NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY) IMPROVEMENTS) ORDER

STATEMENT OF CASE OF DR REDDY'S LABORATORIES (EU) LIMITED

SUBMITTED IN ACCORDANCE WITH RULE 7 OF TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

6 JULY 2021

TABLE OF CONTENTS

Clause	Headings	Page
1.	INTRODUCTION	1
2.	DR REDDY'S AND THE MIRFIELD FACILITY	2
3.	PRE-APPLICATION ENGAGEMENT	4
4.	OBJECTION TO PROPOSED TEMPORARY ACQUISITION OF PLOT 18-025 AND 18-022 AND TEMPORARY STOPPING UP OF STEANARD LANE	6
5.	OBJECTION TO PROPOSED PERMANENT ACQUISITION OF MAINTENANCE ACCESS RIGHTS	10
6.	OBJECTION IN RESPECT OF ADVERSE VIBRATION EFFECTS	12
7.	CLOSING REMARKS	14
EXHIBIT 1	SHEET NO.18 OF THE DEPOSITED PLANS	16
E**XHIBIT 2A**	SWEPT PATH OF A VEHICLE 16.5M IN LENGTH AND 2.5M IN WIDTH ENTERING THE FACILITY	17
EXHIBIT 2B	SWEPT PATH OF A VEHICLE 16.5M IN LENGTH AND 2.5M IN WIDTH EXITING THE FACILITY	18
EXHIBIT 3	SCHEDULE OF THE TYPE AND NUMBER OF VEHICLES WHICH ACCESS THE FACILITY ON A MONTHLY BASIS (INDICATIVE)	19
EXHIBIT 4	LETTER DATED 29TH JULY 2019 FROM NETWORK RAIL TO DR REDDY'S	20
EXHIBIT 5	GUIDANCE ON COMPULSORY PURCHASE AND THE CRICHEL DOWN RULES, JULY 2019	21

1. INTRODUCTION

1.1 This Statement of Case ("**SoC**") is submitted on behalf of Dr Reddy's Laboratories (EU) Limited ("**Dr Reddy's**" or "**our client**") in relation to the application submitted on behalf of Network Rail Infrastructure Limited ("**Network Rail**") for the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order (the "**Proposed Order**") (the "**Application**") to authorise the construction and operation of the Trans-Pennine Upgrade (Huddersfield to Westtown) Scheme (the "**Scheme**"), in accordance with Rule 7 of the Transport and Works (Inquiries Procedure) Rules 2004 (the "**Rules**").

1.2 This SoC is submitted further to the objection to the Proposed Order submitted to the Secretary of State dated 17 May 2021 (the "**Objection**"). The Objection provided a comprehensive explanation of the grounds on which Dr Reddy's is required to object to the powers to authorise compulsory acquisition and stopping up of highways contained within the Proposed Order, in addition to highlighting inadequacies within the Environmental Statement submitted in support of the Application.

1.3 As would be expected, the content of this SoC is largely the same as the contents of the Objection, with the addition of information where necessary to further support the objection of Dr Reddy's and the inclusion of documents or relevant parts of documents which Dr Reddy's intends to refer to or put in evidence in due course as Exhibits to this SoC, as required in accordance with Rule 7(4) of the Rules. It should be noted that whilst reference is made to documents submitted by Network Rail as part of its Application these are not included as Exhibits to this SoC.

1.4 In taking this approach Dr Reddy's is desirous to limit the incurrence of costs as a statutory objector, though in light of the Application, and moreover the contents of the Proposed Order, submitted by Network Rail has been left with no option but to submit the Objection and this SoC in accordance with the relevant procedures and rules so as to responsibly protect its private property rights and ongoing business operations.

2. DR REDDY'S AND THE MIRFIELD FACILITY

2.1 Dr Reddy's is a group company of Dr. Reddy's Laboratories Ltd. (BSE: 500124, NSE: DRREDDY, NYSE: RDY), an integrated pharmaceutical company committed to accelerating access to affordable and innovative medicines. Through its three businesses - Pharmaceutical Services & Active Ingredients, Global Generics and Proprietary Products – Dr. Reddy's Laboratories Ltd. offers a portfolio of products and services including active pharmaceutical ingredients ("**APIs**"), custom pharmaceutical services, generics, biosimilars and differentiated formulations. The major therapeutic areas of focus are gastrointestinal, cardiovascular, diabetology, oncology, pain management and dermatology. Dr. Reddy's Laboratories Ltd. operates in markets across the globe, with its major markets including – USA, India, Russia & CIS countries, and Europe.

2.2 Dr Reddy's is the owner of land which is proposed to be the subject of compulsory acquisition pursuant to the Proposed Order, being Plot 18-025 as identified in the Book of Reference and on Sheet No.18 of the Deposited Plans. Sheet No.18 of the Deposited Plans has been included at **Exhibit 1** to this SoC.

2.3 Dr Reddy's is also the owner and operator of the Manufacturing Facility at Mirfield (the "**Facility**"), which is located directly adjacent to the existing railway line and the limits of the Proposed Order. Dr Reddy's has owned[1] and operated the Facility since 2008 for the manufacture of active pharmaceutical ingredients. Prior to Dr Reddy's operating the Facility the site was occupied by Dow Chemicals, Ascot Mitchell Chemicals and Mirvale Chemicals. The site on which the Facility is located has been a chemical manufacturing facility since the mid 1800's. This is a large industrial site incorporating a large number of buildings, laboratories and outdoor apparatus which (among other things) includes, for example, external storage facilities for liquid nitrogen, bulk solvent storage for raw materials and waste spent solvents. The developed Facility occupies approximately 14 acres.

2.4 The Facility is a lower tier establishment for the purposes of the Control of Major Accident Hazards Regulations 2015. As an operator of a COMAH lower tier establishment Dr Reddy's is committed to achieving a high standard of safety and environmental performance when discharging its regulatory duties in the interest of protecting employees, contractors, visitors, members of the public and the natural and built environment from major accident hazards associated with the nature of activities undertaken at the Facility.

2.5 The Facility is a key provider of high quality employment in the local area employing around 90 persons, with the majority of employees at the Facility living locally. Various investments have taken place at the Facility in recent years which has increased the manufacturing capability, with specific sums also being spent on improving plant safety and environmental standards. The Facility also engages with a variety of local and national businesses and contractors working to maintain the Facility.

2.6 The Facility is a 24/7, 365 day per annum operation, manufacturing multi-tonnes of APIs and chemical intermediates. The facility is presently Dr Reddy's only European manufacturing facility, part of the Chemical Technical Operations umbrella. The API's which are manufactured at the Facility are distributed globally to customers and are used as medicines to help patients regain good health as quickly as possible and to promote wellness across the globe.

2.7 The Facility is in effect located on an island site with the only route of vehicular access to it being the single lane 44 tonne rated bridge across the River Calder which adjoins the public highway at Steanard Lane (the "**Access Bridge**"), which is under Dr Reddy's ownership as part of its land. As a consequence of the presence of the existing low bridge on Steanard lane itself (directly to the south the Access Bridge) which supports the existing

[1] Dr Reddy's bought the business and the land in 2008 and has owned and occupied it ever since. At present, the land is owned by Dr Reddy's as equitable owner as is apparent that the Land Registry is yet to complete the formalities of the registration Dr Reddy's title. The reasons for this are being investigated but it is fully anticipated that Dr Reddy's will become the registered owner once the position is resolved, consistent with its equitable ownership. In other words, pending registration of the legal title, the current registered proprietor holds the title on trust for Dr Reddy's, and once registered the legal title is vested, with retrospective effect, in Dr Reddy's.

railway it is only possible for large vehicles to access the Facility by travelling south west along Steanard Lane (then turning right across the Access Bridge). Similarly, egress is only possible by crossing the Access Bridge and then turning left before travelling north east along the same stretch of public highway.

2.8 Raw material deliveries in the form of large HGV bulk chemical tankers for flammable solvents, liquid nitrogen, aqueous and solvent waste streams attend the Facility on a regular basis, at various times of the day and night in order to service the site, and access and egress over the Access Bridge.

2.9 The majority of Plot 18-025 is land which is used as the turning circle to provide access to and egress from the Facility by large vehicles. Again, this turning circle is owned by Dr Reddy's. Plot 18-022 is the part of Steanard Lane in between the Access Bridge and the turning circle. The Access Bridge, the turning circle and the public highway in between them are essential to allow access for large vehicles, including in respect of deliveries of liquid nitrogen at the Facility (used to blanket bulk storage tanks and purge reactors and associated vessels) to manage fire and explosion risk during manufacturing operations and for access by emergency and rescue services. They also provide the sole access and egress for deliveries of raw solvents, for the distribution of API's from the Facility and for the removal of waste from the Facility produced in connection with the manufacturing activities, and the commercial operation is therefore reliant on the Steanard Lane access being available. To emphasise, these essential vehicles, which must access the Facility at various times during day and night, cannot enter the Facility without use of the turning space provided by the turning circle and the public highway comprised in Plot 18-022.

2.10 Accordingly, the Facility will not be able to operate for any period where the access to it and the turning circle required in connection with this are not available. So as to ensure the Facility can operate, and do so in a safe manner at all times, no disruptions to the access and turning circle may be suffered. This is because the Facility is in operation 24 hours a day and deliveries of liquid nitrogen to the Facility are based on automated telemetry that monitors capacity levels within the storage tanks - and therefore articulated 44 tonne HGV's may (and do) arrive at any time of the day or night as and when necessary to ensure continued safe operations.

2.11 To further explain the essential nature of the turning circle, and indeed the public highway in between the turning circle and the Access Bridge, included at **Exhibit 2A** is a drawing which shows the swept path of a vehicle which is 16.5m in length and 2.5m in width (representing the dimensions of the largest vehicle which is required to use the Access Bridge – liquid nitrogen delivery vehicle) entering the Facility, and at **Exhibit 2B** is a drawing which shows the swept path of the same vehicle exiting the Facility. As can be clearly seen on the drawings, such vehicles require the use of a significant amount of the turning circle for both manoeuvres. Other vehicles which are not as large as this also require use of the turning circle.

2.12 In addition to the above, and so as to more clearly explain the type and number of vehicles which enter the Facility using the Access Bridge, the public highway which comprises Steanard Lane and where necessary the turning circle, included at **Exhibit 3** is a schedule which identifies on an indicative basis[2] the type and number of vehicles which access to and egress from the Facility in a notional month. The figure provided is for traffic movements in one direction (i.e. entry only), and therefore the total number of movements will be twice the figures stated in the **Exhibit 3**, being 3.420 individual traffic movements per month.

[2] The information provided in Exhibit 3 is indicative only because the manufacturing operations at the Facility are undertaken on a campaign basis, and therefore the number of vehicles may fluctuate on a monthly basis.

3. PRE-APPLICATION ENGAGEMENT

3.1 Contrary to the contents of the Consultation Report submitted in support of the Application Dr Reddy's was not meaningfully consulted as a landowner in relation to the Scheme prior to the submission of the Application.

3.2 The first point at which Dr Reddy's became aware of any proposal to acquire Plot 18-025, or indeed of the proposal to stop up the highway which provides access to the Facility, was following receipt of the notice required to be served on them by Network Rail in accordance with Rule 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

3.3 In addition, despite on numerous occasions providing access to the Facility to Network Rail to allow for ecological and vibration surveys to be undertaken in connection with the proposed Scheme, at no point prior to the submission of the Application has any information regarding the operation of the Facility, in particular in respect of the use of Plot 18-025, the access arrangements to the Facility and the types and number of vehicles which use the Access Bridge, or the type and location of precision equipment used at the Facility and its sensitivity to vibration been requested from Dr Reddy's by Network Rail. Nor was the proposal to compulsory acquire Plot 18-025 ever raised with Dr Reddy's.

3.4 It was only following this firm being instructed after the receipt of the aforementioned Rule 15 notice and our seeking to make urgent contact with Network Rail's solicitors that Network Rail made any effort to make direct contact with Dr Reddy's in relation to the proposal to acquire Plot 18-025. All of this was in April 2021.

3.5 Since the submission of the Objection Dr Reddy's has on numerous occasions requested confirmation of the consultation information that was sent to Dr Reddy's prior to the submission of the Application and specifically in relation to the proposal to acquire Plot 18-025.

3.6 Noting the contents of the Consultation Report submitted in support of the Application, Dr Reddy's has been seeking confirmation that the information stated to have been provided to all owners of land potentially affected by the Scheme was provided to Dr Reddy's, and that as stated at paragraph 1.4.7 of the Consultation Report "*due to the fact the Scheme proposals involve the compulsory acquisition of land and rights in land, early consultation included engagement with owners, lessess, tenants and occupiers of land potentially impacted by the Scheme*".

3.7 With regard to the landowner consultation undertaken, paragraph 2.2.1 of the Consultation Report identifies as follows:

3.7.1 "*Phase 1a consultation took place in August 2019 and its purpose was to explain to landowners the potential impacts the Scheme may have on land and property, and in some cases, to understand the operation of businesses affected by the design proposals and how these types of matters could be taken into consideration when developing the design. Through the consultation Network Rail worked to minimise impacts on land interests where possible.*"

3.8 Paragraph 2.2.2 continues to explain the letters that were sent to landowners, depending on the type of impact the Scheme was having on the land and/or property, as follows:

3.8.1 "*Letter 1 – in cases where the Scheme proposals required permanent acquisition of land: affected landowners were offered a one to one meeting before Phase 1 public consultation began;*

Letter 2 – in cases where the Scheme proposals required temporary possession of land; affected landowners were offered a one to one meeting at the Phase 1 public consultation events; and

3.8.2 *Letter 3 – in cases where land may potentially be affected by the Scheme proposals, for example, acquisition of rights over land; affected landowners were advised of the Phase 1 public consultation events and invited to attend.*"

3.9 Taking the above into account and the powers sought in the Order to compulsorily acquire land in the ownership of Dr Reddy's, it is understood that Dr Reddy's should have received both Letters 2 and 3, or a letter addressing both the proposed powers of temporary acquisition and the acquisition of rights sought.

3.10 Following the requests for copies of the correspondence sent to Dr Reddy's in accordance with the Consultation Report, Network Rail provided their understanding of the correspondence between themselves and Dr Reddy's prior to the submission of the Application on 23 June 2021. This included:

3.10.1 a letter, which Network Rail have stated was sent to Dr Reddy's dated 29th July 2019;

3.10.2 details of correspondence between Network Rail and Dr Reddy's in relation to access being provided to the facility for survey work to be undertaken, addressed in paragraph 3.3 of this SoC and also in the Objection; and

3.10.3 the issue and receipt of a Land Information Questionnaire request, seeking to confirm the ownership of land in Dr Reddy's ownership but providing no information to explain any proposals to acquire such land.

3.11 The letter dated 29th July 2019 is included at **Exhibit 4**. It is acknowledged that this letter does set out that Network Rail is contacting owners of land and property who may potentially be affected by the Scheme. The letter does not however explain to any extent that any of the land in Dr Reddy's ownership is proposed to be temporarily acquired during and to facilitate the construction of the works, nor that the acquisition of rights is proposed on a permanent basis. Furthermore, there is no offer of a one to one meeting in light of the possession proposed to be sought. All of that information would be expected to be included taking into account the proposals contained within the Proposed Order.

3.12 Furthermore, the plan included with that letter does not identify the land which is within Dr Reddy's ownership and which powers of compulsory acquisition are sought in respect of in the Proposed Order. As such, there is nothing in this letter which would identify that the land which Network Rail are proposing to compulsorily acquire is land which may potentially be affected.

3.13 The letter at **Exhibit 4**, taking into account the plan included, in essence reads that Dr Reddy's has a site next to the existing railway line that works are to be undertaken to and that therefore the site may be impacted by those works whilst they are undertaken, rather than there being the potential for the land over which powers of compulsory acquisition is now sought to be acquired.

3.14 Whilst it is understood Network Rail may seek to argue otherwise, it is considered to be self-evident that Dr Reddy's was not meaningfully consulted in relation to any proposals to acquire the land in their ownership in respect of which rights of compulsory acquisition are now sought. The letter clearly does not provide all of the information which Network Rail have stated was to be provided to landowners in their Consultation Report, in so far as it does not explain there is any temporary possession or acquisition of permanent rights proposed, and there is no offer of a one to one meeting in light of those proposals. There is also no further evidence of any correspondence being sent in relation to or any attempt being made by Network Rail to discuss the proposed acquisitions with Dr Reddy's.

3.15 Taking all of the above into account, Dr Reddy's maintains its position that there was not meaningful consultation by Network Rail in relation to its proposal to acquire Plot 18-025.

4. OBJECTION TO PROPOSED TEMPORARY ACQUISITION OF PLOT 18-025 AND 18-022 AND TEMPORARY STOPPING UP OF STEANARD LANE

4.1 Both Plots 18-025 and 18-022 are identified within the Proposed Order as being subject to powers of compulsory acquisition as land which temporary possession may be taken of pursuant to Article 34 in their entirety. The purpose for which temporary possession of those plots may be taken is identified as being to provide a working site and access for construction in connection with Work No. 14.

4.2 Article 34 of the Proposed Order provides in relation to the land of which temporary possession may be taken that Network Rail may:

4.2.1 enter upon and take temporary exclusive possession of the land;

4.2.2 remove any buildings and vegetation from that land; and

4.2.3 construct temporary works (including the provision of means of access) and buildings on that land.

4.3 It was open to Network Rail to temper the scope of Article 34 and how this applies to Plot 18-025 and 18-022 through appropriate drafting in the Proposed Order and further granularity being provided on the Deposited Plans. The powers provided for by Article 34 have however not been tempered in relation to those plots. Therefore it is necessary to assume the exercise of those powers to the full extent of their scope and the consequential impacts which could arise as a result for the purpose of considering the impacts on the Facility.

4.4 The period for which temporary exclusive possession of the land may be taken by Network Rail is limited in accordance with Article 34(4) to the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken. At this time Dr Reddy's has no information regarding the duration of Work No. 14 (despite this information being requested of Network Rail), but in any event it is entirely possible in accordance with the terms of the Proposed Order that Network Rail could take exclusive possession of the entirety of both Plots 18-022 and 18-025 for a significant period of time.

4.5 It is also of relevance that the Proposed Order includes powers to temporarily stop up Steanard Lane itself in so far as it is located within the Order limits pursuant to Article 16. Plot 18-022 comprises the extent of Steanard Lane within the Order limits north east of the existing bridge supporting the railway, with the boundaries of that plot being drawn to directly abut the Access Bridge and the turning circle. Stopping up this part of Steanard Lane, as will be expected given all the above, would again prevent, completely, all vehicular access to the Facility.

4.6 Article 16 of the Proposed Order would provide Network Rail with power to:

4.6.1 divert all traffic from that part of Steanard Lane;

4.6.2 prevent all persons from passing along that part of Steanard Lane; and

4.6.3 use that part of Steanard Lane as a temporary working site.

4.7 The effect of the above referred to powers included in the Proposed Order in relation to Plots 18-025 and 18-022 would provide Network Rail with powers to stop up the access to the Facility in connection with the construction of Work No.14 and to use the entirety of Plot 18-022 and 18-025 as a working site for an unspecified but significant period of time. As identified above, the consequence of this would be that the operation of the Facility must cease for the duration of the use of Plot 18-025 and Plot 18-022 in connection with the construction of Work No.14.

4.8 It is also the case that the Facility is not one that could ever simply adopt a "stop-start" approach. Not only would operations cease for the duration of the use of the powers, but there would be disruption during the necessary shut-down and re-opening stages consistent with a facility carrying out long-term manufacturing operations as part of a supply chain.

4.9 That the operation of the Facility may be required to cease in connection with the works to construct the Scheme in accordance with the powers sought in the Proposed Order is wholly unacceptable to Dr Reddy's and the proposed compulsory acquisition of Plot 18-025, together with the acquisition of Plot 18-022 and the stopping up of the highway which forms the surface of that land, is objected to in the strongest terms.

4.10 It is surprising and disappointing that Network Rail have sought to promote a Scheme which may in accordance with the terms of the Proposed Order require the closure of an important local employment site, made all the more so by the lack of meaningful engagement with Dr Reddy's in relation to the proposed acquisition and its impacts in advance of the submission of the Application. It is also apparent that Network Rail have not understood and have not assessed the impacts of the Scheme which they are promoting in this location, as is further outlined below.

4.11 **Failure to justify the powers of compulsory acquisition sought and to comply with CPO Guidance**

4.12 Dr Reddy's have sought to discuss the Scheme and its impacts with Network Rail following receipt of the statutory notice required to be served in accordance with rule 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

4.13 Dr Reddy's met with Network Rail (via Teams call on 5 May 2021), and we and our client have assessed the extent to which Network Rail itself has any detailed understanding of its own plans for using Plots 18-025 and 18-022 in accordance with the terms of the Proposed Order. It is apparent from those discussions that Network Rail does not clearly understand how it intends to use Plots 18-025 and 18-022, where they are to be used their suitability for such use, or their duration of use for those purposes.

4.14 In discussion on 5 May 2021 Network Rail identified that the part of Plot 18-025 closest to the railway is to be used for the storage of materials and that the remainder of Plot 18-025 would not be required to be used, save for access being taken over this. We note that where that is the case Plot 18-025 should have been split into two plots, reflecting the differing rights sought.

4.15 It was however subsequently stated that the turning circle area may be used by Network Rail for the loading and unloading of materials. This firm queried what quantity of materials is proposed to be stored on the part of the site which is not the turning circle, what type of materials would be stored in this location, why taking those factors into account it is necessary for Plot 18-025 to be used in the manner proposed, how the materials would be moved from their stored location onto the railway without impacting the turning circle, and whether it is proposed to remove the trees on this land to facilitate the storage of materials. Network Rail's response was that they were not aware and did not hold further details of how the land is proposed to be used or its suitability for such use at this time.

4.16 This firm also queried the duration of loading and unloading operations which would affect the turning circle – for example, per delivery would the turning circle be blocked for a matter of minutes, hours or days. Again, Network Rail's response was that they did not know and were not in a position to explain this information at this time. The only indication given was that it was certainly not the case that the process of loading/unloading from a vehicle parked on the turning circle would be any kind of quick "drop-off/pick up", and we concur that logically that could never be the case and that what is envisaged is very significant periods of blocking just for that delivery stage.

4.17 It is noted that the explanation provided by Network Rail of how Plot 18-025 would be used, being that only a small part would be used for the storage of materials, does not accord with the terms of the Proposed Order and the Deposited Plans. It is also the case that the only rationale for stopping up Steanard Lane is to be able to stop vehicles using this and to place obstructions on this part of the public highway which would otherwise be unlawful. It is therefore not clear how genuine the explanation provided by Network Rail on 5th May 2021 is given the scope of the powers which continue to be sought in the Proposed Order.

4.18 Whilst Dr Reddy's and Network Rail have continued discussions in relation to the proposed acquisition of land in Dr Reddy's ownership on a without prejudice basis, and which therefore we are not at liberty to discuss in this SoC, those discussions have not in any event provided an explanation of why the use of Plot 18-022 and 18-025 in accordance with the terms of the Proposed Order is necessary to facilitate the delivery of the Scheme.

4.19 The lack of meaningful pre-application engagement by Network Rail in relation to the proposed temporary possession of Plot 18-025 as sought in the Proposed Order, of any attempt to secure the rights which are proposed to be acquired by way of a voluntary agreement and of any clear understanding of why the full extent of Plots 18-025 and 18-022 are necessary to facilitate the delivery of the Scheme are all matters which run contrary to the applicable Guidance on Compulsory Purchase and the Crichel Down Rules[3] (the "**CPO Guidance"**), a copy of which is included for completeness at **Exhibit 5**. In particular the CPO Guidance identifies that:

4.19.1 The confirming authority, in this instance the Secretary of State, will expect the acquiring authority, in this instance Network Rail, to demonstrate that they have taken reasonable steps and made meaningful efforts to acquire all of the land and rights included in the Proposed Order by Agreement[4]. This has evidently not happened in respect of Plot 18-025, and at the time of writing no approach has been made by Network Rail to acquire any rights over Plot 18-025 on a voluntary basis.

4.19.2 Acquiring authorities are expected to talk to landowners to understand more about the land sought to be acquired and any physical or legal impediments in respect of the use of that land[5]. This has evidently not happened and Network Rail's failure to seek to meaningfully engage with Dr Reddy's in respect of the proposed acquisition of Plot 18-025 has led to them submitting proposals which do not take into account the existing use of the land and the physical impediments to the use now proposed by Network Rail, and in turn to the need for this objection to be submitted; and

4.19.3 A confirming minister will need to understand, and the acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers sought and where the acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire it will be difficult to show that the compulsory acquisition of the land is justified in the public interest[6]. Network Rail has not demonstrated any compelling reason why Plot 18-025 in its entirety should be acquired in accordance with the terms of the Proposed Order which may if authorised be exercised in relation to it, and why it is in the public interest to do so, taking into account the impacts this would cause.

4.20 Network Rail's inability clearly to explain the need for and suitability of Plots 18-025 and 18-022 for use as a construction working site and a means of providing access for construction is also clear evidence that Network Rail have not justified that there is not a reasonable alternative to the acquisition of Plots 18-025 and 18-022 (including its stopping up) to facilitate the construction of the Scheme. Where it is not clearly proven to be necessary for Plots 18-025 and 18-022, specifically, to be acquired and subject to the full extent of the powers sought in the Proposed Order in relation to them, the grant of powers of compulsory acquisition in relation to those plots will not be justified and the Proposed Order should not be made with the inclusion of any powers to acquire them.

4.21 As explained in the Objection, any justification which may be provided by Network Rail will need fully to take into account the impacts on the Facility and the business operations from

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3 Ministry of Housing, Communities and Local Government, July 2019

4 See the second paragraph beneath the heading "*2. When should compulsory purchase powers be used*" on page 6 of the CPO Guidance.

5 See the second paragraph beneath the heading "*17. What are the benefits of undertaking negotiations in parallel with preparing and making a compulsory purchase order?*" on page 15 of the CPO Guidance.

6 See the paragraphs below the heading "*13. How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?"* on page 12 and 13 of the CPO Guidance.

it and why it is in the public interest for the Scheme to proceed with those impacts. Taking into account the severe impacts that the Scheme would likely have on the Facility in accordance with the terms Proposed Order, it is not considered that the proposed interference can be justified by Network Rail.

4.22 It is for Network Rail to evidence that the inclusion of all land within the Order limits is necessary and that the acquisition of the land or rights sought in the Proposed Order is in the public interest taking into account the impacts of those.

4.23 At this time this has not been evidenced in relation to Plots 18-025 and 18-022 and therefore the Proposed Order should not be made in the form proposed. Should Network Rail produce a justification for why the use Plots 18-025 and 18-022 in accordance with the terms of the Proposed Order is essential to facilitate the delivery of the Scheme and there is no alternative that would allow for the Scheme to be delivered without the use of those plots, this will need to be carefully considered by our client and Dr Reddy's reserve their right to make further representations in due course as necessary.

4.24 **Environmental Impact Assessment**

4.25 It is also apparent that Network Rail have overlooked the impacts of their proposals on the Facility, as despite the environmental impact assessment ("**EIA**") in support of the Application purporting to assess the socio-economic impacts on existing business activity, there is no assessment of the likely significant impacts on the Facility. In particular, the Facility is not identified as a business which is likely to be sensitive to impacts at paragraph 21.15.31 of the environmental statement ("**ES**"). Taking into account the obvious impacts identified in this letter of objection this is a clear material omission by Network Rail.

4.26 Further, the conclusions of the socio-economic assessment at paragraph 21.5.34 of the ES identify only a minor adverse effect on business receptors as a result of construction. That is not a tenable conclusion when taking into account the obvious impacts that the operation of the powers contained in the Proposed Order would have on the Facility, which in a worst case would require the Facility to close for the duration of Work No.14 plus one year following this.

4.27 Accordingly, the EIA undertaken is not adequate to discharge the statutory requirement provided for by Rule 7A(2) of the Rules, which requires the EIA to identify, describe and assess in an appropriate manner the direct and indirect significant effects of the Scheme.

4.28 It is also noted that at paragraph 21.5.36 of the ES there is reference to access to businesses being maintained as far as reasonably practicable during construction. This statement is made without any assessment of the feasibility to maintain any such accesses having been undertaken and is also not clearly secured. It therefore offers no basis on which to reduce the likely significant impacts of the Scheme on accesses to businesses and should be disregarded by the Secretary of State as mitigation when considering the potential for impacts to arise due to the closure of the access to the Facility.

4.29 Taking into account that the impacts of the Scheme and its construction on the Facility (in accordance with the terms of the Proposed Order) have been overlooked by Network Rail and appropriate environmental information to assess this has therefore been omitted from the ES, it is requested that the Secretary of State directs Network Rail to submit appropriate additional environmental information which does assess the likely significant socio-economic impacts of the construction of the Scheme on the Facility in accordance with Rule 17 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

4.30 Should the Secretary of State not do so or should Network Rail not submit such information for appropriate scrutiny in a procedurally fair manner, any determination to be taken in respect of the Application will not be legally sound, as where environmental information on those impacts and the representations of affected persons on that information is not able to be taken into account by the Secretary of State they will not be able to reach a reasoned conclusion on the likely significant effects of the Scheme on the Facility.

5. OBJECTION TO PROPOSED PERMANENT ACQUISITION OF MAINTENANCE ACCESS RIGHTS

5.1 Plot 18-025 is also identified within the Proposed Order as being subject to powers for the compulsory acquisition of rights and the imposition of restrictive covenants pursuant to Article 29 of the Proposed Order. The permanent rights that may be acquired and restrictive covenants imposed are those which may be required for the provision of maintenance access for the authorised works and the attachment and maintenance of electrical equipment to the railway viaduct (as per Schedule 10 to the Proposed Order).

5.2 The maintenance access rights sought are not tempered in any manner, and therefore would, based on the current drafting of the Proposed Order, provide for access with or without vehicles and equipment and could foreseeably involve the placing of vehicles and equipment anywhere on Plot 18-025 in connection with any such maintenance works. The effect of exercising the powers to acquire such rights and thereafter utilising those rights would again be to prevent access to the Facility for large vehicles for any period of time where maintenance is ongoing and any such vehicles or equipment are present on Plot 18-025. This position and the impacts which would arise on the Facility as a result of the powers sought within the Proposed Order are wholly unacceptable to Dr Reddy's and it objects in the strongest of terms.

5.3 Any rights for access over Plot 18-025 must be tempered such that they do not give rise to any ongoing risk of the operation of the Facility being adversely affected as a result of their exercise.

5.4 In discussion with Network Rail on 5th May 2021 it was stated that Network Rail would require rights of access in connection with maintenance of the authorised works on foot only (without vehicles or equipment). This however is not reflected in the drafting of the Proposed Order, despite it having been open to Network Rail to draft the Proposed Order so that it accurately reflects the rights required, including limiting the scope of the area over which such rights may be exercised. Doing so would have potentially avoided the need for an objection to be raised to this element of the Scheme and the Proposed Order, and if this had been discussed with Dr Reddy's in advance of the submission of the Application that too would no doubt have assisted.

5.5 In light of discussions with Network Rail to date, it is expected that Network Rail will submit an updated draft of the Proposed Order which does accurately reflect that they are seeking rights of access on foot only without vehicles and equipment over such smaller part of Plot 18-025 as is necessary for that purpose and which it is confirmed in advance is satisfactory to our client.

5.6 Further, it is expected that Network Rail will seek to proceed in accordance with the terms of the applicable CPO Guidance and make efforts to acquire any permanent rights of access for maintenance purposes on foot only without vehicles and machinery in a manner which does not have the potential adversely to impact on the continued operation of the Facility on a voluntary basis.

5.7 Should matters progress appropriately such that the rights sought by the Proposed Order are appropriate in scope to reflect reasonable and limited rights which Network Rail in practice considers that it requires, and appropriate assurances are secured, to our client's satisfaction, that the Facility will not be adversely impacted by the exercise of those rights by way of a private agreement also, Dr Reddy's objection in relation to the acquisition of the permanent maintenance access rights over Plot 18-025 may be withdrawn.

5.8 Where matters do not progress as set out above this ground of objection must be sustained. In those circumstances it will be for Network Rail to evidence why it requires the full scope of the rights over the full extent of the land sought in accordance with the terms of the Proposed Order and to justify why it is in the public interest for that scope of rights to be included in the Proposed Order if made, taking into account the impacts on the Facility where the powers are exercised to the full extent that would be authorised.

5.9 In those circumstances it will also be necessary for Network Rail to provide environmental information in respect of the likely significant socio-economic impacts of the Facility during

operation as a consequence of the exercise of the maintenance access rights over the full extent of Plot 18-025, so that the Secretary of State may take that information and representations made in relation to it into account when determining the Application.

5.10 For in the event matters do not progress as hoped Dr Reddy's request that the Secretary of State directs Network Rail to submit appropriate additional environmental information which assesses the likely significant socio-economic impacts of the operation of the Scheme on the Facility in accordance with Rule 17 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 at this time.

6. OBJECTION IN RESPECT OF ADVERSE VIBRATION EFFECTS

6.1 Within the Facility is an analytical laboratory which undertakes quality control checks in respect of all manufactured products. The analytical laboratory is located within an L-shaped building adjacent to the existing railway line. The equipment located and used within the analytical laboratory comprises high-performance liquid chromatography units and gas chromatography units and precision weighing balances. Depending on the amount of external vibration which occurs infra-red and colorimeter equipment may be adversely impacted. Works to deliver the Scheme will be undertaken in very close proximity to the analytical laboratory and it is therefore necessary to understand the levels of vibration associated with the works and whether any adverse effects will occur on the continued operation of the Facility as a consequence of vibration. This matter is relevant both in respect of construction and operation and we provide representations on behalf of our client in relation to both below.

6.2 **Vibration impacts in connection with construction**

6.3 In respect of construction related impacts the Planning Statement submitted in support of the Application identifies at paragraph 9.13.9 that there are potential significant adverse effects on the operation of the Facility in terms of the use of precision equipment during vibratory construction works (such as compaction and piling).

6.4 The potential for such significant adverse effects on the Facility is further discussed at paragraph 8.3.23 of Chapter 8 to Volume 2ii in respect of Route Section 5 of the ES, with that paragraph providing as follows:

6.4.1 "*Dr Reddy's is a pharmaceutical facility which may contain vibration sensitive equipment such as microscopes and precision balances. The use of such equipment may be disturbed by vibration levels exceeding approximately 25 µm/s RMS (or lower, depending on the processes). Construction vibration has the potential to exceed this level. As such, Dr Reddy's will be consulted prior to the start of works and advised of any potential vibration generating construction activities which may affect the use of sensitive equipment during periods of construction works.*"

6.5 It is evident from the contents of the Planning Statement and the above referred to information contained in the ES that Network Rail have identified the potential for significant adverse effects to arise in relation to the operation of precision equipment located at the Facility.

6.6 Despite this and Network Rail presumably identifying that vibration in connection with the construction of the Scheme may give rise to significant adverse effects some time before the Application was submitted when undertaking the assessment work and then drafting the ES reporting this, Network Rail did not at any point prior to the submission of the Application seek any information from Dr Reddy's in relation to the use of precision equipment at the Facility and its sensitivity to vibration to allow for a proper assessment of the likely significant effects to be undertaken. As such, there is no assessment of the likely significant effects of construction vibration on the Facility. All that Network Rail have done is identify the need for such an assessment to be undertaken. That assessment must be undertaken and reported as part of the ES and cannot lawfully be delayed until after the Scheme has been granted consent to proceed.

6.7 Where an assessment of the likely significant effects of construction related vibration on the Facility is not undertaken and submitted to the Secretary of State as additional information any decision taken by the Secretary of State in respect of the Application will not be legally sound. This is because the environmental information in respect of those impacts and the representations of affected persons on that information will not able to be taken into account by the Secretary of State, and therefore they will not be in a position to reach a reasoned conclusion on the likely significant effects of the implementation of the Scheme on the Facility.

6.8 Further to the submission of the Objection Network Rail have made contact with Dr Reddy's in relation to the undertaking of the required surveys to determine the levels of

vibration likely to be experienced at the Facility and the potential impacts of those by a vibration specialist. The survey work was undertaken on or around Thursday 1st July, and as such it is expect that Network Rail will in due course submit an assessment of the likely significant effects of construction related vibration on the Facility.

6.9 However, as no assessment had been undertaken at the time of the submission of the Application (and the results of this are also not yet available) Dr Reddy's is left with no option but to object to the Application on the basis that it does not yet know what the impact of the implementation of the Scheme on the Facility may be, and taking into account that Network Rail have identified the potential for significant adverse effects to arise it can only be assumed that there will be significant adverse effects until an assessment which evidences otherwise is undertaken.

6.10 Dr Reddy's reserves its right to make further representations on this matter in due course once the assessment information has been compiled and submitted.

6.11 Further, it is also noted that Network Rail have purported to identify consultation with Dr Reddy's prior to the start of the works as mitigation for vibration impacts. It is not clear how this is rationally considered to mitigate the impacts that may arise where those impacts have not been assessed. Later consultation with Dr Reddy's, in effect to tell them when they will be impacted, is not a measure which has any genuine mitigatory effect and should be disregarded by the Secretary of State when considering the impacts on the Facility as part of their determination of the Application.

6.12 It is expected that where it is identified that there are likely significant vibration impacts on the Facility, Network Rail will also set out appropriate mitigation measures proposed to be taken in order to avoid, prevent or reduce and, if possible, offset those likely significant adverse effects.

6.13 **Vibration impacts in connection with operation**

6.14 It is understood that operational vibration in connection with the Scheme on the Facility will reduce from the existing baseline levels because of the proposed future realignment of the railway lines and their use, with the faster trains being located on the railway tracks furthest away from the Facility. Given this is the basis on which Network Rail have undertaken their EIA it is necessary for the Secretary of State to ensure that the Scheme cannot in the future be operated in a manner which is inconsistent with what has been assessed (i.e. it must understand the current position and the future position where levels of vibration are reduced, and how the future position is secured).

6.15 This firm has reviewed the proposed planning conditions to be imposed on the deemed planning permission for which a request has been submitted as part of the Application. Having done so we have not been able to identify a clear restriction requiring the railway to be operated in accordance with the approved plans specifying the types of trains which may use the respective sets of railway tracks. We note draft condition two which provides that the development must be carried out in accordance with the approved planning direction drawings. We understand however that this conditions relates to construction only and not ongoing operation.

6.16 Dr Reddy's are not railway engineers and therefore the construction of the tracks in the manner proposed may in itself mean the faster trains must be located on the railway tracks furthest away from the Facility. If that is the case, it would be helpful if Network Rail could clearly confirm why that is so.

6.17 Given the assessment undertaken and conclusions reported in respect of likely significant operational vibration impacts in respect of the Facility are wholly based on the proposed future operational alignment (and we assume the assessment and conclusions in respect of the remainder of the Scheme are undertaken and reported on the same basis), it is expected that Network Rail will update the draft conditions to include a clear restriction on the future operational alignment of the railway line, or that the Secretary of State will impose such a condition where Network Rail do not do so or Network Rail will otherwise identify how this matter is secured.

7. CLOSING REMARKS

7.1 Dr Reddy's has been provided with no alternative but to object in the strongest terms to the Application for the Proposed Order, and in particular the rights of compulsory acquisition in respect of Plot 18-022 and 18-025 and the powers to stop up the public highway present in Plot 18-022, so as to protect its ongoing operations at the Facility in a responsible manner.

7.2 The exercise of the powers included for within the Proposed Order in accordance with their terms, which the Objection and this SoC must relate to, would potentially result in the closure of the Facility. This is because the Facility will not be capable of operating where the turning circle is disrupted by Network Rail as bulk storage tanks for raw materials and liquid nitrogen (used to blanket bulk storage tanks and purge reactors and associated vessels) to manage fire and explosion risk during manufacturing operations would not be able to replenished. Essential access for emergency and rescue services may also not be available.

7.3 Where Plot 18-022 is stopped up, and noting that Plot is purposefully drawn to the very edge of the Access Bridge, no vehicular access would be available to the Facility. That would further impose the closure of the Facility.

7.4 So that our client's position is clearly stated: to ensure the Facility can operate, and operate in a safe manner at all times, no disruptions to the access and turning circle may be suffered at all, and our client will continue to object to the Application for so long as the Proposed Order includes the potential for disruptions to the access to occur.

7.5 Our client will also continue to object whilst the position concerning vibration is satisfactorily resolved, albeit in this regard it is acknowledged that since the submission of the Objection steps are now being taken by Network Rail to undertake that required assessment, in direct response to the Objection.

7.6 It is, in our view, very clear that Network Rail has not discharged its duties in respect of satisfying the tests provided for by the CPO Guidance or in relation to the need to undertake an EIA and produce an ES which assesses and reports on the full scope of the likely significant effects of the implementation of the Proposed Order, in accordance with its terms. These are errors which it is within Network Rail's control to correct.

7.7 No legally sound decision may be taken in respect of the Application until that information and any representations on it are available to be taken into account by the Secretary of State for the purposes of reaching a reasoned conclusion on the likely significant effects of the implementation of the Scheme.

7.8 In light of the contents of the Objection and this SoC, so as to facilitate the removal of Dr Reddy's objection it is expected that Network Rail will look to revise the Proposed Order to:

- 7.8.1 remove both of Plots 18-022 and 18-025 from being subject to temporary possession powers pursuant to Article 34;
- 7.8.2 accurately reflect that the Proposed Order will authorise a permanent right of access on foot only without vehicles and equipment over such smaller part of Plot 18-025 as is necessary for that purpose and which it is confirmed in advance is satisfactory to our client; and
- 7.8.3 where necessary, to include the necessary restrictions so as to secure the future operation of the Scheme will be in accordance with the assessed impacts in respect of level of operational vibration.

7.9 Whilst Dr Reddy's does remain willing to progress discussions with Network Rail and it is hoped an acceptable legally binding position can be reached, there should be no assumption by Network Rail that such matters will be capable of being dealt with by way of a private agreement.

7.10 In addition, should Network Rail revise the Proposed Order as set out above Dr Reddy's will expect the costs of its Objection to be awarded to it on the basis that it has successfully opposed the compulsory acquisition of Plot 18-025 and 18-022 as proposed in the Proposed Order. Such an award would be appropriate as the position would be materially

similar to where the Secretary of State decides to exclude from the grant of the compulsory acquisition provisions the whole, or part of, a statutory objectors property[7] in light of objections made by them.

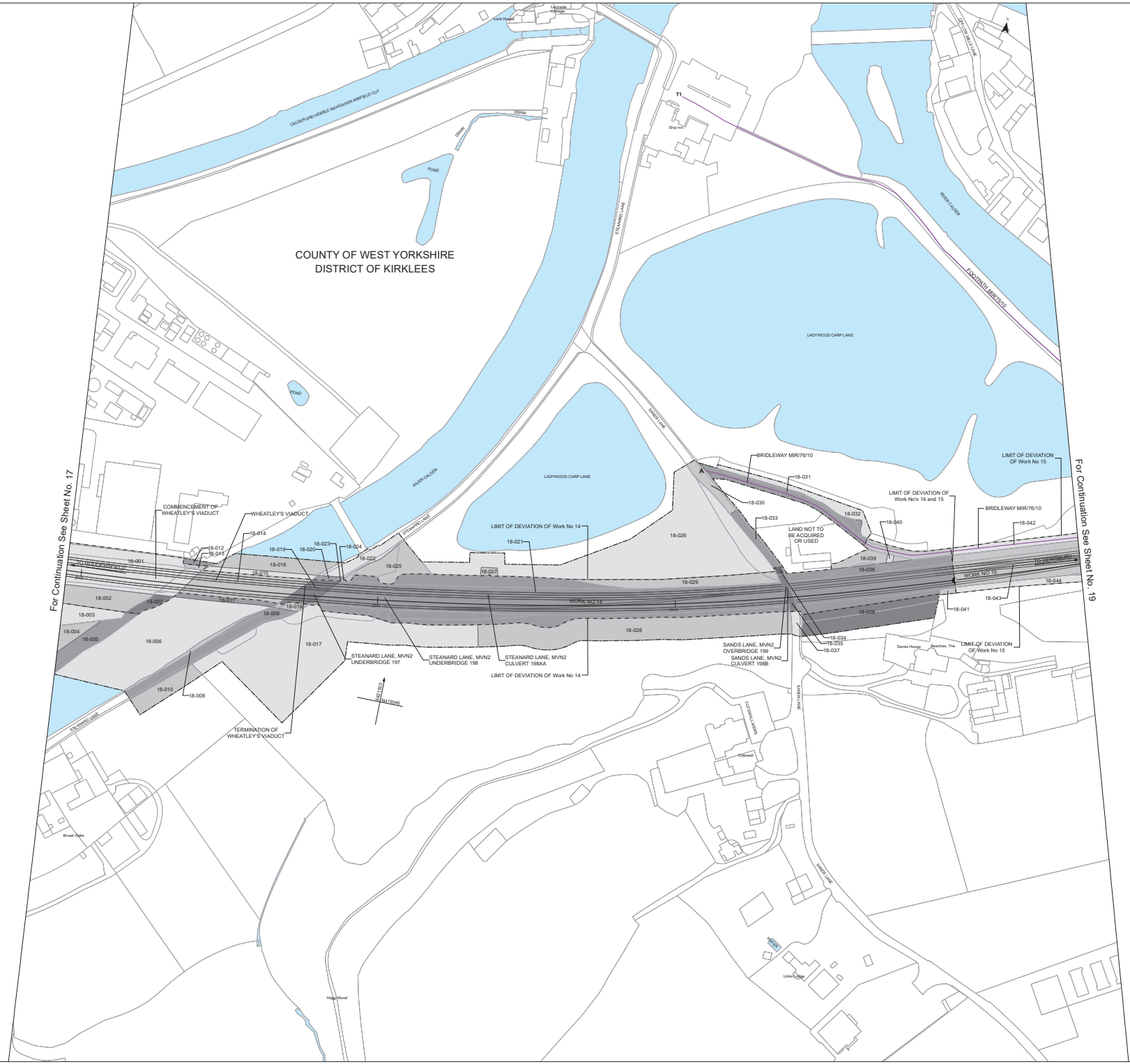
Herbert Smith Freehills LLP

6 July 2021

18857/31043084

[7] See Annex 5 of the Department for Transport Circular 3/94: Awards of costs in applications proceeding under section 6 of the Transport and Works Act 1992 in relation to the award of such costs to successful statutory objectors.

EXHIBIT 1
SHEET NO.18 OF THE DEPOSITED PLANS



THE NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY) IMPROVEMENTS) ORDER

Sheet No. 18

WORK NO. 14 (For section of Work No. 14, see Sheet Nos. 44 and 45)
WORK NO. 15 (For section of Work No. 15, see Sheet Nos. 46, 47 and 48)

KEY

- CENTRE LINE OF WORK
- CENTRE LINE OF SUBSURFACE WORK
- LIMIT OF DEVIATION
- LIMIT OF LAND TO BE ACQUIRED OR USED
- PROTECTIVE WORKS LIMIT
- DISTRICT BOUNDARY
- ○ COMMENCEMENT OF WORK
- ● TERMINATION OF WORK
- ◐ COMMENCEMENT OF WORK AND TERMINATION OF WORK
- A NEW / IMPROVED ACCESS
- EXISTING OR ALLEDGED PUBLIC RIGHT OF WAY
- NEW RIGHT OF WAY TO BE PROVIDED (EXCEPT WHERE PROVIDED OVER A SCHEDULED WORK)

Note: The area enclosed by any limit of deviation or by any limit of land to be acquired or used is the area extending to the outer edges of the line marking those limits.

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0 25 50 75 100 125

SCALE 1:1250 @ A1

EXHIBIT 2A
SWEPT PATH OF A VEHICLE 16.5M IN LENGTH AND 2.5M IN WIDTH ENTERING THE FACILITY

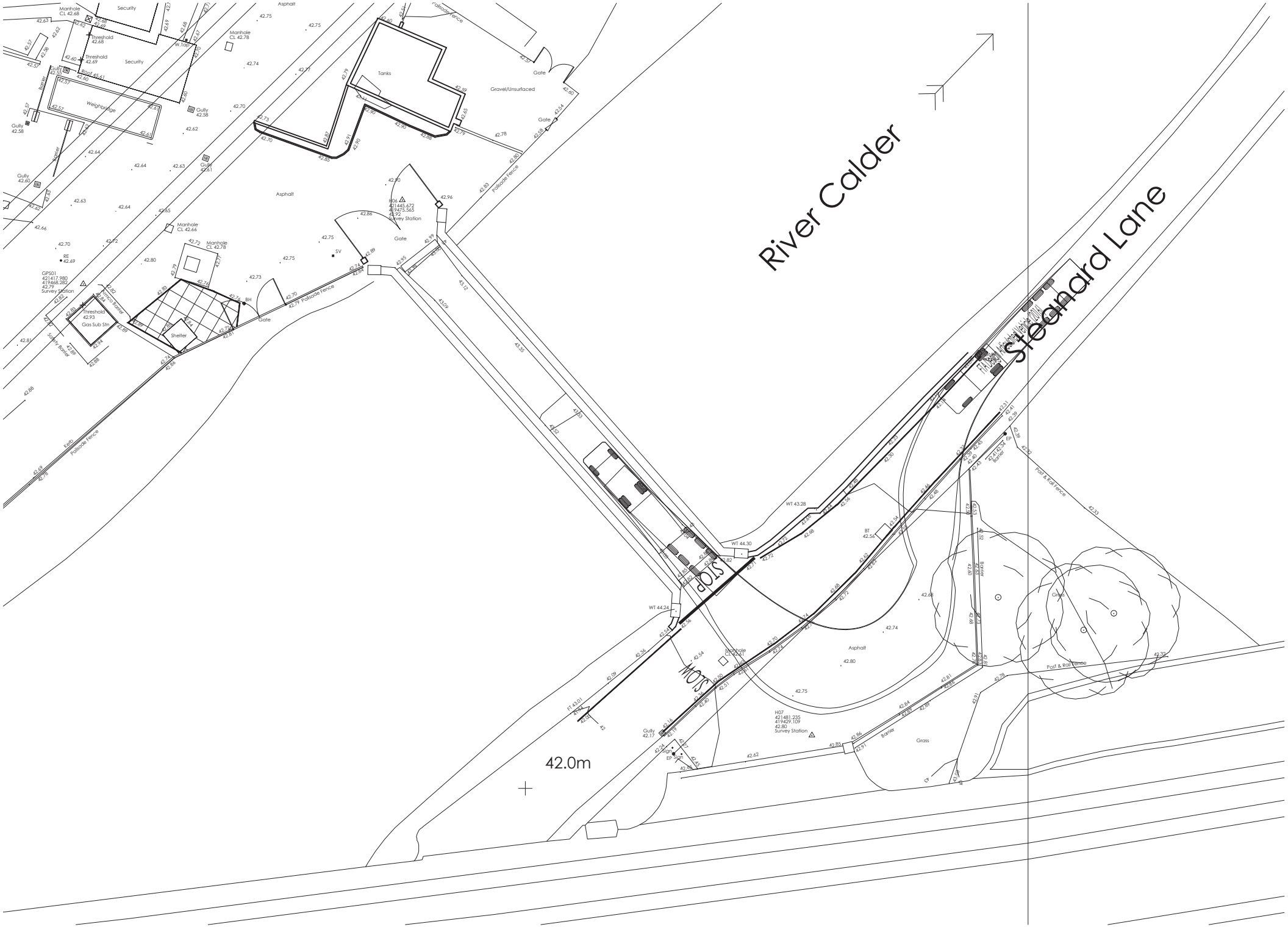

River Calder
Steenard Lane
42.0m
Asphalt
Security
Tanks
Gravel/Unsurfaced
Gate
Grass
Shelter
Weighbridge
Gas Sub Stn
Palisade Fence
Post & Rail Fence
Barrier
Manhole
Gully
Threshold
Bollard
Kerb
Fence
Hedge
Ramp
Steps
Slope
Bank
Stop
Slow
Give Way
Safety Barrier
Traffic Barrier
Overhead Line
Pylon
Building
Entrance
Exit
Pedestrian Gate
Vehicle Gate
Turnstile

EXHIBIT 2B
SWEPT PATH OF A VEHICLE 16.5M IN LENGTH AND 2.5M IN WIDTH EXITING THE FACILITY

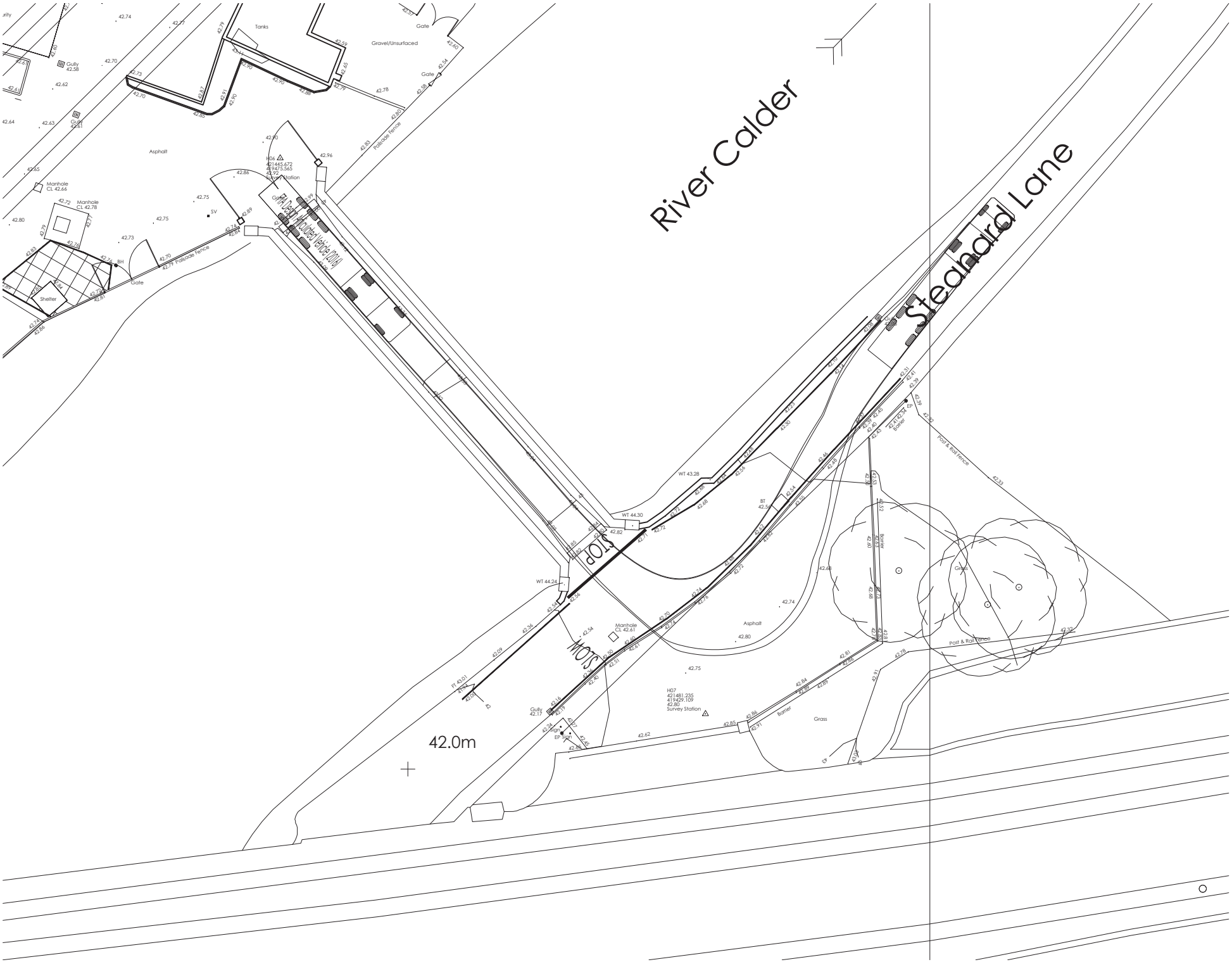

River Calder
Steanard Lane
Tanks
Gravel/Unsurfaced
Gate
Gate
Gate
Asphalt
Asphalt
Asphalt
Grass
Grass
Shelter
Manhole CL 42.66
Manhole CL 42.78
Manhole CL 42.61
Gully 42.58
Gully 42.61
Gully 42.17
Palisade fence
Palisade fence
Post & Rail Fence
Post & Rail Fence
Post & Rail Fence
Barrier
Barrier
Barrier

EXHIBIT 3
SCHEDULE OF THE TYPE AND NUMBER OF VEHICLES WHICH ACCESS THE FACILITY ON A MONTHLY BASIS (INDICATIVE)[8]

Vehicle Type	**Size of Vehicle**	**Quantity PCM[9]**	**Day / Night**	**Average Duration of Stay**
Employee Cars	Various	1488	Shift workers require access 24 hours	8 – 12 Hours
Nitrogen Tanker	50.8ft	2	Telemetry controlled, arrival can be at any point in 24 hour period	2 Hours
Waste Skip Removal	40ft	8	During normal working hours	1 Hour
Bulk Liquid Waste Removal	40ft	7	During normal working hours	3 Hours
Drummed Waste Removal	40ft	6	During normal working hours	3 Hours
Raw Material Bulk Delivery	40ft	2	During normal working hours	2 Hours
Raw Material Drummed Delivery	40ft	2	During normal working hours	1 Hour
Multi-Drop Drivers	7.5ft	150	During normal working hours	15 minutes
Contractors	Car / 7.5ft / 40ft	45	During normal working hours	8+ Hours
Total		**1710**		

8 The information provided in this Exhibit 3 is indicative only because the manufacturing operations at the Facility are undertaken on a campaign basis, and therefore the number of vehicles may fluctuate on a month to month basis.

9 The quantity of vehicles stated in this column represents one-way movements (i.e. entry only) and therefore the number of actual movements (entry and exit) is double the amount stated.

EXHIBIT 4
LETTER DATED 29TH JULY 2019 FROM NETWORK RAIL TO DR REDDY'S

Network Rail
c/o Carter Jonas
First Floor
9 Bond Court
Leeds
LS1 2JZ

Dr Reddy's Laboratory (UK) Limited
6 Riverview Road
Beverley
NULL
HU17 0LD

26th July 2019

Dear Sir/Madam,

Request for meeting

Network Rail is planning to improve the Transpennine railway between Manchester, Huddersfield, Leeds and York, a programme of works known as the Transpennine Route Upgrade (TRU). The improvements will create a more reliable railway with more seats and more frequent trains, improved journey times between York, Leeds and Huddersfield and Manchester and the improvements will support the growth in the economy in the North of England.

Upgrading the section of railway between Huddersfield and Westtown (Dewsbury) ("the scheme") is a key deliverable for TRU. Major improvements are needed in this area and Network Rail is currently developing designs for these improvements.

We are now contacting owners of land and property who may potentially be affected by the scheme. We are holding consultation events in the local community in September 2019 (see attached schedule) and we would like to invite you along to one of these events so that we can discuss with you the current design proposals and any potential impacts. The events will be advertised in the local newspaper and on the radio next month and you will receive a further invitation to the events nearer the time.

We do hope you can attend one these events and we look forward to seeing you.

Yours faithfully,

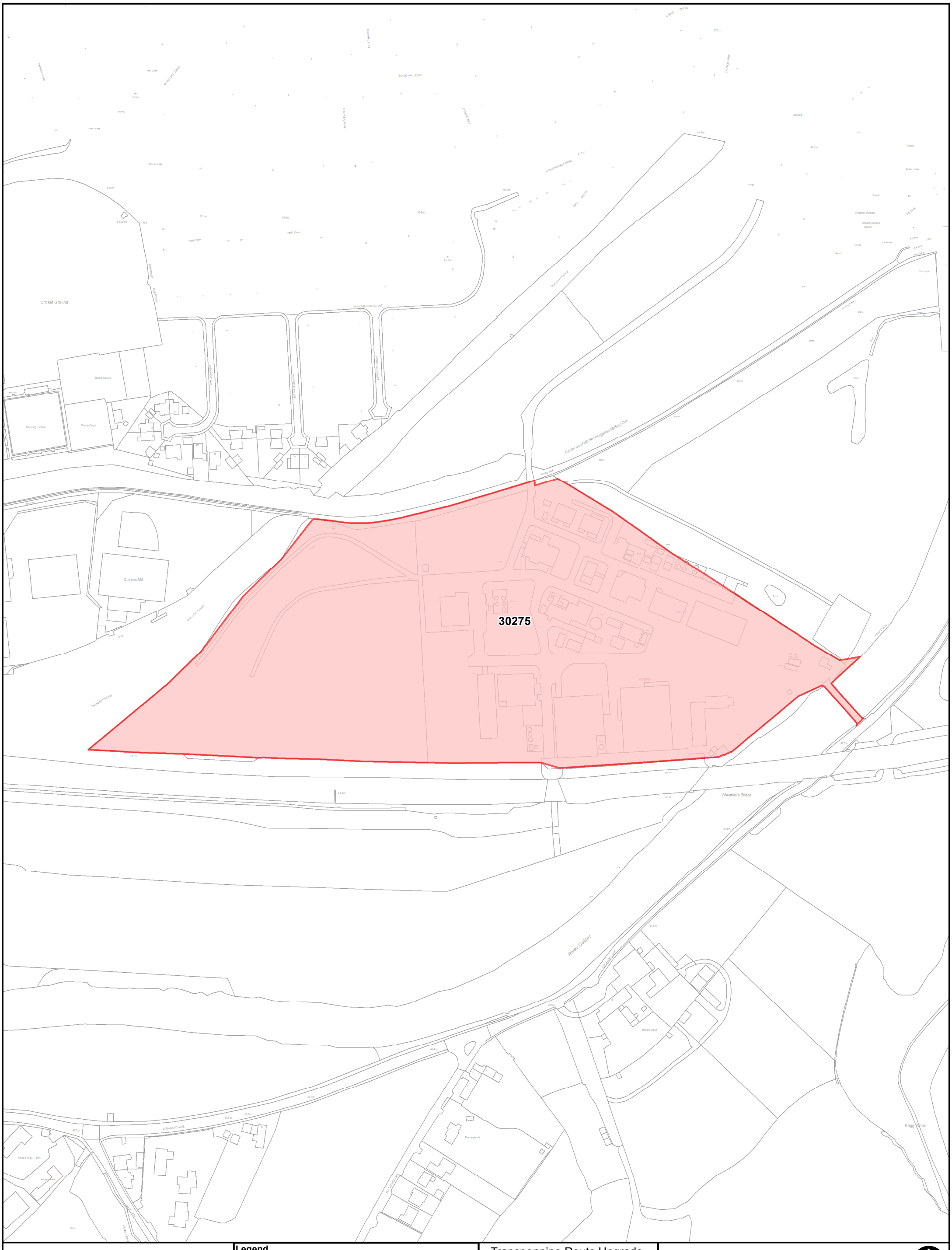


David Vernon
Scheme Sponsor
Enc

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Network Rail Public Consultation Events September 2019 Huddersfield to Westtown (Dewsbury)				
Monday Sept 9 *12pm-8pm*	Tuesday Sept 10 *12pm-8pm*	Wednesday Sept 11 *12pm-8pm*	Thursday Sept 12 *12pm-8pm*	Saturday Sept 14 *10am-1.30pm*
Huddersfield Huddersfield Mission, 3-13 Lord Street, HD1 1QA	**Huddersfield** Huddersfield Mission, 3-13 Lord Street, HD1 1QA	**Deighton** Deighton Sports Arena, Deighton Road, Huddersfield West Yorkshire, HD2 1JP	**Hillhouse** Hudawi Cultural Centre, Great Northern Street, Huddersfield, HD1 6BG	**Bradley** Bradley Park Community Centre, Wilton Avenue, Bradley, HD2 1RS
	Tuesday Sept 17 *12pm-8pm*	Wednesday Sept 18 *12pm-6.30pm*	Thursday Sept 19 *12pm-8pm*	Saturday Sept 21 *10am-1.30pm*
	Mirfield Mirfield Community Centre, Water Royd Lane, WF14 9SG	**Mirfield** Mirfield Community Centre, Water Royd Lane, WF14 9SG	**Ravensthorpe** Dewsbury West Community Centre, Church Street, Ravensthorpe, WF13 3LA	**Ravensthorpe** Dewsbury West Community Centre, Church Street, Ravensthorpe, WF13 3LA

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Legend

Extent of Land Ownership

Transpennine Route Upgrade
Land Ownership Plan

Dr Reddy's Laboratory (UK) Limited

30275

Restricted

Network Rail

Scale at A3: 1:2,500

0 25 50 75 100

Meters

Map Number: 70054226-WSP-PLN-CL-2472920 **Date:** 25/07/2019

EXHIBIT 5
GUIDANCE ON COMPULSORY PURCHASE AND THE CRICHEL DOWN RULES, JULY 2019

Ministry of Housing, Communities & Local Government

Guidance on

Compulsory purchase process

and

The Crichel Down Rules

This compulsory purchase guidance updates the previous version published in February 2018. It applies only to England.

(The guidance contains internal hyperlinks to navigate within the document. You may need to install command icons on your toolbar to allow you to do this. This can be done by downloading the document then opening it as a PDF. Go to View, then Page Navigation and select Previous view/Next view. Once you click on a hyperlink, you can use the Previous arrow to take you back to your original place in the document.)



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If you have any enquiries regarding this document/publication, complete the form at http://forms.communities.gov.uk/ or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: https://twitter.com/mhclg

July 2019

Contents

Compulsory purchase guidance **5**

Tier 1: compulsory purchase overview **5**

General overview 6

The compulsory purchase order process 10

Stage 1: choosing the right compulsory purchase power 11

Stage 2: justifying a compulsory purchase order 12

Stage 3: preparing and making a compulsory purchase order 15

Stage 4: consideration of the compulsory purchase order 20

Stage 5: implementing a compulsory purchase order 32

Stage 6: compensation 37

Tier 2: enabling powers **46**

Section 1: advice on section 226 of the Town and Country Planning Act 1990 47

Section 2: advice on Section 121 of Local Government Act 1972 51

Section 3: Homes England 55

Section 4: urban development corporations 59

Section 5: new town development corporations 62

Section 6: powers of local housing authorities for housing purposes and listed buildings in slum clearances 66

Section 7: to improve the appearance or condition of land 73

Section 8: for educational purposes 75

Section 9: for public libraries and museums 79

Section 10: for airport Public Safety Zones 80

Section 11: for listed buildings in need of repair 82

Tier 3: procedural issues **85**

Common procedural issues **86**

Section 12: preparing statement of reasons 86

Section 13: general certificate 88

Section 14: preparing and serving the order and notices 90

Section 15: order maps 98

Section 16: addresses 100

Procedural issues applying to some compulsory purchase orders **103**

Section 17: for community assets (at the request of the community or a local body) 103

Section 18: special kinds of land 104

Section 19: compulsory purchase of new rights and other interests 112

Section 20: compulsory purchase of Crown land 117

Section 21: certificates of appropriate alternative development 115

Section 22: protected assets certificate 123

Section 23: objection to division of land (material detriment) 125

Section 24: overriding easements and other rights 128

Separate but related guidance **129**

Purchase notices **129**

The Crichel Down Rules **140**

Appendix A (see paragraph 18 of the Rules*)* 146

Appendix B (see paragraph 25 of the Rules) 147

Annex (see paragraph 1 of the Rules) 148

Compulsory purchase guidance

Tier 1: compulsory purchase overview

Guidance relevant to all compulsory purchase orders
This tier contains guidance on:

- General overview
- The compulsory purchase process:
  - Stage 1: choosing the right compulsory purchase power
  - Stage 2: justifying a compulsory purchase order
  - Stage 3: preparing and making a compulsory purchase order
  - Stage 4: consideration of the compulsory purchase order
  - Stage 5: implementing a compulsory purchase order
  - Stage 6: compensation

General overview

1. What are compulsory purchase powers?

These are powers which enable ('enabling powers') public bodies on which they are conferred to acquire land compulsorily. Compulsory purchase of land requires the approval of a confirming minister.

Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.

2. When should compulsory purchase powers be used?

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website.

3. What should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?

When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance, the early acquisition may avoid some of the following costs being incurred:

- legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)
- wider compulsory purchase order process costs (for example, staff resources)
- the overall cost of project delay (for example, caused by delay in gaining entry to the land)
- any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders)

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

4. Who has compulsory purchase powers?

Many public bodies with statutory powers have compulsory purchase powers, including:

- local authorities (which include for some purposes national park authorities)
- statutory undertakers
- some executive agencies, including Homes England[1]
- health service bodies

Government ministers also have compulsory purchase powers, but departments that use them will have their own internal guidance on how to proceed.

5. How is a compulsory purchase order made?

Detailed guidance on the compulsory purchase process is provided in the section on the compulsory purchase order process.

[1] Homes England is the trading name for the Homes and Communities Agency (HCA) and operates under the powers given to the HCA in the Housing and Regeneration Act 2008.

6. How should the Public Sector Equality Duty be taken into account in the compulsory purchase regime?

All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

For example, an important use of compulsory purchase powers is to help regenerate run-down areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the Public Sector Equality Duty, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean that the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems that people with certain protected characteristics might have (eg making sure that documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice).

7. Can anyone else initiate compulsory purchase?

In certain circumstances an owner may also initiate a compulsory purchase process. An owner may initiate the process by serving:

- a purchase notice under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990 - served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or

- a blight notice under section 150 of the Town and Country Planning 1990 Act - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can only be served in the circumstances listed in schedule 13 to the Town and Country Planning Act 1990

8. Are there any other ways to compulsorily acquire land?

Other powers of compulsory purchase include:

- a Transport and Works Act order under the Transport and Works Act 1992 - guidance on Transport and Works Act orders is available from the Department for Transport

- a development consent order under the Planning Act 2008 for a Nationally

Significant Infrastructure Project - guidance is available here

- a hybrid act of Parliament, such as the Crossrail Act 2008, which is one promoted by the government but in relation to specified land rather than the UK as a whole

- a harbour revision order and a harbour empowerment order under the Harbours Act 1964 – guidance is available here

This guidance relates to the use of compulsory purchase powers to make a compulsory purchase order that is provided by a specific act of Parliament and requires the approval of a confirming minister.

The compulsory purchase order process

9. What is the process for making a compulsory purchase order?

There are six key stages in the process:

- Stage 1: choosing the right compulsory purchase power
- Stage 2: justifying a compulsory purchase order
- Stage 3: preparing and making a compulsory purchase order
- Stage 4: consideration of the compulsory purchase order
- Stage 5: implementing a compulsory purchase order
- Stage 6: compensation

Stage 1: choosing the right compulsory purchase power

10. When can an acquiring authority use its compulsory purchase powers?

There are a large number of enabling powers, each of which specifies the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the confirming minister will want to take into account in deciding whether to confirm a compulsory purchase order.

Most acts containing enabling powers specify that the procedures in the Acquisition of Land Act 1981 apply to orders made under those powers. Where this is the case, an acquiring authority must follow those procedures.

11. Which power should an acquiring authority use to make a compulsory purchase order?

Acquiring authorities should look to use the most specific power available for the purpose in mind, and only use a general power when a specific power is not available. The authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use.

Specific guidance is available for:

- local authorities for planning purposes
- local authorities in conjunction with other powers or where land is required for more than one function
- Homes England
- urban development corporations
- new town development corporations
- local housing authorities for housing purposes
- to improve the appearance or condition of land
- for educational purposes
- for public libraries and museums
- for airport Public Safety Zones
- for listed buildings in need of repair

Stage 2: justifying a compulsory purchase order

12. How does an acquiring authority justify a compulsory purchase order?

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order (see How will the Confirming minister consider the acquiring authority's justification for a compulsory purchase order?). Acquiring authorities may find it useful to take account of these in preparing their justification.

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

13. How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?

The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire;
  and

- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for further information in relation to orders under that power.

14. What information about the resource implications of the proposed scheme does an acquiring authority need to provide?

In preparing its justification, the acquiring authority should address:

a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and
- the basis on which the contributions or underwriting is to be made

b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

15. How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and
- any need for planning permission or other consent or licence

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is

required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework.

Stage 3: preparing and making a compulsory purchase order

16. Can acquiring authorities enter land before deciding whether to include it in a compulsory purchase order?

In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in sections 172-179 of, and Schedule 14 to, the Housing and Planning Act 2016.

A minimum of 14 days' notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

17. What are the benefits of undertaking negotiations in parallel with preparing and making a compulsory purchase order?

Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

18. Can alternative dispute resolution techniques be used to address concerns about a compulsory purchase order?

In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to alternative dispute resolution techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties.

The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if

the order were to be confirmed.

19. What other steps should be considered to help those affected by a compulsory purchase order?

Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected
- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access
- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power
- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))
- offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate
- providing a 'not before' date, confirming that acquisition will not take place before a certain time
- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition

20. Why is it important to make sure that a compulsory purchase order is made correctly?

The confirming minister has to be satisfied that the statutory procedures have been followed correctly, whether the compulsory purchase order is opposed or not. This means that the confirming department has to check that no one has been or will be substantially prejudiced as a result of:

- a defect in the compulsory purchase order; or
- by a failure to follow the correct procedures, such as the service of additional or amended personal notices

Where the procedures set out in the Acquisition of Land Act 1981 apply, acquiring authorities must prepare compulsory purchase orders in conformity with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and are urged to take every possible care in doing so, including recording the names and addresses of those with

an interest in the land to be acquired. (See also Can acquiring authorities seek advice from the confirming department?)

Advice on how to complete the forms of orders to which the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 apply is available here.

21. Are there any other important matters that may require consideration when making a compulsory purchase order?

Where relevant, acquiring authorities should also have regard to advice available on:

- the need to justify the extent of the scheme to be disregarded at the outset
- the protection afforded to special kinds of land
- compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access
- restrictions on the compulsory purchase of Crown land

22. Which parties should be notified of a compulsory purchase order?

The parties who must be notified of a compulsory purchase order are referred to as qualifying persons. A qualifying person includes:

- an owner
- an occupier
- a tenant (whatever the period of the tenancy)
- a person to whom the acquiring authority would be required to give notice to treat if it was proceeding under section 5(1) of the Compulsory Purchase Act 1965
- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry; this relates mainly, but not exclusively, to easements and restrictive covenants

When serving notice of an order on qualifying persons, the acquiring authority is also expected to send to each one a copy of the authority's statement of reasons for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. This statement of reasons, although non-statutory, should be as comprehensive as possible.

The general public will also be notified through newspaper notices and site notices.

23. Can objections be made to a compulsory purchase order?

There are statutory requirements for compulsory purchase orders that are about to be submitted to be advertised in newspapers and through site notices. These invite the

submission of objections to the relevant government minister. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the minister within the period specified in the notice. This must be a minimum of 21 days. See here for further information on the requirements for grounds of objection and objectors' statements of case in relation to an inquiry. It is important to make objections as relevant as possible to the matters which fall for consideration, in order for the objection to have an effect.

Under rule 14 of the Compulsory Purchase (Inquiries Procedure) Rules 2007, third parties have no right to be heard at an inquiry, although the inspector may permit them to appear at his discretion (although permission is not to be unreasonably withheld).

Objections should be sent to the confirming department at the address provided.

24. Can acquiring authorities seek advice from the confirming department?

Acquiring authorities are expected to seek their own legal and professional advice when preparing and making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed compulsory purchase order, it may seek informal written comments from the confirming department by submitting a draft for technical examination.

Experience suggests that technical examination by the confirming department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. The role of the confirming department at this stage is confined to giving the draft compulsory purchase order a technical examination to check that it complies with the requirements on form and content in the statutes and the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004, without prejudice to the consideration of its merits or demerits.

25. What documents should accompany a compulsory purchase order which is submitted for confirmation?

Below is a checklist of the documents to be submitted to the confirming minister with a compulsory purchase order:

- one copy of the sealed compulsory purchase order and two copies of the sealed map
- two copies each of the unsealed compulsory purchase order and unsealed map - follow the link for further guidance on order maps
- one copy of the general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: (a) an order made on behalf of a parish council; (b) Church of England property; or (c) a listed building in need of repair
- one copy of the protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in What information needs to be included in a positive statement? in section 16 (except for orders under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

- two copies of the statement of reasons and, wherever practicable, any other documents referred to therein. A statement of reasons must include a statement concerning the planning permission (see How does the acquiring authority address whether there are any other impediments to the scheme going ahead?).

Compulsory purchase orders for listed buildings in need of repair will also require:

- one copy of the repairs notice served in accordance with section 48, where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) - follow the link for further information on Compulsory purchase orders for listed buildings in need of repair

Additional guidance on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks is set out in Department for Transport *Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks for which the Secretary of State is the confirming authority*.

Stage 4: consideration of the compulsory purchase order

26. Who will take the decision to confirm or not a compulsory purchase order?

The 'confirming authority' under the Acquisition of Land Act 1981 is the minister having the power to authorise the acquiring authority to purchase the land compulsorily.

However, under new section 14D of the Acquisition of Land Act 1981[2] a 'confirming authority' can appoint an inspector to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A of the Acquisition of Land Act 1981 applies (ie a non-ministerial order where there is a remaining objection).

Where the Secretary of State for Housing, Communities and Local Government is the confirming authority for such an order, he will carefully consider the suitability of 'delegating' the confirmation decision to an inspector in line with the criteria set out in this guidance. The Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

27. What criteria will the Secretary of State for Housing, Communities and Local Government consider in deciding whether to delegate a decision on a compulsory purchase order?

The Secretary of State for Housing, Communities and Local Government will carefully consider the suitability of all compulsory purchase orders to be delegated to an inspector but will generally delegate the decision on confirmation of a compulsory purchase order where, in his opinion, it appears unlikely to:

- conflict with national policies on important matters
- raise novel issues
- give rise to significant controversy
- have impacts which extend beyond the local area

However, the Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

28. If a compulsory purchase order is delegated to an inspector and new issues/evidence emerge, can the Secretary of State revisit his decision to appoint an inspector to take the confirmation decision?

Section 14D of the Acquisition of Land Act 1981 enables a confirming authority to cancel the appointment of an inspector acting instead of him in relation to the confirmation of a

[2] The power to delegate a decision on a compulsory purchase order to an inspector was inserted by section 181 of the Housing and Planning Act 2016 and applies to compulsory purchase orders submitted to a confirming authority for confirmation on or after 6 April 2018.

compulsory purchase order. The appointment may be cancelled at any time before the inspector has made the confirmation decision.

While each compulsory purchase order will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Secretary of State for Housing, Communities and Local Government considers, in his opinion, that the compulsory purchase order now raises issues which should be considered by him, he may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Secretary of State for Housing, Communities and Local Government who will make the confirmation decision.

If a confirming authority decides to cancel the appointment of an inspector (and does not appoint another inspector to take the decision instead), it must give its reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection (see section 14D(7) of the Acquisition of Land Act 1981).

29. What happens if no objections are made?

If no objections are made to a compulsory purchase order and the confirming minister is satisfied that the proper procedure for serving and publishing notices has been observed, he will consider the case on its merits. The minister can then confirm, modify or reject the compulsory purchase order without the need for any form of hearing. If the order can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Secretary of State may remit the case back to the acquiring authority for confirmation. Go to Can the confirming minister modify an order? for more information.

30. What happens if there are objections and these are not withdrawn?

If objections are received and not withdrawn, the confirming minister will either arrange for a public local inquiry to be held or – where all the remaining objectors and the acquiring authority agree to it – arrange for the objections to be considered through the written representations procedure.

31. What are the different types of objection?

A 'relevant objection' is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a notice to treat.

It may also be an objection made by a person who might be able to make a claim for injurious affection under section 10 of the Compulsory Purchase Act 1965, but only if the acquiring authority think that he is likely to be entitled to make such a claim if the order is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.

A 'remaining objection' is a relevant objection that has not been withdrawn or disregarded (for example because it relates solely to compensation).

Other objections can be made by persons who are not a relevant objector, for example, by a third party, community group or special interest organisation.

32. Does an objection need to be in writing?

Section 13(3) of the Acquisition of Land Act 1981 enables the confirming minister to require every person who makes a relevant objection to state the grounds of objection in writing.

33. When might an objector's statement of case be required?

A confirming authority can also require remaining objectors, and others who intend to appear at inquiry, to provide a statement of case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under Rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, a person may be required to provide further information about matters contained in any such statement of case.

Objectors may wish to prepare a statement of case even when not asked to do so because it may be helpful for themselves and the inquiry.

34. How are objections considered?

Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice on alternative dispute resolution, this should include employing such alternative dispute resolution techniques as may be agreed between the parties.

The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming minister deems it appropriate, as an alternative to holding an inquiry. (In summary, these regulations provide that, once the confirming minister has indicated that the written representations procedure will be followed, the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its statement of reasons. Once these representations have been copied to the objectors, they will also have 15 working days to make representations to the confirming minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.)

The Secretary of State for Housing, Communities and Local Government's practice is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way. The practice of other Secretaries of State may vary.

35. What procedures are followed for inquiries into compulsory purchase orders under Acquisition of Land Act 1981?

The Compulsory Purchase (Inquiries Procedure) Rules 2007[3] ('2007 Rules') apply to:

[3] The Compulsory Purchase (Inquiries Procedure) Rules 2007 were amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018 with effect from 6 April 2018

- all inquiries into compulsory purchase orders made under the Acquisition of Land Act 1981, both ministerial and non-ministerial, and to compulsory rights orders (see rule 2 of the Rules and section 29 of, and paragraph 11 of schedule 4 to, the 1981 act)

- rule 2A provides that where a person is appointed under section 14D of the Acquisition of Land Act 198 the 2007 Rules shall have effect subject to certain modifications as set out in the schedule

- rule 3 provides for written notice from the authorising authority of its intention to cause an inquiry to be held which commences the procedure

- rules 4 to 6 deal with pre-inquiry meetings

- rule 7 deals with statements of case

- rules 8 to 14 deal with the inquiry timetable, appointment of assessor, the date and public notification of the inquiry and appearances at the inquiry including the representation of a minister or government department at inquiry

- rule 15 deals with the handling of evidence at inquiry

- rules 16 to 19 deal with procedure at the inquiry, site inspections and post-inquiry procedures (including notice of decisions) – in particular rule 18(A1) imposes a requirement on the authorising authority to inform certain persons of the expected date of its decision as to whether to confirm the compulsory purchase order.

- rule 19A sets out the procedure to be followed where a decision notified under rule 19(1) is quashed in proceedings before any court

- rule 20 deals with the power to extend time

- rule 21 deals with sending notices or documents by post or by using electronic communications

- rule 21A provides for how a person may withdraw their consent to use of electronic communications

36. What information should an authority's statement of case contain?

It should be possible for the acquiring authority to use the non-statutory statement of reasons as the basis for the statement of case which is required to be served under rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules 2007 where an inquiry is to be held. The acquiring authority's statement of case should set out a detailed response to the objections made to the compulsory purchase order.

37. What supplementary information may be required?

When considering the acquiring authority's order submission, the confirming department may, if necessary, request clarification of particular points. These may arise both before

the inquiry has been held or after the inquiry.

Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices. This information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs.

Where further information is needed, the confirming minister's department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

38. Should a programme officer be appointed?

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

39. When will an inquiry be held?

Practice may vary between departments but, once the need for an inquiry has been established, it will normally be arranged by the Planning Inspectorate in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission. It is important to ensure that adequate notification is given to objectors of the inquiry dates, so that they have sufficient time to prepare evidence for the inquiry. This will also assist in the efficient conduct of the inquiry.

Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority or an objector needs more time to prepare its evidence. The authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

40. What scope is there for joint or concurrent inquiries?

It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a minister) or an appeal against the refusal of planning permission.

Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

41. What advice is available about costs awards?

Advice on the inquiry costs for statutory objectors is given in Award of costs incurred in planning and other proceedings. The principles of this advice also apply to written representations procedure costs.

When notifying successful objectors of the decision on the order under the Compulsory Purchase (Inquiries Procedure) Rules 2007 or the Compulsory Purchase of Land (Written Representations Procedure)(Ministers) Regulations 2004, the Secretary of State for Housing, Communities and Local Government will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs. The practice of other ministers may vary.

42. Are acquiring authorities normally required to meet the costs associated with an inquiry or written representations?

Acquiring authorities will be required to meet the administrative costs of an inquiry and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the Acquisition of Land Act 1981. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is £630 per day as prescribed in The Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000.

Further information on the award of costs is available in planning guidance: Award of costs incurred in planning and other proceedings.

43. What happens if there are legal difficulties with an order?

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

44. Can the confirming minister modify an order?

The confirming minister may confirm a compulsory purchase order with or without modifications. Section 14 of the Acquisition of Land Act 1981 imposes limitations on the minister's power to modify the order. This provides that an order can only be

modified to include any additional land if all the people who are affected give their consent.

There is no scope for the confirming minister to add to, or substitute, the statutory purpose (or purposes) for which the order was made. The power of modification is used sparingly and not to rewrite orders extensively. While some minor slips can be corrected, there is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order.

If it becomes apparent to an acquiring authority that it may wish the confirming minister to substantially amend the order by modification at the time of any confirmation, the authority should write as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry (such as any person required by the confirming authority to provide a statement of case) and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

45. Can a compulsory purchase order be confirmed in stages?

In cases where the Acquisition of Land Act 1981 applies to a compulsory purchase order, section 13C of that act provides a general power for the order to be confirmed in stages, at the discretion of the confirming minister. This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order.

The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the order must include a statement indicating the effect of that direction and be published, displayed and served in accordance with section 15 of the Acquisition of Land Act 1981.

46. When might an order be confirmed in stages?

The power to confirm an order in stages may be used when the minister is satisfied that an order should be confirmed for part of the land covered by the order but is not yet able to decide whether the order should be confirmed in relation to other parts of the order land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where an order is confirmed in part under this power, the remaining undecided part is then treated as if it were a separate order.

To confirm in part, the confirming minister will need to be satisfied that:

- the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless of whether the remainder of the order is ever confirmed

- the statutory requirements for the service and publication of notices have been followed; and

- there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of an order prior to holding a public inquiry or following the written representations procedure)

If the confirming minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded, he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

47. When can a compulsory purchase order be confirmed by the acquiring authority?

Section 14A of the Acquisition of Land Act 1981 provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if certain specified conditions are met. The confirming minister must be satisfied that:

- there are no outstanding objections to the order
- all the statutory requirements as to the service and publication of notices have been complied with; and
- the order is capable of being confirmed without modification

The power of the confirming minister to issue such notice is excluded in cases where:

- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking; or
- the land to be acquired forms part of a common, open space, or fuel or field garden allotment

as confirmation of an order in these circumstances is contingent on other ministerial decisions.

The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming minister to revoke the notice given under these provisions.

48. What should the confirming authority do if it decides to give an acquiring authority the power to confirm an order?

To exercise its discretionary power under section 14A of the Acquisition of Land Act 1981, the confirming authority serves a notice on the acquiring authority giving it the power to confirm the compulsory purchase order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:

- indicate that if the acquiring authority decides to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person

having authority to do so

- suggest a form of words for the endorsement
- refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 act as amended by section 34 of the Neighbourhood Planning Act 2017; and
- require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order

49. What should the acquiring authority do if it decides to confirm its own order?

If the acquiring authority decides to confirm its own order, it should return the notice of confirmation to the confirming authority. The form of the notice of confirmation is set out in Forms 9A and 11 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 as amended The Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2017.

An acquiring authority exercising the power to confirm must notify the confirming authority as soon as reasonably practicable of its decision. Until such notification is received, the confirming minister can revoke the acquiring authority's power to confirm. This might be necessary, for example, if the confirming minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable timescale.

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

50. Are there timetables for confirmation of compulsory purchase orders?

Section 14B of the Acquisition of Land Act 1981[4] requires the Secretary of State to publish one or more timetables for confirmation of compulsory purchase orders. The timescales are set out in this guidance. The target timescales will apply to all confirming authorities other than the Welsh Ministers (who have the power to publish their own timetables under section 14C of the Acquisition of Land Act 1981 in relation to compulsory purchase orders to be confirmed by them).

51. How long will it take to get a decision on a compulsory purchase order which is

[4] The requirement for the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order was inserted by section 180 of the Housing and Planning Act 2016 and applies to orders which are submitted to a confirming authority for confirmation on or after 6 April 2018.

delegated to an inspector and subject to the written representation process?

Where a compulsory purchase order is delegated to an inspector and subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018).

A decision should be issued within 4 weeks of the site visit date in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 8 weeks of the site visit date.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

52. How long will it take to get a decision on a compulsory purchase order which is delegated to an inspector and subject to the public inquiry procedure?

Where a compulsory purchase order is delegated to an inspector and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date on which a decision will be issued (see the modified version of rule 18 in Schedule 1 to the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018.

A decision on the compulsory purchase order should be issued by the inspector within 8 weeks of the close of the Inquiry in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 12 weeks.

53. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the written representation process?

Where a compulsory purchase order is subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018.

The relevant Secretary of State should issue 80% of compulsory purchase decisions on written representation cases within 8 weeks of the site visit. The remaining 20% of cases should be decided within 12 weeks of the site visit.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

54. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the public inquiry process?

Where a compulsory purchase order is to be decided by the Secretary of State and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date of the Secretary of State's decision (see rule 18(A1) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018).

In addition, there is a target that 80% of cases should be decided by the relevant Secretary of State within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks.

55. What happens if the Secretary of State or an inspector fails to issue a decision in accordance with the published timescales?

The Secretary of State must issue an annual report to Parliament showing the extent to which confirming authorities have complied with the published timescales.

The validity of a compulsory purchase order is not, however, affected by any failure to comply with a timetable (see section 14B(4) of the Acquisition of Land Act 1981).

56. Can a compulsory purchase order be challenged through the courts after it has been confirmed?

Any person aggrieved who wishes to dispute the validity of a compulsory purchase order, or any of its provisions, can challenge the order through an application to the High Court under section 23 of the Acquisition of Land Act 1981 ('the 1981 act') on the grounds that:

- the authorisation of the order is not empowered to be granted under the 1981 act or an enactment mentioned in section 1(1) of that act; or

- a 'relevant requirement' has not been complied with

A 'relevant requirement' is any requirement under the 1981 act, of any regulations made under it, or the Tribunals and Inquiries Act 1992 or of regulations made under that act.

Any such application must be made within 6 weeks of the date specified in section 23(4) of the 1981 act.

57. What powers does the court have on an application under section 23 of the Acquisition of Land Act 1981?

Section 24 of the 1981 act sets out the powers of the court on an application under section 23 of the 1981 act. First, the court has the discretionary power to grant interim relief suspending the operation of the order or certificate pending the final determination of the court proceedings (section 24(1)). Second, where a challenge under section 23 of the 1981 act is successful, the court has the discretionary power to quash:

- the decision to confirm the compulsory purchase order (section 24(3)) (NB: this does not apply in relation to an application under section 23 which was made before 13 July 2016); or

- the whole or any part of an order (section 24(2))

58. Is the time period for implementing a compulsory purchase order extended where it is the subject of a legal challenge?

Under section 4A of the Compulsory Purchase Act 1965 (for notice to treat process) and section 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 (for general vesting declaration process) the normal three year period for implementing a compulsory purchase order is extended for:

- a period equivalent to the period from the date an application challenging the order is made until it is withdrawn or finally determined; or

- one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a compulsory purchase order which became operative before 13 July 2016.

An application to challenge an order is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

59. Can a decision not to confirm a compulsory purchase order be challenged through the courts?

A decision not to confirm a compulsory purchase order can be challenged through the courts by means of an application for judicial review under Part 54 of the Civil Procedure Rules 1998.

Stage 5: implementing a compulsory purchase order

60. When does an order become operative?

Unless it is subject to special parliamentary procedure (for example, in the case of certain special kinds of land, a compulsory purchase order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published.

The method of publication and the information which must be included in a notice is set out in section 15 of the Acquisition of Land Act 1981. Confirmation notices must also contain:

- a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981; and

- invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of that act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form

Acquiring authorities must issue the confirmation notices within 6 weeks of the date of the order being confirmed or such longer period as may be agreed between the acquiring authority and the confirming authority (section 15(3A) of the Acquisition of Land Act 1981). Where an acquiring authority fails to do so, the confirming authority may take the necessary steps itself and recover its reasonable costs of doing so from the acquiring authority.

The acquiring authority may then exercise the compulsory purchase power (unless the operation of the compulsory purchase order is suspended by the High Court). The actual acquisition process will proceed by one of two routes - either by the acquiring authority serving a notice to treat or by executing a general vesting declaration.

61. How do I register a confirmation notice as a local land charge?

Section 15(6) of the Acquisition of Land Act 1981 provides that a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.

62. What is a notice to treat?

There is no prescribed form for a notice to treat but the document must:

- describe the land to which it relates

- demand particulars of the interest in the land

- demand particulars of the compensation claim of the recipient and
- state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works

Possession cannot normally be taken until the acquiring authority has served a notice of entry and the minimum period specified in that notice has expired.

Title to the land is subsequently transferred by a normal conveyance.

63. When should a notice to treat be served?

A notice to treat may not be served after the end of the period of three years beginning with the date on which the compulsory purchase order becomes operative, under section 4 of the Compulsory Purchase Act 1965. The notice to treat then remains effective for a further three years, under section 5(2A) of that act.

It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition where requested by an owner.

64. What period of notice should be given before taking possession under the notice to treat process?

Once the crucial stage of actually taking possession is reached, the acquiring authority is required by section 11 of the Compulsory Purchase Act 1965 to serve a notice of its intention to gain entry. In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice, except in either of the following circumstances:

- where it is a notice to which section 11A(4) of the 1965 act applies (ie where it is being served on a 'newly identified person' under section 11A(1)(b) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under section 5(1) of the 1965 act. In these circumstances, section 11A(4) provides for a shorter minimum notice period
- where it is a notice to which paragraph 13 of Schedule 2A to the 1965 act applies (ie where under the material detriment provisions in that schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under paragraph 6, in respect of the land proposed to be acquired)

Although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry.

A notice of entry cannot be served after a notice to treat has ceased to be effective. A notice to treat can only be withdrawn in limited circumstances.

Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with the claimant. It is good practice for the acquiring authority to:

- give owners an indication of the approximate date when possession will be taken when serving the notice to treat
- consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession

Authorities should also be aware that:

- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises
- short notice often results in higher compensation claims
- until there is an actual or deemed notice to treat an occupier is at risk that any costs they incur in anticipation of receiving such a notice may not be claimable; acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation

It is usually important to make an accurate record of the physical condition of the land at the valuation date.

65. What happens if the acquiring authority does not take possession at the time specified in the notice of entry?

Where a compulsory purchase of land has been authorised on or after 3 February 2017 (ie where the order was confirmed on or after that date), section 11B of the Compulsory Purchase Act 1965 allows occupiers with an interest in the land to serve a counter-notice on an acquiring authority to require entry on a specified date which must not be earlier than the date specified in the notice of entry. The occupier must give at least 28 days notice of the date they want entry to be taken.

66. What is a general vesting declaration?

A general vesting declaration can be used as an alternative to the notice to treat procedure. It replaces the notice to treat, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.

General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 and in accordance with the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017.

67. When might a general vesting declaration be used?

An acquiring authority may prefer to proceed by general vesting declaration as this

enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation (subject to any special procedures such as in relation to purchase of commoners' rights: see Compulsory Purchase Act 1965, section 21 and schedule 4). It can therefore be particularly useful where:

- some of the owners are unknown; or
- the authority wishes to obtain title with minimum delay (for example, to dispose of the land to developers)

A general vesting declaration may be made for any part or all of the land included in the compulsory purchase order except where an acquiring authority has already served (and not withdrawn) a notice to treat in respect of that land.

Section 4(1B) of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that the above exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.

For minor tenancies and long tenancies which are about to expire, a general vesting declaration will also not be effective. However, there is a special procedure set out in section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 for dealing with them.

Where unregistered land is acquired by general vesting declaration, acquiring authorities are recommended to voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

68. When should a general vesting declaration be served?

For compulsory purchase orders which become operative on or after 13 July 2016, section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.

69. What period of notice should be given before taking possession under the general vesting declaration process?

For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must give at least three months' notice before taking possession (as this is the minimum vesting period which must be given in a general vesting declaration under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981). Acquiring authorities should consider how long it will take occupiers to reasonably relocate and if 3 months is considered insufficient, consider increasing the vesting period (and therefore the notice period).

70. How does the acquiring authority make a general vesting declaration if the owner, lessee or occupier is unknown?

If it is not possible (after reasonable enquiry) to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with section

329(2) of the Town and Country Planning Act 1990 to serve notice after execution of the declaration (required undersection 6 of the Compulsory Purchase (Vesting Declarations) Act 1981).

71. How can Charity Trustees convey land to a public authority?

If acquiring land from a charity, acquiring authorities should be aware of the provisions in Part 7 of the Charities Act 2011 and may need to consult the Charity Commission.

Stage 6: compensation

72. What is the basis of compensation?

Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the 'equivalence principle'.

73. What are the elements of compensation where land is taken?

While the compensation payable is a single global figure, in practice, the assessment of compensation will involve various elements.

Broadly, the elements of compensation where land is taken are:

- the market value of the interest in the land taken
- 'disturbance' payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land
- loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing
- 'severance/injurious affection' payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put

74. What are the elements of compensation where no land is taken?

Broadly, the elements of compensation where no land is taken are:

- injurious affection
- Part 1 Land Compensation Act 1973 claims

75. What is the market value of the interest in the land taken?

Compensation payable for the compulsory acquisition of an interest in land is based on the 'equivalence principle' (ie that the owner should be paid neither less nor more than their loss). The value of land taken is the amount which it might be expected to realise if sold on the open market by a willing seller (Land Compensation Act 1961, section 5, rule 2), disregarding any effect on value of the scheme of the acquiring authority (known as the 'no scheme' principle); Certificates of Appropriate Alternative Development may be used to indicate the planning permissions that could have been obtained, which will affect any development value of the land.

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

(see Land Compensation Act 1961, section 5, rule 5).

76. How should the value of the land be assessed in light of the 'no scheme principle'?

Sections 6A to 6E of the Land Compensation Act 1961, inserted by section 32 of the Neighbourhood Planning Act 2017[5], set out how the value of the land should be assessed applying the 'no scheme principle'.

Section 6A sets out the 'no scheme principle' that any increases or decreases in value caused by the scheme or the prospect of the scheme must be disregarded and then lists the 5 'no scheme rules' to be followed when applying the 'no-scheme principle'.

Section 6B provides that any increases in the value of the claimant's other land, which is contiguous or adjacent to the land taken, is deducted from the compensation payable. This is known as 'betterment'.

Section 6C provides that where a claimant is compensated for injurious affection for other land when land is taken for a scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.

Section 6D defines the 'scheme' for the purposes of establishing the no-scheme world. The default case, set out in subsection (1), is that the 'scheme' to be disregarded is the scheme of development underlying the compulsory acquisition. Subsection (2) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the 'scheme' is the development of any land for the purposes for which the area is or was designated.

Section 6D(3) and (4) also makes special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a 'relevant transport project' (defined in section 6D(4)(a)) 'the scheme' includes the relevant transport project.

77. Why is special provision made for relevant transport projects?

New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of Section 6D(3) is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in section 6E. The intention of this special provision is to ensure that an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others' public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in section 5A). The qualifying conditions and safeguards in section 6E(2) are, in summary that:

[5] The amendments made by section 32 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017.

- regeneration or redevelopment was part of the published justification for the relevant transport project

- the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project

- the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022

- the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and

- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 'the scheme' will not be treated as if it included the relevant transport project

78. What is the specific safeguard in section 6E(3)?

Section 6E(3) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 (the day after the Neighbourhood Planning Bill was printed). The specific safeguard is intended to provide protection in circumstances where land was purchased:

- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location

- before the Government introduced legislation that made special provision for relevant transport projects

Where the specific safeguard applies, the 'scheme' will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner's land caused by the relevant transport project does not have to be disregarded.

79. When is a relevant transport project announced for the purposes of the specific safeguard in section 6E(3)?

Whether and/or when such a project is 'announced' is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:

- the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document

- the inclusion of the relevant transport project in an application for a development consent order or in a compulsory purchase order

- the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the Transport and Works Act 1992

- the inclusion of the relevant transport project in any Bill put before Parliament

- a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location

80. What if the definition of the 'scheme' is disputed?

Section 6D(5) provides that if there is disagreement between parties as to the definition of the 'scheme' to be disregarded that this can be determined by the Upper Tribunal as a question of fact subject as follows. First, the 'scheme' is to be taken by the Upper Tribunal to be the underlying scheme provided for by the act, or other authorising instrument unless it is shown that the 'scheme' is a scheme larger than, but including, the scheme provided for by that authorising instrument. Second, except by agreement or in special circumstances, the Upper Tribunal may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

81. What is the relevant valuation date?

Section 5A of the Land Compensation Act 1961 establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that such a valuation is to be based on the market values prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.

The relevant valuation date is:

- the date of entry and taking possession if the acquiring authority have served a notice to treat and notice of entry; or

- the vesting date if the acquiring authority has executed a general vesting declaration; or

- the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area

of land (under section 5A(5) of the Land Compensation Act 1961). This means that compensation becomes payable to the claimant for the whole site covered by that notice of entry from that date. The claimant also has the right to receive interest on the compensation due to him in respect of the value of the whole site covered by that notice of entry from that date until full payment is actually made (under section 5A(6) of the 1961 act).

Under the terms of section 11 of the Compulsory Purchase Act 1965, simple interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. Interest is not compounded as, neither section 32 nor regulations made under it, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

82. Is an advance payment of compensation available?

If requested, and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land, under section 52 of the Land Compensation Act 1973 as amended by sections 194 and 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017[6]. Advance payments must be registered as local land charges to ensure that payments are not duplicated.

The amount payable in advance is:

- 90% of the agreed sum for the compensation; or
- 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

83. Is an advance payment available for a mortgage?

In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to his mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released

Section 52ZA of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 enables an acquiring authority to make an advance payment to a claimant's mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB as amended by section 195 of the Housing and Planning Act

[6] The amendments made by section 194(1) to (3) and section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

2016 applies where the total amount exceeds 90% of the total estimated compensation due to the claimant.

The conditions relating to both types of payments are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgage lender(s) in determining the amount of the advance payment payable.

84. What information should a claimant provide when requesting an advance payment of compensation?

As the amount payable is 90% of the acquiring authority's estimate of the compensation due, it is in the interests of claimants to provide early and full information to the authority to ensure that the estimate is as robust as possible.

Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property

Sections 52(2) and (2A) and 52ZC(2) of the Land Compensation Act 1973 as amended by section 194 of the Housing and Planning Act 2016 set out what information the claimant must provide and give the acquiring authority 28 days to request further information. The Secretary of State has published a model claim form which claimants are strongly encouraged to use when making a claim for an advance payment.

85. Is there a deadline for making and paying an advance payment?[7]

Section 52(1) of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 allows a claim for an advance payment to be made and paid at any time after the compulsory acquisition has been authorised. However, an acquiring authority must make an advance payment within 2 months of receipt of the claim or any further information requested under subsection 52(2A)(b) or 52ZC(2), or the date the notice of entry was issued or general vesting declaration was executed, whichever is the later.

[7] The amendments made by section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

There is special provision, under subsections (1A) and (4) of section 52 of the 1973 act, where the compulsory acquisition is one to which the Lands Clauses Consolidation Act 1845 applies. In these cases, the acquiring authority may not make an advance payment if they have not taken possession of the land, but must do so if they have. The payment must be made before the end of the day on which possession is taken, or, if later, before the end of the period of two months beginning with the day on which the authority received the request for the payment or any further information required under section 52(2A)(b).

Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by section 52(1) of the 1973 act where possible.

86. What happens if an advance payment is made but the compulsory purchase does not go ahead?[8]

Section 52AZA of the Land Compensation Act 1973 as amended by section 197 of the Housing and Planning Act 2016 requires a claimant to repay any advance payment if the notice to treat is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with section 52(8A) of the 1973 act).

Section 52ZE of the Land Compensation Act 1973 as amended by section 198 of the Housing and Planning Act 2016 provides for the recovery of an advance payment to a mortgage lender if the notice to treat has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant's interest in the land. In this case, the successor to the claimant must make the repayment.

87. What is compensation for disturbance?

One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as 'disturbance' compensation. The right to compensation for disturbance is set out in the Land Compensation Act 1961, section 5, rule 6. Disturbance payments may include, for example, the costs and expenses of vacating the property and moving to a replacement property such as legal costs, other fees and losses, conveyancing costs and other professional fees.

There are also specific provisions for disturbance payments relating to different interests in land as follows:

[8] The amendments made by section 197 and section 198 of the Housing and Planning Act 2016 apply to a compulsory purchase of land which is authorised on or after 6 April 2018.

- section 20 of the Compulsory Purchase Act 1965 - disturbance for persons who have no greater interest in the land than as tenant for a year or from year to year

- section 46 of the Land Compensation Act 1973 - disturbance where a business is carried on by a person over sixty

- section 47 of the Land Compensation Act 1973 - disturbance where land is the subject of a business tenancy

- section 37 of the Land Compensation Act 1973 - disturbance for persons without compensatable interests in the land acquired

88. Does the '*Bishopsgate* principle' still apply to compensation for disturbance?

Prior to measures in the Neighbourhood Planning Act 2017, case law (*Bishopsgate Space Management v London Underground [2004] 2 EGLR 175*) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of Part 2 of the Landlord and Tenant Act 1954), the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following notice to treat, whether that would happen in reality or not.

This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under section 37 of the Land Compensation Act 1973) which was not subject to this artificial assumption.

Section 35 of the Neighbourhood Planning Act 2017[9] inserts a new section 47 into the Land Compensation Act 1973 bringing the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of Part 2 of the Landlord and Tenant Act 1954). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

89. What are loss payments?

Loss payments are intended to compensate for the claimant's distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see sections 29-36 of the Land Compensation Act 1973). There are three main types of loss payment:

- home loss payments – see sections 29-33 of the Land Compensation Act 1973

[9] The amendments made by section 35 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017

- basic loss payment – see 33A of the Land Compensation Act 1973
- occupier's loss payment - sections 33B and 33C of the Land Compensation Act 1973

90. What are severance and injurious affection?

Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.

Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.

The principle of compensation for severance is set out in section 7 of the Compulsory Purchase Act 1965.

91. What is injurious affection where no land is taken?

Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute.

The principle of compensation for injurious affection where no land is taken is set out in section 10 of the Compulsory Purchase Act 1965.

92. What are Part 1 claims?

In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see Part 1 of the Land Compensation Act 1973).

Tier 2: enabling powers

It is likely that only one of the following enabling powers will be relevant in an individual case

93. Where can further information on the powers of acquisition be found?

Further information can be found here:

- Section 1: advice on section 226 of the Town and Country Planning Act 1990
- Section 2: advice on section 121 of the Local Government Act 1972
- Section 3: Homes England
- Section 4: urban development corporations
- Section 5: New Town Development Corporations
- Section 6: local housing authorities for housing purposes and listed buildings in slum clearance
- Section 7: to improve the appearance or condition of land
- Section 8: for educational purposes
- Section 9: for public libraries and museums
- Section 10: for airport Public Safety Zones
- Section 11: for listed buildings in need of repair

Section 1: advice on section 226 of the Town and Country Planning Act 1990

94. Can local authorities compulsorily acquire land for development and other planning purposes?

Under section 226 of the Town and Country Planning Act 1990 the following bodies (which are local authorities for the purposes of that section):

- county, district or London borough councils (section 226(8))
- joint planning boards (section 244(1)); or
- national park authorities (section 244A)

can acquire land compulsorily for development and other planning purposes as defined in section 246(1).

95. What is the purpose of this power?

This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate.

96. Can this power be used in place of other more appropriate enabling powers?

This power should not be used in place of other more appropriate enabling powers. The statement of reasons accompanying the order should make clear the justification for the use of this specific power. In particular, the Secretary of State may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

97. What can the power be used for?

The power can be used as follows:

- section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement - further guidance on use of the power under section 226(1)(a) can be found here

- section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of

this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme

- section 226(3) provides that an order made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of:

    a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or

    b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment

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

98. Does an order have to specify which paragraph of section 226(1) it is made under?

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

99. Can the powers in section 226(1) or 226(3)(a) be used only if the purpose or activity specified in the order is to be taken forward by the authority itself?

Section 226(4) provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in section 226(1) or 226(3)(a) should be undertaken or achieved. In particular, the authority does not need to undertake an activity or achieve a purpose themselves.

100. In deciding whether to confirm orders made under section 226, does the Secretary of State need to take into account all objections?

Section 245(1) of the Town and Country Planning Act 1990 provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the Local Plan.

101. Can Crown land be compulsorily purchased?

Sections 293 and 226(2A) of the Town and Country Planning Act 1990 apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about thepurchase of interests in Crown land is here.

Section 226(1)(a)

102. Does the development, redevelopment or improvement scheme need to be taking place on the land to be acquired?

The scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

103. Are there any limitations on the use of this power?

The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.

The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority's area.

104. What justification is needed to support an order to acquire land compulsorily under section 226(1)(a)?

Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes, including those whose property is directly affected.

The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the inspector, this will be given due weight.

Where the Local Plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the Local Plan at the appropriate time. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order. In addition, the National Planning Policy Framework is a material consideration in all planning decisions and should be taken into account.

105. Do full details of a scheme need to be worked up before an acquiring authority can proceed with an order?

It may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end use proposed. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

106. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired

- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position

Section 2: advice on Section 121 of Local Government Act 1972

107. What can the general compulsory purchase powers for local authorities be used for?

The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the Local Government Act 1972. Section 120 provides a general power for a principal council ie a county, district or London borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.

Some of the enabling powers in legislation (in the enabling act) for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase, for example:

- public walks and pleasure grounds - section 164, Public Health Act 1875
- public conveniences – section 87, Public Health Act 1936
- cemeteries and crematoria – section 214, Local Government Act 1972
- recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976
- refuse disposal sites – section 51, Environmental Protection Act 1990; and
- land drainage – section 62(2), Land Drainage Act 1991

In addition, section 125 contains a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

108. What considerations apply in relation to making and submitting an order under Part 7 of the Local Government Act 1972?

The normal considerations in relation to making and submission of a compulsory purchase order, as described in Section 13: preparing and serving the order and its notices, would apply to orders relying upon section 121 or section 125. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.

109. Who is the confirming authority for orders under Part 7 of the Local Government Act 1972?

The confirming authority for orders under Part 7 of the 1972 act is the Secretary of State for Housing, Communities and Local Government.

110. What information should be included in orders under sections 121 or 125 about the acquisition power?

Paragraph 1 of the order should cite the relevant acquisition power (section 121 or 125) and state the purpose of the order, by reference to the enabling act under which the purpose may be achieved.

Where practicable, the words of the relevant section(s) of the enabling act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004). For example:

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

111. What restrictions are there to the use of the powers under sections 121 and 125?

Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121 as follows:

a) for the purposes specified in section 120(1)(b), ie the benefit, improvement or development of their area. Councils may consider using their acquisition powers under the Town and Country Planning Act 1990 for these purposes

b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg section 9(a) of the Open Spaces Act 1906

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

112. What should a district council consider in deciding whether to make an order on behalf of a parish council?

The district council should have regard to the representations made to them by the parish council in seeking to get them to make such an order and to all the other matters set out in section 125.

113. What restrictions are there on a district council's power to make an order on behalf of a parish council?

A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8)).

Section 125 also does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that act.

114. What happens if a district council refuses to make an order on behalf of a parish council or does not make one within required time period?

If a district council refuses to make an order under section 125, or does not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order.

Where an order is made by the Secretary of State in such circumstances, section 125 and the Acquisition of Land Act 1981 apply as if the order had been made by the district council and confirmed by the Secretary of State.

115. Can a single order be made by more than one authority and covering mixed purposes, and if so, how is it confirmed?

A single order may be made under section 121 of the Local Government Act 1972 by more than one council and for more than one purpose.

Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments, involving concerted action by them.

Where an inquiry is required or is considered to be appropriate, the inspector's report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

116. Can a district council make an order on behalf of more than one parish council?

A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council.

117. What does a parish council need to consider before asking a district council to make an order on its behalf?

A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This includes:

- the administrative expenses and costs of the inquiry

- the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part

- statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or

- any compensation for injurious affection payable to adjoining owners who may be entitled to claim

When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

Section 3: Homes England

118. What compulsory purchase powers does Homes England have?

Homes England has compulsory purchase powers to acquire land and new rights over land under subsections (2) and (3) of section 9 of the Housing and Regeneration Act 2008.

119. When can Homes England use its compulsory purchase powers?

Homes England can use its compulsory purchase powers to make a compulsory purchase order to facilitate the achievement of its objects set out in section 2 of the Housing and Regeneration Act 2008 (as amended). These are:

- to improve the supply and quality of housing in England
- to secure the regeneration or development of land or infrastructure in England
- to support in other ways the creation, regeneration or development of communities in England or their continued wellbeing
- and to contribute to the achievement of sustainable development and good design in England

with a view to meeting the needs of people living in England.

The made order would then be submitted to the Secretary of State for confirmation in the way set out in Tier 3 of this guidance.

The Localism Act 2011 amended the Greater London Authority Act 1999 so that Homes England's activities in London are now the responsibility of the Mayor to undertake.

120. Why does Homes England have compulsory purchase powers?

Homes England is tasked with supporting private and public sector bodies to deliver housing and regeneration priorities throughout England by providing land, funding and expertise. Powers to compulsorily acquire land can, subject to the normal strong safeguards, ensure that development and regeneration can take place in the right place at the right time.

121. How does Homes England justify the use of its compulsory purchase powers?

Homes England must demonstrate that the proposed acquisition is:

- for the purposes (or 'objects') set out in section 2 of the Housing and Regeneration Act 2008), in addition to any other valid reasons
- in the public interest
- and consistent with the policies in the National Planning Policy Framework and the relevant Local Plan

The justification should be included in the statement of reasons for the compulsory purchase order and preferably be backed up by a more detailed development framework.

122. What is Homes England expected to do when using its compulsory purchase powers?

Before making the compulsory purchase order, Homes England is normally expected to:

- have resolved any major planning difficulties (where practicable); or
- demonstrate that there are no planning or other impediments to the proposed scheme

If, for example, rapid action is essential, it may not always be feasible or sensible (particularly for schemes of strategic or national importance) to wait for planning permission for the replacement scheme or complete all statutory procedures before making the order.

Where the land is required for a defined end use or to provide essential infrastructure (such as roads and sewers) to facilitate regeneration or economic development, Homes England will also normally be expected to have:

- reasonably firm proposals; or
- a long-term strategic need for the land in place

When preparing and making a compulsory purchase order, Homes England should have regard to the general advice available here.

Homes England should submit orders for confirmation to the Planning Casework Unit, Birmingham.

123. Can Homes England compulsorily acquire land even if it has no specific development proposals in place?

It may sometimes be appropriate for Homes England to compulsorily acquire land which is in need of development or regeneration even though there are no specific detailed development proposals in place. Homes England does not usually undertake extensive building development itself. Instead, it often provides assistance for a scheme by stimulating as much private sector investment as possible. Therefore in some circumstances, it may be counterproductive for Homes England to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds.

Nevertheless, when using its compulsory purchase powers, Homes England will still need to provide adequate justification and show that the compulsory acquisition is:

- supported by reasonably firm proposals or a long-term strategic need for the land
- for a clearly defined and deliverable objective; and
- in the public interest

124. How does the Secretary of State decide whether to confirm Homes England's compulsory purchase order?

To reach a decision about whether to confirm a compulsory purchase order made under section 9 of the Housing and Regeneration Act 2008, the Secretary of State will keep the following in mind:

- the statutory purposes (objects) of Homes England
- the general considerations identified in the process of confirming a compulsory purchase order
- any guidance and directions which may be given under section 46 and/or section 47 of the 2008 act or otherwise issued by the Secretary of State
- whether the compulsory purchase of the land supports the activities described in Homes England's statement of reasons
- whether Homes England has demonstrated (where appropriate) that the land is in need of housing development and/or regeneration

The Secretary of State will also take other factors into consideration, depending on whether Homes England has specific proposals for the development or regeneration of the land or it wishes to acquire the land to stimulate private sector investment:

a) **if Homes England has specific proposals for the land**

If Homes England has proposals for the development or regeneration of the land that it wishes to acquire through compulsory purchase, the Secretary of State will also consider:

- any alternative proposals that may have been put forward by the owners of the land or by other persons for the use or reuse of the land and:
  - whether they are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery) what planning applications have been submitted and/or determined and the extent to which the proposals advocated by the other parties may conflict with Homes England's proposals (ie the timing and nature of any housing development and/or regeneration of the wider area concerned)
- whether the proposal is, on balance, more likely to be achieved if the land is acquired by Homes England, including the effect on the surrounding area that the purchase of the land by Homes England will have in terms of stimulating and/or maintaining the regeneration of the area
- and if Homes England intends to carry out direct development, whether this would displace or disadvantage private sector development or investment without proper justification and that the objects of Homes England cannot be achieved by any other means

- the quality of both Homes England's proposals for the land and any alternative proposals and the timetable for completing each

b) **if Homes England does not have specific proposals for the land**

If Homes England proposes to acquire the land for the purpose of stimulating private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable to have specific proposals for the land concerned (beyond any broad indications in its Corporate Plan, or any justification given in Homes England's statement of reasons). However, the Secretary of State will still want to be reassured that:

- there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and

- Home England can show that the use of its compulsory purchase powers is clearly in the public interest.

Section 4: urban development corporations

125. What is the purpose of an urban development corporation?

An urban development corporation is set up under section 135 of the Local Government, Planning and Land Act 1980 ('the act') with the object, as set out in section 136(1), of securing the regeneration of the relevant urban development area. Under section 134(1), an area of land may be designated as an urban development area if the Secretary of State is satisfied that it is expedient in the national interest to do so. An urban development area is likely to have been designated because it contains significant areas of land not in effective use, suffered extensive dereliction and be unattractive to existing or potential developers, investors and residents. The acquisition of land and buildings by compulsory purchase is one of the main ways in which an urban development corporation can take effective steps to secure its statutory objectives.

126. How can regeneration be achieved?

Section 136(2) of the act indicates that regeneration can be achieved particularly by

- bringing land and buildings into effective use
- encouraging the development of existing and new industry and commerce
- creating an attractive environment; and
- ensuring that housing and social facilities are available to encourage people to live and work in the area

127. What powers does an urban development corporation have under the 1980 act?

Subject to any limitations imposed under section 137 or 138, section 136(3) of the act an urban development corporation can acquire, hold, manage, reclaim and dispose of land, and carry out a variety of incidental activities. The compulsory purchase powers are set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the urban development corporation's area.

128. What compulsory purchase powers are available to urban development corporations?

It is for an urban development corporation to decide how best to use its land acquisition powers, having regard to this guidance. The compulsory purchase powers available to urban development corporations to assist with urban regeneration are expressed in broad terms. While an urban development corporation should acquire land by agreement wherever possible, it is recognised that this may not always be practicable and it may sometimes be necessary to use its compulsory purchase power to make an order at the same time as attempting to purchase by agreement.

129. Do urban development corporations have to predetermine what development will take place on land before it is acquired?

To achieve its objectives, it may sometimes be necessary for an urban development corporation to assemble land for which it has no specific development proposals. Urban development corporations are expected to achieve their objectives largely by stimulating and attracting greater private sector investment and do not usually carry out extensive building development themselves, as it may be counterproductive to decide what private sector development should take place. Land may be suitable for a variety of development and the market can change rapidly as regeneration proceeds. Urban development corporation ownership of land can stimulate confidence that regeneration will take place, and help to secure investment. Urban development corporations can often bring about regeneration by assembling land and providing infrastructure over a wide area to secure or encourage its development by others.

130. What is the urban development corporation expected to do where an existing user is affected by an urban development corporation compulsory purchase order?

Where existing users are affected by a compulsory purchase order relating to their premises, the urban development corporation will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the urban development area. Section 146(2) of the act encourages urban development corporations, where possible, to assist persons or businesses whose property has been acquired, to relocate to land owned by the urban development corporation.

131. What happens where an urban development corporation generates receipts in excess of the total cost of assembled land?

When assembling land for redevelopment, an urban development corporation may need to compulsorily acquire a site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the urban development corporation. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the urban development corporation.

132. What does the Secretary of State need to consider when reaching a decision on whether to confirm a section 142 order to acquisition land?

In reaching a decision on whether to confirm a section 142 order, the Secretary of State will take into account the statutory objectives of the urban development corporation set out in paragraph 119 above and consider:

i. whether the urban development corporation has demonstrated that the land is in need of regeneration

ii. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration

iii. whether regeneration is on balance more likely to be achieved if the land is acquired by the urban development corporation

iv. the recent history and state of the land

v. whether the land is in an area for which the urban development corporation has a

comprehensive regeneration scheme; and the quality and timescale of both the urban development corporation's regeneration proposals and any alternative proposals

133. What level of detail do urban development corporations need to provide when seeking an order?

The Secretary of State recognises that given their specific duty to regenerate their areas, it will not always be possible or desirable for urban development corporations to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where there is a defined end use, or provision of strategic infrastructure to facilitate regeneration, an urban development corporation will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, the Secretary of State accepts that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order.

134. Where detailed proposals are not provided what information is an urban development corporation expected to provide?

Where an urban development corporation does not provide detailed proposals for redevelopment, it will still be expected to demonstrate the case for acquisition in the context of its development strategy. The urban development corporation needs to be able to show that using compulsory purchase powers is in the public interest and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will expect the statement of reasons accompanying the submission of the order to include a summary of the framework for the regeneration of the urban development area, and that the urban development corporation will be in a position to present evidence at the public inquiry to support its case for compulsory acquisition.

135. What does the Secretary of State have to consider where there are other proposals for the use of land contained within an order?

Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative proposals may conflict with those of the urban development corporation.

Section 5: new town development corporations

136. What is the purpose of a new town development corporation?

A new town development corporation can be established under section 3 of the New Towns Act 1981 ('the 1981 act') for the purposes of developing a new town. The objects of a new town development corporation, as set out in section 4(1) of the 1981 act, are to secure the laying out and development of the new town in accordance with proposals approved under the 1981 act. In pursuing those objects, new town development corporations must aim to contribute to the achievement of sustainable development, having particular regard to the desirability of good design (see sections 4(1A) and (1B) of the 1981 act).

An area can be designated as the site of a proposed new town under section 1 of the 1981 act where the Secretary of State is satisfied, after consulting with any local authorities who appear to him to be concerned, that it is expedient in the national interest for that area to be developed as a new town by a new town development corporation.

The development of new towns has traditionally been overseen by the Secretary of State. However, under section 1A of the 1981 act the Secretary of State may appoint one or more local authorities (an 'oversight authority') to oversee the development of the area as a 'locally-led' new town. Where an oversight authority is appointed a number of functions that would otherwise be exercisable by the Secretary of State are instead exercisable by the oversight authority – as provided for by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

The Government has published separate guidance on the process for designating a new town and establishing locally-led new town development corporations.

137. What powers does a new town development corporation have under the 1981 act?

Subject to any restrictions imposed under section 5 of the 1981 act, section 4(2) gives new town development corporations the power, among other things, to acquire, hold, manage and dispose of land and other property, and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town.

138. What powers does a new town development corporation have to acquire land?

The powers of new town development corporations to acquire land are set out in section 10 of the 1981 act. They provide for a new town development corporation to acquire (whether by agreement or by compulsion):

- any land within the area of the new town, whether or not it is proposed to develop that land
- any land adjacent to that area which they require for purposes connected with the development of the new town
- any land, whether adjacent to that area or not, which they require for the provision of services for the purposes of the new town

The compulsory purchase powers provided for by section 10 of the 1981 act apply to all new town development corporations – including in the case of locally-led new towns. Compulsory

purchase orders made by new town development corporations (regardless of whether the new town is nationally or locally-led) are subject to confirmation by the Secretary of State.

For nationally-led new towns the new town development corporation must obtain consent from the Secretary of State to acquire land by agreement. For locally-led new towns the new town development corporation must obtain consent to acquire land by agreement from the oversight authority, as provided by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

139. What is the procedure for a new town development corporation acquiring land compulsorily by a compulsory purchase order?

The procedure for making a compulsory purchase order under the 1981 act is set out in schedule 4 to that Act.

140. In what circumstances can new town development corporations use their compulsory purchase powers?

It is for new town development corporations to decide how best to use their land acquisition powers, having regard to this guidance. The compulsory purchase powers available to a new town development corporation in section 10 of the 1981 act are expressed in broad terms, and are intended to assist with land assembly that is necessary to carry out its statutory objects of securing the laying out and development of a new town.

The Secretary of State will expect new town development corporations to demonstrate that they have taken reasonable steps to acquire the land included in a compulsory purchase order by agreement. Depending on when the land is required, it may be necessary for new town development corporations to initiate the compulsory purchase process in parallel with negotiations to acquire the land by agreement.

New town development corporation ownership of land early in the development process may assist with the proper planning for, infrastructure provision in and sustainable development of, a new town – in pursuit of its statutory objects under sections 4(1), (1A) and (1B) of the 1981 act. Specifically, it may help to ensure that developments brought forward using these powers are planned, designed and delivered in a sustainable and holistic way, in which the provision of infrastructure and community facilities are coordinated with the provision of new homes. New town development corporation ownership of land may also provide greater certainty of delivery: helping to stimulate confidence that the new town will proceed, helping to secure infrastructure investment, and thereby helping to promote development.

141. Can new town development corporations acquire land even if they have no specific development proposals in place?

Section 10(1) of the 1981 act enables new town development corporations to acquire land (compulsorily or by agreement) within the area of the new town whether or not it is proposed to be developed. The Secretary of State recognises that to achieve its statutory objects, it may be justified for a new town development corporation to acquire land for which it has no specific development proposals in place.

142. What level of detail do new town development corporations need to provide when seeking an order?

Given their scale, new towns are likely to be developed over an extended period of time, during which market conditions may change. In this context, the Secretary of State recognises that it will not always be possible or desirable for new town development

corporations to have fully worked up, and secured approval for, detailed development proposals prior to proceeding with a compulsory purchase order. While the Secretary of State will need to be reassured that there is a reasonable prospect of the scheme being funded and the development proceeding, it is also recognised that funding and delivery details will not necessarily have been fully worked up at that stage.

Where a new town development corporation does not have detailed proposals for the order lands, it will still be expected to demonstrate a compelling case for acquisition in the context of the planning framework that will guide development of the new town. The new town development corporation needs to be able to show that using compulsory purchase powers is necessary in the public interest and that the acquisition will support investment in and development of the new town.
The Secretary of State will expect the statement of reasons accompanying the submission of the compulsory purchase order to include a summary of the planning framework for the development of the new town and the justification for the timing of the acquisition, and that the new town development corporation will be in a position to present evidence at inquiry to support its case for compulsory acquisition.

While confirmation of a compulsory purchase order is a separate and distinct process from that of designating a new town, the Secretary of State acknowledges that evidence used to support the case for designation in the national interest may also be relevant to justifying the use of compulsory purchase powers in the public interest under section 10 of the 1981 act.

143. What factors will the Secretary of State take into account in deciding whether to confirm a compulsory purchase order under section 10 of the 1981 act?

Any decision about whether or not to confirm a compulsory purchase order will be made on its individual merits, but the factors which the Secretary of State can be expected to consider include:

- the statutory objects of the new town development corporation
- whether the purpose(s) for which the order lands are being acquired by the new town development corporation fits in with the planning framework for the new town area
- whether the new town development corporation has satisfactorily demonstrated that the order lands are needed to support the overall development of the new town
- the appropriateness of alternative proposals (if any) put forward by the owners of the land or other persons

144. What does the Secretary of State have to consider where there are other proposals for the use of land contained within a compulsory purchase order?

Where objectors put forward alternative proposals for the use or development of land contained within a compulsory purchase order, factors that the Secretary of State can be expected to consider include:

- whether these alternative proposals are likely to be implemented, taking into account the planning position and their promoter's track record of delivering large-scale housing development
- how the alternative proposals may conflict with those of the new town development corporation
- how the alternative proposals may, if implemented, affect:
    - the delivery of a new town on land designated for that purpose; and

- the new town development corporation's ability to fulfil its statutory objects (including in relation to achieving sustainable development and good design), and/or the purposes for which it was established.

145. How can new town development corporations dispose of the acquired land?
New town development corporations may dispose of land in such a manner as they deem expedient for securing the development of the new town or for purposes connected with the development of the new town (see section 17 of the New Towns Act 1981).

Section 18 of the 1981 act sets out certain requirements in respect of persons who were previously living or carrying on a business on land acquired by the new town development corporation. If such persons wish to obtain accommodation on land belonging to the new town development corporation and are willing to comply with any requirements of the corporation as to its development and use , section 18 requires the corporation, 'so far as practicable, to give them the opportunity to do so.

Section 6: powers of local housing authorities for housing purposes and listed buildings in slum clearances

Housing Act 1985: Part 2, Provision of housing accommodation

146. What can the power under Part 2 of the Housing Act 1985 be used for?

Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, housing associations or owner-occupiers.

147. What information should be included with applications for confirmation of orders under section 17?

When applying for the confirmation of a compulsory purchase order made under Part 2 of the Housing Act 1985 the authority should include in its statement of reasons information regarding needs for the provision of further housing accommodation in its area. This information should normally include:

- the total number of dwellings in the district
- the total number of substandard dwellings (ie the quantity of housing with Category 1 hazards as defined in section 2 of the Housing Act 2004)
- the total number of households and the number for which, in the authority's view, provision needs to be made
- details of the authority's housing stock by type, particularly where the case for compulsory purchase turns on need to provide housing of particular type
- where a compulsory purchase order is made with a view to meeting special housing needs, eg, of the elderly, specific information about those needs
- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required
- where it is not possible to identify a prospective purchaser at the time a compulsory purchase order is made, details of the authority's proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise

- where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner

148. When does development on land to be acquired for housing development under section 17 need to be completed?

Section 17(4) of the Housing Act 1985 provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years of the date the order is confirmed.

149. Will the Secretary of State refuse to confirm an order made under housing powers if it could have been made under planning powers instead?

Where an authority has a choice between the use of housing or planning compulsory purchase powers the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power.

Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this section.

150. When is the acquisition of empty properties for housing use justified?

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know:

- how long the property has been vacant
- what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome; and
- what works have been carried out by the owner towards its reuse for housing purposes

151. When is the acquisition of substandard properties justified?

Compulsory purchase of substandard properties may be justified as a last resort in cases where:

- a clear housing gain will be obtained
- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation

However, the Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

In considering whether to confirm such a compulsory purchase order the Secretary of State will wish to know:

- what the alleged defects in the order property are
- what other steps the authority has taken to remedy matters and the outcome
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property.
- the Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property

152. Are there any limitations on the use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation?

The powers do not extend to the acquisition of property for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved.

Following the judgment in the case of R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part 2 where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

153. Is consent required for the onward disposal of tenanted properties?

Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the Housing Act 1985.

The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

154. Can the Secretary of State confirm an order where an acquiring authority has given an undertaking that it will not implement the order if the owner subsequently agrees to improve the property?

Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order which is the subject of such an agreement will be considered by the Secretary of State on its individual merits. The Secretary of State has no powers to confirm an order subject to conditions.

Housing Act 1985: Part 9, Slum clearance

155. What information needs to be submitted with an application for confirmation of a clearance area compulsory purchase order?

In addition to the general requirements, an authority submitting an order under section 290 of Part 9 of the Housing Act 1985 should only do so after considering all possible options for the area and will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered
- the standard of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are substandard the justification for acquiring any added lands included in the order
- proposals for rehousing and for relocating commercial and industrial premises affected by clearance
- the proposed after use of the cleared site
- where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning permission will not materialise
- how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that

General guidance on clearance areas can be found in Housing health and safety rating system enforcement guidance.

Further information on listed buildings and unlisted buildings in conservation areas which are included in clearance compulsory purchase orders.

Local Government and Housing Act 1989: Part 7, Renewal Areas

156. What can the powers under Part 7 of the Local Government and Housing Act 1989 be used for?

Section 93(2) of the Local Government and Housing Act 1989 can be used by authorities:

- to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair
- for their proper and effective management and use; or

- for the wellbeing of residents in the area

They may provide housing accommodation on land so acquired.

Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg manpower) resources available to them and to other bodies concerned.

Section 93(4) of the Local Government and Housing Act 1989 can be used by authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Demolition of properties should be considered as a last resort only after all other possible options have been considered. In these exceptional cases regard should be had to any adverse effects on industrial or commercial concerns.

The powers in sections 93(2) and 93(4) of the Local Government and Housing Act 1989 are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in Renewal Areas.

The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the Local Government and Housing Act 1989, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the Renewal Area; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made.

Other housing powers

157. Are there any other housing powers under which local authorities can make compulsory purchase orders?

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

Listed buildings in slum clearance

158. If a building including in a clearance compulsory purchase order under section 290 of the Housing Act 1985 is subsequently listed will the clearance go ahead?

This is a matter for the local planning authority concerned. It will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals.

If the authority favours clearance, it must apply to the Secretary of State for listed building consent within three months of the date of listing (section 305 of the Housing Act 1985).

159. What happens if the building is listed after the order has been submitted to the Secretary of State for confirmation but before a decision is reached?

If a building in a clearance compulsory purchase order is listed after the order has been submitted to the Secretary of State for confirmation, but before he has reached a decision on it, the authority should inform the Secretary of State urgently how it wishes to proceed in the light of listing.

If it favours retaining the building, the authority should request that the building be withdrawn from the order.

If the authority applies for listed building consent to demolish, the Secretary of State will normally hold a joint local public inquiry at which the compulsory purchase order and the application for listed building consent will be considered together.

160. What happens if the building is listed after the order has been confirmed by the Secretary of State?

If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow.

If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not notice to treat has been served and, if it has, whether the building is vested in the authority:

- if notice to treat has not been served, section 305(2) of the Housing Act 1985 prohibits the authority from serving it unless and until the Secretary of State gives listed building consent. Refusal of listed building consent or failure to apply for it within the specified period will effectively release the building from the compulsory purchase order and, where applicable, from the clearance area. In the latter event, the authority must then consider other appropriate action for dealing with unfitness under the housing acts

- if notice to treat has been served before the listing, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue, but this will be under the powers contained in Part 2 of the Housing Act 1985 for residential buildings or Part 9 of the

Town and Country Planning Act 1990 for other buildings

- if the building is already vested in the authority, it will be appropriated to Part 2 of the 1985 act or Part 9 of the Town and Country Planning Act 1990 as the case may be

Local authorities are reminded that Housing health and safety rating system enforcement guidance advises that listed buildings and buildings subject to a building preservation notice should only be included in clearance areas in exceptional circumstances and only where listed building consent has been given.

161. What happens if the building was purchase by agreement under Part 9 of the Housing Act 1985, or under some other power and now held under Part 9 and is subsequently listed?

Under section 306 of the Housing Act 1985 the authority may apply for listed building consent if it still favours demolition. If consent is refused or not applied for within the specified period of three months from the date of listing, the authority is no longer subject to the duty to demolish the building imposed by Part 9 of the Housing Act 1985 and must appropriate it to Part 2 of the Housing Act 1985 or Part 9 of the Town and Country Planning Act 1990 as the case may be.

162. Is planning permission required to demolish an unlisted building in a conservation area where the building is included in a clearance compulsory purchase order?

In these circumstances demolition is permitted development (subject to article 4 directions and any Environmental Impact Assessment requirements) so an application for planning permission is not required – see 'What permissions/prior approvals are required for demolition in a conservation area?' in planning guidance for further information.

Where a submitted clearance compulsory purchase order includes buildings within a conservation area, the Secretary of State will wish to have regard to the conservation area aspect in reaching his decision on the order.

Section 7: to improve the appearance or condition of land

163. Can a local authority compulsorily acquire land to improve its appearance or condition?

In some circumstances a local authority can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 specifically for this purpose.

If the local authority is unsure whether to use these specific powers or if various uses are proposed for the land, the authority may consider using the powers granted by section 226 of the Town and Country Planning Act 1990 instead.

There are also various other compulsory purchase powers that local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.

164. When can a local authority use their powers under section 89 of the National Parks and Access to the Countryside 1949 Act to compulsorily purchase land?

A local authority can use their powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 to compulsorily purchase land to plant trees to preserve or enhance the natural beauty of the land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:

- derelict, neglected or unsightly; or
- likely to become derelict, neglected or unsightly because the authority anticipate that the surface may collapse as a result of underground mining operations (other than coal mining)

165. Can a local authority still consider land to be 'derelict, neglected or unsightly' even if it is in use?

A local authority may still consider land to be 'derelict' or 'neglected' even if it is being put to some slight use when its condition is compared to the potential use of the land. However, it is not the purpose of these powers to enable a local authority to carry out works or acquire land solely because they believe that they can provide a better use than the present one.

166. Who decides whether to confirm an order to compulsorily purchase land under section 89 of the National Parks and Access to the Countryside Act 1949?

The Secretary of State for Environment, Food and Rural Affairs decides whether to confirm an order under section 89(5) of the National Parks and Access to the Countryside Act 1949.

167. What does the phrase 'derelict, neglected or unsightly' mean in connection with these compulsory purchase powers?

There are no statutory definitions so the natural, common sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together as there is considerable overlap between each. For instance, the untidy or ‘unsightly’ appearance of the land may also be relevant in considering whether it is ‘derelict’ or ‘neglected’, or land might be considered ‘neglected’ but not ‘derelict’ if no building works, dumping or excavation have taken place.

The authority may wish to obtain the views of the Secretary of State for Environment, Food and Rural Affairs on the meaning of these words when considering whether to make a section 89(5) order.

Section 8: for educational purposes

168. What powers does a local authority have to make a compulsory purchase order for educational purposes?

A local authority can make a compulsory purchase order for educational purposes using its powers under section 530 of the Education Act 1996, as amended, with the confirmation of the Secretary of State for Education. These powers can be used to acquire land which is required for the purposes of its educational functions, including the purposes of:

- any local authority maintained or assisted school or institution; or
- an academy (whether established or to be established)

169. How does a local authority make a compulsory purchase order for educational purposes?

When making an order a compulsory purchase order under section 530 of the Education Act 1996, the authority should have due regard to statutory requirements from the Department for Education. The local authority may also seek guidance, if necessary, from that department on the form of draft orders where there is doubt about a particular point.

The local authority submits the order and other required documents for confirmation to the Secretary of State for Education at the following address:

Education Funding
Agency Schools
Assets Team
Mowden Hall,
Staindrop
Road,
Darlington,
Co. Durham DL3 9BG

If the compulsory purchase order is for a voluntary aided school, the local authority will need to submit certain additional documents with the order, as well as the standard documents required.

170. What additional documents are required to make a compulsory purchase order for voluntary aided schools?

In addition to the standard list of documents required to make a compulsory purchase order, an order for a voluntary aided school will require the following documents:

a) completed copy of the Site Acquisition form (form SB1), available from the Department for Education; and

b) a qualified valuer's report

These additional documents should accompany, or be submitted as soon as possible after, the order.

171. Can a local authority make a compulsory purchase order in connection with a proposal for changes in school provision?

A local authority may make a compulsory purchase order (under section 530 of the Education Act 1996) in connection with certain proposals for changes in school provision. A proposal could involve:

- the establishment of a new school for children of compulsory school age (under Part 2 of the Education and Inspections Act 2006); or
- a prescribed alteration to an existing maintained school (under Part 2 of the Education and Inspections Act 2006)

172. How does the Secretary of State consider a compulsory purchase order for educational purposes if it is accompanied by a statutory proposal?

The Secretary of State considers a compulsory purchase order made under section 530 of the Education Act 1996 separately to any accompanying statutory proposal for changes in school provision (made under Part 2 of the Education and Inspections Act 2006).

173. When can the Secretary of State for Education compulsorily purchase land that is required by an academy?

The Secretary of State for Education can compulsorily purchase land that is required by an academy using the powers granted by Paragraphs 5 and 7 of schedule 1 to the Academies Act 2010. The Secretary of State can use these powers if a local authority has either:

- disposed of land; or
- made an appropriation of land (that they hold a freehold or leasehold interest in) under section 122 of the Local Government Act 1972

without the consent of the Secretary of State, and if the land in question has been used wholly or mainly for the purposes of a school or a 16 to 19 academy at any time in the period of eight years ending with the day on which this disposal or appropriation was made.

174. What happens once the Secretary of State has completed the compulsory purchase of the land?

Once the Secretary of State has completed the compulsory purchase, the land must be transferred to a person concerned with the running of the academy. The Secretary of State is entitled to recover from the local authority any compensation awarded (and any interest) in relation to the compulsory purchase, together with costs and expenses incurred in connection with the making of the compulsory purchase order.

Arrangements for publishing/seeking proposals for a change in school provision that requires a compulsory purchase order

175. What can a local authority do, if it wishes to compulsorily purchase land to establish a new school for children of compulsory school age?

When a local authority decides that it needs a new school in its area for children of compulsory school age, it is required by section 6A of the Education and Inspections Act 2006 to seek proposals to establish an academy. If the local authority requires land to be compulsorily acquired for this purpose, it should publish the notice seeking proposals before making a compulsory purchase order.

The local authority is also expected to notify the Department for Education of their plan to seek proposals as soon as the need for a new school has been decided upon.

A local authority can only publish its own proposals in the limited circumstances set out in Part 2 of that act, for example if the new school is to replace one or more maintained schools. Further information is available from the Department for Education.

176. What can a local authority do, if it wishes to compulsorily purchase land to make a prescribed alteration to a school?

If a local authority wishes to make a prescribed alteration under Part 2 of the Education and Inspections Act 2006, the local authority should publish their proposals before making a compulsory purchase order.

177. What can an appropriate authority do if their proposal to restructure school sixth form education requires the compulsory purchase of land?

The appropriate authority (the Skills Funding Agency or the Education Funding Agency) should publish their proposal to restructure school sixth form education before the relevant local authority makes a compulsory purchase order.

Section 72 of the Education Act 2002 sets out arrangements for the publication of proposals to restructure sixth form education.

Deciding an application for approval for a change in school provision that accompanies a compulsory purchase order

178. How is a proposal for a change in school provision considered, if it relies on the approval of a compulsory purchase order?

Depending on the nature of the proposal, an application for approval is considered as follows:

a) **Proposals to establish a new academy**

The Secretary of State for Education makes the final decision on whether to approve a proposal to establish a new academy.

When considering the proposal, the Secretary of State takes into account the need for a compulsory purchase order and any decision to approve the proposal is then conditional on the local authority acquiring the site. The local authority is then informed of the decision on the proposal so that it may make and submit the compulsory purchase order.

b) **Proposals to make a prescribed alteration to an existing maintained school**

The relevant local authority or schools adjudicator decides whether to approve a proposal to make a prescribed alteration to an existing maintained school.

The relevant local authority or schools adjudicator considers the application for approval of a proposal for a prescribed alteration. Consideration is given on the merits of the proposal and independently from the Secretary of State's consideration of the compulsory purchase order.

Approval can only be given on the condition that the relevant site is acquired under regulation 16(2)(b) of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. The local authority will then be informed of the decision so that it may make and submit the compulsory purchase order.

179. What happens if the proposal for a change in school provision is rejected?

If the decision is to reject the proposal for a change in school provision, the local authority is advised not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

180. What happens once the Secretary of State has decided whether or not to confirm the compulsory purchase order?

If the Secretary of State decides to confirm the compulsory purchase order the order will be sealed and returned to the local authority. When the local authority has purchased the site, the condition of the approval is met and the approval of the proposal becomes final with no further action required.

If the Secretary of State decides not to confirm the order, the proposal falls as the condition is not met.

Section 9: for public libraries and museums

181. Who has compulsory purchase powers to acquire land for public libraries and museums?

A local authority can compulsorily acquire land for public libraries and museums under section 121 of the Local Government Act 1972, using an appropriate enabling power (such as section 7 or 12 of the Public Libraries and Museums Act 1964).

182. How does a local authority make a compulsory purchase order for public libraries and museums?

When making a compulsory purchase order for public libraries and museums the local authority should have due regard to statutory requirements.

The order should be accompanied by each of the following additional documents:

- a completed copy of form CP/AL1 (obtainable from the Department for Digital, Culture, Media & Sport, Libraries Division)
- a qualified valuer‘s report

The order and accompanying documents are submitted to the Secretary of State for Digital, Culture, Media & Sport for confirmation at the address below:

Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

Section 10: for airport Public Safety Zones

183. Can an airport operator compulsorily purchase property that is located near an airport?

An airport operator can compulsorily purchase whole or part of a property if it is located within the 1 in 10,000 individual risk contour of an airport and if the property, or the relevant part of it, is:

- an occupied residential property
- a commercial or industrial property that is occupied as an all-day workplace

However, a compulsory purchase order should only be made as a last resort, if the airport authority is unable to purchase the property by agreement.

184. What should the airport operator do if a property falls into the categories described above?

If a property falls into the categories described above, the airport operator is expected to offer to purchase the property by agreement, with compensation being payable under the Compensation Code.

If purchase by agreement is not possible, the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

To make a compulsory purchase order, the airport operator will need to demonstrate that the property falls within the categories described and that it has not been possible to purchase the property by agreement. The compulsory purchase order should be sent to the Secretary of State for Transport at:

Airports Policy Division
Zone 1/26, Great Minster House
33 Horseferry Road
London
SW1P 4DR

Once the property has been acquired, the airport operator will be expected to demolish any buildings and to clear the land.

185. What is the '1 in 10,000 individual risk contour' of an airport and why is property within this area significant?

The '1 in 10,000 individual risk contour' is an area of land within the Public Safety Zone of an airport where individual third party risk of being killed as a result of an aircraft accident is greater than 1 in 10,000 per year.

The level of risk in the '1 in 10,000 individual risk contour' is much higher than in other areas of the Public Safety Zone and at some airports, this contour extends beyond the airport boundary. As a result, it is the Secretary of State for Transport's policy that

there should be no occupied residential properties or all day workplaces within this area.

Further information can be found on the Department for Transport website (see circular 1/10).

Section 11: for listed buildings in need of repair

186. Who has compulsory purchase powers for listed buildings in need of repair?

Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives an appropriate authority compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Secretary of State. The appropriate authority may be:

- the relevant local planning authority
- Historic England, if the listed building is located in Greater London
- the Secretary of State for Digital, Culture, Media & Sport

It is the Secretary of State's policy to only use this power in exceptional circumstances.

187. How does an appropriate authority make a compulsory purchase order for a listed building in need of repair?

To make a compulsory purchase order for a listed building in need of repair under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the appropriate authority is required to:

- serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner (see section 31(2) of Planning (Listed Buildings and Conservation Areas) Act 1990/ section 336 of the Town and Country Planning Act 1990) of the listed building at least two months before making the compulsory purchase order
- prepare and serve the compulsory purchase order and its associated notices, if the repairs notice has not been complied with within two months of service
- submit the compulsory purchase order, a copy of the repairs notice and all supporting documents to the Secretary of State for Digital, Culture, Media & Sport

188. What if the owner has deliberately allowed the listed building to fall into disrepair to justify its demolition?

If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the acquiring authority can include a direction for minimum compensation within the compulsory purchase order. Provisions for minimum compensation are given in section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The terms for a minimum compensation direction are set out in optional paragraph 4 of Form 1 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Follow the link for advice on how to include a direction for minimum compensation within a compulsory purchase order.

189. What should a local authority do if an application is made to a magistrates' court to contest a direction for minimum compensation?

As soon as a local authority becomes aware of any application to a magistrates' court:

- to stay further proceedings on the compulsory purchase order, under section 47(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990; or

- for an order that a direction for minimum compensation is not included in the compulsory purchase order, under section 50(6) of the Planning (Listed Buildings and Conservation Areas) Act 1990

they should notify the Secretary of State for Digital, Culture, Media & Sport immediately. Depending on the circumstances, it may be necessary to hold the order in abeyance (ie suspend the order) until the court has considered the application.

Repairs notices

190. When might an appropriate authority serve a repairs notice?

An appropriate authority may consider issuing a repairs notice (under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.

Further information on repairs notices and notices for urgent works are available from the Historic England website.

191. What information should the repairs notice include?

The repairs notice must:

- specify the works which the authority considers reasonably necessary for the proper preservation of the building; and

- explain the effect of sections 47-50 of the Planning (Listed Buildings and Conservation Areas) Act 1990

192. What works might be specified in the repairs notice?

The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs

notice may include works to secure the building's preservation as at the date of listing, but should not be used to restore other features.

Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.

The form of the compulsory purchase order and its associated notices

193. How are the compulsory purchase order and associated notices prepared?

General guidance on the format of compulsory purchase orders is available here.

For compulsory purchase orders for listed buildings in need of repair, there are additional provisions set out in regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004. These require additional paragraphs from the schedule to the regulations to be inserted into the relevant forms, as described below.

When preparing any personal notices:

- include additional paragraphs 3 and 5 of Form 8; and
- if a direction for minimum compensation is included within the order insert additional paragraph 4 of Form 8; and
- include an explanation of the meaning of the direction, as required by section 50(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This should normally include the text of subsections (4) and (5) of section 50 of that act

When preparing the compulsory purchase order:

- if a direction for minimum compensation is included within the order, include optional paragraph 4 of Form 1 in orders drafted using Form 1

Tier 3: procedural issues

194. Where can guidance on common procedural issues be found?

Guidance can be found here:

- Section 12: preparing statement of reasons
- Section 13: general certificate
- Section 14: preparing and serving the order and notices
- Section 15: order maps
- Section 16: addresses

195. Where can further information on other procedural issues which will only apply in certain cases be found?

Further information can be found here:

- Section 17: for community assets (at the request of the community)
- Section 18: special kinds of land
- Section 19: compulsory purchase of new rights and other interests
- Section 20: compulsory purchase of Crown land
- Section 21: certificates of appropriate alternative development (under the Land Compensation Act 1961)
- Section 22: protected assets certificate
- Section 23: objection to division of land (material detriment)
- Section 24: overriding easements and other rights

Common procedural issues

Section 12: preparing statement of reasons

196. What information should be included in the statement of reasons?

The statement of reasons should include the following information:

(i) a brief description of the order land and its location, topographical features and present use

(ii) an explanation of the use of the particular enabling power

(iii) an outline of the authority's purpose in seeking to acquire the land

(iv) a statement of the authority's justification for compulsory purchase, with regard to Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate

(v) a statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'

(vi) a description of the proposals for the use or development of the land

(vii) a statement about the planning position of the order site. See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for planning orders.

(viii) information required in the light of government policy statements where orders are made in certain circumstances eg as stated in Section 5: local housing authorities for housing purposes where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part 9 of the Housing Act 1985)

(ix) any special considerations affecting the order site eg ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc

(x) if the mining code has been included, reasons for doing so

(xi) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented eg need for a waste management licence

(xii) details of any views which may have been expressed by a government department about the proposed development of the order site

(xiii) what steps the authority has taken to negotiate for the acquisition of the land by agreement

(xiv) any other information which would be of interest to persons affected by the order eg proposals for rehousing displaced residents or for relocation of businesses

(xv) details of any related order, application or appeal which may require a co-ordinated decision by the confirming minister eg an order made under other powers, a planning appeal/application, road closure, listed building; and

(xvi) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place

Section 13: general certificate

197. What is the purpose of a general certificate in support of an order submission?

A general certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures.

198. What form should a general certificate in support of an order submission take?

The certificate should be submitted in the following form:

THE ……. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered……in the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues of the …….. dated ……. 20…. and …… 20....(being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was…….. ……. 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on …….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being …… 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on

(i) every owner, lessee, tenant and occupier of all land to which the order relates;

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry. (NB: For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.)

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

3. [*Where the order includes land in unknown ownership*] Notices in the Form

numbered …….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of the notices was not less than 21 days and the last date is/was …….. 20.... .

4. A copy of the order and of the map were deposited at …… on …… 20.... and will remain/remained available for inspection until …….. .

5. (1) A copy of the authority's statement of reasons for making the order has been sent to:

(a) all persons referred to in paragraph 2(i), (ii) and (iii) above (see Which parties should be notified of a compulsory purchase order?)

(b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land

(2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

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

Section 14: preparing and serving the order and notices

199. What format should an order adopt?

The order and associated schedule should comply with the relevant form as prescribed by regulation 3 of, and the schedule to, the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595).

In accordance with the notes to the prescribed forms, the title and year of the act authorising compulsory purchase must be inserted. Each acquisition power must be cited and its purpose clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and its purpose stated. In some cases, a collective title may be sufficient to identify two or more acts. (See Section 1: advice on section 226 of the Town and Country Planning Act 1990 and Section 18: compulsory purchase of new rights and other interests for examples of how orders made under certain powers may be set out. Section 2: advice on section 121 of the Local Government Act 1972 contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

200. Where should the order maps be deposited?

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

201. Can the 'the mining code' be incorporated into an order?

Parts 2 and 3 of schedule 2 to the Acquisition of Land Act 1981, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the act applies. The incorporation of both parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code.

202. Who should authorities notify if they make an order incorporating the mining code?

In areas of coal working notified to the local planning authority by the Coal Authority under article 16 of, and paragraph (o), schedule 4 to, the Town and Country Planning (Development Management Procedure) (England) Order 2015, authorities are asked to notify the Coal Authority and relevant licensed coal mine operator if they make an order which incorporates the mining code.

203. What information about the land to be acquired should be included in an order?

The prescribed order formats set out in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore, the area of each plot, eg in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the Acquisition of Land Act 1981 prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see notes to prescribed Forms 1 to 6 in the regulations).

Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as ‘pasture land’ or ‘arable land’; agricultural and non-agricultural afforested areas may be described as ‘woodland’ etc; and, if necessary, be related to some well known local landmark, eg ‘situated to the north of School Lane about 1 km west of George’s Copse’.

Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

204. What information should be included in the order where the authority already owns an interest in the land to be acquired?

Except for orders made under highway land acquisition powers in Part 12 of the Highways Act 1980, to which section 260 of that act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [describe the land] except those owned by the acquiring authority'. The remaining columns should be completed as described in *What information should be included in the order schedule?* This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg Homes England might decide it wishes to exclude its own interests and local authority interests from an order.

Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a general vesting declaration (see Stage 5: implementing a compulsory purchase order). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

A similar form of words to that described above may be appropriate where the acquiring authority wish to include in the order schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Section 19: compulsory purchase of Crown land.

205. Who is the acquiring authority required to serve notice of the making of the order?

The schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2), 12(2A) and 12(2B) of the Acquisition of Land Act 1981 and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is:

(i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the act)

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the act); and

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

206. Should the order schedule include persons who may have a valid claim to be owners or lessees?

The schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the Acquisition of Land Act 1981, eg persons who have entered into a contract to purchase a freehold or lease.

207. How should partnerships be dealt with?

The acquiring authority should ask the partnership to nominate a person for service. This avoids having to include the names of all partners in a partnership in the schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

208. How should corporate bodies be dealt with?

Service should be effected on the secretary or clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie as owner, lessee etc. (section 6(2) and (3) of the Acquisition of Land Act 1981). NB: under Company Law requirements, notices served on a company should be addressed to the secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.

209. How should Trusts be dealt with?

Individual trustees should be named and served.

210. How should unincorporated bodies be dealt with?

In the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the secretary. NB: The land may be vested in the trustees and not the secretary, but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its secretary, it is considered to be reasonable that the secretary should also be served. However, service solely on the secretary of such a body is not sufficient unless it can be shown that the secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

211. How should charitable trusts be dealt with?

In the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees. See Part 7 of the Charities Act 2011.

212. How should land which is ecclesiastical property be dealt with?

Where land is ecclesiastical property, ie owned by the Church of England, notice of the making of the order must be served on the Church Commissioners as well as on the owners etc of the property (see section 12(3) of the Acquisition of Land Act 1981).

213. How should ancient monuments be dealt with?

Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as Historic England), or the County Archaeologist, according to the circumstances shown below:

- in respect of a *scheduled* ancient monument – Historic England; or
- in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist

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

214. How should land in a national park be dealt with?

Where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural England.

215. How should land which is being used for sport of physical recreation be dealt with?

When an order relates to land being used for the purposes of sport or physical recreation, Sport England should be notified of the making of the order.

216. Can notice be served at a person's accommodation address?

Notice can be served at an accommodation address, or where service is effected on solicitors etc, provided the acquiring authority has made sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown.

217. What information should be included in the order schedule?

- **about the owner or reputed owner** - where known, the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order should include those covenants or restrictions which amount to interests in land that the authority wish to acquire or extinguish. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table of the schedule. The statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest

Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the schedule should refer to the right etc and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority has no interest to acquire.

- **about lessees, tenants, or reputed lessees or tenants -** where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown

- **about occupiers -** where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly

218. What information about qualifying persons under sections 12(2A) and 12(2B) found by diligent enquiries should be included in the order schedule?

Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in sections 12(2A) and (2B) should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire which they are seeking to exercise. (An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Natural England to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.)

Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.

219. What is meant by 'diligent enquiries'?

In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry (see Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041).

Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to find out if there any additional interests they are not aware of if a landowner has been served with a notice and fails to respond.

An acquiring authority does not have any statutory power under section 5A of the Acquisition of Land Act 1981 act to requisition information about land other than that which

it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 act provides an additional means of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

220. How should special category land be recorded in the order?

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

221. What information should be recorded in the order schedule where the land is common, open space etc?

An order may provide for special category land to which section 19 of the Acquisition of Land Act 1981 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg in green) on the order map and described in schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in schedule 3.

When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg where the acquiring authority already own some of the exchange land.

In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (*s*)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or

b) where the order land is all the land being acquired, the land which is 'described'

But if the acquiring authority seek a certificate under paragraph 6(1)(b) of schedule 3 to the 1981 act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate

paragraph 6(2) of the Form (see Note (*s*)). Paragraph 6 becomes paragraph 5 if only new rights are to be acquired compulsorily. (See Section 18: compulsory purchase of new rights and other interests) in relation to additional land being given in exchange for a new right.)

Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both schedules may apply, eg the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

Paragraph 5 of Form 3 should identify the order land, by referring to either:

a) paragraph 2, where the order land is all the land being acquired; or

b) specific numbered plots in the schedule, where the order land is only part of the land being acquired

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

An order may not discharge land from rights etc if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of schedule 3 to the 1981 act. (See also In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate? and In which circumstances may a certificate be given?.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

222. What is the procedure for sealing, signing and dating orders?

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

Section 15: order maps

223. What information should order maps provide?

Order maps should provide details of the land proposed to be acquired, land over which a new right would subsist and exchange land in accordance with the requirements set out in the notes to the forms eg paragraph (g) of the notes that accompany both forms 1 and 2.

The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words 'map referred to in [*order title*]' should be included in the actual heading or title of the map(s).

Land may be identified on order maps by colouring or any other method (see Note (*g*) to Forms 1, 2 and 3 and, in relation to exchange land, Note (*q*) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the longstanding convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master 'location plan' should indicate how the various sheets are interrelated.

Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked 'Map referred to in... 'in accordance with the prescribed form' (as in Form 1), a location map might be marked 'Location plan for the Map referred to in...' Such a location plan would not form part of the order and order map, but be merely a supporting document.

It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order schedule or schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order schedule(s). (For orders which include new rights, see section on Schedule and map.) Land which is delineated on the map, but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

There should be no discrepancy between the order schedule(s) and the map or maps, and

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

Section 16: addresses

224. Where should orders, applications and objections be sent?

Department	Type of order or application	Address
Ministry of Housing, Communities and Local Government	Most orders for which the Secretary of State for Housing, Communities and Local Government is confirming authority Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip's Place Colmore Row Birmingham B3 2PW Email: pcu@communities.gov.uk
Ministry of Housing, Communities and Local Government	Applications for certificates relating to fuel or field garden allotments under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip's Place Colmore Row Birmingham B3 2PW Email:pcu@communities.gov.uk
Department for Environment, Food and Rural Affairs	Applications for certificates relating to common land, town or village greens under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Common Land Casework The Planning Inspectorate 3F Hawk Wing Temple Quay House The Planning Inspectorate 2 The Square Bristol BS1 6PN Email: Common Land Tel: 0303 444 5408

Department for Environment, Food and Rural Affairs	Orders for *waste disposal* purposes	Secretary of State for Environment, Food and Rural Affairs Waste Strategy & Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by *water or sewerage* undertakers	Secretary of State for Environment, Food and Rural Affairs Water Programme Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and orders made by internal drainage boards under section 62(1)(b) of that Act	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Transport	Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984	Secretary of State for Transport National Transport Casework Team Department for Transport Tyneside House Skinnerburn Road Newcastle upon Tyne NE4 7AR

Department for Transport	Airports, and airport Public Safety Zones orders	Secretary of State for Transport Aviation Policy & Reform Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
Department for Transport	Civil aviation orders under the Civil Aviation Act 2012 and the Airports Act 1986	Secretary of State for Transport Aviation Policy & Security Reform, Department for Transport Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
OTHER CONFIRMING AUTHORITIES - for other confirming authorities the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful.		
Department for Education		Real Estate Team Education and Skills Funding Agency Bishopsgate House Darlington DL1 5QE
Department of Health	For NHS and civil estate occupied by DH	Richmond House 79 Whitehall London SW1A 2NS
Home Office		2 Marsham Street London SW1P 4DF
Department for Digital, Culture, Media & Sport	Orders relating to listed buildings	100 Parliament Street London SW1A 2BQ
Department for Work and Pensions	for Benefits Agency	BA Estates 1 Trevelyan Square Boar Lane Leeds LS1 6AB
Department for Business, Energy and Industrial Strategy	Electricity and gas undertakings Onshore Electricity Development Consents	Licensing and Consents Unit 3 Whitehall Place London SW1A 2AW

Procedural issues applying to some compulsory purchase orders

Section 17: for community assets (at the request of the community or a local body)

225. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process either from their own resources, or with a partial or full contribution from those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.

Section 18: special kinds of land

227. What are ‘special kinds of land’?

Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure. The ‘special kinds of land’ are set out in Part 3 of, and schedule 3 to, the Acquisition of Land Act 1981 and are:

a) land acquired by a statutory undertaker for the purposes of their undertaking (section 16 and schedule 3, paragraph 3) (see What protection is given by section 16 of the Acquisition of Land Act 1981?)

b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers for the purposes of their undertaking (section 17 and schedule 3, paragraph 4) (see What protection is given by section 17 of the Acquisition of Land Act 1981?)

c) land held by the National Trust inalienably (section 18 and schedule 3, paragraph 5) (see What protection is given by section 18 of the Acquisition of Land Act 1981?); and

d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and schedule 3, paragraph 6) (see What protection is given by section 19 of the Acquisition of Land Act 1981?)

228. Which bodies are defined as statutory undertakers under the Acquisition of Land Act 1981?

Section 8(1) of the Acquisition of Land Act 1981 defines ‘statutory undertakers’ for the *general* purposes of the act. These include:

- transport undertakings (rail, road, water transport)
- docks, harbours, lighthouses
- Civil Aviation Authority and National Air Traffic Services
- Universal postal service providers

British Telecom is not a statutory undertaker for the purposes of the act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the act. Where their operations are carried out under the specific authority of an act, however, such operators will fall within the definition in section 8(1) of the act.

In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of section 16 of the act (various health service bodies) or section 17 of the act (eg Homes England) (see What protection is given by section 17 of the Acquisition of Land Act 1981?).

229. What protection is there for statutory undertakers' land?

Sections 16 and 17 of the Acquisition of Land Act 1981 provide protection for statutory undertakers' land.

In both cases, the land must have been acquired for the purposes of the undertaking. The provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate minister under section 16, or an objection in respect of land to which they think section 17 applies, undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg their administrative offices. In the circumstances, the land is not held for the purpose of the statutory provision: namely, the conveyance of gas through pipes to any premises or to a pipeline system operated by a gas transporter.

230. What protection is given by section 16 of the Acquisition of Land Act 1981?

Under section 16 of the Acquisition of Land Act 1981, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate minister'. This is the minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Business, Energy and Industrial Strategy. Such representations must be made within the period stated in the public and personal notices, ie not less than twenty-one days, as specified in the act.

A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual minister'). Where the appropriate minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate minister would also be the confirming authority where, for example, an airport operator under Part 5 of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

231. Can an order be confirmed where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn?

Generally, where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a minister) so as to include the interest owned by the statutory undertakers unless the appropriate minister gives a certificate in the terms stated in section 16(2). These are either that:

- the land can be taken without serious detriment to the carrying on of the undertaking (section 16(2)(a)); or

- if taken it can be replaced by other land without serious detriment to the undertaking

(section 16(2)(b))

However, by virtue of section 31(2) of the act, an order made under any of the powers referred to in section 31(1) may still be confirmed where:

- a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused; and

- the confirmation is undertaken jointly by the appropriate minister and the usual minister

232. What protection is given by section 17 of the Acquisition of Land Act 1981?

Section 17(2) of the Acquisition of Land Act 1981 provides that for an order acquiring land owned by a local authority or statutory undertaker, if that authority or undertaker objects, any confirmation would be subject to special parliamentary procedure.

However, section 17(3) excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore, be very limited.

The Secretary of State may by order under section 17(4)(b) of the act extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

a) a housing action trust – Housing Act 1988, section 78 and schedule 10, paragraph 3; and

b) Homes England – Housing and Regeneration Act 2008, section 9(6) and schedule 2, paragraph 1(2)

233. What protection is given by section 18 of the Acquisition of Land Act 1981?

Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section18(3) of the Acquisition of Land Act 1981), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

234. What protection is given by section 19 of the Acquisition of Land Act 1981?

Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the Acquisition of Land Act 1981:

- ‘common’ includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green; the definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965

- ‘open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and

- ‘fuel or field garden allotment’ means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act

An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see Who should an acquiring authority apply to for a certificate under section 19 of the Acquisition of Land Act 1981?) gives a certificate under section 19 of the Acquisition of Land Act 1981 indicating his satisfaction that either:

- exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or

- that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or

- that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary (section 19(1)(b))

Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under schedule 3, paragraph 6 (see also section of guidance on Compulsory purchase of new rights and other interests).

235. Who should an acquiring authority apply to for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

An acquiring authority requiring a certificate from the relevant Secretary of State under section 19 and/or schedule 3, paragraph 6 of the Acquisition of Land Act 1981, should apply as follows:

- common land – the Secretary of State for Environment, Food and Rural Affairs

- open space – Secretary of State for Housing, Communities and Local Government

- fuel or field garden allotments – Secretary of State for Housing, Communities and Local Government

Contact details can be found in Section15: addresses.

236. When should acquiring authority apply for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

Applications for certificates should be made when the order is submitted for confirmation or, in the case of an order prepared in draft by a minister, when notice is published and served in accordance with paragraphs 2 and 3 of schedule 1 to the act.

237. What information should be provided when applying for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981?

The land, including any new rights, should be described in detail, by reference to the

compulsory purchase order, and all the land clearly identified on an accompanying map.

This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.

The acquiring authority should also provide copies of the order, including the schedules, and order map. For a particularly large order, they may provide:

a) copies of the order and relevant parts or sheets of the map; and

b) a copy, or copies, of the relevant extract or extracts from the order schedule or schedules, which include the following:

(i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right ('the order land'); and

(ii) any land which they propose to give in exchange ('the exchange land')

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

When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 act or of paragraph 6(4) of schedule 3 to that act.

It must be specified under which subsection(s) an application for a certificate is made eg section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one subsection, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number)
- the plots numbers and their areas, in square metres
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised
- the purpose of the acquisition
- details of any special provisions or restrictions affecting any of the land in the application; and
- any further information which supports the case for a certificate

238. How will the Secretary of State decide whether to grant a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the inspector at the inquiry into the compulsory purchase order.

Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

239. When must a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981 be declined by the Secretary of State?

The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)([1994] J.P.L. 607).

240. What matters does the Secretary of State take into account when considering a certificate for 'exchange land' under section 19(1)(a) of the Acquisition of Land Act 1981?

Where a certificate would be in terms of section 19(1)(a) of the Acquisition of Land Act 1981, the exchange land must be:

- **no less** in area than the order land; and
- equally advantageous to any persons entitled to rights of common or to other rights, and to the public

Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exists at that date.

Other issues may arise about the respective merits of an order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg ending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

241. What is the definition of 'the public' in regard to exchange land?

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

242. In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate?

In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management.

Such a purpose might be 'improvement' within the sense of section 226(1)(a) of the Town and Country Planning Act 1990, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Section 6: to improve the appearance or condition of land), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB: Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Section 13: preparing and serving the order and notices.

243. What factors does the Secretary of State have to consider when giving a certificate under section 19(1)(b) of the Acquisition of Land Act 1981?

A certificate can only be given in terms of section 19(1)(b) of the Acquisition of Land Act where the Secretary of State concerned is persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

244. What is special parliamentary procedure?

If an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965 as amended by the Growth and Infrastructure Act 2013. The confirming authority will give full instructions at the appropriate time.

In brief, the special parliamentary procedure is:

- following the confirming authority's decision to confirm, after giving 3 days' notice in the London Gazette, the order is laid before Parliament
- if a petition against the special authorisation is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve
- if no petition is lodged, the confirmation is usually approved without such referral

Section 19: compulsory purchase of new rights and other interests

245. Is it possible to compulsorily acquire rights and other interests over land, without acquiring full land ownership?

There are powers available which provide for the compulsory acquisition of new rights over land where full land ownership is not required eg the compulsory creation of a right of access.

246. How can compulsory acquisition of rights over land be achieved?

The creation of new rights can only be achieved using a specific statutory power, known as an 'enabling power'. Powers include (with the bodies by whom they may be exercised) the following:

(i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)

(ii) Highways Act 1980, section 250 (all highway authorities) - guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97

(iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers)

(iv) Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency)

(v) Housing and Regeneration Act 2008, section 9(2) (Homes England)

(vi) Electricity Act 1989, schedule 3 (electricity undertakings); and

(vii) Gas Act 1986, schedule 3 (gas transporter undertakings)

The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

Orders solely for new rights (no other interests in land to be purchased outright)

247. What should the order describe?

The order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981.

Paragraph 1 of the order should describe the purpose for which the rights are required, eg 'for the purpose of providing an access to a community centre which the council are authorised to provide under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

Orders for new rights and other interests

248. What should an order describe where it relates to the purchase of new rights and of other interests in land under different powers?

The order heading should refer to the appropriate enabling act, any other act(s), and the Acquisition of Land Act 1981, as required by the regulations. See Note (b) to Forms 1, 2 and 3 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes.

249. What if the purpose is the same for both new rights and other interests?

This should be relatively straightforward. The order should mention, eg:

> '. . . . . the acquiring authority is hereby authorised to compulsorily purchase
>
> (a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
>
> (b) under section 13 of the said act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose
>
> *[etc, as in Form 1 of the schedule to the regulations*.]'

250. What if the purpose is not the same for the new rights and other interests?

Paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made, eg:

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

251. What should the acquiring authority's statements of reasons and case explain?

They should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority is also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

Schedule and map

252. What should the order schedule show?

The land over which each new right is sought needs to be shown as a separate plot in the order schedule.

253. What level of detail does this require?

The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg where there are a number of new rights, they could be shown together in the schedule with appropriate cross-referencing between the related plots.

254. What does the order map need to show?

The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See note (*g*) to Forms 1, 2 and 3 or Note (*d*) to Forms 4, 5 and 6.)

Special kinds of land (commons, open space and fuel or field garden allotment) (see also Section 17: Special kinds of land and Section 13: Preparing and serving the order and notices)

255. Which part of the Acquisition of Land Act 1981 applies where a new right over special kind of land is being acquired compulsorily?

Paragraph 6 of schedule 3 to the Acquisition of Land Act 1981 applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc). The order will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

256. In which circumstances may a certificate be given?

A certificate may be given by the Secretary of State in the following circumstances:

- the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public (paragraph 6(1)(a) of schedule 3 to the Acquisition of Land Act 1981); or

- paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land; or

- paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the act. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land); or

- paragraph 6(1)(c)

  (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or

  (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway

  and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange

The same order may authorise the purchase of land forming part of a common, open space etc and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

257. What other details needs to be shown where additional land, which is not being acquired compulsorily, is to be vested in the owners of the rights land?

The additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in schedule 3 to the order. Schedule 3 becomes schedule 2 if no other additional or exchange land is being acquired compulsorily.

258. What information has to be provided where and order, which does not provide for the vesting of additional land, but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject (so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired)?

The order needs to comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also In which circumstances may a certificate be given?)

Section 20: compulsory purchase of Crown land

259. What is Crown land?

Crown land is defined in section 293(1) of the Town and Country Planning Act 1990, section 82C of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 31 of the Planning (Hazardous Substances) Act 1990 (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

260. Who is the 'appropriate authority'?

As appropriate, the government department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

261. Can Crown land be compulsorily purchased?

As a general rule, Crown land cannot be compulsorily acquired, as legislation does not bind the Crown unless it states to the contrary.

262. Are there any exceptions to this?

Specific compulsory purchase enabling powers can make provision for their application to Crown land, for example:

- section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 act – including the compulsory purchase powers – shall apply to the Crown

- section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that act to apply to Crown land with the consent of the 'appropriate authority'

The enactments listed below (which is not an exhaustive list) also provide that interests in Crown land **which are not held by or on behalf of the Crown** may be acquired compulsorily if the appropriate authority agrees:

- section 226(2A) of the Town and Country Planning Act 1990

- section 47(6A) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- section 25 of the Transport and Works Act 1992; and

- section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part 3 of the Housing Act 1988 and Part 7 of the Local Government and Housing Act 1989

Issues for consideration

263. What issues should be considered?

Where the order is made under a power to which the provisions mentioned in Are there any exceptions to this? relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order schedule should specify that 'all interests' in [*describe the land*] except those held by or on behalf of the Crown' are being acquired. (See also Section 13: preparing and serving the order and notices).

Section 21: certificates of appropriate alternative development

264. What are the planning assumptions?

Part 2 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act 2011 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, section 14 of the 1961 act provides for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

Section 14 is about assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 act (open market value). The planning assumptions are as follows:

- subsection (2): account may be taken of (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and (b) the prospect (on the assumptions in subsection (5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development

- subsection (3): it may also be assumed that planning permission for appropriate alternative development (as described in subsection (4)) is either in force at the relevant valuation date or it is certain than planning permission would have been granted at a later date

- subsection (4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.

- subsection (5): contains the basic assumptions that (a) the scheme underlying the acquisition had been cancelled on the launch date; (b) that no action has been taken by the acquiring authority for the purposes of the scheme; (c) that there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and (d) that if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme

- subsection (6): defines the 'launch date' as (a) for a compulsory purchase order, the publication date of the notice required under section 11 of or paragraph 2 of schedule 1 to the Acquisition of Land Act 1981; (b) for any other order (such as under the Transport and Works Act 1992 or a development consent order under the Planning Act 2008) the date of first publication or service of the relevant notice; or (c) for a special enactment, the date of first publication of the first notice required in connection with the acquisition under section 15, planning permission is also to be

assumed for the acquiring authority's proposals

265. On what date are the planning assumptions assessed?

The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in section 5A of the Land Compensation Act 1961) rather than the launch date (even though the scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan. This removes the need for the specific references to the development plan which were contained in the previous section 16 that had become out of date.

266. What is a certificate of appropriate alternative development?

Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part 3 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act provides a mechanism for indicating the descriptions of development (if any) for which planning permission can be assumed by means of a 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

267. Who can apply for a certificate of appropriate alternative development?

Section 17(1) of the Land Compensation Act 1961 provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Where an application is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

268. In what circumstances might a certificate be helpful?

Circumstances in which certificates may be helpful include where:

a) there is no adopted development plan covering the land to be acquired

b) the adopted development plan indicates a 'green belt' or leaves the site without specific allocation; and

c) the site is allocated in the adopted development plan specifically for some public purpose, eg a new school or open space

d) the amount of development which would be allowed is uncertain

e) the extent and nature of planning obligations and conditions is uncertain

269. When does the right to apply for a certificate arise?

The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by the acquiring authority. Section 22(2) of the Land Compensation Act 1961 describes the circumstances where this is the position. These include the launch date as defined in section 14(6) for acquisitions by compulsory purchase order, other orders or by private or hybrid Bill. For acquisition by blight notice or a purchase notice it will be the date on which 'notice to treat' is deemed to have been served; or for acquisition by agreement it will be the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a compulsory purchase order comes into operation the acquiring authority should be prepared to indicate the date of entry so that a certificate can sensibly be applied for.

Thereafter application may be made at any time, except that after a notice to treat has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal, an application may not be made unless both parties agree in writing, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

Acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly.

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

270. How should applications for a certificate be made and dealt with?

The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 4, 5 and 6 of the Land Compensation Development (England) Order 2012.

Article 3(3) of the order requires that if a certificate is issued otherwise than for the development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal under section 18 of the 1961 act. From 6 April 2012, this has been to the Upper Tribunal. Article 4 requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned if it specifies development related to a county matter or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Where the certificate is issued by a London borough or the Common Council of the City of London, they must send a copy of the certificate to the Mayor of London if a planning application for such development would have to be referred to him.

Article 4 should be read with paragraph 55 of schedule 16 to the Local Government Act 1972, which provides that all applications for certificates must be made to the district planning authority in the first instance: if the application is for development that is a county matter, then the district must send it to the county for determination. This paragraph also deals with consultation between district and county authorities where the application contains some elements relating to matters normally dealt with by the other authority. Where this occurs, the authority issuing the certificate must notify the other of the terms of the certificate.

Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 6 provides for applications and requests for information to be made electronically.

271. What information should be contained in an application for a certificate?

In an application under section 17, the applicant may seek a certificate to the effect that there either is any development that is appropriate alternative development for the purposes of section 14 (a positive certificate) or that there is no such development (a nil certificate).

If the application is for a positive certificate the applicant must specify each description of development that he considers that permission would have been granted for and his reasons for holding that opinion. The onus is therefore on the applicant to substantiate the reasons why he considers that there is development that is appropriate alternative development.

Acquiring authorities applying for a 'nil' certificate must set out the full reasons why they consider that there is no appropriate alternative development in respect of the subject land or property.

The phrase 'description of development' is intended to include the type and form of development. Section 17(3)(b) requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.

The purpose of a certificate is to assist in the assessment of the open market value of the land. Applicants should therefore consider carefully for what descriptions of development they wish to apply for certificates. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

Applicants should normally set out a clear explanation of the type and scale of development that is sought in the certificate and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:

- confirmation of the valuation date at which the prospects of securing planning permission need to be assessed

- the type or range of uses that it considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate

- where appropriate, an indication of the quantum and/or density of development envisaged with each category of land

- where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged

- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development

- an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date

- a clear justification for its view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant

Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.

272. Is there a fee for submitting an application for a certificate of appropriate development?

A fee is payable for an application for a certificate of appropriate alternative development. Details are set out in Regulation 18 of the The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).

273. What should a certificate contain?

The local planning authority is required to respond to an application by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(1) requires the certificate to state either that:

a) there is appropriate alternative development for the purposes of section 14 (a

'positive' certificate); or

b) there is no development that is appropriate alternative development for the purposes of section 14 (a 'nil' or 'negative' certificate)

Section 17(4) of the Land Compensation Act 1961 requires the local planning authority to issue a certificate, but not before the end of 22 days from the date that the applicant has, or has stated that he or she will, serve a copy of his or her application on the other party directly concerned (unless otherwise agreed).

Section 17(5) requires (a) that a positive certificate must specify all the development that (in the local planning authority's opinion) is appropriate alternative development, even if it is not specified in the application and (b) give a general indication of any reasonable conditions; when permission would reasonably have been granted (if after the relevant valuation date); and any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected.

Section 17(6) provides that for positive certificates, only that development specified in the certificate can be assumed to be appropriate alternative development for the purposes of section 14 and that the conditions etc apply to the planning permission assumed to be in force under section 14(3).

Local planning authorities should note that an application made under s17 is not a planning application. The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so.

Such matters would include, for example, the proportion and type of affordable housing required within a development, limitations on height or density of development, requirements for the remediation of contamination or compensation for ecological impacts, and significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities. The clearer the indication of such conditions and obligations can be, the more helpful the certificate will be in the valuation process.

274. Should a certificate be taken into account in assessing compensation?

A certificate once issued must be taken into account in assessing compensation for the

compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

275. Should informal advice be given on open market value?

Applicants seeking a section 17 certificate should seek their own planning advice if this is felt to be required in framing their application.

In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should:

a) give any such advice to both parties to the negotiation

b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought

It is important that authorities do not do anything which prejudices their subsequent consideration of an application.

276. How are appeals against certificates made?

The right of appeal against a certificate under section 18 of the Land Compensation Act 1961, exercisable by both the acquiring authority and the person having an interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel it and issue a different certificate in its place, as it considers appropriate.

Rule 28(7) of the Upper Tribunal Rules, as amended, requires that written notice of an appeal (in the form of a reference to the Upper Tribunal) must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued.

The reference to the Tribunal must include (in particular) a copy of the application to the planning authority, a copy of the certificate issued (if any) and a summary of the reasons for seeking the determination of the Tribunal and whether he or she wants the reference to be determined without a hearing. The Upper Tribunal does have the power to extend this period (under Rule 5), even if it receives the request to do so after it expires. Appeals against the Upper Tribunal's decision on a point of law may be made to the Court of Appeal in the normal way.

More information on how to make an appeal can be found on the Upper Tribunal's website. Also available on the website is a form you will need to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7612 9710 or by writing to:

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Section 22: protected assets certificate

277. What are protected assets and protected assets certificates?

For the purposes of compulsory purchase protected assets are those set out below in What information needs to be included in a positive statement?. Listing them in a certificate allows the confirming authority to know which assets will be affected by the scheme and will therefore inform the decision as to whether to confirm the compulsory purchase order.

278. What information do authorities need to ensure is included in or accompanies the order?

Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

Every order submitted for confirmation (except orders made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) should therefore be accompanied by a protected assets certificate.

A protected asset certificate should include, for each category of building or asset protected, either a positive statement with specific additional information or a nil return.

279. What information needs to be included in a positive statement?

a) **listed buildings**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

b) **buildings subject to building preservation notices**

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

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

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in The Principles of Selection for Listing Buildings (March 2010).

d) **buildings within a conservation area**

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (or, as the case may be, section 70) and which require planning permission for demolition.

e) **scheduled monuments**

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

f) **registered parks/gardens/historic battlefields**

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

280. What additional information must accompany a positive statement?

The following additional information is required to accompany a positive statement:

- particulars of the asset or assets
- any action already taken, or action which the acquiring authority proposes to take, in connection with the category of protection, eg consent which has been, or will be, sought; and
- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available

281. What happens if a submitted order entails demolition of a building which is subsequently included in conservation area?

Where a submitted order entails demolition of any building which is subsequently included in a conservation area the confirming authority should be notified as soon as possible.

Section 23: objection to division of land (material detriment)

282. What happens where an owner objects to the division of land because it would cause material detriment to their retained land?

Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

The Upper Tribunal will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (ie cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

283. What is the procedure for serving a counter-notice?

In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in Schedule 2A to the Compulsory Purchase Act 1965 (where the notice to treat process is followed) and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 ('the CP(VD)A 1981') (where the general vesting declaration process is followed). The procedure is broadly the same in both cases.

284. What is the effect of a counter-notice on a notice of entry which has already been served on the owner?

Under Part 1 of Schedule 2A to the 1965 act, if the owner serves a counter-notice, any notice of entry under section 11(1) of the 1965 act that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see paragraph 6 of Schedule 2A). The acquiring authority may not serve a further notice of entry on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12 of Schedule 2A to the 1965 act.

285. Under the general vesting declaration procedure, what is the effect of a counter-notice on the vesting date of the owner's land specified in the declaration?

If a counter-notice is served under paragraph 2 of Schedule A1 to the CP(VD)A 1981 within the vesting period specified in the declaration in accordance with section 4(1) of the CP(VD)A 1981, the 'vesting date' for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with Schedule A1 (see section 4(3)(b) of the CP(VD)A 1981).

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286. Can an acquiring authority enter the land it proposed to acquire from the owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)?

Under Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981, an acquiring authority is permitted to enter the land it proposed to acquire from the owner (ie the land included in its notice to treat / general vesting declaration) where a counter-notice has been referred to the Upper Tribunal.

Paragraph 12 of Schedule 2A to the 1965 act provides that, where a counter-notice has been referred to the Upper Tribunal, an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (ie a notice which ceased to have effect under paragraph 6(a) of Schedule 2A), the normal minimum three month notice period will not apply to the new notice in respect of that land (see section 11(1B) of the 1965 act). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see paragraph 13 of Schedule 2A).

Similarly, under the general vesting declaration procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal, the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see paragraph 12 of Schedule A1 to the CP(VD)A 1981). This is intended to allow for the vesting of this land before the Upper Tribunal has determined the material detriment dispute.

However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire **in advance** of the Upper Tribunal's determination and the Tribunal subsequently finds in favour of the owner (ie the Tribunal requires the authority to take additional land from the owner):

a) the authority will **not** have the option of withdrawing its notice to treat under paragraph 29 of Schedule 2A to the 1965 act or paragraph 17 of Schedule A1 to the CP(VD)A 1981, and so will be compelled to take the additional land; and

b) the Tribunal will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see paragraph 28(5) of schedule 2A to the 1965 Act and paragraph 16(4) of Schedule A1 to the CP(VD)A 1981.

287. Do the material detriment provisions in Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981 apply in all cases?

An acquiring authority may, in a compulsory purchase order, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see section 2A of the Acquisition of Land Act 1981). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

288. Are the material detriment provisions the same where a blight notice is served?

The material detriment provisions in relation to blight notices are set out in the Town and Country Planning Act 1990 (see, in particular, sections 151(4)(c), 153(4A) to (7) and 154(4) to (6)).

Section 24: overriding easements and other rights

289. Do acquiring authorities have power to override easements and other rights affecting the acquired land?

Prior to July 2016, only some acquiring authorities had the power to override easements and other rights on land they had acquired. However, provisions in section 203 of the Housing and Planning Act 2016 extended this power to all bodies with compulsory purchase powers and in section 37 of the Neighbourhood Planning Act 2017 to a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration or to a company or body through which Transport for London exercises any of its functions.

290. Are there any restrictions on the use of the power to override easements and other rights?

There are several conditions/limitations on the use of the power to override easements and other rights. These are that:

- there must be planning consent for the building or maintenance work/use of the land
- the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use
- the development must be related to the purposes for which the land was acquired or appropriated
- the land must have become vested in or acquired by an acquiring authority or been appropriated for planning purposes by a local authority on or after 13 July 2016 or be 'other qualifying land' (as defined in section 205(1))
- the power is not available in respect of a 'protected right' (as defined in section 205(1))
- the National Trust is subject to the protections in section 203(10)

291. Are owners of overridden easements and other rights entitled to compensation?

Under section 204 of the Housing and Planning Act 2016, owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under sections 7 and 10 of the Compulsory Purchase Act 1965. Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.

Separate but related guidance

292. What about related procedures?

See separate guidance on:

- Purchase notices
- The Crichel Down Rules

Purchase notices

293. What are the statutory provisions for the service of a purchase notice?

A purchase notice may be based upon:

- a refusal or conditional grant of planning permission or listed building consent
- a revocation or modification order
- a discontinuance, alteration or removal order

The statutory provisions enabling the service of a purchase notice are in section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

The service of a purchase notice may *not* be based upon:

- a failure of the local planning authority to give notice of their decision on an application for planning permission (or listed building consent) within the requisite period
- a refusal of an application for approval of details or of reserved matters
- a refusal of an application for express consent for an advertisement display

294. What is the time for service of a purchase notice?

The time for service of a purchase notice is 12 months from the date of:

- the relevant decision for notices served under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990
- the Secretary of State's confirmation of the relevant order under section 137 Town and Country Planning Act 1990

The date is provided by regulation 12 of the Town and Country Planning General Regulations 1992 and regulation 9 of the Planning (Listed Buildings and Conservation

Areas) Regulations 1990.

The Secretary of State has power to extend this time limit and is normally prepared to do so where the service of a notice is delayed for good reasons. Councils have no power to extend the period for the service of a purchase notice.

295. Who should a purchase notice be served on?

A purchase notice must be served on the council of the district or London borough in which the land is situated. It cannot be served on a county council or government department.

296. What form should a purchase notice take?

There is no official form required for a purchase notice. A letter addressed to the council is enough if it:

- states that the relevant conditions in section 137 Town and Country Planning Act 1990 are fulfilled
- requires the council to purchase the interest(s) in the land, giving the names of the owners
- refers to the relevant planning application and decision
- identifies accurately the land concerned by reference to a plan
- provides the name and address of the owners

It should, if possible, be signed by the owners and state that it is a purchase notice.

297. Is there a right to amend a purchase notice once served?

It has been established that there is no right to amend a purchase notice once served, although an owner can serve more than one notice.

298. What happens where a purchase is accepted by the council or confirmed by the Secretary of State?

Where a purchase is accepted by the council or confirmed by the Secretary of State the council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

299. What land can be included in a purchase notice?

Except in the case of a listed building purchase notice (see below), the land to which a purchase notice relates must be the *identical* area of land which was the subject of the relevant decision or order. If the notice relates to more land, it is invalid.

300. Who can serve a purchase notice?

A purchase notice may be served only by an 'owner' of the land, as defined in section

336(1) of the Town and Country Planning Act 1990. That means a person, at the time of service of the purchase notice, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let.

The only exception is under section 137(2)(b) Town and Country Planning Act 1990 where in relation to a discontinuance notice under section 102 of the Town and Country Planning Act 1990 any person entitled to an interest in land in respect of which the order is made can serve a purchase notice.

301. Can a purchase notice be served in relation to Crown land?

Land owned by the Crown is covered by separate provisions in section 137A of the Town and Country Planning Act 1990 and section 32A of the Planning (Listed Buildings and Conservation Areas) Act 1990. A purchase notice may only be served in relation to Crown land in limited circumstances.

302. Can a purchase notice cover parcels of land in different ownership?

Where land comprises parcels in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice relates to the whole of the land covered by the planning decision or the order.

Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

For listed buildings, section 32(1) Planning (Listed Buildings and Conservation Areas) Act 1990 applies to the building and any land comprising the building, or contiguous or adjacent to it, and owned with it, where the use of the land is substantially inseparable from that of the building, such that it ought to be treated, together with the building, as a single holding. The relevant application site and the listed building purchase notice site need not necessarily be identical.

303. Is the land 'incapable of 'reasonably beneficial use'?

The question to be considered in every case is whether the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is 'incapable of reasonably beneficial use'. The onus is on the person serving the notice to show this.

The potential of the land is to be taken into account rather than just its existing state, including if it is necessary to undertake work to realise that potential. No account is taken of any prospective use which would involve the carrying out of development other than any development specified in paragraph 1 or 2 of schedule 3 Town and Country Planning Act 1990 (development not constituting new development) or, in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in schedule 10 to the Town and Country Planning Act 1990 (amount of gross floor space).

In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the

Secretary of State have undertaken to grant such consent.

In considering what capacity for use the land has, relevant factors include the physical state of the land, its size, shape and surroundings, and the general pattern of land uses in the area. A use of relatively low value may be regarded as reasonably beneficial if such a use is common for similar land in the vicinity.

It may sometimes be possible for an area of land to be rendered capable of reasonably beneficial use by being used in conjunction with neighbouring or adjoining land, provided that a sufficient interest in that land is held by the person serving the notice, or by a prospective owner of the purchase notice land. Whether it is or not would depend on the circumstances of the case. Use by a prospective owner cannot be taken into account unless there is a reasonably firm indication that there is in fact a prospective owner of the purchase notice site.

Profit may be a useful comparison in certain circumstances, but the absence of profit (however calculated) is not necessarily material. The concept of reasonably beneficial use is not synonymous with profit.

Where the use of land would mean it had some marketable value the land would be capable of reasonably beneficial use. Any reasonably beneficial use would suffice.

In determining whether the land has become incapable of reasonably beneficial use in its existing state, it may be relevant, where appropriate, to consider the difference (if any) between the annual value of the land in its existing state and the annual value of the land if development of a class specified in schedule 3 to the Town and Country Planning Act 1990 were carried out on the land. Development of any such class must not be taken into account.

The remedy by way of a purchase notice is not intended to be available where the owner shows merely that he is unable to realise the full development value of his land.

For the purposes of section 137(3)(c) Town and Country Planning Act 1990 or section 32(2)(c) Planning (Listed Buildings and Conservation Areas) Act 1990, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State's determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise 'to give favourable consideration' to an application for permission to develop, as a binding undertaking. If no undertaking has been given, and the council consider that development of a kind not included in the original application ought to be permitted, and that the carrying out of such development would render the land capable of reasonably beneficial use, their proper course is to suggest that the Secretary of State should issue a direction under section 141(3) of the Town and Country Planning Act 1990 or section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

304. How will the Secretary of State satisfy himself that the land is 'incapable of reasonably beneficial use'?

The Secretary of State considers that, in seeking to satisfy himself whether conditions (a) to (c) in section 137(3) of the Town and Country Planning Act 1990 have been fulfilled, he may take into account, among other things, whether there is a reasonable prospect of the

server selling or letting the land for any purpose, were its availability to be made known locally. He would normally expect to see some evidence to show that the person serving the notice has attempted to dispose of his interest in the land before he could be satisfied that the land had become incapable of reasonably beneficial use. This evidence is helpful to assist in demonstrating that there is no reasonably beneficial use for the land. Attempts to dispose of the interest should be reasonable and proportionate.

Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making that claim in respect of *the whole of the land* in question. Therefore, if a part of the land is found to be capable of reasonably beneficial use, the condition in section 137(3)(a) will not be fulfilled in respect of the whole of the land.

In section 137(3)(a) Town and Country Planning Act 1990 the phrase 'has become' is taken to mean 'is' in the context of purchase notices. The Secretary of State is only required to consider whether the land is incapable of reasonably beneficial use in its existing state. He is not required to compare the present state of the land with its state at some earlier time, since there is no period for comparison laid down within the provisions of the act. The only circumstances in which the Secretary of State would be concerned with what brought about the existing state of the land are where that state is due to activities having been carried out on it in breach of planning or listed building control.

When considering whether a listed building has reasonably beneficial use, a relevant factor to be taken into account may be the estimated cost of any renovations believed to be necessary. It is therefore helpful (but not conclusive) if estimated figures for such renovations, and an indication of the likely return on the relevant expenditure, can be provided. If no reasonable person would undertake the works because the benefits would not outweigh the costs then the building would not have a reasonably beneficial use.

305. What is the effect of a purchase notice?

A purchase notice does not require the council to purchase the land, unless (a) they state a willingness to comply with it, (b) it is confirmed by the Secretary of State or (c) it is deemed to have been confirmed under section 143 Town and Country Planning Act 1990. It is also possible that the council will find another authority or body willing to comply with the purchase notice in their place, or that the Secretary of State will confirm the notice on an alternative authority.

306. What should the council on whom notice is served do?

The council should first consider the validity of the notice. An invalid notice should not be sent to the Secretary of State. Instead, the council should inform the person serving the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it.

If the purchase notice appears valid, the council should consider whether the conditions in section 137(3) Town and Country Planning Act 1990 or section 32(3) Planning (Listed Buildings and Conservation Areas) Act 1990 are satisfied. If the council regard the purchase notice as valid they must serve a counter-notice within three months from the date of service of the purchase notice (section139(2) Town and Country Planning Act 1990 or section 33(2) Planning (Listed Buildings and Conservation Areas) Act 1990).

307. What should the council do if they conclude the land has become incapable of reasonably beneficial use?

If the council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If so, the council must serve, on the owner by whom the purchase notice was served, a response notice stating that they are willing to comply with the purchase notice (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990).

If the council intend to seek a contribution from government under section 305 of the Town and Country Planning Act 1990 it is advisable to consult the relevant department at once and in any case before a response notice is served.

308. Can another local authority or a statutory undertaker comply with the notice instead?

Another local authority or a statutory undertaker may be willing to comply with the notice in place of the council on which it is served, for example because permission to develop the land was refused because it was required for their purposes. If so, the council should serve a notice to that effect on the owner by whom the purchase notice was served, giving the name of the other authority or body concerned (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990). That other authority or body will then be deemed to have served notice to treat on the owner concerned.

The advice given in What should the council do if they conclude the land has become incapable of reasonably beneficial use? in relation to seeking a contribution under section 305 of the Town and Country Planning Act 1990 applies to a local authority specified in a response notice as it does to the council on which the purchase notice was served.

309. What happens if neither the council nor another local authority or statutory undertaker are willing to comply with a notice?

If neither the council on which the purchase notice was served nor another local authority or statutory undertaker are willing to comply with the purchase notice, the council are required to serve on the owner by whom the purchase notice was served, a response notice to that effect. The response notice must specify the council's reasons for not being willing to comply and state that they have sent a copy to the Secretary of State.

The specified reasons should be one or more of the following:

- that the requirements of section 137(3)(a) to (c) of the Town and Country Planning Act 1990 (or section 32(2)(a) to (c) of the Planning (Listed Buildings and Conservation Areas) Act 1990) are not fulfilled, in which case the council should specify the use to which, in their view, the land in its existing state could be put

- that, notwithstanding that the council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped, or be preserved or laid out as amenity land in relation to the larger area for which that planning permission was granted

- that another local authority or statutory undertaker which has not expressed willingness to comply with the notice should be submitted as acquiring authority for all or part of the land

- that, instead of confirming the notice, the Secretary of State should:

    - grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice or revoke or amend specified conditions that were imposed; or

    - direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time; or

    - in the case of a purchase notice served under section 137(1)(b) or (c), cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use

310. What should a council's statement of reasons for not complying with the purchase notice include?

It is not sufficient for a council just to state that the site has a reasonably beneficial use. A council's statement of reasons should be full and clear. The reasons should explain fully, for example, why the land is capable of reasonably beneficial use, or why they regard the grant of planning permission (or listed building consent) or the cancellation, revocation or modification of the order (as the case may be) as desirable, or specify the likely ultimate use of the land which would justify the substitution of another local authority or statutory undertaker.

311. What information should be sent with the purchase notice to Secretary of State?

It is important that a council who have decided to send a purchase notice to the Secretary of State should quickly send him the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the response notice, the planning application with plans, and the decision on which the purchase notice was based. Other documents may also be necessary in particular cases. The documents should, if possible, accompany the notice but sending the notice should not be delayed because all the information cannot be provided at the same time. Any information not immediately available should be sent as soon as possible afterwards.

Failure to supply all the relevant information within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time limit.

Additional particulars and documents are also required as follows:

- copies of any planning permissions relevant to section 142 of the Town and Country Planning Act 1990 and accompanying plans

- copies of any orders made under section 97, section 100 or section 102 of the Town and Country Planning Act 1990 or section 23 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and accompanying plans

- details of the location and condition of the land to which the notice relates and the nature of the surrounding land

- particulars of any permission or undertaking relevant to section 137(3)(c) of the Town and Country Planning Act 1990 or section 32(2)(c) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- copies of relevant policies and allocations from the statutory development plan

- statements whether the land, or any part of it, falls within an area which is the subject of a compulsory purchase order or the subject of a direction which restricts permitted development or restricts the grant of planning permission

- the nature of the local planning authority's intentions for the land and the probable timing of any development involved

Copies of the documents submitted to the Secretary of State should be sent to both the person serving the notice and any county council. The Secretary of State should be told that this has been done.

312. What action should the Secretary of State take on receiving a purchase notice?

Under section 140 of the Town and Country Planning Act 1990 the Secretary of State must give notice of his proposed action on the purchase notice, and to specify a period (not less than 28 days) within which the parties may ask for an opportunity of being heard by a person (normally a planning inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification.

It is important to note that, where a hearing has been held, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified.

The Secretary of State must consider whether to confirm the notice or to take other action under section 141 Town and Country Planning Act 1990. If, on the evidence before him, the Secretary of State is not satisfied that the relevant statutory conditions are fulfilled, he will not confirm the purchase notice. If he is satisfied that those conditions are fulfilled, he will either confirm the notice or, dependent upon the evidence before him, take such other action as may be appropriate under section 141.

Under section142 of the Town and Country Planning Act 1990 the Secretary of State is not required to confirm a purchase notice if it appears to him that, even though the land

has become incapable of reasonably beneficial use in its existing state, it ought, in accordance with a previous planning permission, to remain undeveloped or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted. This provision is considered to have effect *only* when the whole of the purchase notice site is comprised in the area required to be left undeveloped in the previous planning permission.

313. Are the Secretary of State's powers in regard to listed building purchase notices different?

The Secretary of State's powers in regard to listed building purchase notices are in section 35 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In contrast to the powers available to him in respect of purchase notices served under the Town and Country Planning Act, the Secretary of State:

- is required to confirm a listed building purchase notice only in respect of part of the land to which it relates, if he is satisfied that the relevant conditions are fulfilled only in regard to that part of the land; and

- may not confirm a listed building purchase notice unless he is satisfied that the land covered by the notice comprises such land as is required for preserving the building or its amenities, or for affording access to it, or for its proper control or management

If it falls to be considered whether another local authority or a statutory undertaker should acquire the land, in place of the council on whom the purchase notice was served, the Secretary of State must have regard to the 'probable ultimate use' of the land or building or site of the building (as the case may be). He will accordingly exercise his power of substitution only where it is shown that the land or building is to be used in the reasonably near future for purposes related to the exercise of the functions of the other authority or body, eg where the land is needed for the building of a school, he will require the county council to acquire the land.

The Secretary of State will not (as he is sometimes asked to do) require another local planning authority to acquire land solely on the grounds that they refused permission for development in the normal exercise of their planning powers. There is no provision for confirmation of a purchase notice on a government department.

314. Is a hearing or local inquiry always held?

It is usual to hold a local inquiry or a hearing which interested members of the public may attend in light of the alternatives open to the Secretary of State under section 141 Town and Country Planning Act 1990. If a request to be heard is made, the department will follow the relevant procedural rules for an inquiry or a hearing as far as practicable although they do not formally apply. The parties will also be expected to observe the spirit of the rules. Because of the statutory time limits for determining purchase notices it will not normally be possible to adhere to the timescales set out for normal planning appeals. Statements of case should be provided by the parties as soon as possible.

315. Can an owner lodge an appeal against refusal of planning permission and serve a purchase notice?

There is nothing to prevent an owner from lodging an appeal against a refusal of planning

permission as well as serving a purchase notice. It is, however, sensible to leave serving a purchase notice until the result of the appeal is known, if this is practicable, because, by virtue of section 336(5) of the Town and Country Planning Act 1990, any decision by the Secretary of State to grant planning permission for the development which is the subject of the appeal dates from the time when the original planning decision was taken by the local planning authority. Since the granting of planning permission would normally be regarded as rendering the land capable of reasonably beneficial use, it is unlikely that the landowner could substantiate a claim that the conditions set out in section 137(3) of the Town and Country Planning Act 1990 are fulfilled. In considering whether to appeal as well as to serve a purchase notice, an aggrieved applicant for planning permission should bear in mind the advice given above on the timing of the service of purchase notices. The Secretary of State's attention should be drawn to any appeal which has been made to him, or any other matter which is before him for determination, relating to the purchase notice site or any part of it.

316. Is there a right of appeal against the Secretary of State's decision on a purchase notice?

Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter. Appeal against his decision is to the High Court under section 288 of the Town and Country Planning Act 1990. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land. Matters related to the transfer of the land are for the parties themselves to settle.

317. How is compensation calculated?

When a purchase notice takes effect a notice to treat is deemed to have been served and the parties proceed to negotiate for the acquisition of the land as if the land had been the subject of compulsory purchase. If the parties are unable to agree the amount of compensation then either party may refer the matter to the Upper Tribunal (Lands Chamber) for determination. Where land is acknowledged to be incapable of reasonably beneficial use in its existing state, it will in most cases have little value and the landowner may simply wish to sell land which may be a liability for him. A person on whom a purchase notice is served may wish to take advice on the value of the land so that it does not spend a disproportionate amount of time disputing a notice about land which has no value.

For the purposes of calculating the compensation payable the valuation date is now fixed by section 5A of the Land Compensation Act 1961 being the earlier of (i) the date the authority enters on and takes possession of the land or (ii) the date when the assessment is made, either by agreement or by the Tribunal.

The nature of the interest to be valued is the interest which existed on the date the notice to treat is deemed to have been served. The normal rules of compensation which apply in compulsory purchase cases will apply in the case of purchase notices except in some cases there will be no scheme of the authority which has to be disregarded.

A purchase notice is normally used in two circumstances. First: where the physical characteristics of the land make it impossible to derive any beneficial use. In such circumstances the land is likely to have no value. Second, however, land may not be capable of a beneficial use in its existing state but may be rendered capable of a beneficial

use if developed, but for reasons of blight, planning permission will not be granted. In these circumstances it is possible to consider what planning permission may have been obtained absent the constraint and compensation will be payable on this basis. In this respect, these provisions complement the blight notice provisions in so far as they provide recompense to a landowner who is unable to secure any return from his land due to the blighting nature of public sector proposals.

The Crichel Down Rules

Rules and procedures

1. This section sets out the revised non statutory arrangements ('Crichel Down Rules') under which surplus government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the annex to this section below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this section all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are government departments, including Executive Agencies, other non-departmental public bodies, local authorities or other statutory bodies. See paragraphs 3 and 4 below. The annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the department, the Rules apply in a mandatory manner.

2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK government department. For other land in Wales, departments disposing of land should follow the procedures set out in 'The Crichel Down Rules' issued by the Department of the Environment and the Welsh Office on 30 October 1992. Departments disposing of land in Scotland should follow the procedures set out in 'Scottish Planning Series: Planning Circular 5 2011: Disposal of Surplus Government Land – The Crichel Down Rules' and in Northern Ireland they should follow 'Disposal of Surplus Public Sector Property in Northern Ireland' produced by the Central Advisory Unit of the Land and Property Services agency of the Department of Finance and Personnel.

3. General guidance on asset management, which includes land and buildings is set out in annex 4.15 of Managing Public Money (Asset Management).

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989

or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

The land to which the rules apply

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter 2 in Part 6 of, and schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

The general rules

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

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. 'Successor' means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

Time horizon for obligation to offer back

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

    1) agricultural land acquired before 1 January 1935

    2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition

    3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition

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

Exceptions from the obligation to offer back

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

    1) where it is decided on specific ministerial authority that the land is needed by another department (ie that it is not, in a wider sense, surplus to government requirements)

    2) where it is decided on specific ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose

    3) where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile

    4) where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land

    5) where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:

        (i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947

        (ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use

        (iii) where dwellings are bought for onward sale to a private registered provider of social housing or Registered Social Landlord in Wales

        (iv) sites purchased for redevelopment by the former English Partnerships or

former regional development agencies or Homes England

6) where a disposal is in respect of either:

   (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

   (ii) a site which consists partly of land which has been materially changed in character and part which has not

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

7) where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

Dwelling tenancies

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

Procedures for disposal

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

Where former owner's address is known

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

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:

    a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site

    b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly

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

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

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

Special procedures where boundaries of agricultural land have been obliterated

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

Terms of resale

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell dwelling-houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

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

Appendix A (see paragraph 18 of the Rules)

Sitting tenants

1. In the context of the Rules, the expression 'sitting tenant' was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department's requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:

   a) a regulated tenancy under the Rent Act 1977, (ie a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   b) an assured tenancy under the Housing Act 1988, (ie a tenancy begun on or after that date, but excluding an assured shorthold tenancy)

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:

   a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   b) an assured shorthold tenancy under the Housing Act 1988

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B (see paragraph 25 of the Rules)

Special procedures where boundaries of agricultural land have been obliterated

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Annex (see paragraph 1 of the Rules)

Guidance for departments

Bodies to which these rules apply (Rule 2)

1. These Rules apply to all government departments, executive agencies and non departmental public bodies in England and other organisations in England (such as health service bodies) which are subject to a power of direction by a minister. They also apply to land in Wales acquired and still owned by a UK government department.

Application of the rules by local authorities and statutory bodies (Rule 4)

2. Local authorities and other statutory bodies which are not subject to a ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK minister, such as the Secretary of State for Business, Energy and Industrial Strategy. The previous practice amongst such authorities has been very variable, but the government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires government departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

3. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, departments may wish to seek legal advice in order to take account of the Rules.

Transfer to the private sector (Rule 5)

4. This rule makes it clear that land transferred to another body for the same functions is not surplus.

The threat of compulsion (Rule 7)

5. A ‘threat of compulsion’ should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively ‘threatened’ to use them for this Rule to apply.

   It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority

could use its powers under the Highways Act 1980 to make a compulsory purchase order. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

What constitutes a disposal? (Rule 9)

6. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting Private Finance Initiative/Private Public Partnership projects do not fall within the Rules, see Rule 5.

What is a material change of character? (Rule 10)

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

Land subject to a long lease (Rule 12)

8. If neither the former freeholder nor former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

Who is a successor? (Rule 13)

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

When is the date of acquisition? (Rule 14)

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

What are ‘reasons of public interest’? (Rule 15(2))

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

Small areas of land (Rule 15(3))

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

When is it inconsistent with the purpose of the original acquisition to offer land back? (Rule 15(5))

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

Dwelling tenancies (Rule 18)

14. For the purposes of the Rules a ‘dwelling’ includes a flat.

Procedures for disposal (Rules 19-24)

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

Market value and the date of valuation (Rule 26)

16. For the purposes of the Rules, ‘market value’ means ‘the best price reasonably obtainable for the property’. This is equivalent to the definition of ‘market value’ in the

Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (ie any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

Maintenance of records (Rule 28)

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