

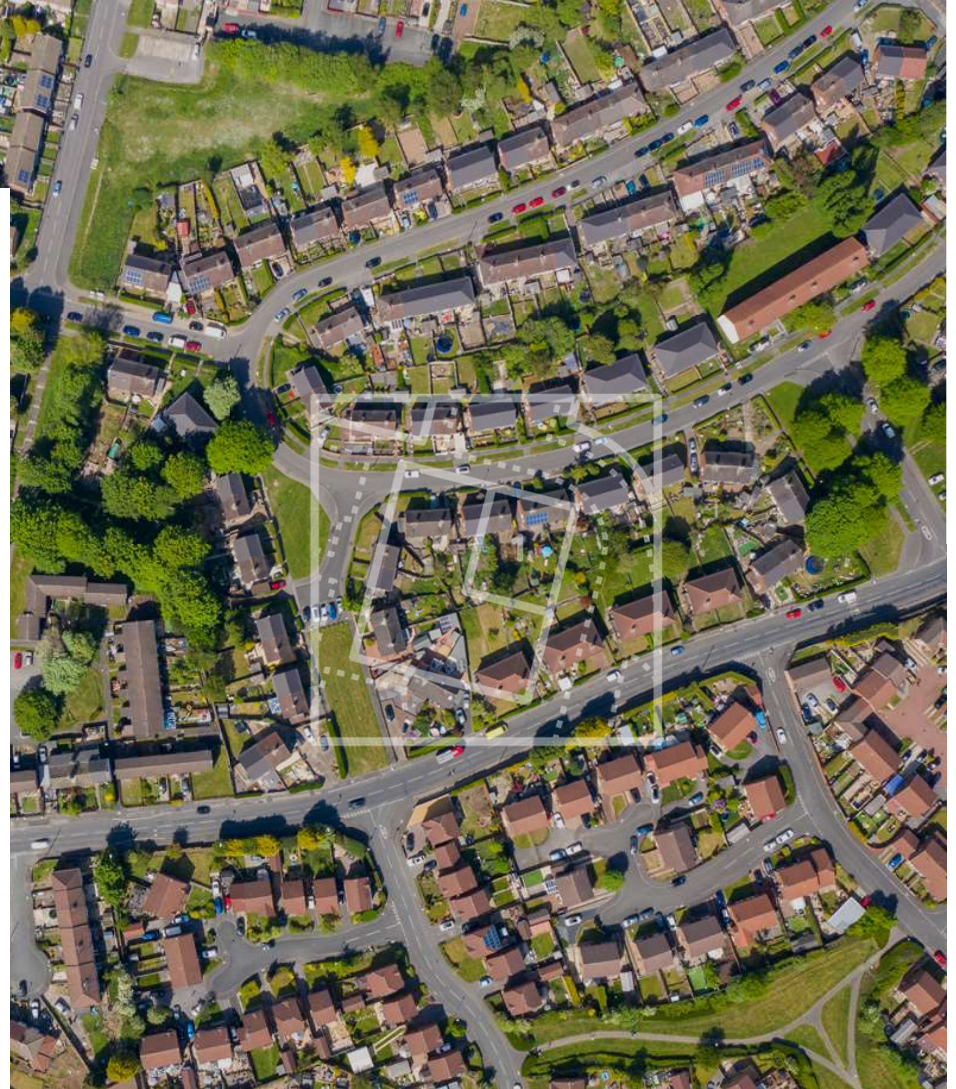


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Law Commission Compulsory Purchase Seminar

6 March 2025





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Meet the speakers



Richard Honey KC



Hugh Flanagan



George Mackenzie



Caroline Daly



Preliminary





Background



Consultation Paper No 267



Compulsory Purchase

Consultation Paper



Why now?





Terms of reference

OUR TERMS OF REFERENCE

- (1) To review the law (legislation, case law and common law rules) relating to:
 - (a) the procedures governing the acquisition of land and interests in land by the making, confirmation, and implementation of compulsory purchase orders, or by agreement;
 - (b) the principles governing the assessment of compensation:
 - (i) for such acquisition;
 - (ii) where such acquisition is contemplated but not proceeded with; and
 - (iii) for severance, disturbance, injurious affection, and other related matters
- (2) To produce a draft Bill or Bills, consolidating and codifying such law and making technical changes, ensuring that the law is modernised, simplified, accessible, technically sound and internally consistent as necessary.
- (3) To review, and consult stakeholders about, compulsory purchase powers with a view to identifying possible anomalies or inconsistencies that make them unfit for purpose.





Scope of consultation





The Previous Law Commission Reports



The Law Commission
(LAW COM No 291)

**TOWARDS A COMPULSORY
PURCHASE CODE:
(2) PROCEDURE**

FINAL REPORT

Report on a reference under section 3(1)(e) of the Law
Commissions Act 1965



Question 54: Section 4 LCA 1961

Consultation Question 54.

6.42 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propose that section 4 of the Land Compensation Act 1961 (costs of proceedings in the Upper Tribunal) should be repealed without replacement.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?



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Implementation of CPOs

NTT vs GVD

--> "A single unified procedure"

Options:

- 1. Make it new!*
- 2. Base on GVD and retain useful aspects of NTT procedure?*



Reasons for use of NTT:

- Where AA only needs to use land temporarily

Commence TP provisions of Neighbourhood Planning Act 2018?

- To provide flexibility about the precise area of land to be acquired?

Temporary possession again?



Reasons for use of NTT cont.

- To extend time limit for implementing CPOs

Require AA when serves NTT (or GVD?) to have made 'clear decision' to proceed with purchase, to prevent use of NTT to illegitimately extend life of CPO by another 3 years?

- To enable AA to withdraw from purchase as with NTT vs irreversible GVD?

Incorporate limited power to withdraw from s.31 LCA 1961?

- To acquire minor or expiring tenancies (with GVD for superior interests)



Abortive orders

Pre-submission of CPO to confirming authority

- No current statutory duty on AA to submit CPO for confirmation
- (Though duty to publish and serve notices of making, which say that the CPO is “about to be submitted for confirmation”)
- Can AA withdraw CPO pre-submission? I.e. ‘unmake’ order? Or is AA functus?



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Post-submission, pre-confirmation

- 2004 and 2024 reports suggest that AA is again functus officio.
- CA now seized of the process.

Post-confirmation

- On same logic, AA would have no power to withdraw or cancel a CPO post-confirmation



Consultation question 98

- Set out powers of AA to withdraw CPO in statute, for:
 1. Pre-submission period
 2. Post-confirmation up to service of NTT / making of GVD
- But why not during confirmation stage?



Consultation question 99: deemed withdrawal of CPO

1. Unless AA submit for confirmation within 6 weeks.

Need to align with existing duty to publish / serve notices of making?

2. If CA refuses to confirm the CPO

3. If AA fails to serve NTT or execute GVD within time limit (3 years)

4. If NTT lapses (3 years)



Consultation question 100

- Duty to give notice of withdrawal / deemed withdrawal to all on whom notice of making served?

Consultation question 101

- Withdrawal of a NTT to be prohibited where AA has entered into possession?



Compensation liability on withdrawal of CPO

- Recommended in 2004 report on withdrawal of CPO or from purchase in respect of any loss or expenses caused by the making of the CPO or withdrawal from the purchase
- 2024 report considers outside scope: *“may significantly expand compensation liability for acquiring authorities ... should be left to Govt which is better placed to conduct the relevant economic analysis and balance public and private interests”*



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Law Commission compensation reform proposals

6 March 2025



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Compensation as a single global figure

- Law Commission says that this is an anachronism, of only historical significance
- Proposal that compensation is no longer regarded as a single global sum
 - this was the basis in *Horn v Sunderland* for saying cannot claim both r2 value based on redevelopment and compensation for disturbance of the business
- But, proposal also to codify in legislation that claims under different heads of compensation must be mutually consistent



Principle of equivalence

- Law Commission raises two questions:
 - should the principle be replaced by a principle of fair compensation?
 - should the principle be codified?
- Recognises that the principle of equivalence is not an over-riding principle in assessing compensation
- Rejects idea that tribunal should have discretion to depart from compensation code to achieve fair compensation in each case
- Principle of fair compensation: subjective, vague and imprecise
- Should not codify, as not necessary and might not just preserve the current position



Proposals for Rule 2 compensation

- Interests for compensation will be those existing at the valuation date, not at date of notice to treat
- Raises issue of land potentially having a negative value – so landowners could be forced to pay the acquiring authority
- Recognises LURA 2023 changes on planning permission means some landowners will receive less than market value for their land when taken from them



Proposals for Rule 6 compensation

- Codify the Shun Fung requirements as:
 - must be causal connection between acquisition and the loss
 - loss must not be too remote
 - loss must have been reasonably incurred – but note what said:
 - “If a reasonable person in the position of the claimant would have taken steps to eliminate or reduce the loss, and the claimant failed to do so, he cannot fairly expect to be compensated for the loss or the unreasonable part of it. Likewise, if a reasonable person in the position of the claimant would not have incurred, or would not incur, the expenditure being claimed, fairness does not require that the authority should be responsible for such expenditure”



Proposals for Rule 6 compensation cont'd

- Change the name to 'consequential loss'
- Cut off entitlement for costs/losses incurred before notice of making the CPO
 - except if the tribunal decides, exceptionally, it would be unfair to do so, or the authority agrees – uncertainty/risk
- Pre-assessment losses to be valued at the date on which they are incurred
 - no need for a valuation date as such for r6 losses



Proposals for s7 compensation

- Codify the principle that s7 compensation is only for diminution in the value of an interest in land
- Declines to provide for a betterment deduction against s7 compensation
- Proposal that s7 compensation can be based on a “before and after” valuation – if the parties agree or if the tribunal determines
 - parties will not agree if it significantly affects compensation payable
 - introduces uncertainty and risk, and duplication – need to run two different valuation cases in tribunal and will not know the right basis for compensation until the tribunal’s decision
- Before and after valuation will not work in many cases, as r2 and s7 are subject to different rules eg planning assumptions, scheme disregards



Proposals for s7 compensation cont'd

- State the valuation date for s7 compensation, as r2 valuation date
- Asks whether “post-valuation date evidence should be taken into account in the assessment of compensation” under s7
- Says are two conflicting lines of authority, but different things:
 - s7 says: “regard shall be had... to the damage, if any, to be sustained by the owner of the land by reason of... the exercise of the powers conferred...”
 - ascertaining the diminution in value caused by the damage, ie the valuation exercise, by reference to post-VD evidence



Compensation where no land taken

- Proposal to amalgamate CPA 1965 s10 and LCA 1973 Part 1
 - amalgamated into one complete, unified, single code for compensation where no land is taken
 - compensation for depreciation caused by public works
- Very different provisions – each subject to different detailed rules
- S10 compensation is for execution of works, in replacement for tortious right of action prevented by statutory authority defence
- Part 1 compensation was designed to supplement this by providing compensation for the use of certain public works



Compensation where no land taken cont'd

- Proposed to retain McCarthy rules for s10 compensation
- Proposed to retain rule that compensation for the construction of public works (s10) should be limited to where there would have been a tortious cause of action but for the statutory authority
- Proposed to keep limitation to diminution in market value only
- Asks about the restriction of compensation to existing use value only as Part 1 – should it be applied, including to s10 replacement
- A great deal will depend on the detailed drafting of the provisions, which is yet to be seen



Conclusions on compensation proposals

- Law Commission's brief is to codify the existing law and make technical changes to modernise and simplify the law
 - respecting the existing balance, not making proposals which aim to increase or decrease entitlement to compensation
- Will produce changed entitlement to compensation in some cases
- Much depends on detailed drafting yet to come, eg r6 duty to mitigate, s7 consideration of post-VD information, s10 / Pt 1 amalgamation, etc
- Discretion given to tribunal will introduce complexity and uncertainty, eg r6 compensation for pre-notice losses, s7 "before and after" valuation, etc



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