Law Commission: law of compulsory purchase and compensation consultation

City of London Law Society ("CLLS"): Consultation Response

Notes:

Responses are due 31 March 2025

The full consultation paper is available here:

https://consult.justice.gov.uk/law-commission/compulsory-purchase/

1. **CONSULTATION QUESTION 1.**

1.1 **We invite consultees' views as to whether they are aware of:**

1.1.1 **any circumstances in which the provisions of the Lands Clauses Consolidation Act 1845 are still relied on? (If so, please provide details of the circumstances and the specific provisions); or**

1.1.2 **any other reasons why the repeal of the 1845 Act might prove to be problematic?**

CLLS Response:

Before repealing the 1845 Act, there would need to be a detailed review of circumstances where the 1845 Act is relied upon in (or incorporated into) other legislation[1]. There would be some work involved in tracing through the implications of its repeal that perhaps explains previous Government hesitancy to do so absent a forensic review.

2. **CONSULTATION QUESTION 2.**

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

CLLS Response:

No specific data or evidence held.

3. **CONSULTATION QUESTION 3.**

3.1 **We invite consultees to tell us if they believe or have evidence or data to suggest that any of our provisional proposals could result in advantages or disadvantages to**

[1] See for example use in Commons Registration (England) Regulations 2014, Schedule 4 paragraph 8.

certain groups whether or not these groups are protected under the Equality Act 2010.

CLLS Response:

No specific data or evidence held.

4. **CONSULTATION QUESTION 4.**

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

CLLS Response:

The proposed insertion does not seem necessary given the clear position in the CPO Guidance. It is unclear what the proposed word "authorised" means, given that the Guidance links this to the making of a CPO and therefore something an acquiring authority (in the case of a local authority) would deliberate (a) before a compulsory purchase order is made, and (b) also applies its mind to in circumstances such as the acquisition or appropriation of land to planning purposes to engage s203. On balance this suggestion does not seem to add anything.

5. **CONSULTATION QUESTION 5.**

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

CLLS Response:

The utility of amalgamating the separate procedures depends on the quality and brevity of the amalgamated drafting. It is easy to see consolidated text that seeks to deal with compulsory acquisition on two different bases becoming unwieldy.

6. **CONSULTATION QUESTION 6.**

6.1 **We invite consultees' views as to the most appropriate terminology to be used in future consolidated legislation to describe the stages in the authorisation process**

for a compulsory purchase order. In particular, would it be best to describe an order as being:

6.1.1 **first "prepared in draft" and then "made" (as ministerial orders currently are);**

6.1.2 **"made" and then "confirmed" (as non-ministerial orders currently are);**

6.1.3 **"applied for" and then "made" (as development consent orders and Transport and Works Act orders currently are); or**

6.1.4 **something else, and if so, what?**

CLLS Response:

The complaint at 2.34 of the Consultation Paper as to the intelligibility of CPO terminology and process to members of the public should attach more to the adequacy of communications explaining that to affected parties rather than the underlying statutory words. Compulsory purchase is a draconian process that has very significant implications for affected parties with which their active engagement at an early stage is important. We do not share the same view that there is merit in using "prepared in draft" instead of referring to an order being "made". If anything, it would seem more likely to risk a member of the public misunderstanding the significance of the step that had been taken by an acquiring authority. That might risk them failing to have proper regard to the importance of involving themselves in the process (whether through objection, engagement of advisors or otherwise). "Made" and then "confirmed", or "applied for" and then "made" seem equally intuitive, save that the latter would not seem to marry up well with a ministerial order.

7. **CONSULTATION QUESTION 7.**

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

CLLS Response:

We do not see a particular issue with the execution of a non-ministerial CPO at the time it is made. What the Consultation Question really hinges on is how matters are communicated to affected parties and whether this is confusing. When the Order is executed and made, plainly that is the version of the Order as it might affect people's properties. They need to engage with that version, since it may end up being confirmed. If the Order is then confirmed in a modified form, then there is a question of hygiene that would be resolved by the provision of an updated conformed copy of the Order Schedule and Map when it is confirmed with modifications. Appropriate management of which versions remain available online, and proper signposting for members of the public would cure any issues.

8. **CONSULTATION QUESTION 8.**

8.1 **We provisionally propose that when publicising the making of a compulsory purchase order by site notice, there should be an express obligation upon acquiring**

authorities (so far as reasonably practicable) to keep the notice in place for the duration of the objection period. Do consultees agree?

CLLS Response:

As 2.11 of the Consultation Paper demonstrates, there are already comprehensive arrangements for public notices and notices on qualifying persons. Within this, site notices effectively play a sweeper role. The issue of deliberate removal and damage to site notices, and of threats made to those persons putting them in place, should not be underestimated. It is known for members of the public to follow around teams affixing site notices, and then to immediately remove them. Very considerable time and resource is already spent checking notices remain in situ and replacing removed or damaged notices. There are likely to be practical difficulties that arise from an express obligation to keep a notice in place for the duration of the objection period. An express requirement to do so is both unnecessary given the breadth of notification undertaken and potentially problematic. This should not be pursued as an amendment in our view.

9. **CONSULTATION QUESTION 9.**

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

CLLS Response:

We are not aware of specific problems, but the suggestion for a confirming authority to be made aware of the undertaker's representation seems sensible.

10. **CONSULTATION QUESTION 10.**

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

CLLS Response:

We do not agree that this should be repealed. It provides a route through which a CPO, for which there is a compelling case in the public interest, can proceed with both the relevant ministers having determined on balance that it is appropriate do so, notwithstanding that there may be serious detriment to the statutory undertaker's operations. They do so having determined that the importance of the CPO proceeding outweighs the detriment to the statutory undertaker, to whom compensation is available.

11. **CONSULTATION QUESTION 11.**

11.1 **We provisionally propose that section 17 of the Acquisition of Land Act 1981, which requires an order acquiring statutory undertakers' or local authorities' land to be**

subject to special parliamentary procedure in certain circumstances, should be repealed. Do consultees agree?

CLLS Response:

We can see sense in repealing the provision.

12. **CONSULTATION QUESTION 12.**

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

CLLS Response:

We agree that this should be capable of being resolved through a normal process of considering objections by the confirming Minister, without requiring the special procedure for the protection of land that is common, open space or fuel or field garden allotment under s19. We agree that there can be some uncertainty as to whether land would fall within the relevant category leading to a precautionary approach.

13. **CONSULTATION QUESTION 13.**

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

(1) Option 1 (no change – leave the existing ambiguity): do nothing to the existing statutory framework and allow any further development in the law to be undertaken through decisions of the courts.

(2) Option 2 (impose greater clarity on the existing framework as we understand it): any challenge to the validity of a compulsory purchase order should be made under the statutory review procedure, and no such challenge may be made by judicial review. The law should be changed to allow an application for statutory review to be lodged once a compulsory purchase order has been made. Judicial review could only be used to challenge decisions made prior to the making of the order.

(3) Option 3 (our 2004 recommendation): any challenge to the validity of a decision to confirm a compulsory purchase order should be made pursuant to the statutory review procedure, and no such challenge may be made by way of judicial review. Any challenge to earlier stages in the process, up to submitting the order for confirmation, should be made by judicial review.

We invite consultees' views on their preferred option and the reasons for their preference.

CLLS Response:

We do not have a strong opinion as to the necessity for reform of the statutory review procedure. However, of the options put forward, Option 3 would provide a clear delineation as between the

role of a statutory challenge only applying to the confirmation decision, and judicial review remaining the available route of challenge to earlier stages in the process.

14. **CONSULTATION QUESTION 14**

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

CLLS Response:

No strong view either way.

15. **CONSULTATION QUESTION 15.**

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

CLLS Response:

We do not consider that this is a necessary amendment. A CPO is confirmed in circumstances where there is a compelling case in the public interest. The legislature has seen fit to afford three years to serve a notice to treat, and a further three years thereafter to take entry. A decision to serve NTTs in circumstances where there was no possible prospect of the scheme proceeding at the point in time of making that decision would potentially be susceptible to judicial review in any event.

There is no reason to unsettle the current position and introduce a further statutory test as to the potential for a scheme to proceed/certainty as to the authority proceeding with the ultimate purchase of the subject land. The ability to withdraw in certain circumstances from the acquisition process is also an inherent feature of NTTs. The authority may not at the point of making a decision to serve NTTs have clarity on full compensation exposure.

16. **CONSULTATION QUESTION 16.**

16.1 **We provisionally propose that:**

(1) the currently alternative procedures for implementing a compulsory purchase order (notice to treat and the general vesting declaration) should be replaced by a single unified procedure; and

(2) the single unified procedure should be based on the more modern general vesting declaration procedure, with suitable modifications. (Consultation Question 17 below asks about what modifications are suitable). Do consultees agree?

CLLS Response:

In relation to both (1) and (2), we disagree with the proposal to unify NTT/NTE process with the GVD process, and also to base the process on the GVD process. The GVD process is a blunt instrument. Whilst it may be used predominantly, many CPOs lack complex considerations around the timing of termination of occupier interests which may require a greater degree of flexibility than is afforded by the GVD process. Take the example of a freehold interest in land that is subject to very many occupational tenancies that continue to trade. They may generate an income for the benefit of the freehold owner (which may be the authority or a development partner). There may be ongoing discussions around relocations, and reincorporation of some occupier interests into the scheme that is the subject purpose of the CPO. The timing about an exact start on site, relocations and other matters may not have been settled, or variations to planning may be being pursued that necessitate some delay – but also certainty that the land can be drawn down and vacant possession achieved. This can be critical to matters like scheme funding. NTTs provide a valuable route to activating the implementation of the CPO in relation to the relevant interest but leaving a greater degree of flexibility as to timing of vesting than a GVD. It is difficult to see how this would fit within the GVD process which is structurally different. NTTs also allow a more nuanced approach on an interest by interest basis. Given the availability of counter notice processes, persons served with a NTT can expedite matters.

17. **CONSULTATION QUESTION 17.**

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

(1) having a vesting period of anywhere between three months and three years after the execution of a general vesting declaration to mirror the three-year default expiry period of a notice to treat;

(2) permitting acquiring authorities to bring forward the vesting date, by agreement with the landowner (as section 8A of the Compulsory Purchase (Vesting Declarations) Act 1981 currently only permits the date to be postponed by agreement);

(3) introducing an alternative statutory notice procedure to acquire minor or long tenancies which are about to expire, replicating the effect of section 9(2) of the Compulsory Purchase (Vesting Declarations) Act 1981;

(4) commencing the temporary possession provisions in sections 18 to 31 of the Neighbourhood Planning Act 2017 either generally or to the extent that they relate to the implementation of CPOs; and

(5) making provision for the withdrawal of a general vesting declaration, applying some or all of the provisions in section 31 of the Land Compensation Act 1961 that apply to notices to treat. We welcome consultees' views on these, or any other options for retaining the flexibility driving the use of the notice to treat procedure in a minority of acquisitions.

CLLS Response:

(1) A GVD is a constructive notice to treat, and therefore it is arguable it already does have the potential to vest up to three years after its execution.

(2) We agree.

(3) This is not necessary if preserving NTTs, which we suggest. Further, the whole point of the long tenancy about to expire is that it enables the acquiring authority to specify a length of tenancy that it does not wish to be acquired pursuant to the GVD, therefore carving it out of its effect. If none is specified, none is excluded – so the change to a GVD is simply not necessary.

(4) We agree.

(5) NTTs tend to be used on a more refined basis than GVDs. The latter would simply sweep up all of the interests set out in the CPO schedule in respect of the land to which it relates (unless expressly excluded from its terms). Consequently, withdrawing a GVD would seem potentially problematic if the outcome was to negate the entire effect of the GVD in relation to all relevant interests to which it related. On complex urban regeneration schemes these can be very many. Linear schemes may typically be less complicated, but they can still involve a single GVD covering a multiplicity of interests. Since the desire to withdraw arises from a person having delivered to the acquiring authority notice in writing of the amount claimed by them, this is likely to be an issue isolated to a specific interest. The authority may wish only to withdraw from acquiring that specific interest, rather than see a GVD of wider applicability fail. This could possibly be cured by allowing omission of the relevant interest from the scope of the GVD. But the GVD process itself is blunt and entirely different to an NTT process. From the moment it is made and notice served, the land will vest at a set point in time. The available window for withdrawal would be far more limited than an NTT.

18. **CONSULTATION QUESTION 18.**

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

(1) owner of a freehold interest;

(2) owner of a leasehold interest (other than a "short tenancy" as defined by section 20(1) of the Compulsory Purchase Act 1965);

(3) mortgagee (whether legal or equitable); and

(4) any person entitled to the benefit of a contract for a freehold or leasehold interest (including an option or right of pre-emption). Do consultees agree?

CLLS Response:

Agree, subject to retaining the same qualifications as the current provisions (i.e. so far as known to the acquiring authority after making diligent inquiry).

19. **CONSULTATION QUESTION 19.**

19.1 **We invite consultees' views as to whether acquiring authorities should be under any additional obligation to serve notice to treat (or other form of notification) on other**

interest holders or occupiers when initiating implementation of a compulsory purchase by the notice to treat method.

CLLS Response:

We do not consider there should be more extensive obligations for notification on other interest holders or occupiers, since they do not have the power to sell, convey or release the land.

20. **CONSULTATION QUESTION 20.**

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

(1) Should there be a prescribed form of notice to treat? If so, what should be the consequence if an acquiring authority fails to use the prescribed notice?

(2) Should a notice to treat set out all the heads of compensation that may be available to the landowner? (The current requirement, in section 5(2)(c) of the Compulsory Purchase Act 1965, only refers to the purchase of the land and to compensation for damage sustained by reason of the execution of the works.)

CLLS Response:

(1) We can see sense in the provision of a prescribed form notice to treat, however, it should not be fatal if there is a failure to use exactly that form if it is of substantially the same effect. It should be remembered that an authority can be serving many thousands of notices in which there is a material risk of minor error rendering a notice technically non-conforming. Whilst robust checks will no doubt be undertaken by practitioners, the scope for discovering such an error after service and remedying it would be limited – especially if not made aware of an error or omission promptly by a recipient.

(2) We agree.

21. **CONSULTATION QUESTION 21.**

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

CLLS Response:

No specific view, although the availability of the ability to serve a counter notice improves the efficacy of the NTT process for affected parties and is another reason not to abandon it.

22. **CONSULTATION QUESTION 22.**

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

CLLS Response:

No strong view either way.

23. **CONSULTATION QUESTION 23.**

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

CLLS Response:

Supportive of the proposal for simplification of the provision.

24. **CONSULTATION QUESTION 24.**

24.1 **We invite consultees' views as to whether the costs of the compulsory conveyance of land should be assessed by: (1) a costs judge of the High Court; or (2) a judge or member of the Upper Tribunal (Lands Chamber)**

CLLS Response:

No strong view, but co-location of the issue of costs and determination of references of compensation cases in the Upper Tribunal would make sense.

25. **CONSULTATION QUESTION 25.**

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

CLLS Response:

Agree.

26. **CONSULTATION QUESTION 26.**

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

CLLS Response:

No specific view.

27. **CONSULTATION QUESTION 27.**

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

CLLS Response:

The concern expressed by consultees in relation to limitation periods and the potential inability to utilise the deed poll procedure after expiry of the period should be considered more closely for the reasons set out in paragraph 4.58.

28. **CONSULTATION QUESTION 28.**

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

CLLS Response:

We consider that it would be better to replace schedule 1 with a simplified provision per the recommendation.

29. **CONSULTATION QUESTION 29**

29.1 **We provisionally propose that the procedure in Schedule 2 (absent and untraced owners) to the Compulsory Purchase Act 1965 should not be restricted to situations where owners are absent from the United Kingdom or are untraceable. The procedure should be available where the owner is: (1) untraceable; (2) unwilling to deal with the acquiring authority; or (3) unable to deal with the authority by reason of illness, absence or other circumstance. Do consultees agree?**

CLLS Response:

Agreed.

30. **CONSULTATION QUESTION 30.**

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

CLLS Response:

The issue appears to be with the time limit within which compensation must be paid to the relevant person. It is not clear why the proposal suggests serving a notice to treat – since such wording might be argued to defeat the ability to remain in undisturbed possession of the land if the time limit for serving the NTT had expired. It would seem better to amend subsection (3) to introduce wording that references ("or if later the date of the agreement or determination of compensation"). Compensation should be linked to the date of entry in such circumstances.

31. **CONSULTATION QUESTION 31.**

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

CLLS Response:

It is considered appropriate that there is a route for rectifying accidental omissions where entry has been taken, albeit the current wording has deficiencies for the reasons set out in the Consultation paper.

32. **CONSULTATION QUESTION 32.**

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

CLLS Response:

It is unclear why such an amendment would be necessary. The NTT process for payment into Court in the context of unknown owners is in order to allow for the subsequent execution of a deed poll to perfect title. However, under a GVD it passes automatically, and the NTT steps associated with dealing with unknown owners are not required. To the extent that a relevant owner affected by a GVD wishes to claim compensation, they can do so in the usual way. A necessity to have paid monies into court in order to effect a GVD that included unknown interests would be cumbersome and unhelpful.

33. **CONSULTATION QUESTION 33**

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

CLLS Response:

We agree that such a provision should cover forms of all acquiring authorities.

34. **CONSULTATION QUESTION 34**

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

CLLS Response:

We do not agree with the proposed amendment, which would potentially require a further check to re-verify the land ownership position as part of the service of notices. Retaining the existing tie of the notification requirement back to those who responded to the earlier request for information is, from a practical implementation perspective, sensible. These means all known layers of interest are served. Usually, landowners will respond to the confirmation notice. In so doing they are required to give accurate information. It is reasonable to assume that most affected landowners will respond. If the position in relation to their interests changes, then they should reasonably update the acquiring authority. Therefore, there should be limited scope for gaps in service in the existing arrangements.

However, we are aware of instances where a party has sought to evade the effect of a GVD by transferring interests in land to another entity prior to the date of vesting (one that was different to the entity specified in their response to the request for information). They then claimed that notice had not been properly served on them and sought to contest the effect of the CPO against their interests. Whilst this may be uncommon, it illustrates potential practical issues that can arise. The administrative burden on an acquiring authority that has already embarked on multiple initial and confirmatory land referencing exercises should not be added to by introducing a further layer at which a party might say that they had not validly been served with notice of the execution of the GVD.

35. **CONSULTATION QUESTION 35**

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

CLLS Response:

We agree with the suggested amendment. Since the amendment proposes that the rights would not be subject to minor tenancies/long tenancies about to expire, the notification provisions in section 6 would need to be updated to ensure that notice was served on such persons in such circumstances. This would then reflect the position for land over which rights were to be acquired in which their subsists minor tenancies and long tenancies about to expire.

36. **CONSULTATION QUESTION 36**

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

CLLS Response:

We agree that this would be a sensible adjustment in order to expressly cater for the acquisition of rights within the prescribed forms.

37. **CONSULTATION QUESTION 37**

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

CLLS Response:

We agree that a civil action with compensation to reflect damages sustained could be more appropriate. We query whether it would be sensible for the provision to be updated to reflect that, rather than repealed without replacement. Note how section 12(6) deals with circumstances where the authority enters onto land having in good faith paid compensation to the person they believed to be entitled to compensation. It interacts also with section 11(4). Thought needs to be applied as to how similar protection would be afforded to an acquiring authority acting in good faith and without collusion. Would they be liable for compensation under a claim in civil action, or should they be protected from a claim? That is not a lapse in behaviour by an authority of the form contemplated by the Consultation, but a genuine mistake that the legislation contemplates, and for which it has deemed the authority should not have additional liability. We say correctly so.

38. **CONSULTATION QUESTION 38**

38.1 **We provisionally propose that the procedure (in section 13 of the Compulsory Purchase Act 1965) allowing the acquiring authority to issue a warrant to obtain possession of land be retained, with the following changes: (1) the warrant should be executable only by the High Court enforcement officer and references to the sheriff should be removed; and (2) it should be made clear that the costs of the**

enforcement process are to be borne initially by the acquiring authority (whilst remaining payable ultimately by the landowner). Do consultees agree?

CLLS Response:

(1) We agree.

(2) Whilst we consider this is already self-evident in the cost recovery mechanism in the statutory provision. We would note that those costs are not, as the consultation question indicates, necessarily payable by "the landowner", but by the "person refusing to give possession". That may be an occupier with no title interest.

39. **CONSULTATION QUESTION 39**

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

CLLS Response:

[No specific issues encountered with the warrant based enforcement procedure.]

40. **CONSULTATION QUESTION 40.**

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

CLLS Response:

We do not have a strong view on ultimate jurisdiction to determine the reasonableness of the costs of enforcement.

41. **CONSULTATION QUESTION 41**

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

CLLS Response:

The suggested express clarification that the notice is a divided land notice is sensible.

42. **CONSULTATION QUESTION 42**

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

CLLS Response:

We agree with the view put forward that prescribed forms would help to ensure consistency of practice.

43. **CONSULTATION QUESTION 43**

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

CLLS Response:

We have commented above on the suggested amendments to section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981, and expressed concerns as to the potential implications of this. We think it would be better to tie the time limit to those currently required to be served with notice (i.e. occupiers and those who responded to the earlier request for information, rather than those persons identified in the amendments to section 6 proposed by this Consultation).

44. **CONSULTATION QUESTION 44**

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

CLLS Response:

We agree that this would be as sensible safeguard for the reasons set out in the Consultation.

45. **CONSULTATION QUESTION 45.**

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

CLLS Response:

We agree with the proposal for an express withdrawal mechanism.

46. **CONSULTATION QUESTION 46**

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

CLLS Response:

We are supportive of simplification and updating of the existing terminology.

47. **CONSULTATION QUESTION 47.**

47.1 **We provisionally propose that the material detriment and amenity and convenience tests should continue to apply where the acquiring authority refers a counter-notice under Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (or Schedule 2A of the Compulsory Purchase Act 1965) to the Upper Tribunal (Lands Chamber). The Tribunal shall determine: (1) in the case of a partial acquisition of a building and the land which belongs to it, whether the part proposed to be acquired can be taken without material detriment to the remainder; or (2) in the case of a partial acquisition of the land belonging to a building (without acquiring any part of the building), whether the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the building. Do consultees agree?**

CLLS Response:

We agree that the tests should continue to apply.

48. **CONSULTATION QUESTION 48**

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

CLLS Response:

We agree with the view expressed at 5.48 that material detriment could be applied in any scenario.

49. **CONSULTATION QUESTION 49**

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

CLLS Response:

Whilst we do not have experience of it being extensively used, were it to be repealed, it would potentially leave a person so affected with less than half an acre of land once divided and little utility for it (assuming they had no other adjoining land into which it could be thrown). Whether extensively used or not, the availability of a statutory route to address the situation seems sensible.

50. **CONSULTATION QUESTION 50**

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

CLLS Response:

No specific additional comments.

51. **CONSULTATION QUESTION 51**

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

CLLS Response:

No objection to the proposal.

52. **CONSULTATION QUESTION 52**

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

CLLS Response:

We do not consider this necessary, and it is arguably inconsistent with Government reforms which allow the disapplication of hope value. We agree with the sentiment at paragraph 6.19 that the concept of "fairness" is vague and potentially subjective.

53. **CONSULTATION QUESTION 53**

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

CLLS Response:

In terms of ascertainment of the interest to be valued, the valuation date is consistent with case law. It does, as noted, give rise to some potential scope for unfairness where an interest terminates or is not renewed directly on account of the existence of the scheme. We consider that there should be scope (as per the legislative amendments to reflect the inherent unfairness of the Bishopsgate principle) to have regard to the likelihood as to whether an interest that existed would have continued but for the scheme underlying the compulsory acquisition.

54. **CONSULTATION QUESTION 54**

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

CLLS Response:

We agree.

55. **CONSULTATION QUESTION 55**

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

CLLS Response:

We are not aware of specific issues arising in practice.

56. **CONSULTATION QUESTION 56**

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

CLLS Response:

We agree that rule (5) works tolerably well in practice. The ability to retain an element of flexibility to address various and potentially unusual situations as they arise would be sensible (given that equivalent reinstatement by its nature deals with use of land for which there is no general demand).

57. **CONSULTATION QUESTION 57**

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

CLLS Response:

We agree, and the risk of a landowner suffering a shortfall is an important consideration in this regard, were deduction for betterment in equivalent reinstatement provided for.

58. **CONSULTATION QUESTION 58**

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

CLLS Response:

We agree that codification of the existing rule would be helpful.

59. **CONSULTATION QUESTION 59**

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

CLLS Response:

We agree that this is a proportionate way to address the assessment, since it retains an element of flexibility if the parties are not so agreed.

60. **CONSULTATION QUESTION 60.**

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

CLLS Response:

The proposed codification of Shun Fung principles is supported.

61. **CONSULTATION QUESTION 61**

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

CLLS Response:

No strong view, since the existing terminology is tolerably well understood.

62. **CONSULTATION QUESTION 62**

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

CLLS Response:

We agree that there is merit in retaining section 10A.

63. **CONSULTATION QUESTION 63.**

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

CLLS Response:

We are aware of circumstances where the one-year time limit has been detrimental. For example, consider where a claimant has had to liquidate other assets held (by example, share investments, thereby negating access to improvements in the market that they would otherwise have realised), and/or to additional borrow monies, in order to acquire a replacement property. This is exacerbated in circumstances where advance payments are made slowly and in a very conservative sum. Unfortunately, that is not uncommon. The time limit increases pressure on claimants and also has the potential to exacerbate and complicate losses suffered in consequence of the compulsory acquisition.

64. **CONSULTATION QUESTION 64**

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

CLLS Response:

We agree with the suggestion. Where a CPO scheme is engaging in the process of site selection this can result in losses for affected persons from a very early stage. Practitioners will be familiar with businesses whose land is affected experiencing loss of customer confidence, employees leaving businesses, and an inability to bid for/service contracts given the uncertainty created by the spectre of compulsory acquisition. These matters are often complex and difficult to evidence, but the losses should in principle be recoverable where they are occasioned by the prospect of compulsory acquisition.

65. **CONSULTATION QUESTION 65.**

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

CLLS Response:

We agree that there is sense in making such provision.

66. **CONSULTATION QUESTION 66.**

66.1 **We provisionally propose that it should be expressly stated in legislation that the valuation date for injury to retained land (ie land which is held with the land acquired) is the same as that for the land acquired. Do consultees agree?**

CLLS Response:

There would be merit in achieving a clear and consistent position (subject to the comments at 9.18 of the Consultation paper).

67. **CONSULTATION QUESTION 67**

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

CLLS Response:

In the context of compensation for injury to retained land, admission of post-valuation date evidence seems the most effective route to providing compensation that reflects a more certain position as to the impacts on the retained land.

68. **CONSULTATION QUESTION 68**

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

CLLS Response:

We agree with the proposal.

69. **CONSULTATION QUESTION 69**

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

CLLS Response:

We agree with the proposal.

70. **CONSULTATION QUESTION 70**

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

CLLS Response:

We have not encountered any specific issues.

71. **CONSULTATION QUESTION 71**

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

CLLS Response:

We agree with the proposed retention and potential simplification of section 50.

72. **CONSULTATION QUESTION 72**

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

CLLS Response:

We agree with the proposed clarification.

73. **CONSULTATION QUESTION 73**

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

CLLS Response:

A simplification of the rule to apply only to breaches of criminal law/law as contained in statute would help to clarify the position.

74. **CONSULTATION QUESTION 74**

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

CLLS Response:

We do consider that there is a lack of clarity in section 5(4) as to the circumstances in which detriment to health is applicable. For example, it surely should not attach to industrial activities taking place in line with a permit that may be inherently harmful to public health by reason of permitted hazardous emissions. Whether through clarification by reference to "without lawful authority" wording or deletion of the "detrimental to health" wording, there is room for improvement in the provision.

75. **CONSULTATION QUESTION 75**

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

CLLS Response:

We consider that there is a need for significant caution in terms of how any codification proceeds on this point. Horn v Sunderland is frequently used, incorrectly, to argue that a claim for development value and disturbance is always mutually inconsistent. However, the case concerned a farm, where continuation of a farming activity on the land after redevelopment for other purposes were plainly inconsistent. There are circumstances in which a claim for redevelopment and disturbance can be mutually consistent – for example, a business seeking to redevelop its own premises and then reoccupy them. A period of temporary displacement may be inherent in those redevelopment proposals, but it would be limited to displacement during construction. The impacts of the CPO may be significantly more harmful in terms of disturbance to that business – and they should rightly be compensated even if the claimant pursues a claim on a redevelopment basis.

76. **CONSULTATION QUESTION 76**

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

CLLS Response:

We agree with the proposal.

77. **CONSULTATION QUESTION 77**

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

CLLS Response:

We have not encountered specific issues with these provisions in practice.

78. **CONSULTATION QUESTION 78**

78.1 **We invite consultees' views as to whether rule (3) of section 5 of the Land Compensation Act 1961 serves any independent purpose that would not be covered**

by the newly codified no-scheme rule in sections 6A-6E of the 1961 Act. Can rule (3) be safely repealed?

CLLS Response:

We agree that it is unclear why retention of the provision is necessary in light of the statutory no scheme rule at 6A – 6E.

79. **CONSULTATION QUESTION 79**

79.1 **In the no-scheme rule cancellation assumption of section 6A(4) of the Land Compensation Act 1961, the cancellation date for the acquiring authority's scheme is the valuation date of the subject land. In the cancellation assumption for planning assumptions in section 14(5)(a) of the 1961 Act, the cancellation date is the launch date for the scheme. We invite consultees' views as to:**

(1) whether this discrepancy gives rise to any difficulties; and

(2) whether the cancellation dates should be harmonised to be the valuation date.

CLLS Response:

Whilst we are not aware of any difficulties in practice, we do agree that the cancellation dates should be harmonised to the valuation date for the purposes of clear consistency.

80. **CONSULTATION QUESTION 80**

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

CLLS Response:

We agree with the commentary at 11.13 that it is difficult at present to test how effective the amendments have been due to their application only to CPOs authorised after 6 April 2018. However, the making of advance payments is one of the areas of compensation that is most in need of revision. Whilst it should not be the case ,it has been known for advance payments to be estimated by certain compensating authorities at a derisorily low level. Some claimants might contend that this is a deliberate tactic to add to litigation fatigue and fiscal pressure on claimants through what is an already stressful process. Authorities would in contrast contend it is due to a paucity of information on which to base an assessment of compensation.

Often claimants will be seeking to re-establish a business without adequate access to compensation. There needs to be a much more robust method of interrogating the adequacy of advance payments and acquiring authorities' own estimates of compensation, and compelling

prompt payment at an earlier stage. This might be something achievable by independent verification by requiring recourse to a third-party surveyor. It might be achievable by application of an elevated level of interest on any amount agreed or determined as a final compensation figure above the advance payment. That elevated level of interest could possibly be applied where there is a material divergence between the advance payment figure and the final compensation figure. If nothing else, that would incentivise the early making of advance payments in a figure that was objectively reasonable in all the circumstance of the case.

81. **CONSULTATION QUESTION 81**

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

CLLS Response:

Most complex claims for compensation are prepared by professional advisory teams appointed on behalf of the claimant. The relevant information sufficient to enable an authority to make an educated estimate of compensation is typically collated and submitted by experienced professional advisors. Whilst the model claim form is helpful, it does not add to the quality of information (or otherwise) that was already being provided by such advisors.

As set out in response to Consultation Question 80, advance payments of compensation are often made at a low level – and the assertion of an inadequacy in the quality of information provided by a claimant is often used as a fig leaf for that. These matters are not cured by a model form, but would be cured by independent interrogation of the adequacy of an advance payment at an early stage by an independent third party surveyor, or potential sanctions for unjustifiably low payments.

82. **CONSULTATION QUESTION 82**

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

CLLS Response:

We note this is subject to amendment in the Planning and Infrastructure Bill 2025 and reserve comment.

83. **CONSULTATION QUESTION 83**

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

CLLS Response:

We agree.

84. **CONSULTATION QUESTION 84**

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

CLLS Response:

We agree that there needs to be flexibility to allow for the UT(LC) to determine a different date from which interest runs for other losses.

85. **CONSULTATION QUESTION 85**

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

CLLS Response:

Interest is a matter of government policy, and clearly there is a balance between the burden on a scheme for which there is a compelling case in the public interest and the implications for a claimant. That said, interest applies to monies during the period that an acquiring authority takes to pay a claimant the monies due to it. It is arguably within the authority's gift to shorten that period (though subject to the adequacy of supporting information upon which to settle a claim). Some might contend that the prescribed rate of interest does not adequately reflect the loss to a claimant from not being able to redeploy capital at an earlier stage, were compensation paid in a timelier fashion.

86. **CONSULTATION QUESTION 86**

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

CLLS Response:

We do consider that there is a need to address the timely payment of compensation to affected parties. Litigation fatigue is a very real consequence of inadequacies in the ability to compel acquiring authorities to make advance payments at a level that is reasonable, objectively. There should be consideration as to whether it is appropriate for there to be more scrutiny around the making of advance payments of compensation. Currently, there is too much leeway for acquiring authorities to make unreasonably low or delayed payments without any supporting sanction.

87. **CONSULTATION QUESTION 87.**

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

(1) Section 20 of the 1965 Act should adopt the definitions of "minor tenancy" and "long tenancy which is about to expire" which appear in the 1981 Act; and

(2) If the acquiring authority wishes to terminate such a tenancy before it is entitled to do so under the terms of the tenancy, it should be required to serve a notice to treat and a further notice requiring possession (as it is required to do by the 1981 Act). Do consultees agree?

CLLS Response:

(1) We agree with the proposal that the 1965 Act should adopt definitions consistent with the 1981 Act in this respect.

(2) We agree with the proposal for service of a NTT in such circumstances..

88. **CONSULTATION QUESTION 88**

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

CLLS Response:

We agree that there does not appear to be a need for a separate set of compensation rules applicable only to minor tenancies, provided it is clear that compensation for compulsory acquisition of short tenancies is assessed according to the same rules that apply to compensation for greater interests.

89. **CONSULTATION QUESTION 89**

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

CLLS Response:

We agree with the proposed retention, and the potential to explore the adoption of more modern language in relation to the same.

90. **CONSULTATION QUESTION 90**

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

CLLS Response:

No specific additional improvements beyond those envisaged by the Consultation proposals at this stage.

91. **CONSULTATION QUESTION 91**

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

(1) any depreciation in the market value of the land over which the right is acquired;

(2) any depreciation in the market value of other land held with that land, caused by the acquisition of the right; and

(3) any consequential loss (applying the principles of rule 6 of section 5 of the Land Compensation Act 1961, with appropriate modifications).

Do consultees agree?

CLLS Response:

We agree that it would be desirable to establish a default uniformity of approach to compensation in relation to the acquisition of new rights, as proposed.

92. **CONSULTATION QUESTION 92**

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

(1) how authorities have sought to establish that they "could acquire the land compulsorily" under section 203(2)(c); and

(2) how parties have sought to assess compensation for overridden rights under section 204(2).

CLLS Response:

(1) There is unquestionably a lack of uniformity of approach by local authorities in terms of how they manage the process of engaging section 203. We do not share the view that establishing the mere existence of a power of compulsory purchase is all that is necessary to proceed to acquire or appropriate land for planning purposes in order to do so. That is a common but fundamental misunderstanding of the law. That is because an acquisition of land by agreement (which is the effective route to engage section 203 outwith the acquisition of land compulsorily under section 226) is set out in section 227 of the 1990 Act. This ties back through section 227(1) to the tests within section 226(1) and 226(1A). Similarly, an appropriation of land to planning purposes requires an authority to engage with a specific process. First to satisfy itself that the land in question is no longer required for the purpose for which it is held immediately before the appropriation (section 122(1) Local Government Act 1972), and second, to then consider whether it could acquire the land by agreement for that proposed new purpose (which engages consideration of the requirements of section 227 and the tests in section 226 of the Town and Country Planning Act).

That requires a conscious deliberation of the CPO tests in the context of CPO Guidance. Authorities such as the City of London have a long established and robust approach to the consideration of whether those tests have been met, and deliberating the proportionality of a proposed interference with the human rights of those affected in the circumstances of the case. This involves, for example, consideration as to whether there have been reasonable efforts to release the relevant rights by agreement.

Some authorities are not so disciplined in their approach and there is a lack of consistency in practice that renders the decisions of some authorities highly vulnerable to legal challenge. This risk is inflated by the lack of any mandatory notification process associated with the Town and Country Planning Act 1990 processes (particularly in the context of appropriation, but in all circumstances).

We do not consider that there is a need for legislative amendment to cure this. It is already expressly clear on the face of the legislation that there are certain steps that must be taken before land can be acquired or appropriated for planning purposes. One needs to look at the underlying power of acquisition, rather than the confines of section 203.

(2) Our experience has been that there is a general consistency of approach that the landowner will be entitled to claim compensation for injurious affection under section 10 of the 1965 Act. However, often in the context of the process of engagement of section 203, an authority will have an expectation that offers made to release rights prior to a decision to acquire or appropriate land to planning purposes are honoured – and so these matters are frequently settled by agreement rather than granular analysis of a claim for injurious affection.

93. **CONSULTATION QUESTION 93**

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

CLLS Response:

We agree that an amalgamation of the provisions into a single code would be helpful.

94. **CONSULTATION QUESTION 94**

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

CLLS Response:

We agree that compensation for loss caused by the execution of public works, as opposed to their use) should continue to be payable only to the extent that a claim would have succeeded at common law.

95. **CONSULTATION QUESTION 95**

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

(1) the restriction of compensation to depreciation of existing use value only, applicable at present to claims under Part 1 of the 1973 Act for use of public works, should also be made applicable to claims for execution of public works;

(2) there should be no such restriction for claims relating to either the use or execution of public works; or

(3) as now, the restriction should be applicable to claims relating to use of public works, but not their execution.

CLLS Response:

Limiting claims relating to use of public works, not their execution, is a decision of the legislature. We have no strong view as to whether there should be a change in this respect.

96. **CONSULTATION QUESTION 96.**

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

(1) to all claims under the unified code; or

(2) to no claims under the unified code.

CLLS Response:

We agree with the sentiment at paragraph 13.62(3) that it is most helpful for a unified code to be simple and internally consistent. We see sense in the proposal to remove the rateable value limit for the reasons set out in paragraph 13,63 – namely that it is difficult to justify in principle larger businesses being precluded from claiming loss caused by execution of public works, since the impact may be as serious on a large business as a smaller one.

97. **CONSULTATION QUESTION 97**

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

CLLS Response:

We agree with the proposal.

98. **CONSULTATION QUESTION 98**

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

(1) from the date of the notice of the making of the order until the date on which it is submitted to the confirming authority for confirmation; and

(2) from the date on which notice of its confirmation is first published until the date on which notice to treat is served or the date on which a general vesting declaration is executed. Do consultees agree?

CLLS Response:

We agree that there is merit in there being a clear statutory process for withdrawal of a CPO.

99. **CONSULTATION QUESTION 99**

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

(1) the acquiring authority fails to submit the order to the confirming authority for confirmation within six weeks of the date of the notice of the making of the order;

(2) the confirming authority refuses to confirm the order (and the refusal decision is not successfully challenged through the courts);

(3) where, after publication of the notice of confirmation, the acquiring authority fails to serve notice to treat or execute a general vesting declaration within the prescribed time limit; or (4) where a notice to treat ceases to have effect pursuant to section 5(2A) or 5(2B) of the Compulsory Purchase Act 1965 (and the prescribed time limit for implementation of the order has itself already expired).

Do consultees agree?

CLLS Response:

Items (2) – (4) are uncontroversial. There is no in principle objection to a prescribed time limit being imposed for the submission for confirmation of an order after its making. It is difficult to envisage circumstances where, after making an order, six weeks is insufficient to then submit it for confirmation – however there should be further consideration as to whether authorities have in practice experienced any practical difficulties submitting an order for confirmation in an expedient manner. The output of that should inform any prescribed time limit, if the consequences are to be that a CPO is deemed withdrawn – particularly if that were then coupled with any compensatory implications for the authority as a result (noting the Law Commission's suggestions in paragraph 14.3 of the Consultation that compensation should be made available for those affected by an order that is withdrawn or abandoned after the notice of the making of the CPO).

100. **CONSULTATION QUESTION 100**

100.1 **We provisionally propose that where an acquiring authority formally withdraws (or is deemed to have withdrawn) a compulsory purchase order (whether in whole or in part), it should be required to give notice of withdrawal to all persons on whom notice of the making of the order was served. Do consultees agree? We invite consultees' views as to whether any such notice of withdrawal be in a prescribed form.**

CLLS Response:

We agree that there is sense in a formalised notification process being set out in legislation to account for such circumstances. Provided that the contents of such notice are prescribed, there is no necessity for a prescribed form. Equally, a prescribed form would help embed consistency of practice.

101. **CONSULTATION QUESTION 101**

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

CLLS Response:

After an acquiring authority has taken possession of land, it is difficult to see why there should be a difference in approach as between a position where the Lands Chamber has determined compensation (section 31(2)) and where a claimant has submitted a properly formulated notice of claim to the authority (section 31(1)). The proposal seems reasonable and would provide for a consistency of approach as between section 31(1) and section 31(2).

102. **CONSULTATION QUESTION 102**

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

CLLS Response:

We can see that this would be a useful resource, albeit the time that it might take to compile it would be disproportionate to the benefit given most acquiring authorities should be tolerably familiar with the compulsory acquisition powers available to them.

103. **CONSULTATION QUESTION 103**

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

CLLS Response:

No specific view on omissions or anomalies.

104. **CONSULTATION QUESTION 104**

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

CLLS Response:

Clearly those seeking to use powers will need to interrogate the scope of the authorising power of compulsory purchase specific to the relevant authority. It could be said that those have evolved to confine the scope of powers of acquisition to what the legislature has concluded is necessary for the relevant authority. However, it is difficult to envisage a situation where it would be sensible for there to be a lack of an available power to acquire rights necessary to deliver a scheme which underlies a compulsory acquisition. On balance, a generic power would assist in ensuring that schemes were able to proceed with all of the necessary rights in place for their delivery and ongoing use. The scope of rights sought should remain subject to robust justification in each case.

105. **CONSULTATION QUESTION 105.**

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

CLLS Response:

The question appears to be directed more at whether a DCO promoter that does not possess a general power to compulsorily acquire land should be able to circumvent the process in the Planning Act 2008. If it has been deemed appropriate that in that context authorisation of the Secretary of State is necessary prior to conducting a survey, it is difficult to see why the entity should in those circumstances be able to avoid that process and benefit from section 172 of the Housing and Planning Act 2016. The legislature has deliberately reserved a power of authorisation to the Secretary of State under the Planning Act 2008, which we must assume is with good reason, where such entities have not been afforded a general power of compulsory acquisition.

106. **CONSULTATION QUESTION 106**

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

CLLS Response:

We agree that a consolidation exercise would be beneficial to ensure that the survey power was consistent for each stage of preparation for and the implementation of a compulsory acquisition.

On behalf of the City of London Law Society

28 March 2025