required to be provided by subsection 9(2), arrange for a public hearing to be held within thirty days after the expiration of the time limited for filing a notice of objection in the locality in which the land referred to in the notice of intention or the application is situated.

10(1.1) Where all notices of objections with which the Officer was satisfied in accordance with subsection (1) have been withdrawn after a hearing has been arranged, whether prior to the commencement of the hearing, during its course or upon its completion,

(a) the Officer shall not commence or authorize the commencement of a hearing,

(b) the Officer shall discontinue any hearing that has been commenced, and

(c) subject to subsection (6), the reporting requirements of sections 16 and 17 do not apply.

10(2) The Lieutenant-Governor in Council may, where he considers it in the public interest to do so, file with the Officer an order that a proposed expropriation proceed without a hearing as provided for in subsection (1), and where such an order is made sections 8 and 9 and any other provisions of this Part regulating notice and hearing have no application unless it is otherwise stipulated in the order.

10(3) A copy of the order filed under subsection (2) shall be served by the Officer on each person who has filed a notice of objection.

10(4) Subject to subsection (5), where

(a) no notice of objection with which the Officer is satisfied in accordance with subsection (1) is filed within the time for filing,

(b) an order has been made that an expropriation proceed without a hearing, or

(c) all notices of objection with which the Officer was satisfied in accordance with subsection (1) have since been withdrawn, whether before or after a hearing is arranged,

or prior to the commencement of, during the course of or upon the completion of a hearing,
the Officer shall immediately notify the expropriating authority to that effect, and the expropriating authority may confirm its notice of intention in the manner provided in section 19 or may at any time prior to the confirmation of the notice of intention abandon the intention.

10(5) Where, in the circumstances described in subsection (4), the expropriating authority is not the Lieutenant-Governor in Council or a municipality, no notice of intention shall be confirmed without the prior approval of the Lieutenant-Governor in Council, and the Officer shall forward to the Lieutenant-Governor in Council a report setting out

- (a) a copy of the notice of intention,
- (b) that
 - (i) no notice of objection to the proposed expropriation has been filed with the Officer,
 - (ii) all notices of objection with which the Officer was satisfied in accordance with subsection (1) have since been withdrawn, or
 - (iii) an order has been made authorizing the expropriation to proceed without a hearing,
- (c) that the approval of the Lieutenant-Governor in Council is required, and
- (d) the latest date at which the notice of intention may be confirmed by the expropriating authority.

10(6) Where no notice of objection to an application for an expropriation pursuant to section 7 is filed with the Officer, or where all notices of objection with which the Officer was satisfied in accordance with subsection (1) have since been withdrawn, the Officer

- (a) shall examine the application,
- (b) may require the applicant to provide such additional evidence in support of its application as it considers necessary, and
- (c) shall report to the Lieutenant-Governor in Council as if a hearing had taken place.

1973, c.6, s.10; 1978, c.18, s.3; 1983, c.31, s.8.

11(1) The Officer shall conduct any hearing under subsection 10(1).

11(2) Repealed: 1983, c.31, s.9.

11(3) The Officer shall serve upon the expropriating authority or the applicant, as the case may be, and upon all persons filing notices of objection in accordance with this Act, not less than twenty-one days notice of the time and place set for the hearing.

1973, c.6, s.11; 1974, c.13(Supp.), s.1.2; 1983, c.31, s.9.

12(1) At least fourteen days before the date fixed for the hearing, the expropriating authority or applicant, as the case may be, shall serve upon each person who has filed a notice of objection a notice indicating the grounds on which it intends to rely at the hearing and shall make available for inspection by such persons any documents, including maps and plans, that the expropriating authority or applicant intends to use at the hearing.

12(1.1) The expropriating authority or applicant shall file with the Officer, at least fourteen days before the date fixed for the hearing, a copy of the notice referred to in subsection (1).

12(2) Where the Officer has not complied with the time periods set out in subsection 9(4) or subsection 11(3), or where the expropriating authority or applicant has not complied with subsection (1), the Officer may postpone the date for the hearing in order to allow compliance with those provisions.

1973, c.6, s.12; 1978, c.18, s.4; 1983, c.31, s.10; 1991, c.13, s.3.

13 The Officer may order the consolidation of any proceedings where he is of the opinion that it is convenient to do so and that it will not prejudice the opportunity of an objecting party to present his objection to a proposed expropriation.

1973, c.6, s.13; 1983, c.31, s.11.

"14(1) The Officer may at any time allow an amendment of a notice of intention or an application in order to modify or make substitution for the land proposed to be expropriated, in which case he shall give directions as to the manner in which notice of the amendment shall be given to the parties to the proceedings, to any affected owner who is not a party to the proceedings and to the public, and as to the time within which notices of objection to the amendment may be filed with the Officer.

14(2) Where the Officer allows an amendment of a notice of intention or an application he shall order the adjournment of any proceedings then under way to enable the expropriating authority or the applicant, as the case may be, to file any additional documentation required by the Officer and to comply with section 12, and to enable notices of objection to be filed with respect to the amended notice of intention or application within such time as is prescribed in the notice given under subsection (1).

1973, c.6, s.14; 1983, c.31, s.12.

"15(1) The expropriating authority or the applicant, as the case may be, shall at the hearing present in full its case in support of the proposed expropriation.

15(2) Each person filing a notice of objection to a proposed expropriation shall be provided with an opportunity to present evidence and argument either personally or by his counsel or agent

- (a) as of right, where the person is an owner of land proposed to be expropriated or of land that may, in the opinion of the Officer, be injuriously affected by the proposed expropriation, or
- (b) with the permission of the Officer, in every other case, to be granted where the notice of objection discloses an interest in the matter of the expropriation that, in the opinion of the Officer, would be materially affected by the expropriation.

15(3) The Officer may make rules of procedure that he considers appropriate to a hearing under this Part, and in no case is the Officer bound to follow rules of evidence or procedure applicable in judicial proceedings.

1973, c.6, s.15; 1983, c.31, s.13.

"16 Repealed: 1983, c.31, s.14.

1973, c.6, s.16; 1983, c.31, s.14.

"17(1) The Officer in conducting a hearing shall consider all evidence presented and representations made to him in support of and in objection to the proposed expropriation and within thirty days after the hearing shall submit a report

- (a) where the expropriating authority is a municipality, to the council thereof, or
- (b) where the expropriating authority is other than a municipality or where an application has been made under section 7, to the Lieutenant-Governor in Council,

and at the same time shall submit a copy of the report to the expropriating authority or the applicant and to each person who made representations at the hearing.

17(2) The report submitted under subsection (1) shall contain a summary of the evidence and arguments presented at the hearing and any finding of fact by the Officer and shall state the opinion of the Officer as to whether the proposed expropriation

- (a) is reasonably necessary to accomplish the objectives of the expropriating authority or applicant,
- (b) is fair, balancing the objectives of the expropriating authority or applicant against the interests of the owner that would be extinguished by the expropriation, and
- (c) in the case of an application made under section 7, is consistent with the public interest.

17(3) Where the report is in respect of a proposed expropriation by an expropriating authority other than the Lieutenant-Governor in Council or a municipality, the Officer shall include with the report

- (a) a copy of the notice of intention,
- (b) notification that the approval of the Lieutenant-Governor in Council is required, and
- (c) notification of the latest date at which the notice of intention may be confirmed by the expropriating authority.

17(4) Where the report is in respect of an application under section 7 for an expropriation by the Lieutenant-Governor in Council, the Officer shall include with the report

(a) a copy of the application, and

(b) notification of the latest date at which the expropriation may be effected.

17(5) In a report submitted in accordance with subsection (1), the Officer may direct an expropriating authority to pay to an owner of land who has appeared before the Officer on a hearing of objection an amount not to exceed two hundred dollars in respect of his costs and expenses in appearing before the Officer and the expropriating authority shall pay such amount to that person.

17(6) Notwithstanding that the Officer has submitted a report in accordance with subsection (1), an expropriating authority or an applicant may apply to the Officer to amend its notice of intention or application in accordance with section 14, and the Officer shall continue to exercise jurisdiction with respect to a notice of intention until its confirmation or abandonment, and with respect to an application until an expropriation is effected pursuant thereto or the application is abandoned, and where hearings are held with respect to an application to amend a notice of intention or an application the Officer shall submit a report with respect thereto in accordance with the provisions of this section relating to the submission of reports by the Officer.

1973, c.6, s.17; 1983, c.31, s.15."

British Columbia Expropriation Act ss 9-16

"Entry for limited purposes

9 (1) In addition to any other powers under an enactment, a person authorized by the expropriating authority may, before or after serving an order under section 5 (4) (a) or an expropriation notice under section 6 (1) (a),

(a) during daylight hours, and

(b) after making reasonable efforts to notify the owner or occupier of the land,

enter any land for the purposes of

(c) making surveys, inspections, examinations, soil tests or doing other things that are necessary to determine

(i) the location of proposed works, or

(ii) the description of the land that the expropriating authority intends to expropriate, and

(d) completing an appraisal of the value of the land or any interest in it.

(2) The person authorized may, on entering the land, cut down any trees or brush that obstructs the running of survey lines.

(3) The expropriating authority must pay compensation for damages that it causes by the exercise of its rights under this section.

(4) When the land entered on is not expropriated, an action does not lie against the expropriating authority for damage caused by the exercise of a right of entry under this section unless notice in writing, signed by the claimant, is given to the expropriating authority who exercised the right of entry, within 6 months after the entry occurred.

"Request for inquiry

10 (1) In this section, "linear development" includes a highway, a railway, a hydro or other electric transmission or distribution line, a pipeline or a sewer, water or drainage line or main.

(2) An owner whose land is included in an expropriation notice, other than an expropriation notice in respect of an expropriation for the construction, extension or alteration of a linear development, may request an inquiry by serving the board with a notice of request for an inquiry.

(3) A notice of request for an inquiry must

(a) be in writing,

(b) contain the name and address of the person making the request, his or her interest in the land to be expropriated and his or her reasons for requesting an inquiry, and

(c) be served on the board and the expropriating authority within 30 days after the date the expropriation notice is served under section 6 (1) (a)."

A request based solely on a claim for compensation may be rejected.

"Power to deny requests

11 (1) The board may order that a request for an inquiry under section 10 be denied if, on the application of the expropriating authority and after granting both parties the opportunity to be heard, the board considers that

- (a) the request for an inquiry is
 - (i) frivolous, vexatious or not made in good faith, or
 - (ii) based solely on a claim for compensation, or
- (b) the person who requested the inquiry has, at a previous hearing or otherwise, already had substantially the same opportunity to object to the expropriation that he or she would have at an inquiry under this Act.

(2) If an order is made to deny the request under subsection (1), the board must promptly serve a copy of the order, together with the reasons for making it, on the person who requested the inquiry and on the expropriating authority.

"Setting down the inquiry

12 (1) Subject to section 11, if the board receives a request under section 10, it must, within 7 days after service under section 10 (3) (c), appoint an inquiry officer who must hold a public inquiry.

(2) The inquiry officer must set a date, that is not more than 21 days after the date of his or her appointment, a time and a place for the inquiry and must serve notice of the date, time and place on

- (a) the persons served under section 6 (1) (a),
 - (b) the expropriating authority, and
 - (c) every person who served a notice of request under section 10 whose request was not denied under section 11.
- (3) The participants in the inquiry are
- (a) the expropriating authority or its authorized representative,
 - (b) all persons referred to in subsection (2) (c), and
 - (c) all persons who are added under section 15 (a).

"Speedy inquiry procedure

13 (1) Despite section 12, before an expropriation notice is served by an expropriating authority, the chair or a member of the board may,

- (a) on the application of the expropriating authority, and
 - (b) on being satisfied that a request for an inquiry will be made,
- appoint an inquiry officer who must set a date, time and place for an inquiry sufficiently in advance to enable the expropriating authority to comply with subsection (2).

(2) The expropriating authority must

- (a) include in the expropriation notice a statement of the date, time and place set for an inquiry under subsection (1), and
- (b) comply with section 6 (1) in sufficient time to provide not more than 21 days between the date that section is complied with and the date set for the inquiry.

(3) Subject to section 11, if a notice has been given under this section, any person referred to in section 10 (2) may become a participant in the inquiry.

"Inquiry

14 (1) The inquiry officer must hold a public hearing for the purpose of inquiring into whether the proposed expropriation of the land is necessary to achieve the objectives of the expropriating authority with respect to the proposed project or work, or whether those objectives could be better achieved by

- (a) an alternative site, or
- (b) varying the amount of land to be taken or the nature of the interest in the land to be taken.

- (2) The necessity for the project or work for which the expropriation is sought must not be considered at the inquiry.
- (3) The inquiry officer may combine 2 or more inquiries that are related and conduct them for all purposes as one inquiry.
- (4) A participant in the inquiry may
 - (a) be represented by counsel or agent,
 - (b) present evidence and argument, and
 - (c) examine and cross examine witnesses and other participants in the inquiry.

"Powers and duties of inquiry officer

15 An inquiry officer may

- (a) add as a participant in the inquiry any person who the inquiry officer considers would be entitled to request an inquiry under section 10 (2), and
- (b) inspect any land.

"Modification of expropriation

16 (1) Before the conclusion of the inquiry, the expropriating authority may alter the expropriation by adding or deleting land from it.

(2) If the expropriation is altered, the expropriating authority must file in the land title office an amended expropriation notice in accordance with section 6 (4) and serve it on

- (a) the inquiry officer,
- (b) every participant in the inquiry,
- (c) each owner of land added or deleted by the amendment, and
- (d) the approving authority.

(3) A person served under subsection (2) (c) may become a participant in the inquiry, and the inquiry officer may adjourn the inquiry for a period not exceeding 30 days from the time the person was served."

3. Confirmation or approval of intention to expropriate

Most of the codes provide that prior to the actual expropriation, the proposed expropriation must be confirmed by a "confirming authority". Details of this process vary from statute to statute, but such variations are not significant.

The confirmation occurs after an inquiry has been dispensed with, or no one with standing has requested one, or after the receipt of the hearing officers report. There is a requirement that the confirming authority consider the report but need not give effect to it. The purpose of the inquiry is merely to ensure that the confirming authority has all relevant information before it when it reaches its decision. The report must generally be furnished to all parties.

The confirmation process is administrative and thus may only be challenged via the review process on the grounds that the decision was unreasonable, or based on irrelevant considerations or that the decision maker failed to have regard to a relevant consideration or that the decision maker made their decision based on an incorrect interpretation of the law. A Court may not revisit the merits of the decision. The confirming authority does not sit as an appeal tribunal on the inquiry officer's report. There is merely a duty to consider.²

² *Walters v Essex (County) Board of Education* 20 D.L.R. (3d) 386, [1971] 3 O.R. 346; *affd.* (1973) 5 L.C.R. 144, 38 D.L.R. (3d) 693, [1974] S.C.R. 481.

The confirming authority need not carry out its functions in public. It is not bound by findings of fact or law in the report. Provided there is no suggestion of bad faith it may be briefed or counselled in advance by its solicitor or chair to reject the report. It need not publish reasons to show that its decision is reasonable though that runs risks on review. It may consider material outside the report if it wishes. The confirming authority need not grant a party an opportunity to make submissions.

Under the Canada Act, confirmation by the Minister of Public Works is effected by the Minister signing a notice of confirmation (s 14(1)).

"Notice of confirmation of intention

14. (1) The Minister may confirm an intention to expropriate an interest in land to which a notice of intention relates, or a more limited interest therein, by requesting the Attorney General of Canada to register a notice of confirmation, signed by the Minister, setting out,

- (a) if the interest expropriated is the same as the interest to which the notice of intention relates, a statement that the intention to expropriate that interest is confirmed; or
- (b) if the interest expropriated is a more limited interest than the interest to which the notice of intention relates, a statement that the intention to expropriate the interest to which the notice of intention relates is confirmed except as expressly specified in the statement."

4. REGISTRATION OF CONFIRMATION OR APPROVAL

Under the Canada Act, the Minister of Public Works requests the Attorney-General to register the notice of confirmation in the same land office where the notice of intention was registered: s14(2)

"Registration of notice

14(2) On receiving from the Minister a request to register a notice of confirmation described in this section, the Attorney General of Canada shall cause the notice to be registered in the office of the registrar where the notice of intention was registered, and if the land to which the notice of confirmation relates is more limited in area than the land described in the notice of intention, shall cause a revised plan of the land to which the notice of confirmation relates to be registered therewith.

R.S., c. 16(1st Supp.), s. 12."

Upon the registration of the notice, the interest becomes vested in the Crown - s15:

"Effect of registration of notice

15. On the registration of a notice of confirmation,

- (a) the interest confirmed to be expropriated becomes and is absolutely vested in the Crown; and
- (b) any other right, estate or interest is, as against the Crown or any person claiming through or under the Crown, thereby lost to the extent that that right, estate or interest is inconsistent with the interest confirmed to be expropriated.

R.S., c. 16(1st Supp.), s. 13".

The provincial codes also require this type of registration.

5. Abandonment of Intention to Expropriate

Under the Canada Act the intention to expropriate may be abandoned at any time, and it will be deemed to have been abandoned if not confirmed within 120 days from the date when the notice of intention was gazetted. See ss 11, 12:

"Confirmation or abandonment of intention

11. (1) Where a notice of intention has been given, the Minister may

- (a) confirm the intention, in the manner provided in section 14,
 - (i) if no objection is filed with him under section 9 within the period of thirty days referred to in that section,
 - (ii) if an objection has been filed with him under section 9 within the period of thirty days referred to in that section, after receiving and considering the report of a hearing officer appointed to conduct a public hearing with respect thereto, or
 - (iii) whether or not an objection has been filed with him under section 9, if a statement to the effect described in subsection 10(11) has been included in the notice of intention; or
- (b) abandon the intention.

Idem

(2) Where, on the expiration of one hundred and twenty days after the day the notice was given, the Minister has not confirmed the intention in the manner provided in section 14, the Minister shall be deemed to have abandoned the intention.

Where more limited interest only required

(3) Whenever, at the time of confirming an intention to expropriate an interest in land, the Minister is of the opinion that a more limited interest only is required by the Crown for a public work or other public purpose, the Minister may confirm the intention to expropriate the more limited interest, in which case the Minister shall be deemed to have abandoned the intention to expropriate the remainder of the interest.

R.S., c. 16(1st Supp.), s. 9.

"Notice of abandonment of intention

12. (1) Where the Minister has abandoned an intention to expropriate an interest in land otherwise than by confirming an intention to expropriate a more limited interest therein, the Minister shall forthwith cause a notice of abandonment of the intention to be sent

- (a) to each of the persons then appearing to have any right, estate or interest in the land, so far as the Attorney General of Canada has been able to ascertain them, and each other person who served an objection on the Minister under section 9; and
- (b) to the Attorney General of Canada, who shall thereupon confirm the abandonment by causing the notice to be registered in the office of the registrar where the notice of intention was registered.

Right of owner where abandonment of intention

(2) Where an intention to expropriate an interest or remainder of an interest in land has been abandoned, compensation in accordance with this Part shall be paid by the Crown to the person who was the owner of the interest or remainder at the time when the notice of intention was registered.

R.S., c. 16(1st Supp.), s. 10.

Additional factors to be taken into account

28. ...

Compensation payable where intention to expropriate abandoned

(2) Where an intention to expropriate an interest or remainder of an interest in land has been abandoned, the compensation payable by the Crown to the owner thereof is the amount of any actual loss sustained by the owner, after the time when the notice of intention was registered and

before the time when the abandonment of the intention, or the intention to expropriate a more limited interest, as the case may be, was confirmed, in consequence of the registration

- (a) of the notice of intention, where the intention to expropriate the interest has been abandoned; or
- (b) of the notice of intention in so far as that notice relates to the remainder of the interest, where the intention to expropriate the remainder has been abandoned."

Except for the provincial statutes of Alberta (ss 20, 24, 24(2)) and New Brunswick (ss 19(11)-(12)), the provincial statutes do not expressly provide for abandonment of the intention to expropriate. These statutes are similar to the Canada Act, with a 180 day expiry period applying in New Brunswick.

The Ontario Act requires a decision within 90 days (s 8(2)), but doesn't set out the consequences of failure. The Manitoba Act provides that if a confirming order is not made within 120 days of the date of the submission of the declaration of intention, the declaration is deemed to have been refused (s 9(4)). These two statutes also give time limits for registration of the approval and plan after approval is granted (see s 9(1) Ontario, s 10(1) Manitoba). Neither of these Acts provide for compensation for abandonment.

The Alberta (s 24), British Columbia (s18(4)), and New Brunswick (s 19(14)) Acts all provide for compensation upon the abandonment of intention to expropriate.

ii the provisions that exist for the payment of compensation, to whom and on what basis such compensation is valued;

The provisions of the "post-expropriation" procedures again vary from province to province. But the following factors are common features of most:

1. Notice of expropriation
2. Entry for appraisal
3. Statutory offer of compensation
4. Clarification of state of title
5. Negotiation
6. Right to possession or use
7. Determination of compensation

1. Notice of expropriation

Under the Canada Act there is no separate notice as such but the Minister is required upon registration of the notice of confirmation to send "forthwith" a copy of that notice to each of the persons appearing to have an interest - s16(1):

"Copies to be sent and offer of full compensation to be made

16. (1) Where a notice of confirmation has been registered, the Minister shall,
- (a) forthwith after the registration of the notice, cause a copy thereof to be sent to each of the persons then appearing to have any right, estate or interest in the land, so far as the

- Attorney General of Canada has been able to ascertain them, and each other person who served an objection on the Minister under section 9; and
- (b) within ninety days after the registration of the notice, or, if at any time before the expiration of those ninety days an application has been made under section 18, within the later of
- (i) ninety days after the registration of the notice, or
 - (ii) thirty days after the day the application is finally disposed of,

make to each person who is entitled to compensation under this Part, in respect of an expropriated interest to which the notice of confirmation relates, an offer in writing of compensation, in an amount estimated by the Minister to be equal to the compensation to which that person is then entitled under this Part in respect of that interest, not conditional on the provision by that person of any release or releases and without prejudice to the right of that person, if he accepts the offer, to claim additional compensation in respect thereof.

Where delay in offer

- (2) Where, in any case, it is not practicable for the Minister to make an offer of compensation under this section in respect of an expropriated interest within the applicable period described in paragraph (1)(b), the Minister shall make such an offer as soon as practicable after the expiration of that period and in any event before any compensation is adjudged by the Court to be payable under this Part in respect thereof, in which case, interest as described in subsection 36(4) is payable in addition to any other interest payable under section 36 to the person entitled to compensation in respect thereof.

Offer to be based on written appraisal

- (3) An offer of compensation made to a person under this section in respect of an expropriated interest shall be based on a written appraisal of the value of that interest, and a copy of the appraisal shall be sent to that person at the time of the making of the offer.

Statements to be included in copy of notice and in offer

- (4) There shall be included in any copy of a notice of confirmation sent to any person as described in paragraph (1)(a) a statement of the provisions of section 29 as that section applies to him, and there shall be included in any offer in writing sent to any person as described in paragraph (1)(b) a statement to the effect that the offer is not conditional on the provision by him of any release or releases and is made without prejudice to his right, if he accepts the offer, to claim additional compensation in respect of the expropriated interest.

R.S., c. 16(1st Supp.), s. 14."

Most of the other provincial statutes do specify a notice of expropriation - e.g. Manitoba Expropriation Act s 14:

"Notice of expropriation

14. Within 60 days after the registration of the declaration the authority shall serve every owner of the land with a notice of the expropriation thereof substantially in the prescribed form."

2. Entry for Appraisal.

This allows a limited right of entry onto the affected land in order to appraise its value so that an offer of compensation may be made. See s 37 of the Canada Act for example as to the procedure and scope of the limited right.

3. Statutory offer of compensation

These provisions provide a legal obligation for the expropriating authority to make or offer a payment to the owner in advance, before the total compensation has been determined by agreement or adjudication. This is a significant feature of the Canadian expropriation codes. Previously the land owner was placed in a difficult position because

the authority was not required to make any offer until the total compensation had been agreed or adjudicated. This was harsh on individuals without funds who sought to obtain alternative property or professional advice or assistance in the interim. It appears that some expropriating authorities voluntarily make advance payments amounting to up to 50% of the property value.

Details of the various provisions containing the offers are set out below:

Canada Act ss 16, 36(4), :

"Copies to be sent and offer of full compensation to be made

16. (1) Where a notice of confirmation has been registered, the Minister shall,
- (a) forthwith after the registration of the notice, cause a copy thereof to be sent to each of the persons then appearing to have any right, estate or interest in the land, so far as the Attorney General of Canada has been able to ascertain them, and each other person who served an objection on the Minister under section 9; and
 - (b) within ninety days after the registration of the notice, or, if at any time before the expiration of those ninety days an application has been made under section 18, within the later of
 - (i) ninety days after the registration of the notice, or
 - (ii) thirty days after the day the application is finally disposed of,

make to each person who is entitled to compensation under this Part, in respect of an expropriated interest to which the notice of confirmation relates, an offer in writing of compensation, in an amount estimated by the Minister to be equal to the compensation to which that person is then entitled under this Part in respect of that interest, not conditional on the provision by that person of any release or releases and without prejudice to the right of that person, if he accepts the offer, to claim additional compensation in respect thereof.

Where delay in offer

- (2) Where, in any case, it is not practicable for the Minister to make an offer of compensation under this section in respect of an expropriated interest within the applicable period described in paragraph (1)(b), the Minister shall make such an offer as soon as practicable after the expiration of that period and in any event before any compensation is adjudged by the Court to be payable under this Part in respect thereof, in which case, interest as described in subsection 36(4) is payable in addition to any other interest payable under section 36 to the person entitled to compensation in respect thereof.

Offer to be based on written appraisal

- (3) An offer of compensation made to a person under this section in respect of an expropriated interest shall be based on a written appraisal of the value of that interest, and a copy of the appraisal shall be sent to that person at the time of the making of the offer.

Statements to be included in copy of notice and in offer

- (4) There shall be included in any copy of a notice of confirmation sent to any person as described in paragraph (1)(a) a statement of the provisions of section 29 as that section applies to him, and there shall be included in any offer in writing sent to any person as described in paragraph (1)(b) a statement to the effect that the offer is not conditional on the provision by him of any release or releases and is made without prejudice to his right, if he accepts the offer, to claim additional compensation in respect of the expropriated interest.

R.S., c. 16(1st Supp.), s. 14."

"Additional interest where delay in offer

- 36(4) Where an offer is not made until after the expiration of the applicable period described in paragraph 16(1)(b) for the making of the offer, interest, in addition to any interest payable under subsection (2) or (3), is payable by the Crown at the rate of five per cent per annum on the compensation, from the expiration of that period to the day on which an offer is made.

The Ontario, Manitoba and New Brunswick statutes are all similar. See Ontario (s25)
New Brunswick (s37)

Manitoba Expropriation Act s 16:

"Offer of compensation

16(1) Within 120 days after the registration of 16(1) the declaration and before serving a notice for possession of the land the authority shall serve upon every registered owner of the land an offer in writing stating:

- (a) the amount that the authority offers in compensation for the market value of the owner's estate or interest in the land and the amount that the authority offers in compensation for the market value of all the estates and interests in the land;
- (b) that the authority offers to pay immediately to the person entitled thereto the entire amount offered in compensation for the market value of the owner's estate or interest in the land;
- (c) unless the market value has been estimated for the purposes of clause (b) upon the basis of a use of the land other than the existing use, that the authority offers to pay:
 - (i) the moving costs, as they are incurred, that are reasonably incurred by an owner in possession of the land at the time the declaration or expropriation was filed, and
 - (ii) the costs, as they are incurred, that are reasonably incurred by any owner in possession of the land at the time the declaration or expropriation was filed of removing and relocating any fixture or structure owned by that owner and situated on the land at the time the declaration or expropriation was filed; and
- (d) that the payment and receipt of the amount estimated for the purposes of clause (b) or of any amount under clause (c) is without prejudice to the rights conferred by this Act in respect of the determination of the compensation and that the amounts are subject to adjustment in accordance with the compensation that is subsequently agreed upon or determined under this Act.

Offer may contain offer of due compensation

16(2) An offer served on a registered owner by an authority may state

- (a) the amount that the authority offers in full settlement of due compensation to the owner including that part thereof that is not compensation for the market value of the owner's estate or interest in the land; and
- (b) the total amount that the authority offers in full settlement of due compensation to all registered owners including that part thereof that is not compensation for the market value of the owners' estates or interests in the land.

Offer of further portion of due compensation

16(3) Where an offer served on a registered owner by an authority states in accordance with clause

(2)(a) the amount that the authority offers in full settlement of due compensation to the owner, the offer may also state

- (a) that the authority offers to pay immediately to the person entitled thereto, in addition to the amount offered to be paid in accordance with clause (1)(b) in compensation for the market value of the owner's estate or interest in the land and the amounts offered to be paid in accordance with clause (1)(c) as moving costs and costs of removing and relocating any fixture or structure, an amount equal to 75% of that part of the amount offered in full settlement of due compensation that is in excess of the total of
 - (i) the amount offered to be paid in accordance with clause (1)(b) in compensation for the market value of the owner's estate or interest in the land, and
 - (ii) the amounts offered to be paid in accordance with clause (1)(c) as moving costs and costs of removing and relocating any fixture or structure; and
- (b) that payment and receipt of the amount calculated for the purpose of clause (a) is without prejudice to the rights conferred by the Act in respect of the determination of due compensation payable by the authority and that the amount of due compensation payable

by the authority is subject to adjustment in accordance with due compensation that is subsequently agreed upon or determined under this Act.

Offer may refer to amounts owing under liens

16(4) Where a registered owner's estate or interest in the land is subject to a registered lien, charge, mortgage or encumbrance on the land, the offer served on the owner by the authority may state the amount that the authority offers in compensation to the owner for the market value of his estate or interest free and clear of the lien, charge, mortgage or encumbrance and indicate that the amount will be reduced by any amount needed to be paid to the holder of the lien, charge, mortgage or encumbrance to obtain the owner's estate or interest free and clear of the lien, charge, mortgage or encumbrance.

Offer to holder of lien, etc.

16(5) Where a registered owner upon whom an offer is served holds a registered lien, charge, mortgage or encumbrance on the land, the offer may state the charge amount that the authority offers in compensation to the owner for the market value of the lien, charge, mortgage or encumbrance, as an indefinite amount needed to be paid to the owner to obtain from him the discharge, withdrawal, postponement or removal of the lien, charge, mortgage or encumbrance not exceeding the amount that the authority offers to pay the owner whose estate or interest is subject to the lien, charge, mortgage or encumbrance as compensation for the market value of his estate or interest free and clear of the lien, charge, mortgage or interest.

Offer to be held open for acceptance

16(6) Where the authority makes an offer to an owner under this section, the authority:

- (a) shall hold open the offer for acceptance by the owner until an amount is certified under subsection 15(2); and
- (b) may, from time to time before the offer is accepted by the owner or an amount is certified under subsection 15(2), amend the offer by serving the owner with an amended offer.

16(7) Repealed, S.M. 1993, c. 25, s. 5.

S.M. 1988-89, c. 28, s. 3; S.M. 1989-90, c. 90, s. 16; S.M. 1993, c. 25, L.R.M. 1987, corr.; L.M. 1988-89, c. 28, art. 3; L.M. 1989-90, c. 90, s. 5. art. 16; L.M. 1993, c. 25, art. 5."

There are also statutory offer provisions under the Alberta, British Columbia, Nova Scotia and Saskatchewan Acts, and the Yukon Ordinance.

5. Negotiation

Some statutes provide for a procedure where parties can gain the assistance of an impartial third party when negotiating compensation.

Canada Act s 30:

"Payment of Compensation

Notice to Minister or owner to negotiate settlement of compensation payable

30. (1) Where, after an offer of compensation in respect of an expropriated interest has been made under section 16 to any person, in this section referred to as "the owner", the owner and the Minister are unable to agree on the amount of compensation to which the owner is then entitled, either the owner or the Minister may, within sixty days after the making of the offer, serve on the other a notice to negotiate settlement of the compensation to which the owner is then entitled.

Stay of proceedings

(2) Where a notice referred to in subsection (1) has been served as provided in that subsection, no proceedings under sections 31 and 32 shall be instituted, or if instituted shall be proceeded with, by or on behalf of either the owner or the Attorney General of Canada in respect of the expropriation, until the expiration of sixty days from the serving of the notice, unless before the expiration of those sixty days the negotiator to whom the matter is referred under subsection (4) has made a report to the Minister that he has been unable to effect a settlement and has sent a copy of his report to the owner.

Appointment of negotiators; remuneration, etc.

(3) The Governor in Council, on the recommendation of the Attorney General of Canada, may appoint one or more suitable persons, who are not persons employed in the Public Service as defined in subsection 3(1) of the Public Service Superannuation Act, to act as negotiators for the purposes of this section, and may fix and authorize payment of the remuneration and expenses to be paid to those persons for any period while they are so acting.

Reference to negotiator

(4) Forthwith after any notice to negotiate is served on the Minister or an owner in accordance with this section, the Minister shall refer the matter to a negotiator appointed under subsection (3) who shall, on reasonable notice to the owner and the Minister, meet with them or their authorized representatives, make such inspection of the land as he deems necessary, receive and consider any appraisals, valuations or other written or oral evidence submitted to him on which either the owner or the Minister relies for his estimation of the amount of the compensation payable, whether or not the evidence would be admissible in proceedings before a court, and endeavour to effect a settlement of the compensation payable.

Report of negotiator

(5) The negotiator shall, within sixty days from the service of the notice to negotiate, report to the Minister his success or failure in the matter of the negotiation, and shall thereupon send a copy of his report to the owner.

Statements in course of negotiation

(6) Evidence of anything said or of any admission made in the course of a negotiation under this section is not admissible in any proceedings before a court for the recovery or determination of the compensation payable to the owner.

R.S., c. 16(1st Supp.), s. 28.

Ontario has quite complex provisions relating to negotiation procedures. Refer to ss 26 and 27.

In Manitoba, the negotiation procedure is handled by the Land Value Appraisal Commission, established under the Land Acquisition Act (RSM 1970). Sections 11-14 of this Act govern the Commission See also s15 of the Manitoba Act as follows:

"Application to commission to determine compensation

15(1) After an offer of compensation is served under section 16, the authority or an owner of the land may, subject to section 37 (time limits), apply to the commission, in accordance with the rules of the commission, for the determination of compensation payable by the authority to the owner for the expropriation.

Certification of amount by commission

15(2) On receiving an application under subsection (1), the commission shall give the authority and owner of the land an opportunity to be heard and shall determine and certify the compensation payable by the authority to the owner.

Certified amount is binding

15(3) Subject to subsection (6) and section 44 15(3) (appeal), an amount certified by the commission under subsection (2) is binding on the authority and the owner.

Authority to pay prescribed fee

15(4) The authority shall pay any fee or charge that is prescribed in respect of a proceeding under subsection (2).

Commission may vary certified amount

15(5) Where new evidence is available after an amount is certified under subsection (2), the authority or owner may, within 30 days after the date of the certificate, apply to the commission for a variation of the certified amount, and the commission may, where it is satisfied that the new evidence was not available at the time of the certification, vary the certified amount and, where the amount is varied, the commission shall certify the new amount of compensation payable.

Authority to pay costs of owner

15(6) The authority shall pay reasonable appraisal, legal and other costs that are reasonably incurred by an owner for the purpose of determining the compensation payable under this Act for an expropriation.

Commission may determine costs

15(7) Where the amount of compensation payable under this Act for an expropriation is settled by the authority and an owner without a hearing or is determined by the commission, the commission may, on application by the authority or owner, determine the costs.

S.M. 1988-89, c. 28, s. 2; S.M. 1993, c. 25, s. 4. "

There are also varieties of negotiation procedures under the Nova Scotia (s 36(1)), and Saskatchewan (s8) Acts and the Yukon Ordinance (ss 13, 14). None of these seem particularly distinct. The Alberta, British Columbia, New Brunswick and Quebec Acts do not make any provision for negotiation.

7. Determination of compensation

Disputed compensation claims are dealt with by the Courts in 6 jurisdictions (Canada, Quebec, New Brunswick, Manitoba, Saskatchewan Alberta the Northwest Territories), by permanent boards in 6 jurisdictions (Nova Scotia, Ontario, Manitoba, Alberta, British Columbia), and by *ad hoc* arbitration boards in 3 jurisdictions (Newfoundland, Prince Edward Island and Yukon Territory). Each situation is governed by its own legislation.

Basic Principles of Compensation

Generally, the approach used in Canada is "Market value plus". This follows the United Kingdom approach, and seeks to reinstate the "value to the owner". Constituent elements in a compensation claim will consist of one or more of the following:

- market value
- special value
- disturbance damages
- several interests
- severance damages and injurious affection
- mitigation and abandonment
- interests and costs

See the Canada Act, ss 25, 26 below.

"Compensation

Right to compensation

25. (1) Compensation shall be paid by the Crown to each person who, immediately before the registration of a notice of confirmation, was the owner of a right, estate or interest in the land to which the notice relates, to the extent of his expropriated interest, the amount of which compensation shall be equal to the aggregate of

- (a) the value of the expropriated interest at the time of its taking, and
- (b) the amount of any decrease in value of the remaining property of the owner, determined as provided in section 27.

Time as of which value to be determined

- (2) For the purposes of this section and sections 26 and 27, the time of the taking of an expropriated interest is,
- (a) where an election has been made under subsection (3) by the owner thereof, the time specified by him in his election; and
 - (b) in any other case, the time when the notice of confirmation was registered.

Election as to time where notice of confirmation not sent until after ninety days from registration

(3) Where no copy of a notice of confirmation was sent to a person whose name is set out in the report of the Attorney General of Canada referred to in subsection 5(2) or who served an objection on the Minister under section 9 until a time more than ninety days after the registration of the notice, that person may, at any time before any compensation is paid to him in respect of any expropriated interest of which he was the owner immediately before the registration of the notice of confirmation, elect to have the value of the interest determined at either

- (a) the time when the notice of confirmation was registered, or
 - (b) the time when the copy of the notice of confirmation was sent to him,
- as specified by him in his election.

R.S., c. 16(1st Supp.), s. 23.

Rules for determining value

26. (1) The rules set out in this section shall be applied in determining the value of an expropriated interest.

The Act applies the “willing buyer/willing seller” test in respect of determining market value.

Market value defined

(2) Subject to this section, the value of an expropriated interest is the market value thereof, that is to say, the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer.

Where owner required to give up occupation

(3) Where the owner of an expropriated interest was in occupation of any land at the time the notice of confirmation was registered and, as a result of the expropriation, it has been necessary for him to give up occupation of the land, the value of the expropriated interest is the greater of

- (a) the market value thereof determined as set out in subsection (2), and
- (b) the aggregate of
 - (i) the market value thereof determined on the basis that the use to which the expropriated interest was being put at the time of its taking was its highest and best use, and
 - (ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance, including moving to other premises, but if those costs, expenses and losses cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the market value determined as set out in subparagraph (i),

plus the value to the owner of any element of special economic advantage to him arising out of or incidental to his occupation of the land, to the extent that no other provision is made by this paragraph for the inclusion thereof in determining the value of the expropriated interest.

Where Crown has taken physical possession of land

(4) In any case where the Crown has taken physical possession or made use of the land referred to in subsection (3) on the expiration of a period of notice to the owner shorter than the ninety days mentioned in paragraph 19(1)(c), there shall be added to the value of the expropriated interest otherwise determined under this section an additional amount equal to ten per cent thereof.

Where specially designed building erected on land

(5) Notwithstanding subsection (3), where any parcel of land to which a notice of confirmation relates had any building or other structure erected thereon that was specially designed for use for the purpose of a school, hospital, municipal institution or religious or charitable institution or for

any similar purpose, the use of which building or other structure for that purpose by the owner has been rendered impracticable as a result of the expropriation, the value of the expropriated interest is, if the expropriated interest was and, but for the expropriation, would have continued to be used for that purpose and at the time of its taking there was no general demand or market therefor for that purpose, the greater of

- (a) the market value of the expropriated interest determined as set out in subsection (2), and
- (b) the aggregate of
 - (i) the cost of any reasonably alternative interest in land for that purpose, and
 - (ii) the cost, expenses and losses arising out of or incidental to moving to and re-establishment on other premises, but if those costs, expenses and losses cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the cost determined under subparagraph (i),

minus the amount by which the owner has improved, or may reasonably be expected to improve, his position through re-establishment on other premises.

Where Crown has taken physical possession of land

(6) In any case where the Crown has taken physical possession or made use of the parcel of land referred to in subsection (5) on the expiration of a period of notice to the owner shorter than the ninety days mentioned in paragraph 19(1)(c), there shall be added to the value of the expropriated interest otherwise determined under this section an additional amount equal to ten per cent thereof.

Additional factors

(7) For the purposes of subparagraphs (3)(b)(ii) and (5)(b)(ii), consideration shall be given to the time and circumstances in which a former owner was allowed to continue in occupation of the land after the Crown became entitled to take physical possession or make use thereof, and to any assistance given by the Minister to enable the former owner to seek and obtain alternative premises.

Land used for residence

(8) Where an expropriated interest was, immediately before the registration of a notice of confirmation, being used by the owner thereof for the purposes of his residence and the value of the interest otherwise determined under this section is less than the minimum amount sufficient to enable the owner, at the earlier of

- (a) the time of payment to him of any compensation in respect of the interest, otherwise than pursuant to any offer made to him under section 16, and
- (b) the time when the Crown became entitled to take physical possession or make use of the land to the extent of the interest expropriated,

to relocate his residence in or on premises reasonably equivalent to the premises expropriated, there shall be added to the value of the interest otherwise determined under this section the amount by which that minimum amount exceeds that value.

Moving and relocation expenses of owner of leasehold interest

(9) Where an expropriated interest was, immediately before the registration of a notice of confirmation, owned by the owner thereof as a leasehold interest, there shall be substituted for the amount determined under subparagraph (3)(b)(ii) or (5)(b)(ii), or the amount by which the minimum amount referred to in subsection (8) exceeds the value of the interest referred to therein otherwise determined under this section, as the case may be, such part of that amount as is appropriate having regard to

- (a) the length of the term of the leasehold interest and the portion of the term remaining at the time at which the determination is relevant;
- (b) any right or reasonable prospect of renewal of the term that the owner of the leasehold interest had; and
- (c) any investment in the land by the owner of the leasehold interest and the nature of any business carried on by him thereon.

Land subject to security interest

(10) Where an expropriated interest was, immediately before the registration of a notice of confirmation, subject to an interest in land that was held by the owner thereof as security only, in this subsection called a "security interest",

- (a) the value of the expropriated interest is the aggregate of

- (i) the value thereof otherwise determined under this section as though it had not been subject to any security interest, and
- (ii) the amount of any loss or anticipated loss to the owner of the expropriated interest resulting from a difference in rates of interest during the remainder of the period for which any principal amount payable under the terms of the security was advanced, that difference to be calculated on the basis of an assumed rate of interest not in excess of the prevailing rate of interest for an equivalent security, to the extent that no other provision is made by this section for the inclusion of an amount in respect of the loss or anticipated loss in determining the value of the expropriated interest,

less the value of each security interest to which the expropriated interest was subject, determined as provided in paragraph (b) but as though no amount were included therein by virtue of subparagraph (ii) of that paragraph;

- (b) the value of the security interest is the aggregate of
 - (i) the principal amount outstanding under the terms of the security, and any interest due or accrued thereunder, at the time of the registration of the notice of confirmation, and
 - (ii) an amount equal to three times the interest element, calculated as a monthly amount, of any payment of interest or of principal and interest payable under the terms of the security at the rate in effect thereunder immediately before the registration of the notice of confirmation,

and where the expropriated interest was subject to more than one security interest, the value of each security interest shall be determined in the order of its priority but in no case shall the value of any security interest to which an expropriated interest was subject exceed the value of the expropriated interest otherwise determined under this section as though it had not been subject to any security interest, less the value of each other security interest the value of which is required by this subsection to be determined in priority thereto; and

- (c) where part only of the interest that was subject to a security interest was expropriated, the value of the security interest is that proportion of the value thereof otherwise determined under this subsection as though the whole of the interest subject to the security interest had been expropriated, that
 - (i) the value of the part only of the interest, otherwise determined under this subsection as though it had not been subject to any security interest,
 is of
 - (ii) the value of the whole of the interest otherwise determined under this subsection as though it had not been subject to any security interest,

less the same proportion of the interest element of any payment made under the terms of the security, between the time of the registration of the notice of confirmation and the time of payment of any compensation in respect of the security interest, otherwise than pursuant to any offer made to the owner thereof under section 16.

Factors not to be taken into account

- (11) In determining the value of an expropriated interest, no account shall be taken of
- (a) any anticipated or actual use by the Crown of the land at any time after the expropriation;
 - (b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where the transaction or agreement was entered into after the registration of the notice of intention to expropriate;
 - (c) any increase or decrease in the value of the interest resulting from the anticipation of expropriation by the Crown or from any knowledge or expectation, prior to the expropriation, of the public work or other public purpose for which the interest was expropriated; or
 - (d) any increase in the value of the interest resulting from its having been put to a use that was contrary to law.

R.S., c. 16(1st Supp.), s. 24."

In some special circumstances market value may be of no particular application (such as where the building in question is a school or a church which is not commonly traded and produces no commercial income. In such rare cases the principle of reinstatement may be applied. Reinstatement seeks to place the owner in a substantially equivalent position by means of substituted property. One important example of this is a “home for a home.” See s 26(5) of the Canada Act for example.

Disturbance damage

This is economic loss suffered by an owner by reason of having to vacate expropriated property. It seems all the statutes are fairly similar, and follow Canada s 26(3)(b)(ii):

"Where owner required to give up occupation...

- (b) the aggregate of...
 - (ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance, including moving to other premises, but if those costs, expenses and losses cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the market value determined as set out in subparagraph (i),..."

However, s 13(2)(d) of the Ontario Act contains a unique provision relating to compensation for "special difficulties in relocation".

Where the principal residence is being taken, some provincial statutes provide for an additional allowance of 5% of the market value of that part of the property used for residential purposes to compensate for the inconvenience and the cost of finding another residence. For example, Manitoba s 28(1)(a):

"Compensation for disturbance of owner

28(1) Subject to subsection (3), the authority shall pay to an owner in respect of disturbance, such reasonable costs, expenses and losses as arise out of or are incidental to the expropriation, including

- (a) where the land includes the residence of an owner, other than a tenant, an allowance to compensate for the inconvenience and the cost of finding another residence in the amount of five per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, if that part was not being offered for sale on the date the declaration was signed;"

Other statutes with this provision are Alberta, New Brunswick and Ontario. In British Columbia, the allowance is limited to the principal place of residence (s37(1)(a)).

Businesses can also be entitled to payments for relocation, and also Business Disturbance (Temporary and permanent loss of profits). These come under the disturbance provisions as discussed above.

Injurious affection

Some Canadian statutes provide for compensation for injurious affection. The Canada Act provides some compensation for injurious affection in a partial taking situation: s 27(2).

"Decrease in value of remaining property where severance

27. (1) The amount of the decrease in value, if any, of the remaining property of an owner is the value of all of his interests in land immediately before the time of the taking of the expropriated interest, determined as provided in section 26, minus the aggregate of
(a) the value of the expropriated interest; and
(b) the value of all his remaining interests in land immediately after the time of the taking of the expropriated interest.

Injurious affection, etc., as factor in determining change in value of remaining property

(2) For the purpose of paragraph (1)(b), the value of the remaining interests in land of an owner immediately after the time of the taking of the expropriated interest shall be determined as provided in section 26, except that in determining that value account shall be taken of any increase or decrease in the value of any remaining interest in land of the owner, that immediately before the registration of the notice of confirmation was held by him together with the expropriated interest, resulting from the construction or use or anticipated construction or use of any public work on the land to which the notice relates or from the use or anticipated use of that land for any public purpose.

R.S., c. 16(1st Supp.), s. 25."

There are different situations where the injurious affection has been caused by part of the claimant's land being taken, and where none of the claimant's land has been taken.

Easements etc.

Surface rights are generally dealt with under other statutes in Canada. The principle ones are:

- Petroleum and Natural Gas Act RSBC 1979 c 323, s21
- Pipeline Act RSBC 1979, c328
- Railway Act RSBC 1979 c354
- Surface Rights Act SA 1983 c.S-27.I, s25
- The Surface Rights Act SM 1987-88, c62 CCSM S235, s26
- The Surface Rights Acquisition and Compensation Act RSS 1978, s. S-65, s29
- National Energy Board Act RSC 1985, c. N-7, Part V.

iii whether powers of compulsory acquisition exist and if so, the criteria under which such provisions can be invoked.

They do exist. See the discussion above.

iv whether separate provisions exist for the acquisition of land by agreement and, if so, whether the compensation provisions are set in legislation and are the same as for the compulsory acquisition of land.

It seems that there are no separate provisions for acquisition by agreement. Note that on the confirmation of a expropriation the expropriating authority must make an offer on the

property immediately. Thus agreement may occur at this stage though against the background of a confirmed expropriation. Otherwise it is assumed that an authority simply treats with an owner with the threat of recourse to expropriation procedures. Obviously such negotiations would not be subject to the compensation regime.

v **whether a definition of “public work” or “public purpose” is provided and whether there is any differentiation between “essential” work and “non essential” work;**

No definitions were found. However as expropriation is a statutory power an expropriating authority must exercise it in accordance with its statutory purposes and duties, otherwise the exercise will be ultra vires and illegal.

vi **the mechanism for recording the transfer of ownership to the state;**

This is discussed above. See ss 14 and 15 Canada Act. Upon the registration of the confirmation notice, the interest becomes vested in the Crown. See s 15:

Under the Canada Act, the Minister of Public Works requests the Attorney-General to register the notice of confirmation in the same land office where the notice of intention was registered: s14(2)

"Registration of notice

14(2) On receiving from the Minister a request to register a notice of confirmation described in this section, the Attorney General of Canada shall cause the notice to be registered in the office of the registrar where the notice of intention was registered, and if the land to which the notice of confirmation relates is more limited in area than the land described in the notice of intention, shall cause a revised plan of the land to which the notice of confirmation relates to be registered therewith.

R.S., c. 16(1st Supp.), s. 12."

Upon the registration of the notice, the interest becomes vested in the Crown - s15:

"Effect of registration of notice

15. On the registration of a notice of confirmation,

- (a) the interest confirmed to be expropriated becomes and is absolutely vested in the Crown; and
- (b) any other right, estate or interest is, as against the Crown or any person claiming through or under the Crown, thereby lost to the extent that that right, estate or interest is inconsistent with the interest confirmed to be expropriated.

R.S., c. 16(1st Supp.), s. 13".

The provincial codes also require this type of registration.

vii **what interest in land may be acquired;**

All types of interest may be acquired as in other jurisdictions. The notice of intention to expropriate must state the interest to be acquired. See s 5(1) of the Canada Act.

viii whether there are any distinctions between the use of acquisition powers by federal or state agencies;

There is both federal and state legislation and though procedures are similar there are differences in the legislation as discussed throughout the course of the discussion of the legislative provisions. Which set of provisions apply to an expropriation depends of the acquiring body or the location of the land to be acquired.

ix whether acquisition of aboriginal lands is dealt with in a different manner in any of the above respects. Include whether the compensation provisions contemplate a “valuation of or compensation for” spiritual or other special values that aboriginal peoples may have in respect of land.

Acquisition of reserve lands and other lands subject to self determination Acts or land settlements is restricted under the Canada Expropriation Act and the Indian Act. See discussion below.

No special provisions were found in respect of compensation for aboriginal lands or spiritual or other special values.

b) Disposal provisions.

The Canadian authorities are generally not subject to restrictions when disposing of surplus land. Consequently, this area of law is not very well developed.

i the general principles adopted when land held for a public purpose is no longer required for that purpose (or any other public purpose);

There is no provision in the Canada Act governing disposal of land. However, the Ontario, Manitoba, Alberta and British Columbia Acts do have disposal sections. The Alberta and British Columbia Acts also confer rights on successors. However the disposal provisions are of limited application as compared with the New Zealand disposal provisions. Importantly the provisions state that the approval authority may give permission to dispose of the land without offerback.

Manitoba Act s51

"Restriction on disposal of expropriated land

51(1) Where an authority has expropriated part of a parcel of land and, finding it no longer requires the land or a part thereof, decides to dispose of the land or a part thereof, if the owner of the parcel at the time of expropriation is still at the time of disposal the owner of the unexpropriated part of the parcel, the authority shall not, without the approval of the confirming authority, which in the case of a municipality or school division or school district may be given by resolution of the council or board thereof, dispose of the surface of the lands or any part of the surface of the lands without giving the owner from whom the land was expropriated the first chance to repurchase the lands on the terms of the best offer received by the authority.

Application of subsection (1)

51(2) Subsection (1) does not apply to the sale or disposal of any building, improvement or fixture on the land at the time of expropriation."

British Columbia Act s21

"Divesting after expropriation

21 (1) If, within 2 years after filing the vesting notice under section 23, the expropriating authority determines that the land is no longer required for its purposes, the authority must not, without the approval of the approving authority, dispose of the land without first offering it to the owner from whom the land was taken, or his or her successor.

(2) If an owner referred to in subsection (1) wishes to re-acquire the land expropriated, but cannot agree with the expropriating authority on the purchase price, the chair must summarily determine the market value of the land as at the time of making his or her summary determination, and that amount is the purchase price.

(3) The costs of proceedings under this section must be borne by the parties, unless the chair, in special circumstances, orders the expropriating authority or the owner to bear the costs of the other.

(4) Part 7 of the Land Title Act applies to a re-acquisition under this section."

The McRuer report considered the lack of restrictions upon disposal to be an unjustified encroachment upon the rights of owners and as encouraging "excess expropriation" in order that a speculative profit might be made. The issue of excess expropriation is a difficult issue which has also been the subject to discussion in the United States (excess condemnation). It occurs where extra land is taken next to a development such as a highway. Once complete the extra land is sold at an enhanced value. It is possible to argue that the excess value belongs to the state which paid for the development in any event. Note also New Zealand's approach seems superior where in assessing compensation on taking any increase or enhancement in the value of the remainder of the land is taken into account.

The McRuer report advised that it was not practical to confer a pre-emptive right on former owners. Each case required individual consideration in light of its particular facts. It was also seen as impractical to lay down fixed rules in respect of the price at which an offer back ought to be made. Rather the report favoured a system whereby land would not be disposed of without the consent of the appropriate approving authority. The approving authority would consider the matter and in particular whether it was practical in the circumstances to make an offer back. The authority could make inquiry into the desires of the former own and the price at which nay offer should be made.

It is not clear whether those matters would be statutory requirements or simply non statutory guidelines or policy to be followed by the approving authority. In any event the proposal obviously intended to afford the authority greater freedom as to offer back than would exist under fixed statutory pre-emptive rights similar to those which exist in New Zealand's disposal regime. The recommendation certainly bears similarities to the non statutory Crichel Down rules which operate in the United Kingdom.

There have been incidences in Ontario (where disposal restrictions exist) of expropriating authorities seeking waivers of pre-emptive rights from owners on acquisition. It is unclear as to how enforceable such a waiver might be.

In any event unless expropriation occurs there is no right of repurchase. The right does not apply where the consent of the owner is given in respect of a proposed acquisition.

ii whether provisions (similar to the statutory offer contained in section 40 of the Public Works Act 1981) exist to return surplus land to the person from whom it was acquired for the public purpose. Where such provisions exist, on what terms and conditions is such an offer made;

Offer back requirements exist in some areas. See the discussion above.

iii any mechanism for returning land to successors of former owners where the former owner has died and whether this is restricted to immediate successors;

In British Columbia and Ontario such provisions exist.

iv whether provisions exist to reunite the surplus land with the original title notwithstanding current land ownership;

No provisions were found.

v where “offer back” type provisions do exist, whether there is any time limit after which an offer is not required, i.e. is the right of the former owner to receive an offer extinguished after a certain time period following acquisition;

The Ontario and Manitoba jurisdictions have no time limits. British Columbia and Alberta have a 2 year time limit.

vi the degree of contestability of the disposal process required when disposing of surplus land;

The provisions that exist in respect of offer back are statutory and are thus subject to judicial review where the decision maker acts unreasonably or illegally.

vii whether surplus land acquired for a public work is exempt from normal subdivisional requirements on disposal;

No relevant information.

viii whether former aboriginal land is dealt with in a different manner.

No special provisions were found.

c) Analysing what provisions exist for private providers (e.g. utility companies) of public services as against core and local government.

Certain private providers can exercise powers of expropriation. See the discussion above. Many federal Acts confer powers on ministries, government and quasi-governmental agencies, railway and pipeline companies, and private utility type enterprises. In respect of each body it is necessary to interpret the relevant statute to determine the extent of the powers, and the purposes for which they have been granted. Procedures in respect of such expropriations will normally be controlled by the appropriate expropriation code.

It is not possible to analyse all the statutory provisions. The McRuer Report³ noted that in Ontario, over 8000 authorities had powers of expropriation. See also the discussion in respect of securing easements via expropriation above.

d) Analysing any compliance and enforcement provisions that exist to ensure acquisition and disposal requirements are adhered to.

There is no specialist body or provisions to ensure compliance. Expropriation by the various departments is the exercise of an administrative power and is subject to the purvey of the Courts acting on review. The same would apply to the exercise by a private provider of a statutory power of expropriation.

e) Analysing the form of legislation and related legislation i.e. is the legislation enabling or prescriptive. Are the provisions for acquisition and disposal prescribed or left to the discretion of the decision maker, are the provisions contained in one piece of legislation or spread over a number of separate Acts depending on the nature of the work.

The form of the legislation is similar to New Zealand (and the United Kingdom although more consolidated) Provisions authorising expropriation are contained in a number of specific acts and the power is ancillary to the exercise of the expropriating authorities functions. It is necessary to examine the statute in the case of each body to determine the extent and nature of the power conferred and the purposes for which it may be used.

The procedures for the implementation of expropriation and compensation payable are consolidated and codified in the various expropriation acts of each state and the commonwealth.

f) Analysing when the legislation was last amended and the nature of those amendments. Also include any other recent amendments (within the last twenty years) that significantly modify or change the acquisition and/or disposal provisions, particularly as they relate to aboriginal or customary land rights.

The amendments are largely noted in the full text of each statute and the footnotes to this report. The Canada Act and the Ontario Act on which it was based were designed to bring about a more enlightened approach to expropriation in terms of process and compensation. It would appear that such an approach has largely been achieved as

³ First Report of the Royal Commission Inquiry into Civil Rights, February 1968.

compared to the old approach which is still evident in Quebec, Prince Edward Island and Saskatchewan.⁴

g) Analysing any general provisions or exclusions in public works legislation relating to aboriginal peoples vis a vis treaties, or agreements between a government and an aboriginal people.

The Canadian Bill of Rights guarantees the right of aboriginal peoples to be free from discrimination.

"BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; "

There also exist various restrictions in respect of the exercise of powers of expropriation in relation to Indian lands held in reserves or which are the subject to treaties between the Indian peoples and the Canadian government. In particular the consent of the Governor in Council is required before exercising expropriation in respect of reserve lands.

For instance the Indian Act R.S., c.I-6, s.1:

"Exemption from seizure

29. Reserve lands are not subject to seizure under legal process. R.S., c. I-6, s. 29.

"LANDS TAKEN FOR PUBLIC PURPOSES

Taking of lands by local authorities

35. (1) Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

Procedure

(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.

Grant in lieu of compulsory taking

(3) Whenever the Governor in Council has consented to the exercise by a province, a municipal or local authority or a corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the

⁴ See Eric Todd "The Law of Expropriation and Compensation in Canada" (2nd ed) 1992 Carswell

consent of the owner, authorize a transfer or grant of the lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

Payment

(4) Any amount that is agreed on or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection (1). R.S., c. I-6, s. 35. "

The Indian Act does not apply to the Inuit.

"APPLICATION OF ACT

Application of Act

4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Inuit."

The expropriation Act itself contains restrictions upon the exercise of expropriation powers in respect of Indian or aboriginal lands which are the subject of specific self determination Acts or settlements.

See for example the Canada Act s 4:

Acquisition and Abandonment of Land

Authority to expropriate

4. (1) Any interest in land, including any of the interests mentioned in section 7, that, in the opinion of the Minister, is required by the Crown for a public work or other public purpose may be expropriated by the Crown in accordance with the provisions of this Part.

Exception

(2) No interest in land that is Category IA land or Category IA-N land, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984, may be expropriated under this Part without the consent of the Governor in Council.

Exception

(3) No interest in lands that are "Sechelt lands", as defined in the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986, may be expropriated under this Part without the consent of the Governor in Council.

Exception

(4) No interest in settlement land as defined in section 2 of the *Yukon Surface Rights Board Act* may be expropriated under this Part without the consent of the Governor in Council.

Exception

(5) No interest in Tetlit Gwich'in Yukon land may be expropriated under this Part without the consent of the Governor in Council.

Notice of intention

(6) Where an interest in land referred to in subsection (4) or (5) is to be expropriated, notice of intention to obtain the consent of the Governor in Council shall be given to the Yukon first nation or Gwich'in Tribal Council, as the case may be, on completion of any public hearing and submission of a report to the Minister required by section 10 or, if no hearing is held, on the expiration of the period of thirty days referred to in section 9.

Definition of "Tetlit Gwich'in Yukon land"

(7) In this section, "Tetlit Gwich'in Yukon land" means land as described in Annex B, as amended from time to time, to Appendix C of the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich'in, as represented by the Gwich'in Tribal

Council, that was approved, given effect and declared valid by the *Gwich'in Land Claim Settlement Act*.

The United Kingdom

Preliminary comments re jurisdiction.

In the United Kingdom the rule of law has protected private property rights since Magna Carta. As in New Zealand the compulsory acquisition of land is possible only by statutory authority. Previously the royal prerogative could be used to acquire land in certain situations but its application is now doubtful.

The United Kingdom has a much longer legal history than New Zealand and has seen changes in the way compulsory acquisition is dealt with. Essentially the system has grown on a case by case and usage basis. Initially specific acts of Parliament were used to acquire the land in question. Later standard provisions came to be used which were consolidated in the Land Clauses Consolidation Act 1845 to avoid the need of repeating the provisions. Later those provisions were consolidated again in the Acquisition of Land Act 1981. General discretionary powers of acquisition came to be bestowed upon the authorities. The most common form involves the use of the compulsory purchase order procedure.

Unlike the codified situation in New Zealand the UK legislation has never been completely consolidated. There are over 500 statutes which contain reference to compulsory purchase powers and procedures. However the implementation and compensation procedures tend to be consolidated within core statutes.

It has been stated on many occasions that the United Kingdom system as a whole is sprawling and difficult to understand in its entirety. This is a fundamental weakness in terms of its operation by acquiring authorities and its application to the citizens affected by acquisition. I have tried to concentrate on the areas most relevant to New Zealand and the perceived problems with the New Zealand following the case law review as some areas of the United Kingdom law are of no direct relevance here.

Of particular interest are the acquisition methods which appear to operate in an inferior manner to New Zealand's. Specific attention is drawn to the elongated timeframes which operate at the pre acquisition stage and the public inquiry process. The United Kingdom is also struggling with particular difficulties relating to planning blight which are exacerbated by delay.

There is an interesting departure from the New Zealand type disposal regime in the United Kingdom. In that jurisdiction non-statutory rules have been adopted which are considerably more flexible than New Zealand's rules and appear to expose the Crown to less risk.

a) Acquisition and compensation provisions

i the general principles adopted when land is required by the state for a public purpose;

There are various sources of compulsory purchase powers available in the UK as the position has never been codified or consolidated:

1. **Royal prerogative**
An example of this is the wartime expropriation of property for the defence of the realm by the Crown although even in such cases it has been held that compensation is payable. This type of acquisition is of no practical significance today due to the erosion of prerogative powers and it is possible that there is no longer any such Crown prerogative relating to land acquisition.
2. **Private Act of Parliament**
The Channel Tunnel Act 1987 is an example of this mode of acquisition which suits major projects. A private bill is presented to Parliament seeking authority for the compulsory purchase of land for a certain purpose. Land is particularised in a schedule to the bill and reference is made to deposited plans. Persons affected are notified and may make objections by way of petition, and these petitions are heard before a select committee of each House.
3. **Public General Act of Parliament**
This is very unusual. Examples include the Admiralty (Signals Stations) Act 1915 and the Metropolitan Paving Act 1817 (Michael Angelo's Act). Such an Act authorises a named authority to compulsorily purchase land for its purposes without any further authorisation.
4. **Public General Act of Parliament and provisional order**
This process involves two stages. A Public Act is passed as above, and then a provisional order is made specifying the required land. This has to be confirmed by the appropriate Minister and then submitted to Parliament as a provisional order confirmation bill which then authorises the taking of land. See for example the Light Railways Act 1896. This procedure is now unusual and has been superseded by the next procedure.
5. **Public General Act and compulsory purchase order (cpo)**
This is now the most common form of acquisition by local and public bodies in the United Kingdom. A public general Act is passed which authorises the acquiring authority to take land for specific purposes. The power to acquire is always ancillary to the functions of the body in question. The procedures in relation to compulsory acquisition centre around the compulsory purchase order or cpo. In each particular case the authority issues a cpo in respect of the land required and the cpo is confirmed by the Minister not by Parliament. If there are objections, the Minister will hold a public inquiry. Various ministers can be authority; refer s 10 below. Today, most acquisitions are made under Acts incorporating this procedure, e.g. The Highways Act 1980. The making and confirmation of a cpo is usually governed by the Acquisition of Land Act 1981. After these initial authorisation procedures come the implementation procedures whereby the authority either treats with the owner or issues a vesting declaration. Compensation is determined at this stage and the land is transferred to the authority. The implementation procedures are largely consolidated in the Compulsory Purchase Act 1965 discussed below.

"Acquisition of Land Act 1981 (Part II):

"Part II Purchases by Local and Other Authorities

"S. 10. Preliminary

- (1) This Part of this Act has effect except where a Minister is the acquiring authority.
- (2) The compulsory purchase order shall be in the prescribed form and shall describe by reference to a map the land to which it applies.
- (3) Before submitting the order to the confirming authority the acquiring authority shall comply with sections 11 and 12 below.⁵

"Part II Purchases by Local and Other Authorities: Notices prior to submission of order to confirming authority

"S. 11. Notices in newspapers

- (1) The acquiring authority shall in two successive weeks publish a notice in the prescribed form in one or more local newspapers circulating in the locality in which the land comprised in the order is situated.
- (2) The notice shall--
 - (a) state that the order has been made and is about to be submitted for confirmation,
 - (b) describe the land and state the purpose for which the land is required,
 - (c) name a place within the locality where a copy of the order and of the map referred to therein may be inspected, and
 - (d) specify the time (not being less than twenty-one days from the first publication of the notice) within which, and the manner in which, objections to the order can be made.⁶

Notice of the cpo must be given to those with proprietary type interest such as owners, or lessees or to occupiers.

"Part II Purchases by Local and Other Authorities: Notices prior to submission of order to confirming authority

"S. 12. Notices to owners, lessees and occupiers

- (1) The acquiring authority shall serve on every owner, lessee and occupier (except tenants for a month or any period less than a month) of any land comprised in the order a notice in the prescribed form--
 - (a) stating the effect of the order,
 - (b) stating that it is about to be submitted for confirmation, and
 - (c) specifying the time (not being less than twenty-one days from service of the notice) within which, and the manner in which, objections to the order can be made.
- (2) For the purposes of this section an occupier being a statutory tenant within the meaning of the Rent Act 1977 or the Rent (Agriculture) Act 1976 [or a licensee under an assured agricultural occupancy within the meaning of Part I of the Housing Act 1988] shall be deemed to be a tenant for a period less than a month.
- (3) Where under this section any notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Church Commissioners.
In this subsection "ecclesiastical property" means land belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of the bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction [or being diocesan glebe land within the meaning of the Endowments and Glebe Measure 1976].⁷

⁵ ANNOTATIONS: This section derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, paras 1, 2, 3(1). This section does not extend to Scotland.

⁶ ANNOTATIONS: This section derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 3(1)(a). This section does not extend to Scotland.

⁷ ANNOTATIONS: Sub-ss (1), (3) derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 3(1)(b), (2), (3); sub-s (2) derived from the Housing Repairs and Rents Act 1954, s 50(1).

"Part II Purchases by Local and Other Authorities: Confirmation of order

"S. 13. Confirmation of order

(1) If no objection is duly made by any such owner, lessee or occupier as is mentioned in section 12 above, or if all objections so made are withdrawn, the confirming authority, upon being satisfied that the proper notices have been published and served, may, if the confirming authority thinks fit, confirm the order with or without modifications."

Where an objection is received a public inquiry must be held. The United Kingdom procedure is significantly different to the Canadian legislation where any person may seek a public inquiry. It is similar to the position in Australia where the right is restricted to those with proprietary style interests.

"(2) If any objection duly made as aforesaid is not withdrawn, the confirming authority shall, before confirming the order, either cause a public local inquiry to be held or afford to any person by whom any objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the confirming authority for the purpose, and, after considering the objection and the report of the person who held the inquiry or the person appointed as aforesaid, may confirm the order either with or without modifications.

(3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the confirming authority shall afford to the acquiring authority, and to any other persons to whom it appears to the confirming authority expedient to afford it, an opportunity of being heard on the same occasion.

(4) Notwithstanding anything in subsection (2) or (3) above, the confirming authority may require any person who has made an objection to state in writing the grounds thereof, and may disregard the objection for the purposes of this section if the confirming authority is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed.

(5) This section has effect subject to section 31 below (joint confirmation by confirming authority and appropriate Minister).⁸

"S. 14. Land not originally included in order

The order as confirmed by the confirming authority shall not, unless all persons interested consent, authorise the acquiring authority to purchase compulsorily any land which the order would not have authorised that authority to purchase compulsorily if it had been confirmed without modification.⁹

"S. 15. Notices after confirmation of order

As soon as may be after the order has been confirmed the acquiring authority shall publish in one or more local newspapers circulating in the locality in which the land comprised in the order is situated a notice in the prescribed form--

- (a) describing the land,
- (b) stating that the order has been confirmed, and
- (c) naming a place where a copy of the order as confirmed and of the map referred to therein may be inspected at all reasonable hours,

Sub-s (2): words in square brackets added by the Housing Act 1988, s 140, Sch 17, Part I, para 32(1). Sub-s (3): words in square brackets added by the Planning and Compensation Act 1991, s 70, Sch 15, para 27. This section does not extend to Scotland.

⁸ ANNOTATIONS: Sub-ss (1)-(4) derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 4. This section does not extend to Scotland.

⁹ ANNOTATIONS: This section derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 5. This section does not extend to Scotland.

and shall serve a like notice, and a copy of the order as confirmed, on any person on whom notices with respect to the land were required to be served under section 12 above.¹⁰

In some cases, a cpo is the subject of a special parliamentary procedure under the Statutory Orders (Special Procedure) Act 1945. In such a case Parliament has the opportunity of considering the order and any petition against it.

6. Transport and Works Act 1992 and works order

This is a new procedure for obtaining authorisation to construct transport and other works and for any necessary compulsory purchase of land. Sections 1 & 3 allow a works order to be made by statutory instrument by the Secretary of State. (Ref s5, Schedule 1). Section 20 provides that any person or body can apply for a works order. This includes individuals, companies, and most statutory bodies. There are rules for steps that must be taken prior to an application for a works order: see the Transport and Works (Application and objection) rules 1992¹¹.

7. Common acquisition and compensation procedures

There are various implementation procedures which are common to all compulsory acquisitions. The Land Clauses Compensation Act 1845 consolidated standard powers covering acquisition and compulsory purchase. These are still applicable to some statutes. Some of the provisions were then consolidated into the Compulsory Purchase Act 1965 which now governs most acquisition procedures.

Under the most common method of compulsory acquisition, being the cpo, procedure a notice to treat must be served once the cpo has been confirmed. Alternatively a vesting declaration is made. In some cases such as blight or in the case of a purchase notice, the notice to treat is deemed to have been served. The consequences are the same in each case. Essentially issues of compensation are then resolved and the property is conveyed to the acquiring authority.

The following provisions from the Compulsory Purchase Act 1965 are of interest.

"SECTION: 4 Time limit

The powers of the acquiring authority for the compulsory purchase of the land shall not be exercised after the expiration of three years from the date on which the compulsory purchase order becomes operative.

"SECTION: 5 Notice to treat, and untraced owners

(1) When the acquiring authority require to purchase any of the land subject to compulsory purchase, they shall give notice (hereafter in this Act referred to as a "notice to treat") to all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.

(2) Every notice to treat--

(a) shall give particulars of the land to which the notice relates,

¹⁰ ANNOTATIONS: This section derived from the Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 6. This section does not extend to Scotland.

¹¹ Denyer-Green p17

(b) shall demand particulars of the recipient's estate and interest in the land, and of the claim made by him in respect of the land, and

(c) shall state that the acquiring authority are willing to treat for the purchase of the land, and as to the compensation to be made for the damage which may be sustained by reason of the execution of the works.

[(2A) A notice to treat shall cease to have effect at the end of the period of three years beginning with the date on which it is served unless--

(a) the compensation has been agreed or awarded or has been paid or paid into court,

(b) a general vesting declaration has been executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981,

(c) the acquiring authority have entered on and taken possession of the land specified in the notice, or

(d) the question of compensation has been referred to the Lands Tribunal.

(2B) If the person interested in the land, or having power to sell and convey or release it, and the acquiring authority agree to extend the period referred to in subsection (2A) of this section, the notice to treat shall cease to have effect at the end of the period as extended unless--

(a) any of the events referred to in that subsection have then taken place, or

(b) the parties have agreed to a further extension of the period (in which case this subsection shall apply again at the end of the period as further extended, and so on).

(2C) Where a notice to treat ceases to have effect by virtue of subsection (2A) or (2B) of this section, the acquiring authority--

(a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2B) of this section, and

(b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.

(2D) The amount of any compensation payable under subsection (2C) shall, in default of agreement, be determined by the Lands Tribunal.

(2E) Compensation payable to any person under subsection (2C) shall carry interest at the rate prescribed under section 32 of the Land Compensation Act 1961 from the date on which he was entitled to be given notice under that subsection until payment.]

(3) Schedule 2 to this Act (which relates to absent or untraced owners) shall have effect for the purposes of this Act.

"SECTION: 6 Reference to Lands Tribunal

If a person served with a notice to treat does not within twenty-one days from the service of the notice state the particulars of his claim or treat with the acquiring authority in respect of his claim, or if he and the acquiring authority do not agree as to the amount of compensation to be paid by the acquiring authority for the interest belonging to him, or which he has power to sell, or for any damage which may be sustained by him by reason of the execution of the works, the question of disputed compensation shall be referred to the Lands Tribunal."

As discussed above the authority may use the expedited procedure contained in the Compulsory Purchase (Vesting Declarations) Act 1981 rather than issuing a notice to treat. Under the notice to treat procedure the owner must convey the land to the authority. The vesting declaration combines the notice to treat and conveyance with one procedure

that automatically vests the land in the authority on a specified date. This may be useful where the legal owners of the land cannot be identified for some reason. Where a vesting declaration is made the authority is deemed to have served a notice to treat and the compensation provisions under the Land Compensation Act 1961 automatically come into play.

"SECTION: 1 Application of Act

(1) This Act has effect for the purpose of enabling any authority to whom this section applies to vest in themselves by a declaration land which they are authorised by a compulsory purchase order to acquire, and with respect to connected matters.

(2) This section applies to any Minister or local or other public authority authorised to acquire land by means of a compulsory purchase order.

"SECTION: 4 Execution of declaration

(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves from the end of such period as may be specified in the declaration (not being less than 28 days from the date on which the service of notices required by section 6 below is completed).

(2) For the purposes of this Act a certificate by the acquiring authority that the service of notices required by section 6 below was completed on a date specified in the certificate shall be conclusive evidence of the fact so stated.

(3) In this Act the "vesting date" in relation to a general vesting declaration means the first day after the end of the period specified in the declaration in accordance with subsection (1) above.

"SECTION: 5 Earliest date for execution of declaration

(1) A declaration under section 4 above shall not be executed before the end of the period of two months beginning with the date of the first publication of the notice complying with section 3 above, or such longer period, if any, as may be specified in the notice:

Provided that, with the consent in writing of every occupier of the land specified in the declaration, the acquiring authority may execute the declaration before the end of that period of two months, or of the longer period so specified, as the case may be.

(2) A declaration under section 4 above shall not be executed before the compulsory purchase order has come into operation, and this subsection applies in particular where the compulsory purchase order is subject to special parliamentary procedure and therefore does not come into operation in accordance with section 26(1) of the Acquisition of Land Act 1981 or any corresponding provision of the relevant enactments.

"SECTION: 7 Constructive notice to treat

(1) On the vesting date the provisions of--

(a) the Land Compensation Act 1961 (as modified by section 4 of the Acquisition of Land Act 1981) and

(b) the Compulsory Purchase Act 1965,

shall apply as if, on the date on which the general vesting declaration was executed, a notice to treat had been served on every person on whom, under section 5 of the Compulsory Purchase Act 1965, the acquiring authority could have served such a notice, other than--

(i) any person entitled to an interest in the land in respect of which such a notice had actually been served before the vesting date, and

(ii) any person entitled to a minor tenancy or a long tenancy which is about to expire.

(2) For the purposes of subsection (1) above it shall be assumed that the acquiring authority required to take the whole of the land specified in the declaration and had knowledge of all the parties referred to in section 5 of the Compulsory Purchase Act 1965.

(3) The power conferred by section 31 of the Land Compensation Act 1961 to withdraw a notice to treat shall not be exercisable in respect of a notice to treat which is deemed to be served under this section. "

ii the provisions that exist for the payment of compensation, to whom and on what basis such compensation is valued;

The existing statute law relating to compensation is mainly in 3 Acts: the Land Compensation Act 1961, The Compulsory Purchase Act 1965, and the Land Compensation Act 1973, although this is added to by other statutes such as the Planning and Compensation Act 1991.

Under s 63 of the Land Clauses Consolidation Act 1845, two types of compensation are available being the value of the land plus other damages:

"Purchase of lands otherwise than by agreement.

S. 63 Purchase money and compensation, how to be estimated

In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith. "

Now, the rules in the Land Compensation Act 1961 govern the valuation of land taken. (See below). The principles regarding loss of value to land still apply.

"Part II Provisions determining amount of compensation: General provisions

S. 5. Rules for assessing compensation

Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

(1) No allowance shall be made on account of the acquisition being compulsory:

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise:

(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers:

(4) Where the value of land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account:"

As is the case in other jurisdictions compensation may be assessed on a reinstatement basis in certain special circumstances.

"(5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

(6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land and the following provisions of this Part of this Act shall have effect with respect to the assessment.^{12 "}

Section 7 of the Compulsory Purchase Act 1965 contains a right to compensation in respect of severance:

"S. 7 Measure of compensation in case of severance

In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land to be purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.^{13 "}

Section 10 of the Compulsory Purchase Act 1965 contains a right to compensation for owners of easements and restrictive covenants over compulsorily acquired land:

"S. 10 Further provision as to compensation for injurious affection

- (1) If any person claims compensation in respect of any land, or any interest in land, which has been taken for or injuriously affected by the execution of the works, and for which the acquiring authority have not made satisfaction under the provisions of this Act, or of the special Act, any dispute arising in relation to the compensation shall be referred to and determined by the Lands Tribunal.
- (2) This section shall be construed as affording in all cases a right to compensation for injurious affection to land which is the same as the right which section 68 of the Lands Clauses Consolidation Act 1845 has been construed as affording in cases where the amount claimed exceeds fifty pounds.
- (3) Where this Part of this Act applies by virtue of [Part IX of the Town and Country Planning Act 1990] references in this section to the acquiring authority shall be construed in accordance with [section 245(4)(b) of that Act].^{14 "}

¹² ANNOTATIONS: Rule (3): words omitted repealed by the Planning and Compensation Act 1991, ss 70, 84, Sch 15, para 1, Sch 19, Part III. Applied with modifications by the Aviation and Maritime Security Act 1990, s 43, Sch 2, para 4.

¹³ ANNOTATIONS: This Act modified by the Gas Act 1986, s 9(3), Sch 3, Part II, the Water Act 1989, s 151, Sch 18, para 2, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 6, the Water Industry Act 1991, Sch 9, Sch 11, para 6, the Water Resources Act 1991, Sch 18, Sch 19, para 6. This section modified by the Housing Act 1988, s 78, Sch 10, Part III, the Water Act 1989, s 151, Sch 18, para 3, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 8.

¹⁴ ANNOTATIONS: Sub-s (3): words in square brackets substituted by the Planning (Consequential Provisions) Act 1990, s 4, Sch 2, para 13(2). This Act modified by the Gas Act 1986, s 9(3), Sch 3, Part II, the Water Act 1989, s 151, Sch 18, para 2, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 6, the Water Industry Act 1991, Sch 9, Sch 11, para 6, the Water Resources Act 1991, Sch 18, Sch 19, para 6.

Under s20 of the Compulsory Purchase Act 1965, tenants can be entitled to compensation:

"S. 20 Tenants at will, etc

- (1) If any of the land subject to compulsory purchase is in the possession of a person having no greater interest in the land than as tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation for the value of his unexpired term or interest in the land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain.
- (2) If a part only of such land is required, he shall also be entitled to compensation for the damage done to him [by severing] land held by him or otherwise injuriously affecting it.
- (3) If the parties differ as to the amount of compensation payable under the foregoing provisions of this section the dispute shall be referred to and determined by the Lands Tribunal.
- (4) On payment or tender of the amount of such compensation all such persons shall respectively deliver up to the acquiring authority, or to the person appointed by them to take possession, any such land in their possession required by the acquiring authority.
- (5) If any person having a greater interest than as tenant at will claims compensation in respect of any unexpired term or interest under any lease or grant of the land subject to compulsory purchase, the acquiring authority may require that person to produce the lease or grant, or the best evidence thereof in his power; and if, after demand in writing by the acquiring authority, the lease or grant, or that best evidence, is not produced within twenty-one days, that person shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.
- (6) This section has effect subject to section 39 of the Landlord and Tenant Act 1954.¹⁵ "

Section 9 of the Land Compensation Act 1961 provides that "no account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that an indication has been given that the relevant land is, or is likely to be acquired by an authority possessing compulsory purchase powers." Section 6 contains similar provisions.

There are some special cases where the market value will not be used.

- Refer to Rule 5, s 5 Land Compensation Act 1961¹⁶.
- Houses unfit for human habitation may be compulsorily acquired under Part VI of the Housing Act 1985, and valuation paid on the value of a bare site. However, this now only applies to orders made prior to 31 March 1990 (refer Local Government and Housing Act 1989 which gave claimants an entitlement to compensation assessed by reference to market values.
- Listed buildings: if the building is being acquired under s 51 Planning (Listed Buildings and Conservation Areas) Act 1990 because steps are not being taken to properly preserve it, minimum compensation shall be paid

¹⁵ ANNOTATIONS: Sub-s (2): words in square brackets substituted by the Planning and Compensation Act 1991, s 70, Sch 15, para 4. This Act modified by the Gas Act 1986, s 9(3), Sch 3, Part II, the Water Act 1989, s 151, Sch 18, para 2, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 6, the Water Industry Act 1991, s 155, Sch 9, Sch 11, para 6, the Water Resources Act 1991, Sch 18, Sch 19, para 6. This section modified by the Housing Act 1988, s 78, Sch 10, Part III, the Water Act 1989, s 151, Sch 18, para 7, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 12.

¹⁶ Denyer-Green p 193

There are grounds to claim compensation for disturbance. The categories that are well established include:

- goodwill
- loss of profits
- other business or trade loss
- new premises and their adaptation
- removal expenses, legal costs and other fees
- interest and charges
- general interference

The tests for determining the eligibility of items of a claim for disturbance compensation were set out in *Cole v Southwark Borough Council* (1979)251 EG 477. The loss must have been sustained. The loss must be a natural and reasonable consequence of the dispossession and must not be too remote. The claimant must take steps to mitigate loss.

There is also compensation available for people affected by public works not necessarily associated with compulsory purchase.

iii whether powers of compulsory acquisition exist and if so, the criteria under which such provisions can be invoked including whether the powers can be delegated and to whom;

Yes, powers do exist. See discussion and the provisions above.

iv whether separate provisions exist for the acquisition of land by agreement and, if so, whether the compensation provisions are set in legislation and are the same as for the compulsory acquisition of land. Include any ability to delegate the powers of acquisition;

It is clear that "Enactments authorising compulsory purchase invariably authorise the government departments or public authorities involved to purchase land by agreement as well as with the use of compulsory powers."¹⁷ Some statutes only authorise purchase by agreement (See for example the Open Spaces Act 1906).

There can be purchase by agreement with no cpo, or with a cpo "in the background". In fact it appears that it is common for acquiring authorities to negotiate with the threat of the cpo in the background. Refer to s 3 Compulsory Purchase Act 1965:

"S. 3 Acquisition by agreement in pursuance of compulsory purchase order

"It shall be lawful for the acquiring authority to agree with the owners of any of the land subject to compulsory purchase, and with all parties having an estate or interest in any of the land, or who are by Schedule 1 to this Act or any other enactment enabled to sell and convey or release any of

¹⁷ Denyer-Green p 57

that land for the absolute purchase, for a consideration in money [or money's worth], of any of that land, and of all estates and interests in the land.¹⁸"

Where no notice to treat has been served, the parties are free to observe terms and price with no regard to the statutory rules of compensation. Where a notice to treat has been served, the agreement must be within the statutory code.

By virtue of s 22 Land Compensation Act 1961 an offer in writing will be sufficient to make the Act apply.

"SECTION: 22 Interpretation of Part III

(1) In this Part of this Act "the parties directly concerned", in relation to an interest in land, means the person entitled to the interest and the authority by whom it is proposed to be acquired.

(2) For the purposes of sections seventeen and eighteen of this Act, an interest in land shall be taken to be an interest proposed to be acquired by an authority possessing compulsory purchase powers in the following (but no other) circumstances, that is to say--

(a) where, for the purpose of a compulsory acquisition by that authority of land consisting of or including land in which that interest subsists, a notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, has been published or served in accordance with that Act or Order; or

(b) where a notice requiring the purchase of that interest has been served under any enactment, and in accordance with that enactment that authority are to be deemed to have served a notice to treat in respect of that interest; or

(c) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.

(3) . . .¹⁹

v ***whether a definition of "public work" or "public purpose" is provided and whether there is any differentiation between "essential" work and "non essential" work;***

I did not find a specific definition. Land may only be taken for the purposes specified in the specific public general statute which authorises the acquiring authority to take land. Each cpo issued by that authority will be scrutinised by the appropriate Minister to ensure that it is within the purposes of the enabling statute. Parliament decides whether each application for ability to compulsorily purchase land or any bill for the acquisition of particular land being promoted is for the public benefit.

Public use or benefit is clearly a key element underlying the granting and use of compulsory purchase.

¹⁸ ANNOTATIONS: Words in square brackets added by the Planning and Compensation Act 1991, s 70, Sch 15, para 3. This Act modified by the Gas Act 1986, s 9(3), Sch 3, Part II, the Water Act 1989, s 151, Sch 18, para 2, the Electricity Act 1989, s 10(1), Sch 3, Part II, para 6, the Water Industry Act 1991, s 155, Sch 9, Sch 11, para 6, the Water Resources Act 1991, Sch 18, Sch 19, para 6.

¹⁹ ANNOTATIONS:

Sub-s (3): repealed by the Planning and Compensation Act 1991, ss 70, 84, Sch 15, para 18, Sch 19, Part III.

Modified by the Housing Act 1988, s 76, Sch 9, Part II. "

vi the mechanism for recording the transfer of ownership to the state;

Where an owner has been served with a notice to treat and issues of compensation have been disposed of the owner conveys the property to the authority. Where a general vesting declaration has been made there is no need for a conveyance and the property automatically vests in the authority. See the Compulsory Acquisition (Vesting Declarations) Act 1981.

vii what interest in land may be acquired;

- freehold
- leasehold (Compulsory Purchase Act 1965, s 20 as set out above)
- easements & restrictive covenants: usually if owner of a third party interest is not paid compensation, these will remain binding against the title and may revive if the land is sold. Some Acts, e.g. Housing Act 1985 extinguish these rights (s 295). S 13 of the Local Government (Miscellaneous Provisions) Act provides that where an authority is authorised to acquire land it may be authorised to acquire specific rights over land. These must be specified in the cpo. Many enabling Acts authorise the acquisition of rights over land, e.g. the Highways Act s 250.

viii whether there are any distinctions between the use of acquisition powers by federal or state agencies;

N/A

ix whether acquisition of aboriginal lands is dealt with in a different manner in any of the above respects. Include whether the compensation provisions contemplate a “valuation of or compensation for” spiritual or other special values that aboriginal peoples may have in respect of land.

N/A

b) Disposal provisions.

Provisions relating to disposal of land do not appear very complex or developed in the UK. There is little in the way of statutory requirements as compared with New Zealand.

i the general principles adopted when land held for a public purpose is no longer required for that purpose (or any other public purpose);

There are controls on disposal under the Land Clauses Consolidation Act 1845, ss 127-132. These still apply to some current transactions but their application is now quite limited and they are not as restrictive as the New Zealand disposal regime in any event:

"SALE OF SUPERFLUOUS LAND

"S. 127. Lands not wanted to be sold within 10 years after expiration of time limited for

completion of works, or in default to vest in owners of adjoining lands

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

"S. 128. Lands not in a town or built upon, etc, to be offered to owner of lands from which they were originally taken, or to adjoining owners

Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

"S. 129 Right of pre-emption to be claimed within six weeks from offer--Evidence of refusal, etc, to exercise right

If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

"S. 130 Differences as to price to be settled by arbitration

If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

"S. 131 Lands to be conveyed to the purchasers

Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

"S. 132 Effect of the word "grant" in conveyances

In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them;

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expence of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them:

All and such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances."

Where these rules did not apply, there is no statutory obligation for the purchasing authority to offer the land back to the original owner unless there is a provision in a specific empowering Act requiring it. However the Courts in the United Kingdom have noted that common fairness demands an offer back where a citizen has their land acquired via coercive means. See *R v Commission for the New Towns ex p Tompkins* (1988) 58 P. & C.R. 57 per Bingham LJ.

Significantly, following a political scandal in the 1950s, the "Crichel Down Rules" were instituted for surplus land owned by central government, and were recommended to other agencies. The latest version of these rules was published in October 1992 by the Department of the Environment and the Welsh Office²⁰. For Local Government, the rules apply subject to the requirements of the Local Government Act 1972, s 123. Section 123 provides that although Councils may dispose of land in any way they wish, they must not, without the consent of the Secretary of State, dispose of land "for a consideration less than the best that can reasonably be obtained".

In some circumstances where it is hard to accurately value land the only method of obtaining the best value may be an auction or tender. In such circumstances a body may be unable to offer land back to the original owners as a result of the duty imposed by s 123. See *Tompkins v Commission for the New Towns* [1989] 12 EG 59. As those provisions are statutory they outweigh the Crichel Down rules where there is conflict.

²⁰ [1993] JPL 325.

Section 122 of the same Act prescribes wide powers on Local Authorities to appropriate land which is no longer required for the purpose for which it was acquired for other local government purposes.

Thus it would appear that bodies in the United Kingdom are better able than their New Zealand counterparts to retain land which may be required for some other government or local body purpose but which is not strictly required for the original public work or any other public work. This appears sensible as in the end one ought to be able to assume that all Crown or state use is for the public benefit, even if it is not a “public works”. This avoids the type of situation which has arisen in New Zealand where land is required for a government purpose (such as a potential Maori land claim) but not for a public work as defined by the Public Works Act. In such circumstances the land must prima facie be disposed of under s 40. Furthermore the New Zealand government could possibly be forced to reacquire the land at a later date to satisfy the claim. Such a situation obviously leads to inefficiency and expense. The United Kingdom provisions appear superior as they allow the Crown to hold on to the land where there is some other legitimate public use for the land.

The application of the Crichel Down rules will depend on the particular role and function of each local authority or statutory body. The rules are also commended for application to bodies in the private sector to which public sector land holdings were transferred on privatisation. Enforcement of the rules by the Government against the private sector would appear to be impossible except by indirect means, where for example the government was a key shareholder or could exert some other pressure. It would appear to be extremely difficult for a former owner to enforce the rules against a private sector land holder.

Generally the rules apply to all land acquired against a background of compulsion. Thus they will apply to a voluntary sale if the acquiring authority possessed a power to acquire the land compulsorily though did not use it. In that regard the rules are of wide application and recognise the reality of negotiating a sale by agreement with a body which can hold a cpo over the head of the owner. The rules do not apply where the land was for sale immediately before the negotiations for acquisition commenced.

The general rule is that the land, the character of which has not been materially changed since the original acquisition by the government, and which becomes surplus to requirements within a prescribed period should be offered back to the original owners.

Material change includes the erection of houses on agricultural land or the building of offices on an urban site or where substantial works have been carried out to existing buildings. The erection of temporary buildings is not a material change. The cost of restoring land to its previous condition is relevant to the issue of whether there has been a material change. Where only part of the land has materially changed in character the obligation applies only to the part which has not changed.

The rules were only extended to apply to non-agricultural land in 1992.

There are exceptions to the general rule which are more extensive than the exceptions contained in the New Zealand s 40 regime or the Australian Commonwealth disposal regime for example.

Exceptions.

- ❑ A disposal in execution of government policy transferring certain functions to the private sector.

This is important as it allows the authority to transfer property “beyond the reach” of the previous owner. As discussed above though the Crichton Down rules are recommended to the private sector in such a situation it is doubtful that the government could enforce them. It would appear even more difficult for a prior owner to insist on offer back as against the private sector holder. It is also of note that such a private sector owner would be more influenced by the commercial expediency and a desire to obtain best price than a public bodies which must have regard to public interest as well as commercial factors.

- ❑ Where the disposal is of a development site consisting of two former holdings or a site which consists of partly of land which has materially changed in character and there is a risk of a fragmented sale which would substantially reduce its market value or prejudice the prospects of development
- ❑ Where disposal would be inconsistent with the purpose of the original acquisition
- ❑ Where in very exceptional cases it is decided on specific ministerial authority that for strong and urgent reasons of public interest it is necessary to transfer the property to an authority or other body with powers of compulsory acquisition
- ❑ Where the land is required by another department and is thus not truly surplus to government requirements.

This is interesting with regard to the New Zealand position where land becomes surplus and subject to offer back where it is no longer required for any public work. As discussed above and in my review of New Zealand Public Works case law this can lead to difficulties where there is a further Government use (such as a need to meet a land claim) that does not meet the public works definition. By contrast the term “government requirement” as it appears in the Crichton Down rules is extremely broad and rather vague.

- ❑ Where small areas of agricultural land have no satisfactory agricultural use even in conjunction with other lands held by the former owner
- ❑ Where market value is so uncertain that clawback provisions would be insufficient to safeguard the public purse and a competitive sale is advised.

This provision is also of interest and provides an option to resort to competitive sale where market value cannot be determined.

Procedures are prescribed as to the manner of offer back and steps to be taken in tracing the prior owner. The 25 year restriction persons applied in view of the difficulties in tracing former owners in respect of a longer period. This is a significant departure from the position in New Zealand and reflects difficulties similar to those encountered here with tracing former owners.

ii whether provisions (similar to the statutory offer contained in section 40 of the Public Works Act 1981) exist to return surplus land to the person from whom it was acquired for the public purpose. Where such provisions exist, on what terms and conditions is such an offer made;

See the discussion above in respect of the limited legislative and comprehensive non legislative procedures.

iii any mechanism for returning land to successors of former owners where the former owner has died and whether this is restricted to immediate successors;

The Crichel Down rules extend to successors. This includes any person to whom the land would have devolved by will or intestacy or a person who has succeeded other than by purchase to adjoining land from which the land was severed.

iv whether provisions exist to reunite the surplus land with the original title notwithstanding current land ownership;

See s128 Land Clauses Consolidation Act 1845, s 128 and the Crichel Down rules discussed above.

"S. 128. Lands not in a town or built upon, etc, to be offered to owner of lands from which they were originally taken, or to adjoining owners

Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit."

v where "offer back" type provisions do exist, whether there is any time limit after which an offer is not required, i.e. is the right of the former owner to receive an offer extinguished after a certain time period following acquisition;

Under the Crichel Down rules the requirement to offer back does not apply to

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

This is interesting in comparison with New Zealand which has no time limit to the offer back requirement. See the discussions above.

vi the degree of contestability of the disposal process required when disposing of surplus land;

The Crichel Down rules are not statutory. They are non statutory guidelines which are commended to the departments. This would appear to make any action challenging a decision not to offer back land more difficult than in New Zealand. In New Zealand a decision maker is required to adhere to a statutory obligation to offer back unless certain exceptions apply. This is the exercise of a limited statutory discretion and is thus clearly subject to judicial review.

The position in the United Kingdom is less clear given that the decision maker is merely required (as the Land Clauses Consolidation Act does not apply in most cases) to have regard to the departmental guidelines. Such guidelines or rules are designed to ensure that officers comply with the departmental policy. Failure to properly apply the rules would clearly be a breach of an officer's employment responsibilities. The enforceability of the rules by a member of the public is not clear and such an action would obviously be on more difficult ground than a classic judicial review claim based on statutory provisions.

Generally the decision maker would be exercising their duties and functions as an officer of the authority in disposing of an asset of that authority. A claim that the decision was unreasonable or that the rules were interpreted incorrectly or that the decision was unlawful would be difficult as any improper actions of the officer would merely be evidence that the officer had breached internal rules.

It would be necessary to link those improper actions to obligations or duties owed to and enforceable by the public under some statutory provision to enable review. It might be possible that a former owner has a legitimate expectation that the internal rules will be applied. Another option would be a tortious claim based on reasonably foreseeable loss of the pre-emptive right arising from misfeasance of public office.

It is beyond the scope of this research paper to resolve these issues which involve difficult issues of administrative law and depend on the exact technical standing and nature of the Crichel Down rules. Suffice to say that it would be a difficult task for litigants to enforce a failure to apply government policy by a departmental employee as compared to the standard administrative claims brought in New Zealand in respect of s 40.

vii whether surplus land acquired for a public work is exempt from normal subdivisional requirements on disposal;

I have not located such an exemption.

viii whether former aboriginal land is dealt with in a different manner.

N/A

c) Analysing what provisions exist for private providers (e.g. utility companies) of public services as against core and local government.

Electricity, gas, and water authorities all have enabling Acts which authorise compulsory acquisition of easements for their installations. For example, the Pipe-lines Act 1962, enables private enterprises to compulsorily acquire easements and construct pipe-lines without the need of a Private Act. A private provider may also promote a bill to be passed into law for the acquisition of land in the ordinary manner.

d) Analysing any compliance and enforcement provisions that exist to ensure acquisition and disposal requirements are adhered to.

A breach of the acquisition provisions of any Act will be subject to judicial review and the scrutiny of the Courts. The same applies in respect of disposal where there is an illegal exercise of a statutory discretion. However the Crichton Down rules are not statutory and presumably are not easily enforced by the public at large. The rules are merely departmental guidelines. Breach of them is evidence that an authority failed to conduct itself correctly. How that is to be enforced is the issue for a litigant. See the discussions above.

The Lands Tribunal established by Lands Tribunal Act 1949 has wide jurisdiction to determine matters related to land and compensation.

e) Analysing the form of legislation and related legislation i.e. is the legislation enabling or prescriptive. Are the provisions for acquisition and disposal prescribed or left to the discretion of the decision maker, are the provisions contained in one piece of legislation or spread over a number of separate Acts depending on the nature of the work.

The United Kingdom features a mixture of provisions. There are a lot of disparate Acts covering different aspects of the procedure, including very old Acts as well as new ones. The position is confused. Most major Acts are enabling legislation.

f) Analysing the statutory material relating to blight and compensation in the United Kingdom, their linkages with the planning process, and the arguments currently

circulating as to appropriate compensation. Canvass related issues in respect of delay and inefficiency in the cpo process.

Broadly, the purpose of blight notices is to compel an authority to purchase land in advance of their compulsory purchase requirements in order to mitigate hardship. Blight involves compulsory acquisition in reverse. There is a second example of this reverse process where an owner may issue a purchase order to an authority requiring acquisition following the refusal or grant of planning permission with conditions which has rendered the land incapable of reasonable beneficial use. See s 137 of the Town and Country Planning Act 1990.

Only certain categories of owner occupiers can serve a blight notice. The classes of blighted land are given in Schedule 13 Town and Country Planning Act 1990:

"Sch 13 Blighted Land (s 149)

Sch 13

Land allocated for public authority functions in development plans etc.

1. Land indicated in a structure plan in force for the district in which it is situated either--
 - (a) as land which may be required for the purposes--
 - (i) of the functions of a government department, local authority [National Park authority] or statutory undertakers, . . . or
 - (ii) of the establishment or running by a public telecommunications operator of a telecommunication system, or
 - (b) as land which may be included in an action area.

Notes

- (1) In this paragraph the reference to a structure plan in force includes a reference to--
 - [(a) proposals for the alteration or replacement of a structure plan which have been made available for inspection under section 33(2);
 - (b) any proposed modifications to those proposals which have been published in accordance with regulations under section 53.]
- (2) Note (1) shall cease to apply when the copies of the proposals made available for inspection have been withdrawn under section [34].
- (3) Note (1) shall also cease to apply when--
 - (a) the relevant proposals become operative (whether in their original form or with modifications), or
 - (b) the Secretary of State decides to reject the proposals and notice of the decision has been given by advertisement.
- (4) In Note (1) references to anything done under any provision include references to anything done under that provision as it applies by virtue of section 51.
- (5) This paragraph does not apply to land situated in a district for which a local plan is [in operation], where that plan--
 - (a) allocates any land in the district for the purposes of such functions as are mentioned in this paragraph; or
 - (b) defines any land in the district as the site of proposed development for the purposes of any such functions.

[(5A) In Note (5) the reference to a local plan in operation includes a reference to a minerals local plan, a waste local plan, which in either case is in operation, and to a local plan continued in operation by virtue of paragraph 44 of Schedule 4 to the Planning and Compensation Act 1991.]
- (6) This paragraph does not apply to land within paragraph 5 or 6.
- (7) In the application of this paragraph to Greater London the reference to a structure plan shall be construed as a reference to the Greater London Development Plan [and Notes (1) to (4) shall be omitted].

2. Land which--

- (a) is allocated for the purposes of any such functions as are mentioned in paragraph 1(a)(i) or (ii)

- by a local plan [in operation] for the district, or
(b) is land defined in such a plan as the site of proposed development for the purposes of any such functions.

Notes

[(1) In this paragraph the reference to a local plan in operation includes a reference to a minerals local plan, a waste local plan, which in either case is in operation, and to a local plan continued in operation by virtue of paragraph 44 of Schedule 4 to the Planning and Compensation Act 1991, and also includes--

(a) proposals for the making or alteration and replacement of any such plan where copies of the proposals have been made available for inspection under section 40(2) or by virtue of paragraph 43 of Schedule 4 to the Planning and Compensation Act 1991; and

(b) any proposed modifications to those proposals which have been published in accordance with regulations under section 53.]

(2) . . .

(3) Note (1) shall . . . cease to apply when--

(a) the relevant plan or proposals become operative (whether in their original form or with modifications), or

(b) the Secretary of State decides to reject, or the local planning authority decide to abandon, the plan or proposals and notice of the decision has been given by advertisement.

(4) In Note (1) references to anything done under any provision include references to anything done under that provision as it applies by virtue of section 51.

(5) . . .

3. Land indicated in a unitary development plan in force for the district in which it [where the land] is situated--

(a) as land which may be required for the purpose of any such functions as are mentioned in paragraph 1(a)(i) or (ii), or

(b) as land which may be included in an action area.

Notes

(1) In this paragraph the reference to a unitary development plan includes references to--

(a) a unitary development plan of which copies have been made available for inspection under section [13(2)];

(b) proposals for the alteration or replacement of a unitary development plan of which copies have been made available for inspection under that provision as applied by section 21(2) . . . ;

(c) modifications proposed to be made by the local planning authority or the Secretary of State to any such plan or proposals as are mentioned in paragraph (a) or (b), being modifications of which notice has been given in accordance with regulations under Chapter I of Part II.

(2) Note (1) shall cease to apply when the copies of the plan or proposals made available for inspection have been withdrawn under section . . . or 14(2) (but section 14(4) shall not invalidate any blight notice served by virtue of Note (1) before the withdrawal of copies of the plan or proposals).

(3) Note (1) shall also cease to apply when--

(a) the relevant plan or proposals become operative (whether in their original form or with modifications), or

(b) the Secretary of State decides to reject, or the local planning authority decide to withdraw, the plan or proposals and notice of the decision has been given by advertisement.

(4) In Note (1) references to anything done under any provision include references to anything done under that provision as it applies by virtue of section 25(2).

4. Land which by a unitary development plan is allocated for the purposes, or defined as the site, of proposed development for any such functions as are mentioned in paragraph 1(a)(i) or (ii).

Notes

(1) In this paragraph the reference to a unitary development plan includes references to--

(a) a unitary development plan of which copies have been made available for inspection under section [13(2)];

(b) proposals for the alteration or replacement of a unitary development plan of which copies have been made available for inspection under that provision as applied by section 21(2) . . . ;

(c) modifications proposed to be made by the local planning authority or the Secretary of State to any such plan or proposals as are mentioned in paragraph (a) or (b), being modifications of which notice has been given in accordance with regulations under Chapter I of Part II.

(2) Note (1) shall cease to apply when the copies of the plan or proposals made available for inspection have been withdrawn under section . . . 14(2) (but section 14(4) shall not invalidate any blight notice served by virtue of Note (1) before the withdrawal of copies of the plan or proposals).

(3) Note (1) shall also cease to apply when--

(a) the relevant plan or proposals become operative (whether in their original form or with modifications), or

(b) the Secretary of State decides to reject, or the local planning authority decide to withdraw, the plan or proposals and notice of the decision has been given by advertisement.

(4) In Note (1) references to anything done under any provision include references to anything done under that provision as it applies by virtue of section 25(2).

5. Land indicated in a plan (other than a development plan) approved by a resolution passed by a local planning authority for the purpose of the exercise of their powers under Part III as land which may be required for the purposes of any [such functions as are mentioned in paragraph 1(a)(i) or (ii).]

6. Land in respect of which a local planning authority--

(a) have resolved to take action to safeguard it for development for the purposes of any such functions as are mentioned in paragraph 5, or

(b) have been directed by the Secretary of State to restrict the grant of planning permission in order to safeguard it for such development.

New towns and urban development areas

7. Land within an area described as the site of a proposed new town in the draft of an order in respect of which a notice has been published under paragraph 2 of Schedule 1 to the New Towns Act 1981.

Note

Land shall cease to be within this paragraph when--

(a) the order comes into operation (whether in the form of the draft or with modifications), or

(b) the Secretary of State decides not to make the order.

8. Land within an area designated as the site of a proposed new town by an order which has come into operation under section 1 of the New Towns Act 1981.

9. Land which is--

(a) within an area intended to be designated as an urban development area by an order which has been made under section 134 of the Local Government, Planning and Land Act 1980 but has not come into effect; or

(b) within an area which has been so designated by an order under that section which has come into effect.

Clearance and renewal areas

10. Land within an area declared to be a clearance area by a resolution under section 289 of the Housing Act 1985.

11. Land which--

(a) is surrounded by or adjoining an area declared to be a clearance area by a resolution under section 289 of the Housing Act 1985, and

(b) is land which a local authority have determined to purchase under section 290 of that Act.

12. Land indicated by information published in pursuance of section 92 of the Local Government

and Housing Act 1989 as land which a local authority propose to acquire in exercise of their powers under Part VII of that Act (renewal areas).

Highways

13. Land indicated in a development plan (otherwise than by being dealt with in a manner mentioned in paragraphs 1, 2, 3 and 4) as--

- (a) land on which a highway is proposed to be constructed, or
- (b) land to be included in a highway as proposed to be improved or altered.

14. Land on or adjacent to the line of a highway proposed to be constructed, improved or altered, as indicated in an order or scheme which has come into operation under Part II of the Highways Act 1980 (or under the corresponding provisions of Part II of the Highways Act 1959 or section 1 of the Highways Act 1971), being land in relation to which a power of compulsory acquisition conferred by any of the provisions of Part XII of that Act of 1980 (including a power compulsorily to acquire any right by virtue of section 250) may become exercisable, as being land required for purposes of construction, improvement or alteration as indicated in the order or scheme.

Notes

(1) In this paragraph the reference to an order or scheme which has come into operation includes a reference to an order or scheme which has been submitted for confirmation to, or been prepared in draft by, the Minister of Transport or the Secretary of State under Part II of that Act of 1980 and in respect of which a notice has been published under paragraph 1, 2 or 10 of Schedule 1 to that Act.

(2) Note (1) shall cease to apply when--

- (a) the relevant order or scheme comes into operation (whether in its original form or with modifications), or
- (b) the Secretary of State decides not to confirm or make the order or scheme.

(3) In this paragraph the reference to land required for purposes of construction, improvement or alteration as indicated in an order or scheme includes a reference to land required for the purposes of section 246(1) of the Highways Act 1980.

15. Land shown on plans approved by a resolution of a local highway authority as land comprised in the site of a highway as proposed to be constructed, improved or altered by that authority.

[16. Land comprised in the site of a highway as proposed to be constructed, improved or altered by the Secretary of State if he has given written notice of the proposal, together with maps or plans sufficient to identify the land in question, to the local planning authority.]

17. Land shown on plans approved by a resolution of a local highway authority as land proposed to be acquired by them for the purposes of section 246(1) of the Highways Act 1980.

18. Land shown in a written notice given by the Secretary of State to the local planning authority as land proposed to be acquired by him for the purposes of section 246(1) of the Highways Act 1980 in connection with a [highway] which he proposes to provide.

New streets

19. Land which--

(a) either--

- (i) is within the outer lines prescribed by an order under section 188 of the Highways Act 1980 (orders prescribing minimum width of new streets) or section 159 of the Highways Act 1959 (which is the predecessor of that section); or
- (ii) has a frontage to a highway declared to be a new street by an order under section 30 of the Public Health Act 1925 and lies within the minimum width of the street prescribed by any bylaws or local Act applicable by virtue of the order; and

(b) is, or is part of--

- (i) a dwelling erected before, or under construction on, the date on which the order is made;
- or

(ii) the curtilage of any such dwelling.

Note

This paragraph does not include any land in which the appropriate authority have previously acquired an interest either in pursuance of a blight notice served by virtue of this paragraph or by agreement in circumstances such that they could have been required to acquire it in pursuance of such a notice.

General improvement areas

20. Land indicated by information published in pursuance of section 257 of the Housing Act 1985 as land which a local authority propose to acquire in the exercise of their powers under the provisions of Part VIII of that Act relating to general improvement areas.

Compulsory purchase

21. Land authorised by a special enactment to be compulsorily acquired, or land falling within the limits of deviation within which powers of compulsory acquisition conferred by a special enactment are exercisable.

22. Land in respect of which--

(a) a compulsory purchase order is in force; or

(b) there is in force a compulsory purchase order providing for the acquisition of a right or rights over that land;

and the appropriate authority have power to serve, but have not served, notice to treat in respect of the land or, as the case may be, the right or rights.

Notes

(1) This paragraph applies also to land in respect of which--

(a) a compulsory purchase order has been submitted for confirmation to, or been prepared in draft by, a Minister, and

(b) a notice has been published under paragraph 3(1)(a) of Schedule 1 to the Acquisition of Land Act 1981 or under any corresponding enactment applicable to it.

(2) Note (1) shall cease to apply when--

(a) the relevant compulsory purchase order comes into force (whether in its original form or with modifications); or

(b) the Minister concerned decides not to confirm or make the order.

[23. Land--

(a) the compulsory acquisition of which is authorised by an order under section 1 or 3 of the Transport and Works Act 1992, or

(b) which falls within the limits of deviation within which powers of compulsory acquisition conferred by such an order are exercisable, or

(c) which is the subject of a proposal, contained in an application made in accordance with rules under section 6 of that Act or in a draft order prepared under section 7(3) of that Act, that it should be such land.]²¹

²¹ ANNOTATIONS: Para 1 derived from the Town and Country Planning Act 1971, s 192(1)(a), the Telecommunications Act 1984, Sch 4, para 53(6), and the Coal Industry Act 1987, Sch 1, para 19; para 1 Notes (1)-(4), (6) derived from the Land Compensation Act 1973, ss 68(1), (4), (5)(part), (7)(part), 71(2); para 1 Note (5) derived from the Town and Country Planning Act 1971, s 192(2); para 1 Note (7) derived from the Town and Country Planning Act 1971, Sch 4, para 5, the Land Compensation Act 1973, s 68(8), and the Local Government Act 1985, Sch 1, para 20(2); paras 2, 13, 15, 16 (as originally enacted), 21 derived from the Town and Country Planning Act 1971, s 192(1)(b), (c), (e), (f), (i); para 2 Note (1) derived from the Land Compensation Act 1973, s 68(2), (9); para 2 Notes (2), (4), (5) derived from the Land Compensation Act 1973, s 68(4)(part), (7)(part), (8); para 2 Note (3) derived from the Land Compensation Act 1973, s 68(5)(part), (9); paras 3, 4 derived from the Town and Country Planning Act 1971, s 192(1)(bb), (bc), and the Local Government Act 1985, Sch 1, para 16(1); paras 3, 4 Notes (1)-(4) derived from the Local Government Act 1985, Sch 1, para 17(1)-(3), (5); paras 5, 6, 18 derived from the

The persons entitled to serve a blight notice are set out in s 149 of the Act. Procedures in respect of notices are given in ss 150-152 of the Act.

"S. 149 Scope of Chapter II

- (1) This Chapter shall have effect in relation to land falling within any paragraph of Schedule 13 (land affected by planning proposals of public authorities etc.); and in this Chapter such land is referred to as "blighted land".
- (2) Subject to the provisions of sections 161 and 162, an interest qualifies for protection under this Chapter if--
 - (a) it is an interest in a hereditament or part of a hereditament and on the relevant date it satisfies one of the conditions mentioned in subsection (3); or
 - (b) it is an interest in an agricultural unit or part of an agricultural unit and on the relevant date it is the interest of an owner-occupier of the unit; and in this Chapter such an interest is referred to as "a qualifying interest".
- (3) The conditions mentioned in subsection (2)(a) are--
 - (a) that the annual value of the hereditament does not exceed such amount as may be prescribed

Land Compensation Act 1973, ss 71(1)(a), (b), 74(2)(b); paras 7, 8 derived from the Land Compensation Act 1973, s 72(1), and the New Towns Act 1981, Sch 12, para 11; para 7 Note derived from the Land Compensation Act 1973, s 72(2); para 9, para 9 Note derived from the Local Government, Planning and Land Act 1980, ss 147(1), (2); paras 10, 11 derived from the Land Compensation Act 1973, s 73(1), and the Housing (Consequential Provisions) Act 1985, Sch 2, para 24(8); para 12 derived from the Town and Country Planning Act 1971, s 192(1)(ha), and the Local Government and Housing Act 1989, Sch 11, para 20; para 14 derived from the Town and Country Planning Act 1971, s 192(1)(d), and the Highways Act 1980, Sch 24, para 20; para 14 Notes (1), (3) derived from the Land Compensation Act 1973, ss 69(1)(a), 74(1), and the Highways Act 1980, Sch 24, para 23; para 14 Note (2) derived from the Land Compensation Act 1973, s 69(2); paras 17, 19 derived from the Land Compensation Act 1973, ss 74(2)(a), 76(1), and the Highways Act 1980, Sch 24, para 23; para 19 Note derived from the Land Compensation Act 1973, s 76(4); para 20 derived from the Town and Country Planning Act 1971, s 192(1)(h), and the Housing (Consequential Provisions) Act 1985, Sch 2, para 22; para 22 derived from the Town and Country Planning Act 1971, s 192(1)(g), (j), and the Land Compensation Act 1972, s 75(1), (2); para 22 Note (1) derived from the Land Compensation Act 1973, s 70(1), and the Interpretation Act 1978, s 17(2)(a); para 22 Note (2) derived from the Land Compensation Act 1973, s 70(2). Para 1: in sub-para (a)(i) words in square brackets added by the Environment Act 1995, s 78, Sch 10, para 32(16), words omitted repealed by the Coal Industry Act 1994, s 67, Sch 9, para 39(4), Sch 11, Part II; in Notes (1), (2), (5), (7) words in square brackets substituted, and Note (5A) added, by the Planning and Compensation Act 1991, s 27, Sch 4, para 37(1)-(5). Para 2: first words in square brackets and Note (1) substituted, in Note (3) word omitted and Notes (2), (5) repealed, by the Planning and Compensation Act 1991, ss 27, 84, Sch 4, para 37(6)-(9), Sch 19, Part I. Para 3: words underlined prospectively repealed and subsequent words in square brackets prospectively substituted by the Local Government (Wales) Act 1994, s 20(4), Sch 6, para 24(16), as from a day to be appointed; in Note (1) figure in square brackets substituted and words omitted repealed and in Note (2) figure omitted repealed, by the Planning and Compensation Act 1991, ss 27, 84, Sch 4, para 37(10)-(13), Sch 19, Part I. Para 4: in Note (1) figure in square brackets substituted and words omitted repealed and in Note (2) figure omitted repealed, by the Planning and Compensation Act 1991, ss 27, 84, Sch 4, para 37(10)-(13), Sch 19, Part I. Paras 5, 18: words in square brackets substituted by the Planning and Compensation Act 1991, ss 32, 70, Sch 7, para 56, Sch 15, para 14(2). Para 16: substituted by the Planning and Compensation Act 1991, s 70, Sch 15, para 14(1). Para 23: added by the Transport and Works Act 1992, s 16(2). Modification: references to waste modified by the Waste Management Licensing Regulations 1994, SI 1994 No 1056, reg 19, Sch 4, Part I, para 11, to include "Directive Waste" as defined by reg 1(3), Sch 4, Part II thereof. Modification: paras 1, 2 modified in relation to the area of any local planning authority in Wales during the period beginning on 1 April 1996 and ending when a unitary development plan has become fully operative for that area, by the Local Government (Wales) Act 1994, s 20(3), Sch 5, paras 21, 22. This Act does not extend to Scotland.

for the purposes of this paragraph by an order made by the Secretary of State, and the interest is the interest of an owner-occupier of the hereditament; or

(b) that the interest is the interest of a resident owner-occupier of the hereditament.

(4) In this section "the relevant date", in relation to an interest, means the date of service of a notice under section 150 in respect of it.

(5) In this Chapter "blight notice" means a notice served under section 150, 161 or 162.²²

A qualifying owner may serve a "blight notice" on the acquiring authority.

"S. 150. Notices requiring purchase of blighted land

(1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that--

(a) he is entitled to a qualifying interest in that hereditament or unit;

(b) he has made reasonable endeavours to sell that interest [or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable]; and

(c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land, he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.

(2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or unit as it applies in relation to an interest in the whole of a hereditament or unit.

(3) Subsection (2) shall not enable any person--

(a) if he is entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of his interest in part of a hereditament or unit; or

(b) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the whole of that part.

(4) In this Chapter--

(a) subject to section 161(1), "the claimant", in relation to a blight notice, means the person who served that notice, and

(b) any reference to the interest of the claimant, in relation to a blight notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in subsection (1).²³

A counter notice may be given by the authority where it disagrees with the blight notice served on it. The counter notice must rely on a specified statutory ground.

²² ANNOTATIONS: Sub-s (1) derived from the Town and Country Planning Act 1971, s 192(1)(part); sub-s (2) derived from the Town and Country Planning Act 1971, s 192(3), (4)(part), (5)(part); sub-s (3) derived from the Town and Country Planning Act 1971, s 192(4)(part), and the Town and Country Planning (Blight Provisions) Order 1990, SI 1990 No 465; sub-s (4) derived from the Town and Country Planning Act 1971, s 192(4)(part), (5)(part); sub-s (5) derived from the Town and Country Planning Act 1971, s 192(6), and the Land Compensation Act 1973, s 82(2). This Act does not extend to Scotland.

²³ ANNOTATIONS: Sub-s (1) derived from the Town and Country Planning Act 1971, s 193(1), and the Land Compensation Act 1973, s 77; sub-ss (2), (3) derived from the Town and Country Planning Act 1971, s 193(2); sub-s (4) derived from the Town and Country Planning Act 1971, s 193(4). Sub-s (1): words in square brackets added by the Planning and Compensation Act 1991, s 70, Sch 15, para 13. This Act does not extend to Scotland.

"S. 151. Counter-notices objecting to blight notices

- (1) Where a blight notice has been served in respect of a hereditament or an agricultural unit, the appropriate authority may serve on the claimant a counter-notice in the prescribed form objecting to the notice.
- (2) A counter-notice under subsection (1) may be served at any time before the end of the period of two months beginning with the date of service of the blight notice.
- (3) Such a counter-notice shall specify the grounds on which the appropriate authority object to the blight notice (being one or more of the grounds specified in subsection (4) or, as relevant, in section 159(1), 161(5) or 162(5)).
- (4) Subject to the following provisions of this Act, the grounds on which objection may be made in a counter-notice to a notice served under section 150 are--
 - (a) that no part of the hereditament or agricultural unit to which the notice relates is comprised in blighted land;
 - (b) that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire any part of the hereditament, or in the case of an agricultural unit any part of the affected area, in the exercise of any relevant powers;
 - (c) that the appropriate authority propose in the exercise of relevant powers to acquire a part of the hereditament or, in the case of an agricultural unit, a part of the affected area specified in the counter-notice, but (unless compelled to do so by virtue of this Chapter) do not propose to acquire any other part of that hereditament or area in the exercise of any such powers;
 - (d) in the case of land falling within paragraph 1, 3 or 13 but not 14, 15 or 16 of Schedule 13, that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire in the exercise of any relevant powers any part of the hereditament or, in the case of an agricultural unit, any part of the affected area during the period of 15 years from the date of the counter-notice or such longer period from that date as may be specified in the counter-notice;
 - (e) that, on the date of service of the notice under section 150, the claimant was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
 - (f) that (for reasons specified in the counter-notice) the interest of the claimant is not a qualifying interest;
 - (g) that the conditions specified in paragraphs (b) and (c) of section 150(1) are not fulfilled.
- (5) Where the appropriate enactment confers power to acquire rights over land, subsection (4) shall have effect as if--
 - (a) in paragraph (b) after the word "acquire" there were inserted the words "or to acquire any rights over";
 - (b) in paragraph (c) for the words "do not propose to acquire" there were substituted the words "propose neither to acquire, nor to acquire any right over";
 - (c) in paragraph (d) after the words "affected area" there were inserted "or to acquire any right over any part of it".
- (6) An objection may not be made on the grounds mentioned in paragraph (d) of subsection (4) if it may be made on the grounds mentioned in paragraph (b) of that subsection.
- (7) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 19 of Schedule 13 shall not include those mentioned in subsection (4)(b) or (c).
- (8) In this section "relevant powers", in relation to blighted land falling within any paragraph of Schedule 13, means any powers under which the appropriate authority are or could be authorised--
 - (a) to acquire that land or to acquire any rights over it compulsorily as being land falling within that paragraph; or
 - (b) to acquire that land or any rights over it compulsorily for any of the relevant purposes; and "the relevant purposes", in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the paragraph in

question, it is liable to be acquired or is indicated as being proposed to be acquired.²⁴

"S. 152 Further counter-notices where certain proposals have come into force

- (1) Where--
 - (a) an appropriate authority have served a counter-notice objecting to a blight notice in respect of any land falling within paragraph 1, 2, 3, 4 or 14 of Schedule 13 by virtue of Note (1) to that paragraph, and
 - (b) the relevant plan or alterations or, as the case may be, the relevant order or scheme comes into force (whether in its original form or with modifications),the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection.
- (2) Such a further counter-notice shall not be served--
 - (a) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations come into force; or
 - (b) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection.²⁵ "

Counter notice objections are referred to the Lands Tribunal (See s 153 Town and Country Planning Act).

"S. 153 Reference of objection to Lands Tribunal: general

- (1) Where a counter-notice has been served under section 151 objecting to a blight notice, the claimant may require the objection to be referred to the Lands Tribunal.
- (2) Such a reference may be required under subsection (1) at any time before the end of the period of two months beginning with the date of service of the counter-notice.
- (3) On any such reference, if the objection is not withdrawn, the Lands Tribunal shall consider--
 - (a) the matters set out in the notice served by the claimant, and
 - (b) the grounds of the objection specified in the counter-notice;and, subject to subsection (4), unless it is shown to the satisfaction of the Tribunal that the objection is not well-founded, the Tribunal shall uphold the objection.
- (4) An objection on the grounds mentioned in section 151(4)(b), (c) or (d) shall not be upheld by the Tribunal unless it is shown to the satisfaction of the Tribunal that the objection is well-founded.
- (5) If the Tribunal determines not to uphold the objection, the Tribunal shall declare that the notice to which the counter-notice relates is a valid notice.
- (6) If the Tribunal upholds the objection, but only on the grounds mentioned in section 151(4)(c), the Tribunal shall declare that the notice is a valid notice in relation to the part of the hereditament, or in the case of an agricultural unit the part of the affected area, specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice, but not in relation to any other part of the hereditament or affected area.

²⁴ ANNOTATIONS: Sub-ss (1), (2) derived from the Town and Country Planning Act 1971, s 194(1); sub-s (3) derived from the Town and Country Planning Act 1971, s 194(5)(part); sub-s (4) derived from the Town and Country Planning Act 1971, s 194(2), the Local Government, Planning and Land Act 1980, Sch 15, paras 18, 19, and the Local Government Act 1985, Sch 1, para 16(2); sub-s (5) derived from the Town and Country Planning Act 1971, s 194(4), and the Land Compensation Act 1973, s 75(3)(a); sub-s (6) derived from the Town and Country Planning Act 1971, s 194(3); sub-s (7) derived from the Land Compensation Act 1973, s 76(2); sub-s (8) derived from the Town and Country Planning Act 1971, s 194(6), and the Land Compensation Act 1973, s 75(3)(b). This Act does not extend to Scotland.

²⁵ ANNOTATIONS: Sub-s (1) derived from the Land Compensation Act 1973, ss 68(6)(part), 69(3), and the Local Government Act 1985, Sch 1, para 17(4); sub-s (2) derived from the Land Compensation Act 1973, s 68(6)(part). This Act does not extend to Scotland.

- (7) In a case falling within subsection (5) or (6), the Tribunal shall give directions specifying the date on which notice to treat (as mentioned in section 154) is to be deemed to have been served.
- (8) This section shall have effect in relation to a further counter-notice served by virtue of section 152(1) as it has effect in relation to the counter-notice for which it is substituted. ²⁶

Sections 154 - 157 give further details and interpretation relating to blight.

"S. 154. Effect of valid blight notice

- (1) Subsection (2) applies where a blight notice has been served and either--
- (a) no counter-notice objecting to that notice is served in accordance with this Chapter; or
 - (b) where such a counter-notice has been served, the objection is withdrawn or, on a reference to the Lands Tribunal, is not upheld by the Tribunal.
- (2) Where this subsection applies, the appropriate authority shall be deemed--
- (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in the hereditament, or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area, and
 - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)--
- (a) in a case where, on a reference to the Lands Tribunal, the Tribunal determines not to uphold the objection, is the date specified in directions given by the Tribunal in accordance with section 153(7);
 - (b) in any other case, is the date on which the period of two months beginning with the date of service of the blight notice comes to an end.
- (4) Subsection (5) applies where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 151(4)(c) and either--
- (a) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired--
 - (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the hereditament or affected area specified in the counter-notice, and
 - (ii) withdraws his claim as to the remainder of that hereditament or area; or
 - (b) on a reference to the Lands Tribunal, the Tribunal makes a declaration in accordance with section 153(6) in respect of that part of the hereditament or affected area.
- (5) Where this subsection applies, the appropriate authority shall be deemed--
- (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the hereditament or affected area specified in the counter-notice (but not in so far as it subsists in any other part of that hereditament or area), and
 - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (6).
- (6) The date referred to in subsection (5)--
- (a) in a case falling within paragraph (a) of subsection (4), is the date on which notice is given in accordance with that paragraph; and
 - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Lands Tribunal in accordance with section 153(7). ²⁷

"S. 155. Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire

²⁶ ANNOTATIONS: Sub-ss (1), (2) derived from the Town and Country Planning Act 1971, s 195(1); sub-ss (3)-(7) derived from the Town and Country Planning Act 1971, s 195(2)-(6); sub-s (8) derived from the Land Compensation Act 1973, s 68(6)(part). This Act does not extend to Scotland.

²⁷ ANNOTATIONS: Sub-ss (1), (2) derived from the Town and Country Planning Act 1971, s 196(1); sub-ss (3), (6) derived from the Town and Country Planning Act 1971, s 196(2), (4); sub-ss (4), (5) derived from the Town and Country Planning Act 1971, s 196(3). This Act does not extend to Scotland.

- (1) Subsection (2) shall have effect where the grounds of objection specified in a counter-notice served under section 151 consist of or include the grounds mentioned in paragraph (b) or (d) of subsection (4) of that section and either--
- (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal; or
 - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred.
- (2) If--
- (a) a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes the whole or part of the hereditament or agricultural unit to which the counter-notice relates, or
 - (b) the land in question falls within paragraph 21 of Schedule 13, any power conferred by that order or, as the case may be, by special enactment for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part of it shall cease to have effect.
- (3) Subsection (4) shall have effect where the grounds of objection specified in a counter-notice under section 151 consist of or include the grounds mentioned in paragraph (c) of subsection (4) of that section and either--
- (b) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal; or
 - (c) the time for referring that objection to the Lands Tribunal expires without its having been so referred;
- and in subsection (4) any reference to "the part of the hereditament or affected area not required" is a reference to the whole of that hereditament or area except the part specified in the counter-notice as being the part which the appropriate authority proposes to acquire as mentioned in the counter-notice.
- (4) If--
- (a) a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any of the part of the hereditament or affected area not required, or
 - (b) the land in question falls within paragraph 21 of Schedule 13, any power conferred by that order or, as the case may be, by the special enactment for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the hereditament or affected area not required shall cease to have effect.²⁸

"S. 156. Withdrawal of blight notice

- (1) Subject to subsection (3), the person by whom a blight notice has been served may withdraw the notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the notice has been determined by the Lands Tribunal or, if there has been such a determination, at any time before the end of the period of six weeks beginning with the date of the determination.
- (2) Where a blight notice is withdrawn by virtue of subsection (1) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (3) A person shall not be entitled by virtue of subsection (1) to withdraw a notice after the appropriate authority have exercised a right of entering and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.
- (4) No compensation shall be payable in respect of the withdrawal of a notice to treat which is deemed to have been withdrawn by virtue of subsection (2).²⁹

²⁸ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 199. This Act does not extend to Scotland.

²⁹ ANNOTATIONS: Sub-ss (1), (2) derived from the Town and Country Planning Act 1971, s 198(1); sub-ss (3), (4) derived from the Town and Country Planning Act 1971, s 198(2), (3). This Act does not extend to Scotland.

"S. 157. Special provisions as to compensation for acquisitions in pursuance of blight notices

(1) Where--

(a) an interest in land is acquired in pursuance of a blight notice, and

(b) the interest is one in respect of which a compulsory purchase order is in force under section 1 of the Acquisition of Land Act 1981, as applied by section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, containing a direction for minimum compensation under section 50 of that Act of 1990,

the compensation payable for the acquisition shall be assessed in accordance with that direction and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.

(2) Where--

(a) an interest in land is acquired in pursuance of a blight notice, and

(b) the interest is one in respect of which a compulsory purchase order is in force under section 290 of the Housing Act 1985 (acquisition of land for clearance);

the compensation payable for the acquisition shall be assessed in accordance with that Act and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.

(3) The compensation payable in respect of the acquisition by virtue of section 160 of an interest in land comprised in--

(a) the unaffected area of an agricultural unit; or

(b) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in section 151(4)(c), so much of the affected area of the unit as is not specified in the counter-notice,

shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the Land Compensation Act 1973.

(4) In subsection (3) the reference to "the appropriate authority" shall be construed as if the unaffected area of an agricultural unit were part of the affected area.³⁰

Sections 158-160 Town and Country Planning Act are special provisions relating to blight notices served by an owner-occupier of agricultural units.

"S. 158 Inclusion in blight notices of requirement to purchase parts of agricultural units unaffected by blight

(1) This section applies where--

(a) a blight notice is served in respect of an interest in the whole or part of an agricultural unit, and

(b) on the date of service that unit or part contains land ("the unaffected area") which is not blighted land as well as land ("the affected area") which is such land.

(2) Where this section applies the claimant may include in the blight notice--

(a) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and

(b) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.

(3) Subject to section 159(4), "other relevant land" in subsection (2) means--

(a) if the blight notice is served only in respect of part of land comprised in the agricultural unit, the remainder of it; and

(b) land which is comprised in any other agricultural unit occupied by the claimant on the date

³⁰ ANNOTATIONS: Sub-ss (1), (2) derived from the Town and Country Planning Act 1971, s 197, the Acquisition of Land Act 1981, Sch 4, para 1, and the Housing (Consequential Provisions) Act 1985, Sch 2, para 22; sub-ss (3), (4) derived from the Land Compensation Act 1973, s 81(6), (7)(part). This Act does not extend to Scotland.

of service and in respect of which he is then entitled to an owner's interest as defined in section 168(4).³¹

"S. 159 Objections to s 158 notices

- (1) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of section 158 shall include the grounds that the claim made in the notice is not justified.
- (2) Objection shall not be made to a blight notice served by virtue of section 158 on the grounds mentioned in section 151(4)(c) unless it is also made on the grounds mentioned in subsection (1).
- (3) The Lands Tribunal shall not uphold an objection to a notice served by virtue of section 158 on the grounds mentioned in section 151(4)(c) unless it also upholds the objection on the grounds mentioned in subsection (1).
- (4) Where objection is made to a blight notice served by virtue of section 158 on the grounds mentioned in subsection (1) and also on those mentioned in section 151(4)(c), the Lands Tribunal, in determining whether or not to uphold the objection, shall treat that part of the affected area which is not specified in the counter-notice as included in "other relevant land" as defined in section 158(3).
- (5) If the Lands Tribunal upholds an objection but only on the ground mentioned in subsection (1), the Tribunal shall declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area.
- (6) If the Tribunal upholds an objection both on the grounds mentioned in subsection (1) and on the grounds mentioned in section 151(4)(c) (but not on any other grounds) the Tribunal shall declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice but not in relation to any other part of the affected area or in relation to the unaffected area.
- (7) In a case falling within subsection (5) or (6), the Tribunal shall give directions specifying a date on which notice to treat (as mentioned in sections 154 and section 160) is to be deemed to have been served.
- (8) Section 153(6) shall not apply to any blight notice served by virtue of section 158.³²

"S. 160 Effect of notices served by virtue of s 158

- (1) In relation to a blight notice served by virtue of section 158--
 - (a) subsection (2) of section 154 shall have effect as if for the words "or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area" there were substituted the words "or agricultural unit"; and
 - (b) subsections (4) and (5) of that section shall not apply to any such blight notice.
- (2) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 159(1), then if either--
 - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area; or
 - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 159(5),
 - the appropriate authority shall be deemed--
 - (i) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the affected area (but not in so far as it subsists in the unaffected area), and

³¹ ANNOTATIONS: Sub-ss (1), (2) derived from the Land Compensation Act 1973, s 79(1); sub-s (3) derived from the Land Compensation Act 1973, s 79(2). This Act does not extend to Scotland.

³² ANNOTATIONS: Sub-ss (1), (4)-(8) derived from the Land Compensation Act 1973, s 80(1), (3)-(7); sub-ss (2), (3) derived from the Land Compensation Act 1973, s 80(2). This Act does not extend to Scotland.

- (ii) to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)--
 - (a) in a case falling within paragraph (a) of subsection (2), is the date on which notice is given in accordance with that paragraph; and
 - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 159(7).
- (4) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 159(1) and also on the grounds mentioned in section 151(4)(c), then if either--
 - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired--
 - (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and
 - (ii) withdraws his claim as to the remainder of that area and as to the unaffected area; or
 - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 159(6) in respect of that part of the affected area,
 the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area or in the unaffected area) and to have served a notice to treat in respect of it on the date mentioned in subsection (5).
- (5) The date referred to in subsection (4)--
 - (a) in a case falling within paragraph (a) of that subsection, is the date on which notice is given in accordance with that paragraph; and
 - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 159(7).
- (6) In relation to a blight notice served by virtue of section 158 references to "the appropriate authority" and "the appropriate enactment" shall be construed as if the unaffected area of an agricultural unit were part of the affected area.³³

Sections 161-168 contain more procedural type powers relating to blight.

"S. 161 Powers of personal representatives in respect of blight notice

- (1) In relation to any time after the death of a person who has served a blight notice, sections 151(1), 152(1), 153(1), 154(4) and (5), 156(1) and 160(2) and (4) shall apply as if any reference in them to the claimant were a reference to the claimant's personal representatives.
- (2) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that--
 - (a) he is the personal representative of a person ("the deceased") who at the date of his death was entitled to an interest in that hereditament or unit;
 - (b) the interest was one which would have been a qualifying interest if a notice under section 150 had been served in respect of it on that date;
 - (c) he has made reasonable endeavours to sell that interest [or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable];
 - (d) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land; and
 - (e) one or more individuals are (to the exclusion of any body corporate) beneficially entitled to

³³ ANNOTATIONS: This section derived from the Land Compensation Act 1973, s 81(1)-(5), (7). This Act does not extend to Scotland.

that interest,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.

- (3) Subject to subsection (4), subsection (2) shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the whole of a hereditament or agricultural unit.
- (4) Subsection (3) shall not enable any person--
 - (a) if the deceased was entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of the deceased's interest in part of the hereditament or unit; or
 - (b) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the whole of that part.
- (5) Subject to sections 151(7) and 159(2) and (3), the grounds on which objection may be made in a counter-notice under section 151 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds--
 - (a) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
 - (b) that (for reasons specified in the counter-notice) the interest of the deceased is not such as is specified in subsection (2)(b);
 - (c) that the conditions specified in subsection (2)(c), (d) or (e) are not satisfied.³⁴

"S. 162. Power of mortgagees to serve blight notice

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that--
 - (a) he is entitled as mortgagee (by virtue of a power which has become exercisable) to sell an interest in the hereditament or unit, giving immediate vacant possession of the land;
 - (b) he has made reasonable endeavours to sell that interest [or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable]; and
 - (c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,then, subject to the provisions of this section, he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.
- (2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or unit as it applies in relation to an interest in the whole of a hereditament or unit.
- (3) Subsection (2) shall not enable a person--
 - (a) if his interest as mortgagee is in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of any interest in part of the hereditament or unit; or
 - (b) if his interest as mortgagee is only in part of a hereditament or agricultural unit, to make or serve any such notice or claim in respect of any interest in less than the whole of that part.

³⁴ ANNOTATIONS: Sub-s (1) derived from the Town and Country Planning Act 1971, s 200, and the Land Compensation Act 1973, s 81(8); sub-ss (2), (5) derived from the Land Compensation Act 1973, s 78(1), (3); sub-ss (3), (4) derived from the Land Compensation Act 1973, s 78(2). Sub-s (2): words in square brackets added by the Planning and Compensation Act 1991, s 70, Sch 15, para 13. This Act does not extend to Scotland.

- (4) Notice under this section shall not be served unless the interest which the mortgagee claims he has the power to sell--
- (a) could be the subject of a notice under section 150 served by the person entitled to it on the date of service of the notice under this section; or
 - (b) could have been the subject of such a notice served by that person on a date not more than six months before the date of service of the notice under this section.
- (5) Subject to sections 151(7) and 159(2) and (3), the grounds on which objection may be made in a counter-notice under section 151 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds
- (a) that, on the date of service of the notice under this section, the claimant had no interest as mortgagee in any part of the hereditament or agricultural unit to which the notice relates;
 - (b) that (for reasons specified in the counter-notice) the claimant had not on that date the power referred to in subsection (1)(a);
 - (c) that the conditions specified in subsection (1)(b) and (c) are not fulfilled;
 - (d) that (for reasons specified in the counter-notice) neither of the conditions specified in subsection (4) was, on the date of service of the notice under this section, satisfied with regard to the interest referred to in that subsection.³⁵

"S. 163 Prohibition on service of simultaneous notices under ss 150, 161 and 162

- (1) No notice shall be served under section 150 or 161 in respect of a hereditament or agricultural unit, or any part of it, at a time when a notice already served under section 162 is outstanding with respect to it, and no notice shall be served under section 162 at a time when a notice already served under section 150 or 161 is outstanding with respect to the relevant hereditament, unit or part.
- (2) For the purposes of subsection (1), a notice shall be treated as outstanding with respect to a hereditament, unit or part--
- (a) until it is withdrawn in relation to the hereditament, unit or part; or
 - (b) in a case where an objection to the notice has been made by a counter-notice under section 151, until either--
 - (i) the period of two months specified in section 153 elapses without the claimant having required the objection to be referred to the Lands Tribunal under that section; or
 - (ii) the objection, having been so referred, is upheld by the Tribunal with respect to the hereditament, unit or part.³⁶

"S. 164. Special provisions as to partnerships

- (1) This section shall have effect for the purposes of the application of this Chapter to a hereditament or agricultural unit occupied for the purposes of a partnership firm.
- (2) Occupation for the purposes of the firm shall be treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the definitions of "owner-occupier" in section 168(1) and (2) shall apply in relation to the firm accordingly.
- (3) If, after the service by the firm of a blight notice, any change occurs (whether by death or otherwise) in the constitution of the firm, any proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or, as the case may be, shall be incumbent upon, the partners for the time being constituting the firm.
- (4) Nothing in this Chapter shall be construed as indicating an intention to exclude the operation

³⁵ ANNOTATIONS: Sub-s (1) derived from the Town and Country Planning Act 1971, s 201(1), and the Land Compensation Act 1973, s 77(1), (2); sub-ss (2), (3) derived from the Town and Country Planning Act 1971, s 201(2); sub-ss (4), (5) derived from the Town and Country Planning Act 1971, s 201(3), (6). Sub-s (1): words in square brackets added by the Planning and Compensation Act 1991, s 70, Sch 15, para 13. This Act does not extend to Scotland.

³⁶ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 201(4), (5), and the Land Compensation Act 1973, s 78(4). This Act does not extend to Scotland.

of the definition of "person" in Schedule 1 to the Interpretation Act 1978 (by which, unless the contrary intention appears, "person" includes any body of persons corporate or unincorporate) in relation to any provision of this Chapter.

(5) Subsection (2) shall not affect the definition of "resident owner-occupier" in section 168(3).³⁷

"S. 165. Power of Secretary of State to acquire land affected by orders relating to new towns etc where blight notice served

- (1) Where a blight notice has been served in respect of land falling within paragraph 7, 8 or 9 of Schedule 13, then until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area the Secretary of State shall have power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.
- (2) Where the Secretary of State acquires an interest under subsection (1), then--
 - (a) if the land is or becomes land within paragraph 8 or, as the case may be, paragraph 9(b) of Schedule 13, the interest shall be transferred by him to the development corporation established for the new town or, as the case may be, the urban development corporation established for the urban development area; and
 - (b) in any other case, the interest may be disposed of by him in such manner as he thinks fit.
- (3) The Land Compensation Act 1961 shall have effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State under subsection (1) as if--
 - (a) the acquisition were by a development corporation under the New Towns Act 1981 or, as the case may be, by an urban development corporation under Part XVI of the Local Government, Planning and Land Act 1980;
 - (b) in the case of land within paragraph 7 of Schedule 13, the land formed part of an area designated as the site of a new town by an order which has come into operation under section 1 of the New Towns Act 1981; and
 - (c) in the case of land within paragraph 9(a) of Schedule 13, the land formed part of an area designated as an urban development area by an order under section 134 of the Local Government, Planning and Land Act 1980 which has come into operation.³⁸

"S. 166. Saving for claimant's right to sell whole hereditament, etc

- (1) The provisions of sections 151(4)(c), 153(6), 154(4) and (5) and 155(3) and (4) relating to hereditaments shall not affect--
 - (a) the right of a claimant under section 92 of the Lands Clauses Consolidation Act 1845 to sell the whole of the hereditament or, in the case of an agricultural unit, the whole of the affected area, which he has required the authority to purchase; or
 - (b) the right of a claimant under section 8 of the Compulsory Purchase Act 1965 to sell (unless the Lands Tribunal otherwise determines) the whole of the hereditament or, as the case may be, affected area which he has required that authority to purchase.
- (2) In accordance with subsection (1)(b), in determining whether or not to uphold an objection relating to a hereditament on the grounds mentioned in section 151(4)(c), the Lands Tribunal shall consider (in addition to the other matters which they are required to consider) whether--
 - (a) in the case of a house, building or factory, the part proposed to be acquired can be taken without material detriment to the house, building or factory; or
 - (b) in the case of a park or garden belonging to a house, the part proposed to be acquired can

³⁷ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 204. This Act does not extend to Scotland.

³⁸ ANNOTATIONS: Sub-ss (1), (2) derived from the Land Compensation Act 1973, s 72(4), and the Local Government, Planning and Land Act 1980, s 147(4); sub-s (3) derived from the Land Compensation Act 1973, s 72(5), the Local Government, Planning and Land Act 1980, s 147(5), and the New Towns Act 1981, Sch 12, para 11. This Act does not extend to Scotland.

be taken without seriously affecting the amenity or convenience of the house.³⁹

"S. 167. No withdrawal of constructive notice to treat

Without prejudice to the provisions of section 156(1) and (2), a notice to treat which is deemed to have been served by virtue of this Chapter may not be withdrawn under section 31 of the Land Compensation Act 1961.⁴⁰

"S. 168. Meaning of "owner-occupier" and "resident owner-occupier"

- (1) Subject to the following provisions of this section, in this Chapter "owner-occupier", in relation to a hereditament, means--
- (a) a person who occupies the whole or a substantial part of the hereditament in right of an owner's interest in it, and has so occupied the hereditament or that part of it during the whole of the period of six months ending with the date of service; or
 - (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, a person who so occupied the hereditament or as the case may be, that part of it during the whole of a period of six months ending immediately before the period when it was not occupied.
- (2) Subject to the following provisions of this section, in this Chapter "owner-occupier", in relation to an agricultural unit, means a person who--
- (a) occupies the whole of that unit and has occupied it during the whole of the period of six months ending with the date of service; or
 - (b) occupied the whole of that unit during the whole of a period of six months ending not more than 12 months before the date of service,
- and, at all times material for the purposes of paragraph (a) or, as the case may be, paragraph (b) has been entitled to an owner's interest in the whole or part of that unit.
- (3) In this Chapter "resident owner-occupier", in relation to a hereditament, means--
- (a) an individual who occupies the whole or a substantial part of the hereditament as a private dwelling in right of an owner's interest in it, and has so occupied the hereditament or, as the case may be, that part during the whole of the period of six months ending with the date of service; or
 - (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the hereditament or, as the case may be, that part during the whole of a period of six months ending immediately before the period when it was not occupied.
- (4) In this section--
- "owner's interest", in relation to a hereditament or agricultural unit, means a freehold interest in it or a tenancy of it granted or extended for a term of years certain not less than three years of which remain unexpired on the date of service; and
- "date of service", in relation to a hereditament or agricultural unit, means the date of service of a notice in respect of it under section 150.⁴¹

"S. 169. "Appropriate authority" for purposes of Chapter II

- (1) Subject to the following provisions of this section, in this Chapter "the appropriate authority", in relation to any land, means the government department, local authority [National Park authority] or other body or person by whom, in accordance with the circumstances by virtue of which the land falls within any paragraph of Schedule 13, the land is liable to be acquired or is indicated as being proposed to be acquired or, as the case may be, any right over the land is

³⁹ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 202. This Act does not extend to Scotland.

⁴⁰ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 208. This Act does not extend to Scotland.

⁴¹ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 203. This Act does not extend to Scotland.

proposed to be acquired.

- (2) If any question arises--
 - (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a local highway authority; or
 - (b) which of two or more local highway authorities is the appropriate authority in relation to any land for those purposes; or
 - (c) which of two or more local authorities is the appropriate authority in relation to any land for those purposes,
that question shall be referred to the Secretary of State, whose decision shall be final.
- (3) If any question arises which authority is the appropriate authority for the purposes of this Chapter--
 - (a) section 151(2) shall have effect as if the reference to the date of service of the blight notice were a reference to that date or, if it is later, the date on which that question is determined;
 - (b) section 162(4)(b) shall apply with the substitution for the period of six months of a reference to that period extended by so long as it takes to obtain a determination of the question; and
 - (c) section 168(1)(b), (2)(b) and (3)(b) shall apply with the substitution for the reference to 12 months before the date of service of a reference to that period extended by so long as it takes to obtain a determination of the question.
- (4) In relation to land falling within paragraph 7, 8 or 9 of Schedule 13, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if "the appropriate authority" were the Secretary of State.
- (5) In relation to land falling within paragraph 19 of Schedule 13, "the appropriate authority" shall be the highway authority for the highway in relation to which the order mentioned in that paragraph was made.⁴²

"S. 170 "Appropriate enactment" for purposes of Chapter II

- (1) Subject to the following provisions of this section, in this Chapter "the appropriate enactment", in relation to land falling within any paragraph of Schedule 13, means the enactment which provides for the compulsory acquisition of land as being land falling within that paragraph or, as respects paragraph 22(b), the enactment under which the compulsory purchase order referred to in that paragraph was made.
- (2) In relation to land falling within paragraph 2, 3 or 4 of that Schedule, an enactment shall for the purposes of subsection (1) be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that paragraph if--
 - (a) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed; or
 - (b) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority [National Park authority] or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.
- (3) In relation to land falling within paragraph 2, 3 or 4 of that Schedule by virtue of Note (1) to that paragraph, "the appropriate enactment" shall be determined in accordance with subsection (2) as if references in that subsection to the development plan were references to any such plan, proposal or modifications as are mentioned in paragraph (a), (b) or (c) of that Note.

⁴² ANNOTATIONS: Sub-ss (1)-(3) derived from the Town and Country Planning Act 1971, s 205, and the Telecommunications Act 1984, Sch 4, para 53(6); sub-s (4) derived from the Land Compensation Act 1973, s 72(3)(part), and the Local Government, Planning and Land Act 1980, s 147(3)(part); sub-s (5) derived from the Land Compensation Act 1973, s 76(3)(part). Sub-s (1): words in square brackets added by the Environment Act 1995, s 78, Sch 10, para 32(5). This Act does not extend to Scotland.

- (4) In relation to land falling within paragraph 5 or 6 of that Schedule, "the appropriate enactment" shall be determined in accordance with subsection (2) as if references in that subsection to the development plan were references to the resolution or direction in question.
- (5) In relation to land falling within paragraph 7, 8 or 9 of that Schedule, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if "the appropriate enactment" were section 165(1).
- (6) In relation to land falling within paragraph 10 or 11 of that Schedule, "the appropriate enactment" shall be section 290 of the Housing Act 1985.
- (7) In relation to land falling within paragraph 19 of that Schedule, "the appropriate enactment" shall be section 239(6) of the Highways Act 1980.
- (8) In relation to land falling within paragraph 22 of that Schedule by virtue of Note (1) to that paragraph, "the appropriate enactment" shall be the enactment which would provide for the compulsory acquisition of the land or of the rights over the land if the relevant compulsory purchase order were confirmed or made.
- (9) Where, in accordance with the circumstances by virtue of which any land falls within any paragraph of that Schedule, it is indicated that the land is proposed to be acquired for highway purposes, any enactment under which a highway authority are or (subject to the fulfilment of the relevant conditions) could be authorised to acquire that land compulsorily for highway purposes shall, for the purposes of subsection (1), be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within that paragraph.
- (10) In subsection (9) the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question--
- (a) the coming into operation of any requisite order or scheme made, or having effect as if made, under the provisions of Part II of the Highways Act 1980;
 - (b) the coming into operation of any requisite scheme made, or having effect as if made, under section 106(3) of that Act;
 - (c) the making or approval of any requisite plans.
- (11) If, apart from this subsection, two or more enactments would be the appropriate enactment in relation to any land for the purposes of this Chapter, the appropriate enactment for those purposes shall be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that (apart from this Chapter) the land would have been acquired by the appropriate authority.
- (12) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of this Chapter, that question shall be referred--
- (a) where the appropriate authority are a government department, to the Minister in charge of that department;
 - (b) where the appropriate authority are statutory undertakers, to the appropriate Minister; and
 - (c) in any other case, to the Secretary of State,
- and the decision of the Minister or, as the case may be, the Secretary of State shall be final.⁴³

⁴³ ANNOTATIONS: Sub-s (1) derived from the Town and Country Planning Act 1971, s 206(1), sub-s (2) derived from the Town and Country Planning Act 1971, s 206(2), and the Local Government Act 1985, Sch 1, para 17(6)(part); sub-s (3) derived from the Land Compensation Act 1973, s 68(10)(part), and the Local Government Act 1985, Sch 1, para 17(6)(part); sub-s (4) derived from the Land Compensation Act 1973, s 71(3); sub-s (5) derived from the Land Compensation Act 1973, s 72(3)(part), and the Local Government, Planning and Land Act 1980, s 147(3)(part); sub-s (6) derived from the Land Compensation Act 1973, s 73(3), and the Housing (Consequential Provisions) Act 1985, Sch 2, para 24(8); sub-s (7) derived from the Land Compensation Act 1973, s 76(3)(part), and the Highways Act 1980, Sch 24, para 23; sub-s (8) derived from the Land Compensation Act 1973, s 70(3); sub-ss (9), (11), (12) derived from the Town and Country Planning Act 1971, s 206(3), (5), (6); sub-s (10) derived from the Town and Country Planning Act 1971, s 206(4), and the Highways Act 1980, Sch 24, para 20.

"S. 171 General interpretation of Chapter II

(1) Subject to the following provisions of this section, in this Chapter--

"the affected area", in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any paragraph of Schedule 13;

"agricultural" has the same meaning as in section 109 of the Agriculture Act 1947 and references to the farming of land include references to the carrying on in relation to the land of agricultural activities;

"agricultural unit" means land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land;

"annual value" means--

(a) in the case of a hereditament which is shown in a local non-domestic rating list and none of which consists of domestic property or property exempt from local non-domestic rating, the value shown in that list as the rateable value of that hereditament on the date of service;

(b) in the case of a hereditament which is shown in a local non-domestic rating list and which includes domestic property or property exempt from local domestic rating, the sum of--

(i) the value shown in that list as the rateable value of that hereditament on the date of service; and

(ii) the value attributable to the non-rateable part of that hereditament in accordance with subsections (2) and (3);

(c) in the case of any other hereditament, the value attributable to that hereditament in accordance with subsections (2) and (3);

"blight notice" has the meaning given in section 149(5);

"the claimant" has the meaning given in section 150(4);

"hereditament" means a relevant hereditament within the meaning of section 64(4)(a) to (c) of the Local Government Finance Act 1988;

"special enactment" means a local enactment, or a provision contained in an Act other than a local or private Act, which is a local enactment or provision authorising the compulsory acquisition of land specifically identified in it; and in this definition "local enactment" means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure.

(2) The value attributable to a hereditament, or the non-rateable part of it, in respect of domestic property shall be the value certified by the relevant valuation officer as being 5 per cent. of the compensation which would be payable in respect of the value of that property if it were purchased compulsorily under statute with vacant possession and the compensation payable were calculated in accordance with Part II of the Land Compensation Act 1961 by reference to the relevant date.

(3) The value attributable to a hereditament, or the non-rateable part of it, in respect of property exempt from local non-domestic rating shall be the value certified by the relevant valuation officer as being the value which would have been shown as the rateable value of that property on the date of service if it were a relevant non-domestic hereditament consisting entirely of non-domestic property, none of which was exempt from local non-domestic rating.

(4) Land which (apart from this subsection) would comprise separate hereditaments solely by reason of being divided by a boundary between rating areas shall be treated for the purposes of the definition of "hereditament" in subsection (1) as if it were not so divided.

(5) In this section--

"date of service" has the same meaning as in section 168;

"relevant valuation officer" means the valuation officer who would have determined the rateable value in respect of the hereditament for the purposes of Part III of the Local Government

Sub-s (2): words in square brackets added by the Environment Act 1995, s 78, Sch 10, para 32(5). This Act does not extend to Scotland.

Finance Act 1988 if the hereditament had fulfilled the conditions set out in section 42(1)(b) to (d) of that Act;
"relevant date" is the date by reference to which that determination would have been made;
and expressions used in the definition of "annual value" in subsection (1) or in subsection (2) or (3) which are also used in Part III of that Act have the same meaning as in that Part.⁴⁴

There has been a substantial amount of discussion in respect of blight notices and the statutory framework which has stemmed from general dissatisfaction with the manner in which the system operates. There is a basic tension between owners who have property values blighted but who are unable to claim and entities seeking to carry out projects on realistic budgets. Allowing the unrestricted serving of blight notices would make such projects unfeasible due to expense. This is particularly the case when such projects normally only secure the bulk of their finance where they get beyond the proposal and planning stage into the implementation phase. Little money will normally exist for wholesale acquisitions at the earlier stage. There is a general concern that easing the restrictions on blight will push the costs of projects beyond even what the public purse can afford.

Part of the difficulty relates not so much to the ability or otherwise to serve a blight notice but on the length of time it takes in many instances for a project to get beyond the planning and public inquiry stage and into the acquisition and implementation phase. This is because the proposed project and any uncertainty relating to it blights property values for an inordinate period of time with the owner unable to compel acquisition where they do not come with the blight regime. There is also considerable delay between the time when an authority decides to utilise a cpo and the time when the cpo is finally confirmed. Where the cpo is opposed confirmation may take up to six months.⁴⁵ Some of this delay is attributed to lack of institutional knowledge within departments as to the operation of the cpo procedures.

Note also that a department may wait up to three years before exercising its powers from the date on which the cpo becomes effective by virtue of s 4 of the Compulsory Purchase Act 1965 and then a further three years before the notice to treat ceases to have effect by virtue of s 5(2A).

An interesting result of these problems is that opposition to the project becomes quickly entrenched. Owners with blighted value and facing a long delay before the project goes through are more likely to mount intense opposition in the planning and public inquiry phase. This leads to extra cost and extra delay.

In terms of proposed solutions it appears to be generally accepted that there is no quick fix. Rather than expanding the class of persons who may serve blight notices the most popular avenue of attack appears to be streamlining the planning and cpo process. How this can be done without jeopardising procedural safeguards is the fundamental issue.

⁴⁴ ANNOTATIONS: This section derived from the Town and Country Planning Act 1971, s 207, the Land Compensation Act 1973, ss 82(5), 87(1), and the Town and Country Planning (Blight Provisions) Order 1990, SI 1990 No 465. This Act does not extend to Scotland.

⁴⁵ Guy Roots Q.C. "Compulsory Purchase: Unlocking the potential" [1999] JPL 34.

Reference has been made to the Australian jurisdiction where there is no public inquiry following the initial equivalent of the cpo and prior to confirmation. Instead, the acquisition decision is subject to an application for a reconsideration by the Minister or an application for review by an Appeal Body. There is some support for the adoption of such a “quick take” procedure in the United Kingdom. Alternatively the timetable for such inquiries should be reined in. Reference has also been made to Canada where the a public inquiry is also held but where delay does not seem to have become such a paralysing issue.

Similarly it is suggested that there should be less consultation and disclosure at the planning stage to lessen planning blight. However it is unlikely that depriving the public of the relevant information as a means of lessening the incidence of blight will find favour.

Interestingly, Central Railway promoted a scheme for blight compensation designed to protect property values and reduce opposition in respect of a freight link between the industrial heartland of England and France. The key was seen as protecting the value and marketability of the properties affected at the earliest possible stage. The value of each property price was agreed at the outset at fair open market and ignoring any possible effect of the project. Premiums could be added and value was linked to a regional index. The owner was then given a 21 year option under which Railway could be required to purchase the property once approvals had been obtained and construction had begun in the area. Once the option became exercisable a generous compensation package was available if the owner decided to remain and Railway would be released from its obligations. Importantly, rights under the scheme are transferable on sale to a third party, thus property values were preserved. Finally, an owner who had joined the scheme was not bound to accept the project and could still make their views known through other channels in relation to the project.

This was seen as the cost of getting the project done in an expeditious manner. Railway took the view that protecting property values also assisted it in that it would need to on sell properties compulsorily acquired at a later stage.

By comparison there is authority for the proposition that excessive delay without compensation may be a breach of the European Unions Convention on Human Rights adopted in the United Kingdom via the Human Rights Act 1998. (See the Swedish case of *Sporrong and Lonroth v Sweden* (1982) 5 E.H.R.R. 35).

Comments on Use of CPO Powers.

The use of cpo powers and departmental attitudes towards their use has been the subject of study.⁴⁶ Importantly cpo’s were resorted to in most cases to overcome a stubborn seller or to amalgamate land in multiple ownership. There was also some use to resolve unknown ownership although the powers are not intended for resolving conveyancing difficulties.

⁴⁶ See David Adams “The use of Compulsory Purchase under Planning Legislation”,

The study revealed that the cpo powers had not been used significantly during the research period from mid 1992 until mid 1994. 243 of the 294 respondent authorities had made no use at all of cpo's in that time. The remaining authorities made 100 cpo's.

One of the biggest deterrents was the perceived cost of compensation attaching to the use of a cpo. This reflected diminished financial resources and the values of the land in question. The cost of losing a cpo inquiry was given as a significant reason not to adopt such a course of action. Another factor allied to this was a perception that negotiation was more likely to achieve the desired result. However the threat of cpo is often held in the background to ensure progress in the negotiations.

As discussed above the protracted timeframes involved in the cpo process also operated to deter authorities from utilising it. The final significant factor was a perception that cpo's generated bad publicity.