

# The National Assembly for Wales

## *Revised Circular on Compulsory Purchase Orders*

NAFWC 14/2004

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### **COMPULSORY PURCHASE ORDERS**

#### **INTRODUCTION**

1. The Welsh Assembly Government believes that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – at whatever level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.
2. The purpose of this Circular is to provide guidance to acquiring authorities in Wales making compulsory purchase orders to which the Acquisition of Land Act 1981 applies. Its aim is to help them to use their compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory or administrative requirements, to ensure that orders progress quickly and are without defects. However, it is not intended to be comprehensive<sup>1</sup>. It concentrates mainly on those policy issues, procedures and administrative requirements to which authorities need to have regard to assist the speedy handling of their orders by National Assembly for Wales ('the National Assembly'), along with guidance on certain key elements of the implementation and compensation arrangements.
3. The main topics covered in the Circular are:

Powers	paragraphs 10 to 12
Justification for making a Compulsory Purchase Order	paragraphs 13 to 20
Environmental Impact Assessments	paragraph 21
Preparing and making an Order	paragraphs 22 to 32
The confirmation process	paragraphs 33 to 48
Implementation	paragraphs 49 to 54
Compensation	paragraphs 55 to 64

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<sup>1</sup> More detailed guidance on managing the process is provided, for example, in "The Compulsory Purchase Procedure Manual", available on subscription, price £250 including CD-Rom and access to dedicated web-site, from The Stationery Office (TSO); telephone order line 0870 600 5522, quoting subscription category 700 30 95

4. The advice in the main body of the Circular is supplemented by detailed explanatory notes in Appendices A to S. These relate to powers, procedural issues and allied matters including certificates of appropriate alternative development, and are listed on page 18.

## TERMS USED

5. In this Circular meanings are as follows:

"the 1965 Act"	Compulsory Purchase Act 1965
"the 1973 Act"	Land Compensation Act 1973
"the 1981 Act"	Acquisition of Land Act 1981
"the 1990 Act"	Town and Country Planning Act 1990
"the 1990 Inquiries Procedure Rules"	Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 (SI 1990 No 512)
" the 1994 Regulations"	Compulsory Purchase of Land Regulations 1994 (SI 1994 No 2145)
"acquiring authority"	meaning assigned by s7(1) of the 1981 Act

## RELATED CIRCULARS AND CANCELLATIONS<sup>2</sup>

6. This Circular replaces the hitherto extant parts of MHLG Circular 48/59 in relation to Wales; WO Circular 2/93 and WO Circular 4/95, both of which are cancelled.
7. WO Circular 1/90 gives detailed guidance on the 1990 Inquiries Procedure Rules. Advice on the forms of orders to which the 1994 Regulations apply is given in Appendix R to this Circular.
8. This Circular should be read with the following:
  - WO Circular 29/93: Award of costs incurred in planning and other (including compulsory purchase order) proceedings
  - WO Circular 61/96 - orders affecting historic buildings and conservation areas.

## STAFFING AND FINANCIAL IMPLICATIONS

9. Action in accordance with this Circular will have no significant effect on National Assembly or local government staffing levels or expenditure.

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<sup>2</sup> This Circular applies only to Wales; separate arrangements have been made in respect of the applicability of Circulars in England

## **POWERS**

10. An acquiring authority can only make use of the 1981 Act powers for the compulsory acquisition of land where such use has been specifically sanctioned in enabling legislation. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under that particular legislation and the types of acquiring authority to which it applies.
11. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought; and that, in turn, will influence the factors which the National Assembly will want to take into account in determining confirmation. Authorities should look to use the most specific power available for the purpose in mind, and only use a general power where unavoidable<sup>3</sup>. Factors relevant to specific individual powers are considered in Appendices A to F. Those are intended to supplement, rather than to replace, the general guidelines set out in the following paragraphs.
12. The advice in this Circular applies to orders which are to be confirmed by the National Assembly for Wales<sup>4</sup>.

In addition to the guidance in this Circular, including any relevant Appendices, authorities should have regard to any particular requirements of the National Assembly and/or of the legislation granting the specific acquisition powers being exercised.

## **JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER**

13. It is for the acquiring authority to determine how best to justify its proposals for the compulsory acquisition of any land and to be ready to defend such proposals at any Inquiry and, if necessary, in the courts. It is not the role of National Assembly to interpret the law as it applies to acquiring authorities. Nevertheless, the following guidance is offered to give an indication of the factors to which the National Assembly may have regard in deciding whether or not to confirm an order, and which acquiring authorities might therefore find it useful to take into account.
14. 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 it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected, having regard, in particular, 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.

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<sup>3</sup> For instance, although the courts have held that the planning compulsory purchase power at section 226(1)(b) of the 1990 Act may be used to acquire a house that has become dilapidated, the National Assembly would normally expect such acquisitions to be made under Housing Act powers (see Appendix B)

<sup>4</sup> In respect of an order made for flood defence/land drainage purposes covering land in Wales and England, acting jointly with the Secretary of State for Environment, Food and Rural Affairs

15. The National Assembly has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is to be expropriated. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Circular is not intended to imply that the National Assembly will require any particular degree of justification for any specific order. Nor will it make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required **immediately** in order to secure the purpose for which it is to be acquired.
16. 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 expropriation of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The coming into force of the Human Rights Act has simply served to reinforce that basic requirement.

### **Resource implications of the proposed scheme**

17. In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required. It may be that the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, however, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met, including the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.
18. The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the National Assembly would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisitions within the statutory period following confirmation of the order. It may also look for evidence that sufficient resources could be made available immediately to cope with any acquisitions resulting from blight notices<sup>5</sup>.

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<sup>5</sup> Blight notices under section 150 of the 1990 Act can only be served in the circumstances listed in Schedule 13 to that Act.

## **Impediments to Implementation**

19. As part of demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account, including the programming of any infrastructure or remedial work which may be required, and any need for planning permission or other consent or licence.
20. Where planning permission will be required for the scheme, and has not already been granted, there should be no obvious reasons why it might be withheld. In particular, this means that, irrespective of the legislative powers under which the actual acquisition is being proposed, the provisions of section 54A of the 1990 Act require that the scheme which is the subject of the planning application should be in accordance with the development plan for the area unless material considerations indicate otherwise. Such material considerations might include, for example, the provisions of the local authority's Community Strategy or supplementary planning guidance which has been subject to public consultation.

## **Environmental Impact Assessments**

21. Acquiring authorities should also be aware of the need to comply with the requirements of the European Community Directive<sup>6</sup> on the assessment of the effects of certain public and private projects on the environment. Further guidance on this matter is given in Welsh Office Circular 11/99 Environmental Impact Assessment. Authorities should also bear in mind the need, during the compulsory acquisition process, to keep up to date any information which has been obtained as part of any environmental impact assessment exercise.

## **PREPARING AND MAKING AN ORDER**

### **Preparatory work**

22. Before embarking on compulsory purchase, acquiring authorities should seek to acquire land by negotiation wherever practicable. However, although the compulsory purchase of land is intended as a last resort when attempts to acquire by agreement fail, acquiring authorities should consider when the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Indeed, given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. 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.
23. Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship

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<sup>6</sup> Council Directive 85/337/EEC as amended by Council Directive 97/11/EC

with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

### **Use of Alternative Dispute Resolution Techniques**

24. 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 (ADR) techniques**, involving a suitably qualified independent third party, wherever this would be appropriate<sup>7</sup> throughout the whole of the compulsory purchase process from the planning and preparation stage to agreeing the compensation payable for the acquired properties. 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 which might eventually be payable if the order were to be confirmed. The use of ADR 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. It also echoes the spirit of the Government's own pledge to settle legal disputes to which it is a party by means of mediation or arbitration wherever appropriate and the other party agrees<sup>8</sup>.

### **Other Means of Involving Those Affected**

25. Other actions which acquiring authorities may wish to consider initiating during the preparatory stage include:
- providing full information about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; and
  - appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.
26. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible. This means that the authority should be in a position to make, advertise and submit a fully documented order immediately after having resolved to make it. The authority should also take every care to ensure that the order is made correctly and under the terms of the most appropriate enabling power.

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<sup>7</sup> Bearing in mind that statutory objectors have a statutory right to be heard at an inquiry and claimants have a statutory right of recourse to the Lands Tribunal to determine compensation disputes.

<sup>8</sup> "Government pledges to settle legal disputes out of court", Press Notice by Lord Chancellor's Dept, 117/01, 23 March 2001.

27. An acquiring authority may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Tribunal), including the basis on which disturbance costs would be assessed.

### **Making Sure That The Order Is Made Correctly**

28. The National Assembly has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed order (see paragraph 44 below). This means that it has to check that no one has been, or will be, substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing orders, including in recording the names and addresses of those with an interest in the land to be acquired.
29. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to an order, and errors or omissions may occasionally emerge after an order has been made and submitted. Authorities therefore need to bear in mind that the National Assembly's power of modification in such cases (as in all other cases, - see paragraphs 45-46 below) is limited by section 14 of the 1981 Act. This provides that an order can only be modified to include any additional land or interests if all the people who are affected give their consent.

### **Advice from the Confirming Authority**

30. Acquiring authorities are expected to seek their own legal and professional advice when making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed order, it may ask whether the National Assembly would be prepared to make informal written comments. Where it indicates that it is willing to do so, then the acquiring authority may submit a draft order for technical examination.
31. Experience suggests that such technical examination by the National Assembly can assist significantly in avoiding delays caused by poorly prepared orders being submitted for confirmation. However, any response made by the National Assembly on a draft order will inevitably be subject to the caveat that its comments are without prejudice to its consideration of any order which may subsequently be submitted for confirmation. The role of the National Assembly at that stage will be confined to giving the draft order a technical examination to check that it complies with the requirements on form and content in the statutes and the Regulations; with no consideration of its merits or demerits.

## **Documentation to be Submitted with an Order for Confirmation**

32. Appendix M provides a checklist of the documents to be submitted to the National Assembly with an order. The explanatory notes in the Appendices should be consulted when the order, the map and the supporting documents are being compiled.

## **THE CONFIRMATION PROCESS**

### **Statement of Reasons**

33. When serving notice of the making and effect of an order on each person entitled to be so served, the acquiring authority is expected also to send to each of them a copy of the authority's *statement of reasons* for making the order. As far as practicable, a copy of this statement should also be sent to any short-term tenant and, where appropriate, to any applicant for planning permission in respect of the land. (See Appendix P for further guidance as to the contents of the statement.) This non-statutory statement of reasons should be as comprehensive as possible. It ought therefore to be possible for the acquiring authority to use it as the basis for the statement of case which is required to be served under rule 7 of the 1990 Inquiries Procedure Rules where an inquiry is to be held, (see paragraph 15 of WO Circular 1/90.)
34. As the statement of reasons provides an early indication of the type of case, it will also help the Planning Inspectorate Agency (PINS) to consider possible manpower implications and whether the Inspector to be appointed for any inquiry or inquiries needs particular specialist skills.

### **Objections**

35. Section 13(4) of the 1981 Act enables the National Assembly to require objectors to state their grounds of objection in writing. It can also require statutory objectors, and others who intend to appear at an inquiry, to provide a statement of case. Experience has shown that requiring statements of case is a useful device for minimising the need to adjourn inquiries as a result of the introduction of new information, and greater use may be made in the future. Under rule 7(5) of the 1990 Inquiries Procedure Rules, a person may be required to provide further information about matters contained in any such statement of case.

### **Supplementary Information**

36. When considering the acquiring authority's order submission, the National Assembly may, if necessary, request clarification of particular points. 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 (see also Appendix Q); and in such cases the 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

National Assembly will write to the authority setting out the points of difficulty and the further information or statutory action required. The National Assembly will copy its side of any such correspondence to statutory objectors, and requests that the acquiring authority should do the same.

### **Consideration of Objections**

37. Although all statutory objectors have a right to be heard at an inquiry, authorities are encouraged to continue to negotiate with both statutory and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice in paragraph 24 above, this should include employing such ADR techniques as may be agreed between the parties. Although there is nothing at present to stop compulsory purchase orders from being considered by means of written representations if all the objectors agree, the fact that there is no statutory procedure for this means that there is a general reluctance to use this mechanism. The parties would have to agree the procedure beforehand, and the National Assembly would need to be satisfied that it was not flawed. It could therefore prove to be even more cumbersome than holding an inquiry in cases where an offer of informal consideration of the issues by an independent mediator does not satisfy all the objectors.

### **Timing of Inquiry**

38. Once the need for an inquiry has been established, it will normally be arranged by PINS, 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 four months after submission.
39. When the date of the inquiry has been fixed it will be changed only for exceptional reasons. The National Assembly will not normally agree to cancel an inquiry unless the order, or all outstanding objections to it from statutory objectors, have been withdrawn. As a general rule it will not be changed where the authority needs more time to prepare its evidence, as 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.

### **Scope for Joint or Concurrent Inquiries**

40. 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 National Assembly, so that the appropriateness of arranging a joint inquiry or concurrent inquiries can be considered. Such actions might include, for example, an application for an order stopping up a highway (when it is to be determined by the National Assembly) 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.

### **Inquiries Procedure Rules**

41. The 1990 Inquiries Procedure Rules apply to non-National Assembly compulsory purchase orders made under the 1981 Act, and to compulsory rights orders<sup>9</sup>. Detailed guidance is given in WO Circular 1/90. Inquiries into National Assembly compulsory purchase orders which have been published in draft are governed by the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (SI 1994/3264).

### **Inquiry Costs**

42. Advice on statutory objectors' inquiry costs is given in Annex 6 to WO Circular 29/93. The National Assembly will remind successful objectors that they may be entitled to claim inquiry costs when they are notified of the decision on the order under the 1990 Rules, and that until then they need not pursue the matter either with the Inspector or the National Assembly.
43. Acquiring authorities will normally be required to meet the administrative costs of an inquiry into a compulsory purchase order, and the expenses incurred by the Inspector appointed to hold the inquiry. 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, is prescribed in the Fees for Inquiries (Standard Daily Amount) (Wales) Regulations 2002 (SI 2002 No 2780) made under the Housing and Planning Act 1986 and is currently £645 for each day.

### **Legal Difficulties**

44. Whilst only the Courts can rule on the validity of compulsory purchase orders, the National Assembly would not confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, a formal, reasoned decision will be issued, 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.

### **Modification Of Orders**

45. The National Assembly may confirm an order with or without modifications, (but see paragraph 28 above about the limitations imposed by section 14 of the 1981 Act). There is, however, no scope for the National Assembly to add to, or substitute, the statutory purpose(s) for which it was made<sup>10</sup>. The power of modification is used sparingly and not to re-write orders extensively. 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

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<sup>9</sup> See rule 2 and section 29 of, and paragraph 11 of Schedule 4 to, the 1981 Act.

<sup>10</sup> Procter & Gamble Ltd v Secretary of State for the Environment (1991) EGCS 123.

the order. Some minor slips can be corrected, but not significant matters such as the substitution of a different, or insertion of an additional, purpose.

46. If it becomes apparent to an acquiring authority that it may wish the National Assembly to substantially amend the order by modification if it is confirmed, the authority should write to the National Assembly as soon as possible, setting out the proposed changes. This letter should be copied to each statutory objector, any other person who may be entitled to appear at the inquiry<sup>11</sup>, 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.

### **Confirmation in Stages**

47. Although there may be situations where it would make sense for an order to be confirmed in stages, there is no general power for this. A small number of specific provisions enabling the National Assembly to confirm in part do, however, exist - albeit they are rarely used in practice. For an order made under section 226 of the 1990 Act, section 245(2) of that Act enables the National Assembly to confirm it in part and to give directions postponing consideration of the order in so far as it relates to the remaining land until such time as may be specified<sup>12</sup>. Section 259 of the Highways Act 1980 enables an order made under that Act by a local highway authority to be confirmed in an unlimited number of stages.

### **Notification of Date of Confirmation**

48. Acquiring authorities are asked to ensure that in all cases the National Assembly 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 1981 Act. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 Act for any application to the High Court is based on this date. Similarly, and for the same reason, where the National Assembly has given a certificate under section 19 of, or paragraph 6 of Schedule 3 to, the 1981 Act, it should be notified straight away of the date when notice is first published.

## **IMPLEMENTATION**

49. Unless it is subject to special parliamentary procedure<sup>13</sup>, an order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published in accordance with section 15 of the 1981 Act. The acquiring authority may then exercise the compulsory purchase power (subject to the operation of the order being suspended by the High Court). The advice in this Circular is mainly directed towards the procedures leading to the confirmation of an order as those are the stages in which the National

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<sup>11</sup> Such as any person required by the confirming authority to provide a statement of case

<sup>12</sup> The effect of this is that an order can be confirmed in a two (but not more than two) stage process. If such directions are given, section 245(3) of the 1990 Act requires the National Assembly to include a statement of their effect in the notice of confirmation required to be advertised and served in the prescribed form under section 15 of the 1981 Act.

<sup>13</sup> See Appendix G

Assembly is directly involved. However, the actual acquisition process is clearly crucial for both the acquiring authority and those whose interests are being acquired; and it is in the interests of both parties that it should be completed as expeditiously as possible.

### **Notice to Treat**

50. The period allowed under section 4 of the 1965 Act for the service of a notice to treat following the advertising of the notice of confirmation of the order is three years, after which the notice to treat remains effective under section 5(2A) of the 1965 Act for up to a further three years. It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property; and the prospect of a period of up to six years before the 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 by agreement where requested by an owner.
51. Although the whole acquisition process can be long and drawn-out, once the crucial stage of actually taking possession is reached, the authority is only required by section 11 of the 1965 Act to serve a notice giving not less than fourteen days notice of its intention to gain entry. Furthermore, 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. Authorities are urged, however, to adopt a timetable which is more sympathetic to the needs of those being dispossessed, and even when that is not possible, to give them as much notice as possible of proposed events. Thus, for example, it would be good practice to give owners an indication at the time of serving the notice to treat of the approximate date when possession will be taken, and to consider sympathetically 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 be aware that agricultural landowners/tenants may need to know the notice of entry date earlier than others because of crop cycles and the need to find alternative premises. Authorities should also be aware that short notice often results in higher compensation claims.

### **General Vesting Declaration**

52. As an alternative to the notice to treat procedure an authority may prefer to proceed by general vesting declaration<sup>14</sup>. 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<sup>15</sup>. It can therefore be particularly useful where some of the ownerships are unknown or the authority wishes to obtain title with minimum delay in order, for example, to dispose of the land to developers.

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<sup>14</sup> General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of land (Vesting Declarations) Regulations 1990 (SI 1990 No 497)

<sup>15</sup> But subject to any special procedures, eg in relation to purchase of commoners' rights: section 21 of, and Schedule 4 to, the 1965 Act).

53. A general vesting declaration may be made for any part or all of the land included in the order, but it will not be effective against interests in respect of which notice to treat has already been served and not withdrawn, minor tenancies, or long tenancies which are about to expire. Where, after reasonable inquiry, it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom preliminary notice<sup>16</sup> is to be served, service must be effected under the procedure described in section 6(4) of the 1981 Act. Where the same circumstances apply in relation to the notice which is required to be served after execution of the declaration<sup>17</sup>, the authority should comply with section 329(2) of the 1990 Act.
54. There is uncertainty as to whether the service of a notice under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 or the executing of a general vesting declaration under section 4 of that Act constitutes the commencement of the exercise of compulsory purchase for the purposes of section 4 of the 1965 Act<sup>18</sup>. An authority may therefore wish to ensure that it has **executed** a general vesting declaration within three years of the order becoming operative.

## COMPENSATION

55. The assessment of compensation is a complex and specialised field, governed by extensive case law. Both acquiring authorities and claimants will therefore normally require specialist advice. The following points relate to issues which have arisen in the context of the fundamental review<sup>19</sup> of compulsory purchase procedures and compensation and which are relevant to the operation of the system as it currently stands.
56. The compensation payable for the compulsory acquisition of land is based on the principle<sup>20</sup> that the owner should be paid neither less nor more than his loss. It thus represents the value of the land to the owner, which is regarded as consisting of:
- the amount which the land might be expected to realise if sold on the open market by a willing seller (open market value)<sup>21</sup>;
  - compensation for severance<sup>22</sup> and/or injurious affection<sup>23</sup>; and

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<sup>16</sup> Under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981

<sup>17</sup> Under section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981

<sup>18</sup> In *Westminster City Council v Quereshi* [1990] P & CR 380, Aldous J. held that it was the former, whilst in *Co-operative Insurance Society Ltd v Hastings Borough Council* [1993] 91 LGR 608 Vinelott J. disagreed and ruled that it was the latter

<sup>19</sup> See Compulsory Purchase Policy Review Advisory Group Final Report (July 1999); "Compulsory Purchase and Compensation: delivering a fundamental change" (consultation document, December 2001); and *Compulsory Purchase Powers, Procedures and Compensation: the way forward*" (policy statement, July 2002), available at [www.odpm.gov.uk](http://www.odpm.gov.uk) or on request, free of charge, from "ODPM Free Literature", PO Box No 226, Wetherby, LS23 7NB; tel 0970 1226 236; fax:0870 1226 237; E-mail: [odpm@twoten.press.net](mailto:odpm@twoten.press.net)

<sup>20</sup> *Established by LJ Scott in Horn v Sunderland Corporation* [1941] 2 KB 26; [1941] All ER 480

<sup>21</sup> Land Compensation Act 1961, section 5, Rule 2

<sup>22</sup> Compulsory Purchase Act 1965, section 7

<sup>23</sup> Compulsory Purchase Act 1965, section 10

compensation for disturbance and other losses not directly based on the value of the land<sup>24</sup>.

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 equivalent reinstatement<sup>25</sup>.

### **The date to which the assessment of compensation should relate**

57. Where an acquiring authority makes a general vesting declaration, compensation and the interest thereon is assessed as at and from the vesting date<sup>26</sup>. There is no such statutory definition for other cases, but it has been determined in case law<sup>27</sup> that, where a notice to treat is served, the valuation date is either the date on which the acquiring authority takes possession (the date of entry) or, if earlier, the date on which compensation is agreed by the parties or determined by the Lands Tribunal. However, under the terms of section 11 of the 1965 Act interest is payable, at the prescribed rate, from the date on which the authority enters and takes possession until the outstanding compensation is paid. It is therefore important that the date of entry is properly recorded by the acquiring authority.

### **Value of the Land**

58. Realistic estimates of compensation should be established early on and be thoroughly reviewed as better information becomes available. It is generally accepted that there can be no precise means of defining the open market value of any piece of land, and that any assessment must depend on the professional judgement and experience of the qualified valuer undertaking it. For this reason, there are likely to be variations in the estimates of value placed on any particular site by those advising the acquiring authority and the claimant. In many cases these will be narrowed down by a process of negotiation to a figure which both sides can accept but, exceptionally, it may have to be left to the Lands Tribunal to determine a fair sum. If the parties wish to obtain a binding determination as to the amount of compensation payable before the compulsory purchase process has been completed, they can make a reference by consent to the Lands Tribunal<sup>28</sup>.
59. Clearly, the closer the claim and offer the better will be the chance of a shorter period of negotiation. Acquiring authorities may therefore wish to bear in mind the possibility that, by beginning negotiations at what they themselves perceive to be the lowest possible figure within the range in which the open market value of the land in question is likely to lie, they may simply be protracting negotiations without significantly affecting the final figure. This not only creates delays in completing the acquisition, but also increases the authority's costs (including the professional fees payable for the claimant's

<sup>24</sup> Land Compensation Act 1961, section 5, Rule 6

<sup>25</sup> Land Compensation Act 1961, section 5, Rule 5

<sup>26</sup> Compulsory Purchase (Vesting Declarations) Act 1981, section 10

<sup>27</sup> *Birmingham Corporation v West Midland Baptist (Trust) Association (Inc)* [1970] AC 874; *Washington Development Corporation v Bemlings (Washington) Ltd* 52 P&CR 267

<sup>28</sup> Where the claim is small and the issues are straightforward the parties can use either the Land Tribunal's simplified procedure or the written representations procedure.

valuer), while also reducing the overall credibility of the acquiring authority in the eyes of claimants. It also prolongs the period of anxiety for the claimant while waiting for a fair settlement.

### **Advance Payments**

60. If the acquiring authority takes possession before compensation has been agreed, it is obliged under section 52 of the Land Compensation Act 1973, if requested, to make an advance payment on account of any compensation which is due for the acquisition of any interest in land. The amount payable is 90% of the acquiring authority's estimate of the compensation due or, if the amount of the compensation has been agreed, 90% of that figure; and it is due to be paid within three months of the claimant's written request. Authorities are urged to adopt a responsible approach towards making such payments, in terms of adhering to the three month statutory time limits and the requirement to pay 90% of their estimate or the agreed sum, in order to help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation. Prompt and adequate advance payments will also reduce the amount of the interest ultimately payable by the authority on the outstanding compensation due.
61. Acquiring authorities should also consider making earlier payments where justified to enable claimants to proceed with reinstatement. For example, an acquiring authority which qualifies as a local authority for the purposes of the Local Government Act 1972 may use its wide-ranging powers under section 111 of that Act to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It may therefore see advantage in using those powers to make payments before taking possession if that seems likely to encourage early settlement to the advantage of all parties. Furthermore, section 80 of the Planning and Compensation Act 1991 gives all acquiring authorities a discretionary power to make payments on account of the compensation and interest payable under any of the provisions referred to in that section or listed in Schedule 18 to that Act. Again, authorities are urged to adopt a sympathetic approach to using these powers to alleviate obvious hardship.

### **Professional Fees**

62. Although there is no specific statutory basis for the payment of the fees incurred by a claimant in obtaining professional help in preparing and sustaining his claim for compensation, there is established case law<sup>29</sup> for the payment of such fees as disturbance.
63. In the context of a recent Fundamental Review of compulsory purchase procedures and compensation, the Office of the Deputy Prime Minister in England has received considerable support for the proposal that the anachronistic Ryde's Scale should be abandoned, and the fees paid to valuers brought into line with all other professional fees by being agreed on the basis of the actual (reasonable) costs incurred. This proposal is endorsed by the National Assembly. There will therefore be no further reviews of Ryde's Scale.

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<sup>29</sup> For example, *London County Council v Tobin*, [1959] 1 All ER 649

Thus, as with all other professional fees, (and given that the current rates are already out of date), it will be for the parties concerned to agree a reasonable basis for payment<sup>30</sup>. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of the more routine claims. This might make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.

### **The effect of limitation periods on claims**

64. Whilst acquisition by the general vesting declaration procedure has always been subject to limitation period in respect claims for compensation<sup>31</sup>, acquiring authorities should be aware of the effect of limitation periods on other claims for compensation, particularly under Part 1 of the 1973 Act, following recent case law<sup>32</sup>. Claimants should be made aware at the earliest opportunity that limitation periods now apply to them in respect of all claims for compensation.

### **Planning and Compensation Bill**

65. During the preparation of this Circular, the Planning and Compensation Bill has been going through its various legislative stages. A number of provisions in the Bill relate to compulsory purchase and a further Circular will be issued to incorporate the changes once those provisions come into force.

[ ]

Minister for the Environment  
Welsh Assembly Government

The Chief Executive  
County Councils in Wales

WDA

The National Park Officer  
National Park Authorities in Wales

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<sup>30</sup> The Royal Institution of Chartered Surveyors (RICS) has recently published a guidance note on possible arrangements for agreeing surveyors' fees; "Guidance Note on fee calculation post Ryde's Scale", which is available on the RICS web-site at [www.rics.org](http://www.rics.org)

<sup>31</sup> Compulsory Purchase (Vesting Declarations) Act 1981, section 10(3)

<sup>32</sup> Hillingdon London Borough Council v ARC Limited [1998] 3 WLR 754

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<sup>33</sup> This is not an exhaustive list of the CPO powers available to acquiring authorities - only those powers for which guidance is considered necessary or helpful are covered. Some powers referred to in WO Circular 4/95 are not covered as it is no longer considered necessary to do so.

## Appendix A

# Orders made under section 226 of the Town and Country Planning Act 1990

### APPROPRIATE ACQUIRING AUTHORITIES

1. Section 226 of the 1990 Act enables a local authority as defined in section 226(8), (i.e. county or county borough), a joint planning board<sup>34</sup> or a national park authority<sup>35</sup> to acquire land compulsorily for "planning purposes" as defined by section 246. These are referred to collectively in this Appendix as "acquiring authorities with planning powers".

### THE POWERS

2. The powers in section 226 are intended to provide a positive tool to help these acquiring authorities with planning powers to assemble land where this is necessary to achieve the implementation of their planning proposals. The powers are expressed in wide terms and can therefore be used by such authorities 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. However, these powers should not otherwise be used in place of other enabling powers<sup>36</sup>, and the statement of reasons should make clear the justification for using the Planning Act powers. In particular, the National Assembly may refuse to confirm an order if it appeared to it that this general power was being 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.
3. The National Assembly takes the view that an order made under subsection (1) of section 226 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.

### Section 226(1)(a)

4. Under the power provided in section 226(1)(a), an acquiring authority with planning powers may, if authorised, acquire land in its area which is suitable for,

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<sup>34</sup> section 244(1) of the 1990 Act

<sup>35</sup> section 244A of the 1990 Act

<sup>36</sup> eg. section 164 of the Public Health Act 1875, section 89 of the National Parks and Access to the Countryside Act 1949, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 239 of the Highways Act 1980, or section 17 of the Housing Act 1985. In relation to the last, see also paragraph 8 of Appendix B, which explains that when land for housing development is being assembled under planning powers, the National Assembly will have regard to the policies set out in this Appendix.

and is required in order to secure, the carrying out of development<sup>37</sup>, redevelopment or improvement<sup>38</sup>. This wide power may be used to acquire land for a variety of planning purposes such as a town centre redevelopment or other comprehensive regeneration scheme for which the authority wishes to assemble a number of individual properties or areas of land. When an order is made under this section, both the authority and the National Assembly must have regard to the matters set out in section 226(2) (see paragraph 14 below).

### **Section 226(1)(b)**

5. Section 226(1)(b) allows an acquiring authority with planning powers, if authorised, to acquire land in its 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. This might be a useful power. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of a scheme of such, but its potential scope is broad.

### **Section 226(3)**

6. In addition to land to which section 226(1) applies ("the primary land"), section 226(3) provides that an order made under section 226(1) 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 acquiring authority with planning powers intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) should therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

### **Section 226(4)**

7. This section makes it clear that an acquiring authority with planning powers can exercise its compulsory purchase powers under subsection 226(1) or (3) irrespective of whether it intends to undertake itself the scheme for which the land is required.

### **Section 245 of the 1990 Act**

8. Section 245(1) provides the National Assembly with the right to disregard objections which, in its opinion, amount to an objection to the provisions of the development plan. This power is unique to orders made under section 226 of the 1990 Act.

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<sup>37</sup> Under section 336(1) of the 1990 Act, "development" has the meaning given in section 55 (including any special controls given by direction in relation to demolition and redevelopment (see WO Circular 31/95: "Planning Controls over Demolition").

<sup>38</sup> "Improvement" in this context might include a minor adjustment in the street pattern or the provision of space for vehicular access and parking.

9. Section 245(2) provides for situations where the National Assembly may be satisfied that some of the land shown in an order made under section 226 should be acquired compulsorily, but has not determined whether to authorise the compulsory acquisition of other land included in the order. There may therefore be occasions when it may take the view that, rather than either refusing to confirm the whole order or confirming it subject to modifications which would exclude part of the land, it should:
  - (a) confirm that part of the order which relates to the land which he is satisfied should be acquired compulsorily; and
  - (b) give a direction, postponing consideration of the order, so far as it relates to any other land, until such time as the direction specifies.

### **Interests in Crown land**

10. Sections 293 and 296 of the 1990 Act 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 interest may, therefore, be included in the order. Further advice about the purchase of interests in Crown land is given in Appendix K.

### **JUSTIFICATION FOR EXERCISING COMPULSORY PURCHASE POWERS FOR PLANNING PURPOSES**

11. Paragraphs 13 to 21 of the Circular consider in general terms the need for any acquiring authority to be able to satisfy the National Assembly that there is a compelling case in the public interest for the proposed compulsory acquisition. However, the wording of section 226 of the 1990 Act requires an authority exercising those compulsory purchase powers to take account of further specific considerations.
12. Comparing and contrasting these specific considerations with those applying to compulsory purchase powers under different statutes may have a bearing on deciding the most appropriate powers under which to acquire land. For example, it might, in some cases, be more appropriate for the Welsh Development Agency to use its powers under section 21A of the Welsh Development Agency Act 1975 (as amended by the Government of Wales Act 1998) to assemble land required for regeneration purposes than for the local planning authority to use its section 226 powers.

### **Demonstrating that the land is "required"**

13. When making an order under section 226(1)(a) or 226(1)(b), the appropriate acquiring authority is required by the terms of the Act to demonstrate that the

land to be taken is genuinely "required" in order to secure the carrying out of development, redevelopment or improvement of the land (section 226(1)(a)) or to achieve the stated purpose or purposes which are required in the interests of the proper planning of the area (section 226(1)(b)). In the context of these courses of action, the courts have held that "required" must mean more than "desirable" but that, provided there is evidence from which it would be reasonable to conclude that, without the use of the compulsory power, the purpose for which the land is required would be unlikely to be achieved, the acquiring authority should not be expected to demonstrate that they have used all other available powers before resorting to compulsory purchase.

### **Planning matters**

14. When an order is made under section 226(1)(a) of the 1990 Act, both the acquiring authority and the National Assembly must have regard to the matters set out in section 226(2). These relate to the provisions of the development plan, any extant planning permissions, and any other considerations which would be material to the determination of an application for planning permission for development on the land.
15. Thus, the authority is not bound by the provisions of the development plan as the basis for justifying the compulsory purchase of land under the provisions of section 226 where material considerations can be shown to outweigh its provisions. These might relate, for example, to national or regional policies concerning such issues as regeneration or housing provision brought forward since the last revision of the development plan. In such situations, where there has not yet been an opportunity to incorporate such policies into the development plan for the area, the National Assembly would normally expect to see that the proposals underlying the compulsory purchase have been worked up in supplementary planning guidance which has been subjected to public consultation.
16. In justifying the compulsory acquisition of private property for planning purposes, there needs to be a degree of certainty that the intended scheme will proceed and the owners will not have been deprived of their property for no good reason. This means that, before making a compulsory purchase order under section 226, an acquiring authority with planning powers needs to be satisfied, so far as is possible, that the proposed scheme would not be blocked by planning problems. An extant planning permission would clearly demonstrate that. It is, however, acknowledged that it will not always make sense to have to wait for such a permission before proceeding with an order, and this is not seen by the National Assembly as an essential requirement to be fulfilled before submitting an order for confirmation. Furthermore, there may be instances where the existence of a full planning permission might not be appropriate as a determining factor, - for example if it is about to expire or there are proposals before the local planning authority for a modification or revocation order.

17. As the allocation of land for a particular purpose in an adopted local plan or unitary development plan should normally imply that planning permission will be granted for the purpose for which the land is proposed to be acquired, subject to the consideration of any other material considerations, the National Assembly will be willing to consider an order in advance of or, more desirably, in parallel with seeking planning permission. This will, however, mean that the authority making the order will have to accept the possibility that the order could be rejected while the planning permission was granted.
18. There may also be circumstances, such as those described in paragraph 15 above, in which it is appropriate for an acquiring authority with planning powers to make an order under section 226 of the 1990 Act at the same time as an associated planning application even though this is supported solely by a proposal set out in supplementary planning guidance which has been subjected to public consultation. In such a case, both the acquiring authority and the National Assembly will need to satisfy themselves that all those who might have objections to the underlying proposal have had an opportunity to put them to the relevant planning authority, (who may also be the authority making the order), and that such objections have been taken into account by that authority in deciding to adopt the supplementary planning guidance. Even so, planning matters may still be material to the merits of, or objections to, the order.

### **Financial viability**

19. If the National Assembly is to be satisfied that the purpose for which the land is to be acquired will be achieved, evidence to establish the financial viability of the scheme will need to be provided in those cases where it is an issue. This does not mean, though, that the acquiring authority will be required as a matter of routine to submit a full financial appraisal of the proposed scheme in justification for its compulsory purchase proposals. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the National Assembly that there is a reasonable prospect that the scheme will proceed. However, the greater the uncertainty about the financial viability of a scheme, the more compelling the other grounds for undertaking the compulsory purchase will have to be.
20. If an authority exercising its compulsory purchase powers under section 226 of the 1990 Act chooses to provide detailed financial information as part of its submission, or in response to the issue being raised by an objector or other party, it may then be taken into account by the National Assembly to the extent that it may be a material consideration as mentioned in section 226(2)(c). This could arise, for example, if the fact that the necessary funding (for example, by means of grant aid) is strictly time-limited leads the authority to argue for the compulsory acquisition of the necessary land in advance of finalising the statutory planning position. Alternatively, the authority may wish to strengthen its arguments by providing detailed financial information if, for example, objectors have raised concerns that it would be imprudent, or premature, to authorise the compulsory purchase without proper consideration of the financial arrangements.

# Orders made under housing powers.

## INTRODUCTION

1. This Appendix provides guidance to local authorities considering whether to make compulsory purchase orders under the Housing Acts. It also provides guidance on the information which should be submitted in support of applications for the confirmation of housing orders in addition to the general requirements described in the Circular.
2. Housing compulsory purchase orders submitted for confirmation will be considered on their merits both in the light of any objections received and the general policy, described in the Circular, that orders should not be made unless there is a compelling case in the public interest. The further policies and requirements apply to compulsory purchase orders made under the Housing Acts.

## HOUSING ACT, 1985: PART II

### Circumstances in which powers may be used

3. Section 17 of the Housing Act 1985 ("the 1985 Act") empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
4. 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 sub-standard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, registered social landlords or owner-occupiers. Regulation 96 in the Local Authorities (Capital Finance) Regulations 1997 (SI 1997/319)<sup>39</sup> as amended ("the Capital Finance Regulations"), makes special provisions for onward disposal.

### Information to be included in applications for confirmation of orders

5. When applying for the confirmation of a compulsory purchase order made under Part II of the 1985 Act the authority should include in its statement of reasons for making the order 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, unfit dwellings, other dwellings in need of renovation and vacant dwellings; 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, may also be helpful, particularly where the case advanced for compulsory purchase turns

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<sup>39</sup> S.I. 1997/319 has been amended numerous times. Regulation 96 has, however, only been amended by SI1999/1852.

on a need to provide housing of a particular type. Where a compulsory purchase order is made with a view to meeting special housing needs, such as those of single persons, the elderly, disabled or homeless, specific information about these needs should also be included.

6. The authority should also provide information about its proposals for the land or property it is seeking to acquire. Where, as will normally be the case, it proposes to dispose of the land or property concerned, the authority should submit where possible information regarding the prospective purchaser; the purchaser's proposals regarding the provision of housing accommodation; and when these will materialise. Information regarding any other statutory consents required for the proposals will also be relevant. It is recognised that in some cases it may not be possible to identify a prospective purchaser at the time a compulsory purchase order is made. Negotiations may be proceeding or the authority may propose to sell on the open market. In such cases the authority should submit information about its 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.

### **Acquisition of land for housing development**

7. The acquisition of land for housing development is an acceptable use of compulsory purchase powers, including where it will make land available for private development, or development by registered social landlords. Section 17(4) of the 1985 Act provides that the National Assembly may not confirm a compulsory purchase order unless it is satisfied that the land is likely to be required within 10 years. The National Assembly would not normally regard compulsory purchase as justified where development will not be completed within 3 years of acquisition.
8. Where an authority has a choice between the use of housing or planning compulsory purchase powers (referred to in Appendix A) the National Assembly 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 National Assembly will have regard to the policies set out in this Appendix.

### **Acquisition of empty properties for housing use**

9. 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 into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. When considering whether to confirm a compulsory purchase order the National Assembly 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; the outcome; and what works have been carried out by the owner towards its re-use for housing purposes. Cases may, however, arise where the owner cannot be traced.

## **Acquisition of sub-standard properties**

### *(a) General use of Power*

10. Compulsory purchase of sub-standard properties may also 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. In considering whether to confirm a compulsory purchase order the National Assembly will wish to know what are the alleged defects in the order property; what other measures the authority has taken to remedy matters (eg. service of a notice on the owner under section 215 of the Town and Country Planning Act 1990 requiring him or her to remedy the loss of amenity that such a property causes); the outcome; and the extent and nature of any works carried out by the owner to secure the improvement and repair of the property. The National Assembly will also wish to know the authority's proposals regarding any tenants of the property.
11. The National Assembly 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.

### *(b) Houses in multiple occupation*

12. Cases may arise where an authority wishes to make a compulsory purchase order following a control order under section 379 of the 1985 Act in respect of a house in multiple occupation. Guidance on the relevant statutory provisions is given in paragraphs 4.8.1 - 4.10.4 of the Memorandum accompanying WO Circular 55/93 "Houses in multiple occupation: guidance to local authorities on managing the stock in their area". It is recognised that a compulsory purchase order may be justified where there is no realistic possibility of returning a property to the owner at the expiry of the control order.
13. Where a compulsory purchase order is made under Part II of the 1985 Act within 28 days of the control order, Part IV of Schedule 13 provides that the authority need not prepare or serve a Management Scheme until it is notified of the National Assembly's decision whether or not to confirm the compulsory purchase order. A compulsory purchase order may be made after the 28 day period has elapsed, but the authority will then remain under the duty to prepare a Management Scheme. It should also be borne in mind that where a property has been improved following a control order, there may be less justification for compulsory purchase to secure improved housing accommodation. Where the control order has been in force for a significant period of time, evidence of the previous management of the property, on which the case for compulsory purchase may have to depend, may no longer be current. Authorities who wish to resort to compulsory purchase may therefore find it advisable to do so as soon as possible after the control order has been made.

14. Difficulties have arisen where authorities wishing to take advantage of the 28 day provision have prepared compulsory purchase documents hastily and then found the compulsory purchase order to be defective and incapable of confirmation. Therefore, in making a control order, an authority may at the same time want to anticipate the possible use of compulsory purchase procedures and prepare accordingly.

(b) *Limitations*

15. The National Assembly confirms the advice given to the Office of the Deputy Prime Minister that the powers under Part II of the 1985 Act to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement 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 II 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.
16. 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 1985 Act. The National Assembly cannot give consent for the disposal if it appears to it that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

### **Acquiring authority undertakings not to implement compulsory purchase orders**

17. Where they are seeking to acquire compulsorily an empty and neglected property some acquiring authorities have adopted the practice of offering to the owner an undertaking that if he (or she) withdraws his objection and agrees to improve the property and bring it into acceptable use within a specified period, the confirmed order will not be implemented. Such undertakings are a matter between the acquiring authority and owner, and the National Assembly has no involvement. A compulsory purchase order the subject of such an agreement will still be considered on its individual merits as described in paragraphs 9 and 10 above. The National Assembly has no powers to confirm an order subject to such conditions.

## **Housing Act 1985: Part IX**

### **Clearance areas**

18. General guidance on clearance areas is given in National Assembly for Wales Circular 20/02 - Housing Renewal Guidance, Annex J. Advice on use of clearance area compulsory purchase powers is given in Annex J, Appendix 1 to that Circular. For ease of reference, the summary of the guidance in Annex J, Appendix 1 is repeated in paragraphs 19 and 20 below.

19. Clearance area CPOs are made under section 290 of the Housing Act 1985. In addition to the general requirements set out in the Circular, an authority submitting a clearance area CPO will be expected to deal with the following matters in their statement of reasons:
- the declaration of the clearance area and its justification, having regard to the Code of Guidance for dealing with unfit premises in Annex G [to the Housing Renewal Guidance];
  - The unfitness of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are unfit as required by Rule 22(2) in the 1990 Inquiries Procedure Rules;
  - the justification for acquiring any added lands included in the CPO;
  - proposals for re-housing and for re-locating commercial and industrial premises affected by clearance; and
  - the proposed after-use of the cleared site. The authority should demonstrate that there are no planning impediments to the proposed use.
20. Authorities promoting clearance area CPOs will need to demonstrate that they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that.

## **Local Government and Housing Act 1989: Part VII**

### **Renewal areas**

21. General guidance on renewal areas is given in Annex I to the National Assembly Housing Renewal Guidance (NAW Circular 2002). Appendix 1 to that annex gives guidance on acquisition of land and property in relation to renewal areas, and for ease of reference is reproduced at paragraphs 22-28 below.
22. Section 93(2) of the Local Government and Housing Act 1989 ("the 1989 Act") empowers authorities to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair; their effective management and use; or the well-being of residents in the area. They may provide housing accommodation on land so acquired.
23. Section 93(2) of the 1989 Act also provides that authorities may acquire by agreement or compulsorily properties for improvement, repair or management by other persons. 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 (RA).

24. 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 RA strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (e.g. manpower) resources available to them and to other bodies concerned.
25. Section 93(4) of the 1989 Act empowers authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a RA. 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 registered social landlord or other development partner. Where projects involve the demolition of properties, regard should be had to any adverse effects on industrial or commercial concerns.
26. The powers in sections 93(2) and 93(4) of the 1989 Act are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in RAs.
27. 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 Assembly Government 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.
28. As explained in the Circular, compulsory purchase orders are considered on their merits but should not be made unless there is a compelling case in the public interest. Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the 1989 Act, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the RA. It should also set out the relationship of the proposals for which the CPO is required to their overall strategy for the RA; 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**

29. Compulsory purchase orders made by local authorities under section 300 of the 1985 Act fall to 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 National Assembly will also have regard to the policies set out in this Appendix where applicable.

# Orders made under Part VII of the Local Government Act 1972 for purposes of other powers

## INTRODUCTION

1. Some of the powers in legislation for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase. 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 such 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.
2. Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the 1972 Act. Section 120 provides a general power for principal local authorities to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power (see examples at paragraph 9), or where land is intended to be used for more than one function.
3. The normal considerations in relation to the making and submission of a compulsory purchase order, as described in the Circular, would apply to orders relying upon section 121. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.
4. Section 125 of the 1972 Act (as amended by section 43 of the Housing and Planning Act 1986) is a general power for a principal council<sup>40</sup> to acquire land compulsorily (subject to certain restrictions) on behalf of a community council which is unable to purchase by agreement land needed for the purpose of a statutory function.

## ACQUISITION AND ENABLING POWERS

5. When an order is made by a principal council under section 121 of the 1972 Act, or by a principal council on behalf of a community council under section 125 of that Act, paragraph 1 of the order should cite the relevant acquisition power and state the purpose of the order, by reference to the Act ("enabling Act") under which the purpose may be achieved.
6. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted in the order (see Note (e) to Forms 1 to 3 in the Schedule to

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<sup>40</sup> Defined in section 270 of the 1972 Act in relation to Wales as a county or county borough council.

the 1994 Regulations). For example - "..... County Borough Council are under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the community council of .....] for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 the land which is described ....."

7. As mentioned above, authorities should note that sections 121 and 125 of the 1972 Act are subject to some constraints. Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121. These are as follows:
  - a. for the purposes specified in section 120(1)(b), ie. the benefit, improvement or development of their area;
  - 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) in relation to orders made by principal councils on behalf of community councils.

8. An enabling power (see paragraph 1) may or may not also contain a power to acquire land. Section 164 of the Public Health Act 1875 (public walks and pleasure grounds) is an example of a power to acquire land which itself has no provision for the use of compulsion, but which can be exercised in conjunction with the power of compulsory purchase at section 121.
9. Other powers which do not include a land acquisition power (see paragraph 2) but which can be used in conjunction with sections 120 and 121 of the 1972 Act to achieve compulsory purchase include the following:
  - i. public conveniences - section 87, Public Health Act 1936;
  - ii. cemeteries and crematoria - section 214 of the 1972 Act (see also paragraph 15 below);
  - iii. recreational facilities - section 19, Local Government (Miscellaneous Provisions) Act 1976 (used in the example in paragraph 6);
  - iv. refuse disposal sites - section 51, Environmental Protection Act 1990; and
  - v. and drainage - section 62(2), Land Drainage Act 1991.

## **ORDERS MADE ON BEHALF OF COMMUNITY COUNCILS**

10. If a community council have been unable to acquire by agreement and on reasonable terms, they may make representations to the principal council to

make an order under section 125. The principal council should have regard to this and to all the other matters set out in section 125, some of which are mentioned in paragraph 13.

11. A principal council may not acquire land compulsorily on behalf of a community council for a purpose for which a community 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) of section 226).
12. Section 125 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 principal council should purchase the land compulsorily, on behalf of the community council, under section 25 of that Act.
13. If the principal council refuse to make an order under section 125, or do not make one within 8 weeks of the community council's representations or within such an extended period as may be agreed between the two councils, the community council may petition the National Assembly, which may make the order. Where an order is made by the National Assembly in such circumstances, section 125 and the 1981 Act apply as if the order had been made by the principal council and confirmed by the National Assembly.

## **JOINT ORDERS AND MIXED PURPOSES**

14. A single order may be made under section 121 of the 1972 Act by more than one council and, as mentioned in paragraphs 1 and 2, for more than one purpose.
15. A principal council may also make an order on behalf of more than one community council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several community councils which form a joint burial committee in the area of the principal council. (See also paragraph 9(ii).)

## **COSTS AND COMPENSATION**

16. A community council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A principal council which makes an order on behalf of a community council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the community council the expenses which it has incurred. This involves 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 (see also paragraphs 42 and 43 of the Circular); and statutory compensation including, where appropriate, any additional disturbance or home or farm loss payments, to which the dispossessed owners may be entitled.

17. When considering whether to confirm or make an order, the National Assembly will have regard to questions concerning the ability of the community 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.

### **Orders made under section 89(5) of the National Parks and Access to the Countryside Act 1949**

1. Section 89(5) of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") includes powers for a local planning authority to acquire land compulsorily in order to:
  - plant trees to preserve or enhance the natural beauty of their area (section 89(1)); or
  - carry out works to enable land in their area which appears to them to be (a) derelict, neglected or unsightly, or (b) is likely to become so by reason of actual or apprehended collapse of the surface as the result of underground mining operations (other than coal mining) (section 89(2) as amended), to be reclaimed or improved or brought into use.
2. If an authority doubts whether the powers under section 89 should be used, or where various uses are proposed, it is open to it to consider acquisition under section 226 of the Town and Country Planning Act 1990 (see Appendix A). The various other powers under which local authorities can acquire and develop land for particular purposes, such as for housing or public open space, can also be exercised in relation to land which is derelict, neglected or unsightly.
3. When considering whether to make an order under section 89(5) of the 1949 Act, or when preparing their case in support of such an order, authorities may find it helpful to have the National Assembly's view about the meaning of the words "derelict, neglected or unsightly" for these purposes.
4. The phrase "derelict, neglected or unsightly" is used in connection with the specific powers of reclamation given to a local authority under section 89(2) of the 1949 Act. There are no statutory definitions of these words and so they are to be given their natural, common-sense meaning. It is preferable, where possible, to consider the words taken together, as there is a considerable overlap between all three words. The word "unsightly" is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be "neglected" without having been the subject of any operations by man (such as building, dumping or excavating), but it may be inappropriate to describe such land as "derelict".
5. It may be that land is being put to some slight use but is still properly described as "derelict" or "neglected" when its condition is considered in the

light of the potential use of the land. It is not the purpose of section 89, however, to enable a local authority to carry out works or to acquire land compulsorily solely because they consider that they have a better use for the land than the present one.

# Orders for educational purposes, and for public libraries and museums

## EDUCATION– LOCAL EDUCATION AUTHORITIES’ COMPULSORY PURCHASE POWERS

1. Section 530 of the Education Act 1996 (as amended) ("the 1996 Act") gives power to the local education authority (LEA) to acquire compulsorily land which is required for the purposes of its functions, including the purposes of any LEA-maintained or assisted school or institution.
2. Orders made by LEAs under section 530 of the 1996 Act should be submitted for confirmation to the National Assembly at the address given in Appendix S. LEAs may seek guidance, if necessary, from the National Assembly on the form of draft orders where there is doubt about a particular point.
3. Before making an order under section 530 of the 1996 Act, the LEA should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.

## THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998

4. The LEA may wish to acquire land compulsorily in conjunction with proposals under section 28 or 31 of the School Standards and Framework Act 1998 ("the 1998 Act"). In such circumstances the LEA should publish the 1998 Act proposals before making and submitting any compulsory purchase order under section 530 of the 1996 Act.
5. The relevant school organisation committee or adjudicator will consider the application for approval of the 1998 Act proposals on its merits and independently from consideration by the National Assembly of the case for confirming the compulsory purchase order. Where the relevant body is minded to approve the proposals, it should do so conditionally under regulation 9(b) of the Education (School Organisation Proposals) (Wales) Regulations 1999 on condition that the relevant site is acquired. The LEA will be informed of the decision so that it may then make and submit the order. If the National Assembly decides to confirm the order, the order will be sealed and returned to the LEA. When the purchase of the site has been effected, and the condition of the approval met, the approval of the proposals therefore becomes final with no further action required.
6. If the decision is to reject the 1998 Act proposals, however, the LEA should not make the order since, in these circumstances it would be inappropriate for the National Assembly to confirm it.

## **THE EDUCATION ACT 2002**

7. Section 72 of the Education Act 2002 introduce new arrangements for the National Council for Education and Training for Wales to publish proposals for the restructuring of sixth form education. The final decision on whether to approve proposals will be made by the National Assembly. These arrangements are expected to come into force in Spring 2004. In such cases the need for the order will be taken into account by the National Assembly when it considers the statutory proposals, and any decision to approve them will be conditional upon the acquisition of the site. The LEA will be informed of the decision on the proposals so that it may then make and submit the necessary compulsory purchase order. The National Assembly will consider the order separately. If the order is confirmed, the proposals will be fully approved when the site purchase is completed. If the order is not confirmed the proposals will fall when the condition is not met.

## **VOLUNTARY AIDED SCHOOLS**

8. Where compulsory purchase orders are made for voluntary aided schools, the following documents, additional to those specified in Appendix M, should accompany, or be submitted as soon as possible after, the order:
  - (a) a completed copy of form SB1 (obtainable from the National Assembly at the address in Appendix S); and
  - (b) a qualified valuer's report.

## **PUBLIC LIBRARIES AND MUSEUMS**

9. Land for public libraries and museums may be acquired compulsorily under section 121 of the Local Government Act 1972 in conjunction with an appropriate enabling power (see also Appendix C). Orders for these purposes should be submitted to the National Assembly at the address given in Appendix S. Such orders should be accompanied by the following additional documents:
  - (a) a completed copy of form CP/AL1 (obtainable from the National Assembly); and
  - (b) a qualified valuer's report.
10. Authorities are reminded of the general advice in paragraph 11 of the Circular that all orders should be made having due regard to statutory requirements and to any guidance from the National Assembly.

### Compulsory Acquisition for Highway Purposes

This Appendix refers to a number of particular points arising in relation to the compulsory acquisition of land under the Highways Act 1980. Unless therefore there are indications to the contrary references in the text are to the 1980 Act.

#### STATEMENT OF PURPOSES OF ACQUISITION IN THE ORDER

1. In order to enable the purposes of the acquisition to be properly stated in the CPO itself, it is frequently important to determine whether the scheme involves the construction of a new highway or is a scheme for the improvement of an existing highway. In many cases the distinction is obvious but cases do arise (particularly where the scheme involves realignment of an existing highway) in which there can be some difficulty in ascertaining whether the scheme does or does not involve the construction of a new length or new lengths of highway.
2. It is considered that the proper criterion to be applied in all cases is that indicated in the wording of Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995; that is to say, that where all the projected works are to be carried out on land outside but abutting the boundary of the highway the case is involving the improvement of an existing highway only, but where works are to be carried out on other land, so that, when the scheme is complete, there will be non-highway land between the projected works and the existing highway, then on that length the works should be regarded as works for the construction of a new highway.
3. To assist in attaining clarity and accuracy in the statement of purposes in the CPO, regard should be had to the following points:-
  - (a) **Construction as well as improvement**  
If construction of a new length of highway, and improvement of an existing highway, are involved, both purposes should be clearly stated.
  - (b) **Ancillary roads, etc.**  
Where construction of a new highway involves construction of ancillary roads to connect the new road with the existing highway system, or related improvements to existing roads, this should be made clear.
  - (c) **Highway to be improved**  
These should be named or briefly described.
  - (d) **New lengths of highway**  
These should be briefly described (eg "a new highway to bypass (name of town or village)", "a new highway from Llewelyn Street to Heol-y-Mynydd in the said Council's area, etc).

**(e) Land outside the highway**

Where the scheme is one for the improvement or construction of a highway, the land to be included in the CPO will normally be limited to that falling within the highway as improved or newly constructed. If land outside these limits is required for use in connection with the improvement or construction of a highway (eg as working space), this will need to be made clear and the power in section 240(2)(a) cited. If areas of land outside the proposed boundaries of the highway are to be acquired in reliance on section 239(6) the description of purposes should include a reference to land adjoining or adjacent to the highway, as well as to the frontages to the highway.

**(f) Associated schemes/orders**

Where there is an associated made special roads scheme/side roads order the purposes need not be elaborate; they can be described in broad terms and as being in pursuance of the made scheme/order.

**(g) Acquisition of rights**

Where it is proposed to acquire rights over land for various purposes (including drainage), these should be described.

## **EXTENT OF LAND ACQUISITION**

### **Distance limits**

4. Section 249 and Schedule 18 specify distance limits applicable to the compulsory acquisition of land. These limits do not apply to land required for the drainage of a highway, the diversion of a navigable watercourse, the carrying out of works under section 110, or the provision of protection for a highway against snow, flood, landslide or other hazards of nature.

### **Private means of access**

5. Section 240(1) gives highway authorities power to acquire land compulsorily for the purpose of providing new private means of access as authorised by section 129 or by an order under section 14. Land needed for use in connection with the carrying out of such works may also be included in the order.

### **Side roads**

6. Section 240(1) also empowers the compulsory acquisition of land required in connection with an order made under section 14 for the alteration of side roads which cross or enter the route of a classified road or will otherwise be affected by the construction or improvement of a classified road. Land needed for use in connection with the carrying out of such works may also be included in the CPO.

### **Working space**

7. Section 240(2) authorises highway authorities to acquire compulsorily land adjoining or in the vicinity of an existing highway or the route of a proposed

highway in order to enable them to carry out reasonably and effectively works in connection with the construction or improvement of the highway (ie land for working space, means of access to construction sites or the provision of spoil dumps, plant and machinery storage space, etc), (see paragraphs 5 and 6 above in relation to working space, etc, required in connection with works carried out under sections 14 to 129).

### **Land burdened by restrictive covenants and third party rights**

8. Section 260(1) and (2) empowers highway authorities to include in orders, land in which they have already acquired an interest by agreement. When such a CPO becomes effective, the provisions of the Compulsory Purchase Act 1965 will apply, thus giving persons entitled to the benefit of covenants or other third party rights, a right to compensation in appropriate circumstances. It is not envisaged that section 260(1) can be used so as to sanction a CPO which does not cover land other than the land in which the highway authority have acquired the interest by agreement. Section 260(3) and (4) provides for enabling lessees of, or contractors operating, a service area or a lorry area to use the land for those purposes, notwithstanding the existence of a restrictive covenant or other third party rights, in the same way that the highway authority themselves could use the land.

### **Power to acquire land outside the highway boundary**

9. Section 246 provides the power to acquire land compulsorily (or by agreement) outside the proposed boundary of a highway in order to reduce the adverse effect of the existence or use of the highway on its surroundings, as follows:-
  - (i) Section 246(1) provides that highway authorities may acquire land compulsorily for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them (or proposed to be constructed or improved by them) has or will have on its surroundings. This power enables the acquisition of land needed to maintain or improve the environment of areas adjacent to the road. Having acquired such land, highway authorities may make suitable use of it under the provisions of section 282 or they may dispose of it under existing powers. It is considered desirable that wherever possible section 246(1) land should be included in the same compulsory purchase order as the highway land. The acquiring authority should, of course, be in a position to show what they intend to do with the land. Compulsory acquisition of land under the provisions of section 246(1) must begin before the opening of the new or improved highway, and section 246(4) defines the time when acquisition is begun.
  - (ii) Section 246(7) makes it clear that the reference to construction or improvement of highways in section 246 includes construction or improvement pursuant to a side roads order.

- (iii) Section 250(1) makes it clear that the expression "highway land acquisition powers" includes the power to acquire land under section 246. This means that the powers to acquire rights compulsorily under section 250, the power to make a CPO to clear title under section 260, the provisions relating to concurrent procedure in section 257 and the power to make or confirm a compulsory purchase order in part under section 259 will apply to the acquisition of land under section 246.
- (iv) Section 282 enables highway authorities to carry out works for mitigating the adverse effects which the existence or use of a highway has or will have on the surroundings of the highway. This means that there are specific powers to erect physical barriers (such as walls, screens or mounds of earth) alongside roads in order to reduce the effects of traffic noise on people living nearby. Section 282(2) enables the appearance of any earth mounds or other landscaped works to be improved by planting. The provision under section 282(3) that a highway authority may develop or redevelop any land acquired by them under section 246 enables the construction of buildings alongside new or improved roads. Such buildings may be constructed so as to act as a barrier against traffic noise or otherwise for the mitigation of adverse effects of the highway on its surroundings.

### **Boundary of land required cuts through building**

10. Where the boundary of the widening or new construction cuts through a building, notwithstanding the powers of an owner to exercise his right under section 8 of the Compulsory Purchase Act 1965 to require the highway authority to buy the entire building or in a case where the provision of that section may be inapplicable, it is usually appropriate to acquire the site of the entire building in reliance on section 240(2)(a) of the 1980 Act. This certainly should be done in cases where the demolition of part of a building would cause the rest of the building to collapse or leave a precariously poised or dangerous structure. Where, however, the highway scheme involves the acquisition of significant areas of land which lies outside the highway boundary, in a case where section 240(2)(a) is inapplicable, use should be made of the powers given by section 239(6) as well as those given by section 239(1) or (3) and, as appropriate, section 246(1).

### **Acquisition of rights over land**

11. There are frequent cases where highway schemes necessitate work on land not required to form part of the highway and where, so long as the highway authority have power to carry out such work, the landowner can by such an arrangement retain his land to mutual advantage, since the highway authority would not wish to incur the expense of acquiring and maintaining land unnecessarily. Sections 250 to 252 (which should be read with Schedule 19) provide for the compulsory acquisition of rights over land by the creation of new rights.

12. The kinds of rights for which these provisions are designed are in the nature of easements ancillary or appurtenant to the highway, proposed highway or other facility. Examples of those likely to be required in connection with highway schemes are as follows:
  - (i) the right to construct and maintain a bridge, viaduct, tunnel or other structure to carry a highway over or under land;
  - (ii) the right to lay and maintain drains and associated works (eg inspection chambers); but see also paragraph 16 below;
  - (iii) the right to carry out works on watercourses (eg diversions, widening or deepening channels, filling in old watercourse beds, etc);
  - (iv) the right to place and maintain footings or ground anchors in land;
  - (v) the right to place and maintain snow fences, etc, on land;
  - (vi) the right of access for the construction and maintenance of a retaining wall (ie on other land to which title will be acquired).
13. However, it is emphasised that the National Assembly does not envisage that these powers can be used by highway authorities in cases where the land will form part of the highway or where the works will, to all intents and purposes, deprive the land owner permanently of any real benefit from the land. In such cases full title to the land would be appropriate. Similarly, in so far as compulsory acquisition is concerned, full title should be included in the order in cases where highway land acquisition powers are exercised to provide for a footpath, bridleway or other highway across land or for a new means of access to premises for a third party.

#### NOTE

*It is considered that, because of the absence of express provision to this effect, sections 250 to 252 do not provide for the compulsory creation of rights for limited periods, though they do not preclude the creation of such rights by agreement. Also sections 242(3), 254 and 255 which are rarely used powers (dealing with the creation of rights) are not affected by these provisions.*

14. Where an Order provides for the acquisition of rights over land forming part of a common, open space or fuel or field garden allotment, the special parliamentary procedure is no longer a requirement. The Order is instead subject to the National Assembly's Standing Orders prior to confirmation. Specific power to acquire land to be given in exchange for rights which will burden common or other special category land is contained in section 250(2) of the 1980 Act. Rights acquired under this Act are, under section 251, binding upon successors in title to the land concerned, and where a highway is transferred from one highway authority to another they are exercisable by the transferee authority. Section 251(5) provides in effect that where registered land is affected the instrument creating rights must be registered under the

Land Registration Acts. Section 252 provides that a landowner can require an acquiring authority to take full title to the land instead of the right authorised in a CPO.

15. Where a number of rights are included in the CPO, the following form of wording is suggested for article 1:

"a. Subject to the provisions of this order, the said ... Council are, under sections ... and 250 of the Highways Act 1980, hereby authorised to purchase compulsorily for the purpose of ... the land which is described in the Schedule hereto and is delineated and coloured pink on the map prepared in duplicate sealed with the common seal of the said ... Council and marked 'Map referred to in the ... Purchase Order 19.', and the rights described in the said Schedule over the land described therein and delineated and shown coloured blue on the said map."

The rights should then be described in column 2 of the Schedule.

### **Drainage of highways**

16. Reference has already been made to the power in the 1980 Act to acquire rights over land for drainage purposes. The following provisions should also be noted, however –

- (i) where it is proposed to lay drains for an existing highway, this work can be done under section 100(1) to (3) if the drains are to be laid on land adjoining or near to the highway. In addition a highway authority can, under section 100(5) and (6), use Public Health Act powers to drain their highways and proposed highways. In all these cases the acquisition of specific rights by CPO is unnecessary. The cases where rights acquisitions may be necessary or desirable are, generally, cases involving new highways, as section 100(1) to (3) only applies to highways – it does not apply to *proposed* highways.
- (ii) Where rights to lay and maintain drains are involved and they are to be used for discharging water into any watercourse or any drainage or other works vested in or under the control of a navigation authority, a water authority or other drainage authority within the meaning of the Land Drainage Act 1991, section 339 of the 1980 Act will apply and the consent of the relevant authority will be needed. Before confirming an order providing for the acquisition of land or rights in such cases, the National Assembly will require to be satisfied that the necessary consents have been given or that the consent of these authorities is not needed.

### **Works affecting watercourses**

17. Many highway schemes involve the diversion of or execution of works to watercourses. Sections 106 and 107 make provision for the construction of bridges over or tunnels under navigable waters and sections 108 and 109 give specific powers to divert a navigable watercourse. Sections 106 and 108 also contain provisions which allow the matters provided for therein to be dealt

with in a side roads order, although it should be noted that in the case of section 106 this can be done only if the bridge or tunnel is part of a highway which is to be altered or constructed in pursuance of the side roads order. Section 100 provides powers to divert non-navigable watercourses and to carry out other general works in respect of both navigable and non-navigable watercourses. The power to acquire land for works under section 108 and 110 is contained in section 240(2)(b), and under section 249(3) the distance limits in relation to compulsory acquisition do not apply to land or rights acquired for this purpose.

18. It will be noted that section 110 provides for watercourse works to be carried out without the acquisition of land and in such cases subsections (5) and (7) contain a distinct procedure as to serving of notices and hearing of objections. It is suggested, however, that where local highway authorities are proposing to carry out such works in connection with a highway scheme for which they are also making a CPO for other land they will find it advantageous to include in the CPO rights to carry out the watercourse works. This will ensure that all the objections are dealt with under the CPO machinery.

#### **Acquisition of land in advance of requirements**

19. The provisions of section 248(2)-(4) (together with Schedule 17) enable highway authorities to use their land acquisition powers to acquire land compulsorily in advance of requirements, subject to one or more of the conditions set out in section 248(3) being fulfilled. This power is useful, for example, where land is required for the construction of a new road which is designed to be a dual carriageway road but where it is intended to build only one of the carriageways immediately, or where it is intended to carry out a major highway improvement but only a limited improvement is to be made in the first instance. These powers are also exercisable in relation to the provision of service areas, maintenance compounds and lorry areas. Under the requirements of section 248(3), however, the highway authority must have an immediate intention to throw *all* the land into the highway (eg as a very wide verge) or into the service area, etc, as the case may be, or their outline plans for the use of this subsequent stage area must have been approved by the National Assembly. Where the land is not to be thrown into the highway immediately it might well be possible for a landowner to retain an area of second stage land under cultivation or for grazing until such time as the highway authority needs it for highway works. The power to acquire in advance of requirements facilitates considerably the forward planning of local authorities' major road projects, and also makes it possible to acquire the necessary land in one operation instead of two or more as well as avoiding the expense of making several orders and conducting associated inquiries. The provisions may also be of benefit to landowners whose land might otherwise be subject to piecemeal acquisition.

#### **Procedural points affecting the treatment of objections and the consideration of orders**

## **POWER TO DISREGARD CERTAIN OBJECTIONS**

20. Where an order depends on any of the schemes or orders set out in Schedule 20 and on which a decision has been given, the National Assembly under section 258(1) has power to disregard an objection to the order if, in its opinion, it amounts in substance to an objection to the related scheme or order. The power to disregard repetitious objections is discretionary and the National Assembly is not therefore obliged to disregard them. It would undoubtedly wish to hear and consider any such objection which appeared to raise new points or where, owing to the lapse of time since the earlier decision, changed circumstances might make it desirable to consider alterations to the road scheme as originally proposed. This power to disregard repetitious objections does not extend to persons appointed to conduct public inquiries. While they may draw the attention to objectors, in appropriate cases, to the existence of these provisions they will listen to and report on any points made by the objector so that they can be considered by the National Assembly.

## **SUBMISSION OF "ALTERNATIVE ROUTE" OBJECTIONS**

21. Under section 258(2) and (3) an objector to a CPO who wishes to propound an alternative route at an inquiry can be directed to furnish to the National Assembly sufficient particulars of the alternative route to enable it to be identified. Objectors must be given at least fourteen days in which to prepare their particulars of the alternative route and they are required to submit them to the National Assembly not less than fourteen days before the date of the inquiry. The National Assembly would wish to include any such direction in the notice of the inquiry. As copies of such submissions received by the National Assembly will need to be sent to the acquiring authority as they are received, but in sufficient time to enable the authority to consider them before the inquiry, the National Assembly's aim is to specify a submission date in the notice which terminates some 3 weeks before the date of the inquiry or hearing. If an objector fails to comply with a direction to submit details of alternative route proposals, both the National Assembly and the person conducting the inquiry may disregard the objection insofar as it consists of a submission about an alternative route.

## **PART-CONFIRMATION OF COMPULSORY PURCHASE ORDERS**

22. Section 259 of the 1980 Act empowers the National Assembly to confirm part of a CPO and defer its decision on the remaining part. Where an order is confirmed in part, that part and the remaining part are treated as becoming separate orders. In deciding whether to exercise its power to confirm, with or without modifications, part of a CPO, the National Assembly will give very careful consideration to the relationship between that part and the remainder of the order, and it will not use that power in cases where the remaining part is of a controversial nature and the interests of the objectors to that remaining part would be likely to be prejudiced by part-confirmation.

## Special kinds of land

### SECTION 1

#### National Trust Land

1. Since the coming into force of the Government of Wales Act 1998<sup>41</sup>, the special parliamentary procedure relating to special kinds of land no longer has effect in relation to those orders to be made or confirmed by the National Assembly, with the single exception of National Trust land. All land formerly subject to that procedure is now dealt with in accordance with the standing orders of the National Assembly<sup>42</sup>.
2. The advice in this Appendix about the compulsory purchase of the National Trust land mentioned in Part III of the 1981 Act also applies to the compulsory acquisition of new rights over such land and to paragraph 5 of Part II of Schedule 3;
3. Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section 18(3)), 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.

#### Special parliamentary procedure

4. Where an order is being confirmed so as to include National Trust 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. The National Assembly will give full instructions at the appropriate time.
5. Described briefly for information, special parliamentary procedure is as follows: following the National Assembly's decision to confirm, the order is laid before Parliament, after giving 3 days' notice in the London Gazette. If a petition of general objection or amendment 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 2

#### Statutory Undertakers

6. Section 8(1) defines "statutory undertakers" for the general purposes of the 1981 Act. Paragraphs 10 and 11 below explain the effects of section 17, for the purposes of which other bodies (eg. housing action trusts) may be defined as,

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<sup>41</sup> Section 44

<sup>42</sup> SO 25

or deemed to be, statutory undertakers. Public gas transporters, certain electricity suppliers, the Environment Agency and water and sewerage undertakers are deemed to be statutory undertakers for the purposes of the 1981 Act. British Telecom are not statutory undertakers 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 1981 Act.

### **Protection for statutory undertakers' land**

7. Sections 16 and 17 provide protection for statutory undertakers' land. In both cases, the land must have been acquired for the purposes of the undertaking and these 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 Secretary of State<sup>43</sup> under section 16, or an objection in respect of land to which they think section 17 applies (but see paragraphs 10 and 11)), 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, an authorisation held by Transco to act as a gas transporter within the meaning given by section 7(1) of the Gas Act 1986, which by virtue of section 16(1) and paragraph 2(1)(xxxi) is therefore a statutory undertaker, would not apply in relation to a redundant, manufactured gas works which they held, in their authorised area, as a site to be redeveloped for housing. In such circumstances, Transco would not be deemed to be a statutory undertaker, since they would be acting otherwise than for purposes connected with the supply of gas through pipes to premises.

### **Section 16 of the 1981 Act**

8. Under section 16, 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 public gas suppliers, the Secretary of State for Trade and Industry. 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.
9. 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 National Assembly"). Where the 'appropriate Minister' is also the confirming authority (ie in Wales, in relation to water and sewerage undertakers) the intention of the statutory undertakers should be clearly

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<sup>43</sup> The functions of the Secretary of State as "the appropriate Minister" (in pursuance of the definition in section 8(3)) of the 1981 Act are only transferred to the National Assembly so far as they relate to water and sewerage undertakers (treated as statutory undertakers for the purposes of this Act by virtue of Schedule to the Water Act 1989) except under section 16 where those functions are also transferred in relation to the bodies and trusts referred to in section 16(3). It is directed that, in relation to water and sewerage undertakers, these functions shall, in relation to land situated in the catchment areas of the rivers Dee, Wye and Severn be exercisable by the National Assembly concurrently with the Secretary of State.

stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection.

10. Subject to the advice in paragraph 11 below about orders to which section 31 applies, where a section 16 representation is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is the National Assembly) 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 (16(2)(a)) that the land can be taken without serious detriment to the carrying on of the undertaking, or (16(2)(b)) that if taken it can be replaced by other land without serious detriment to the undertaking.

### **Joint confirmation**

11. If the appropriate Minister is unwilling (or unable) to give a section 16(2) certificate, the land may, nevertheless, be acquired compulsorily if the order is confirmed jointly by the appropriate Minister and the National Assembly under section 31 of the 1981 Act. An order may only be confirmed jointly if it is made under any of the enactments mentioned in section 31(1).

## **SECTION 3**

### **Section 19 of the 1981 Act**

12. 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 1981 Act:
  - "common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green<sup>44</sup>. 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.
13. An order which authorises purchase of any such land will not be confirmed unless the National Assembly gives a certificate under section 19 indicating its satisfaction that either:
  - section 19(1)(a) - exchange land is being given which is no less in area and equally advantageous as the land taken; or
  - section 19(1)(aa) - that the land is being purchased to ensure its preservation or improve its management; or

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<sup>44</sup> Where rights of common are extinguished by an order, acquiring authorities should also consider the need to seek consent under section 22 of the Commons Act 1899. Further information can be obtained from the address given in Appendix S.

- section 19(1)(b) - 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.
14. Likewise, an order which authorises the purchase of new rights over such land will not be confirmed unless a certificate is given under Schedule 3, paragraph 6 (See Appendix J, paragraphs 10–14).
  15. As to the form of order, see Appendix Q, paragraphs 16-23 and Appendix J, paragraphs 13-16.

### **Application for a section 19 certificate**

16. An acquiring authority which will require a certificate from the National Assembly under section 19 and/or Schedule 3, paragraph 6, should apply to the address given at Appendix S.

Applications for certificates should be made when the order is submitted for confirmation (or, in the case of an order prepared in draft by the National Assembly, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

17. 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.)

18. 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.
19. It must be specified under which sub-section(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 sub-section, 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 250 square yards (209 square meters) or under the highway widening or drainage criterion.

20. In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the National Assembly 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; and
  - details of any special provisions or restrictions affecting any of the land in the application;
  - any further information which supports the case for a certificate.
21. 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 National Assembly is satisfied that a certificate could, in principle, be given, it will direct the acquiring authority to publish notice of its 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.
22. 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 National Assembly'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 National Assembly'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.
23. The National Assembly must decline to give a certificate if it 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 National Assembly 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)*<sup>45</sup>.

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<sup>45</sup> [1994] J. P. L. 607.

## **Exchange land**

24. Where a certificate would be in terms of section 19(1)(a), the exchange land must be no less in area than the order land; and must be 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 National Assembly 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 3 and 4 of Form 2 in the Schedule to the 1994 Regulations). But the National Assembly may have regard to any prospects of improvement to the exchange land which exist at that date. Other issues may arise involving questions of the respective merits of 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 pending 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 National Assembly will examine any such case with particular care.

## **Meaning of the "the public"**

25. With regard to exchange land for open space included in an order, the National Assembly 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 National Assembly 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.

## **Section 19(1)(aa)**

26. 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 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Appendix D), 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 Appendix Q, paragraph 23.*

### **Section 19(1)(b)**

27. Generally, a certificate will be given in terms of section 19(1)(b), where that paragraph applies, ie. that both the criteria set out in the third bullet point of paragraph 13 are met. The National Assembly will, however, have regard to the sum total of the category of land - common, open space or fuel or field garden allotment - being acquired compulsorily, and it may be reluctant to certify in terms of section 19(1)(b) where a proposal would lead to the loss of all or a large part of such land. In such cases it may decline to give a certificate in terms of section 19(1)(b), in which case the acquiring authority may wish to consider providing suitable exchange land and seeking a certificate in terms of section 19(1)(a).

### **Non-Certificate Acquisitions**

28. In acquisitions which do not come within the certification procedure but were previously subject to the special parliamentary procedure, the National Assembly's Standing Orders apply<sup>46</sup>. A draft of the confirmation order will, in such cases, be laid before the Assembly and there is a right to petition against the making of the order. The procedure allows for the hearing of objections before a special committee of the Assembly. In the absence of any valid objection, the Assembly may confirm the order.

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<sup>46</sup> Standing Order 25

# Appendix H

## Listed buildings and conservation areas

1. Section 1 of this Appendix sets out the form of certificate which Appendix M indicates needs to be submitted with an order where it includes listed buildings or buildings in a conservation area. If no listed buildings or buildings in a conservation area are included in the order, when it is submitted a nil return should be indicated.
2. Section 2 relates to the compulsory purchase of listed buildings in need of repair under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (in this Appendix, "the Listed Buildings Act").

### SECTION 1

#### Forms of Certificate

3. A certificate in whichever of the following forms is appropriate should be submitted with any order which contains buildings which have been listed (including any notified as qualifying for listing), or buildings within a conservation area. The authority should also:
  - provide particulars of the building or buildings;
  - indicate any action already taken, or which they propose to take, in connection with listed building or conservation area consent;
  - enclose with any certificate a copy of any consent or application for consent, or forward such a copy as soon as the consent or application is available; and
  - notify the National Assembly as soon as possible where a submitted order entails demolition of any building which is subsequently included in a conservation area.
4. The forms of certificates to be submitted are as follows (numbers in brackets refer to the Notes at the end, \* = delete as appropriate):
  - (a) Listed buildings (1)

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 Listed Buildings Act [insert order reference, list reference, address].
  - (b) Buildings which qualify for listing (2)

The proposals in the order will involve the demolition/alteration/extension\* of the following building(s) which has/have\* not yet been formally listed but which has/have\* been notified as qualifying for listing by the National Assembly.

- (c) 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)].

- (d) 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 WO Circular 61/96 'Historic Buildings and Conservation Areas'.

- (e) Buildings within a conservation area (3)

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 (or, as the case may be, section 70) of the Listed Buildings Act.

#### Notes

1. *Section 1 (with section 2) of the Listed Buildings Act is the consolidation of section 54 of the Town and Country Planning Act 1971. Buildings listed under section 54 of the 1971 Act, or under sections 30 and 32 of the Town and Country Planning Acts 1947 and 1962 respectively count as being listed under section 1 of the Listed Buildings Act.*
2. *Notification of buildings which qualify for listing is usually given by letter by the National Assembly, but may have been given by a copy of the CADW Inspector's survey notes, which are sent in confidence to local authorities before preparation of revised statutory lists.*
3. *A direction of the Secretary of State for Wales, currently in paragraph 20 of WO Circular 1/98 applies for the purposes of sections 74 and 75 of the Listed Buildings Act. The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 4(e) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of an article 4 direction, the permitted development right has been withdrawn and a planning application required.*

## SECTION 2

### **Compulsory acquisition of a listed building in need of repair under section 47 of the Listed Buildings Act**

5. Sections 47, 48 and 50 of the Listed Buildings Act relate to the compulsory acquisition by the appropriate authority of a listed building in need of repair; service on the owner of a repairs notice; and inclusion in the order of a direction for minimum compensation.

6. At least two months before making an order under section 47 of the Listed Buildings Act the acquiring authority must, under section 48, serve a repairs notice on the owner as defined in section 91(2) of the Listed Buildings Act. Advice about repairs notices is found in Part 4 of WO Circular 61/96.
7. In order to comply with regulation 4 of the Compulsory Purchase of Land Regulations, all personal notices must include additional paragraphs 3 and 5 in Form 8 in the Schedule to the Regulations. If the acquiring authority have included a direction for minimum compensation under section 50 of the Listed Buildings Act, they must also insert additional paragraph 4 of Form 8.
8. A direction for minimum compensation might be in the following terms:

"Under section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), the (insert name of acquiring authority) make the following direction:

For the purpose of assessing compensation and notwithstanding anything to the contrary in the Land Compensation Act 1961, the Town and Country Planning Act 1990 or the Listed Buildings Act, it is hereby directed that it shall be assumed that planning permission would not be granted for any development or redevelopment of the site of the building described in the Schedule to this order and that listed building consent would not be granted for any works for the demolition, alteration or extension of that building, other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair".
9. Note (p) to Form 8 in the Schedule to the Regulations states that the Notice should refer to a place (eg "below" or "in the attached note") where the meaning of the direction is explained, as required by section 50(3). The explanation should normally include the text of subsections (4) and (5) of section 50.
10. When an order made under section 47 of the Listed Buildings Act is submitted to the National Assembly for confirmation, a copy of the repairs notice served in accordance with section 48 must be included with all the supporting documents listed in Appendix M to this Circular.
11. A local authority which has made an order under section 47 of the Listed Buildings Act should notify the National Assembly immediately they become aware of any application to a magistrates' court either under section 47(4) or section 50(6). Depending on the circumstances, it may be necessary to hold the order in abeyance until such time as the court has considered the application.

### Compulsory purchase of new rights and other interests

1. This appendix gives some general advice<sup>47</sup> about the compulsory acquisition of new rights over land where full land ownership is not required eg. the compulsory creation of a right of access.
2. Such compulsory acquisition of rights over land by creation of new rights is, by virtue of section 28 of the 1981 Act, subject to the provisions of Schedule 3 to that Act. It can only be achieved using a specific statutory 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, all highway authorities may acquire rights under Part XII by virtue of section 250. (Guidance on the use of these powers is given in Appendix F);
  - (iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers); Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency);

#### ORDER HEADING

3. For an order which relates solely to new rights, the order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981. For an order which includes new rights *and* land to be acquired for other purposes, the order heading should refer to the appropriate enabling Act, any other Act(s), and the 1981 Act, as required by the Regulations. See Note (b) on the use of Forms 1, 2 and 3 in the Schedule to the 1994 Regulations.

#### ORDERS SOLELY FOR NEW RIGHTS

4. Where an order relates solely to new rights and does not include other interests in land which are to be purchased outright, paragraph 1 of the order should identify 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 1976 Act".

#### ORDERS FOR NEW RIGHTS AND OTHER INTERESTS

5. Where an order relates to the purchase of new rights and of other interests in land, paragraph 1 of the order should describe all the relevant powers and

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<sup>47</sup> Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is referred to within this appendix as an example. Where in practice a different power is used, eg. section 250 of the Highways Act 1980, the authority should take into account any special requirements which may apply to the use of that power.

purposes. Where the purpose is the same for both new rights and other interests, it may be relatively straightforward. For example:

" . . . . .the Council are hereby authorised

- (a) under section 121 of the Local Government Act 1972 to purchase compulsorily for the purposes of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 the land which is described in the Schedule hereto and is delineated and shown [coloured pink/hatched etc, as appropriate]; and
- (b) under section 13 of the said Act of 1976, to purchase compulsorily, for the same purpose, the new rights which are described in the said Schedule and are over the land delineated and [shown coloured blue/crosshatched etc, as appropriate],

[on the map prepared in duplicate, sealed .....

*[etc, as in Form 1 of the Schedule to the Regulations].*

6. Where the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the order should describe all of the relevant powers under, and purposes for which, the order has been made. For example:

".....the Council are hereby authorised

- (a) under section 89 of the National Parks and Access to the Countryside Act 1949 to purchase compulsorily for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use, the derelict, neglected or unsightly land which is described in the Schedule hereto and is delineated and shown [coloured pink/hatched etc, as appropriate]; and
- (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, to purchase compulsorily for the purpose of providing an access to the above mentioned 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, the new rights which are described in the said Schedule and are over the land delineated and shown [coloured blue/cross hatched etc, as appropriate],

[on the map prepared in duplicate, sealed....." ]

*[etc, as in Form 1 of the Schedule to the Regulations].*

7. The acquiring authority's statements of reasons and case 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 are also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

## **SCHEDULE AND MAP**

8. The land over which each new right is sought should be shown as a separate plot in the order Schedule. 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.
9. 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 (f) to Forms 1, 2 and 3 or Note (d) to Forms 4, 5 and 6.)

## **SPECIAL Kinds of Land (see also Appendices G and Q)**

10. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act 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 not be confirmed unless the National Assembly gives a certificate, in the relevant terms, under paragraph 6(1) and (2).
11. A certificate may be given in the following circumstances:
  - paragraph 6(1)(a) - 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; or
  - paragraph 6(1)(aa) - the right is being acquired in order to secure the preservation or improve the management of the land (but see paragraph 13 below); 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; or
  - paragraph 6(1)(c)
    - i. the land affected by the right to be acquired does not exceed 250 square yards (209 square metres); 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.

12. The same compulsory purchase 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.
13. 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 Appendix Q, paragraph 23; and Appendix G, paragraph 26).
14. 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 1994 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 1 of the order. Paragraph 1(ii) should be adapted as described in Note (j) (See also Appendix Q, paragraphs 19 and 20 and Appendix G, paragraph 17).
15. 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.
16. An 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, should comply with Form 3 and should include the reference in paragraph 3(3) of that Form (or, if appropriate, as adapted for paragraph 3(2) of Form 6) to land over which the new right is acquired. (See also paragraph 13.)

# Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

## GENERAL POSITION

1. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land<sup>48</sup>. If it is proposed to include such land in an order, careful consideration should be made of the enabling legislation.

## EXCEPTIONS TO GENERAL POSITION

2. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land. Section 327 of the Highways Act 1980 provides for a highway authority and the National Assembly (in relation to trunk roads in Wales) 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 National Assembly in respect of land in Wales)<sup>49</sup>.
3. The enactments listed below<sup>50</sup> 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 agree:
  - section 296 of the Town and Country Planning Act 1990;
  - section 83 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 III of the Housing Act 1988 and Part VII of the Local Government and Housing Act 1989).

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<sup>48</sup> Under various provisions, eg. s283(1) of the Town and Country Planning Act 1990 and s83(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is "Crown land".

<sup>49</sup> 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.

<sup>50</sup> This is not an exhaustive list.

## ISSUES FOR CONSIDERATION

4. From the foregoing, therefore, a Crown interest in land should generally not be included in an order unless: (a) there is an agreement under section 327 of the Highways Act 1980 which provides for the use of compulsory purchase powers; or (b) the order is made under a power to which the provisions mentioned in paragraph 3 above relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land.
5. Where (b) above applies, 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.
6. Where the appropriate authority have entered into an agreement with a highway authority so as to permit the inclusion in a compulsory purchase order of the Crown's interest or interests, the land may be included and described as for any privately owned land. 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 the interest(s) held by [*the relevant Crown body*]" are being acquired. (See also Appendix Q, paragraph 14).

# Land Compensation Act 1961 Certificates of appropriate alternative development

## INTRODUCTION

1. Part II of the Land Compensation Act 1961 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, sections 14-16 of the 1961 Act provide for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.
2. Where, however, 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 III of the 1961 Act provides a mechanism for indicating the kind of development (if any) for which planning permission can be assumed by means of a so called "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.
3. In many cases these assumptions will derive from the development plan as adopted by the local planning authority, and it will be for the owner and the acquiring authority to agree what permissions might reasonably have been expected in the light of the plan, or, if they cannot agree, to refer their dispute to the Lands Tribunal.

## CERTIFICATE SYSTEM

4. Section 17(1) of the 1961 Act 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. Circumstances in which certificates may be required include:
  - (a) where there is no adopted development plan covering the land to be acquired;
  - (b) where the adopted development plan indicates a "green belt" or "area of special landscape value" or leaves the site without specific allocation; and
  - (c) where the site is allocated in the adopted development plan specifically for some public purpose, eg. a new school or open space.

5. The local planning authority is required to respond 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(4) requires the certificate to state either:
  - planning permission would have been given for development of one or more specified classes and for any development for which the land is to be acquired, but would not have been granted for any other development (a "positive certificate"); or
  - planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development (a "nil" or "negative" certificate).

Where the local planning authority consider that permission would only have been granted subject to conditions or at a future time, or both, they are required to specify those conditions and/or that future time, as the case may be. "Classes" here merely means types of development and is not limited to development within the classes listed in the Town and Country Planning (Use Classes) Order 1987. Local planning authorities are not restricted to consideration of the classes specified by the applicant.

6. The applicant must state whether or not he considers that there are any classes of development which either immediately or at a future time would be appropriate for the land if it were not being acquired by an authority possessing compulsory purchase powers. If the applicant considers that there are such classes of development he must say what they are and when they would be appropriate. An applicant must give his grounds for the opinions expressed in his application, ie the onus is on the applicant to substantiate the reasons why he considers certain alternative development to be appropriate. Acquiring authorities are able to apply for a "nil" certificate indicating that no development would have been permitted.
7. The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers. That event is defined in section 22(2) of the 1961 Act, and so the relevant date will be:
  - (i) ***acquisition by private or hybrid Parliamentary Bill*** – the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;
  - (ii) ***acquisition by compulsory purchase order*** – the date of notice of making of the order (or date of publication of the draft compulsory purchase order, if the acquiring authority is a Government Department);
  - (iii) ***acquisition by Transport and Works Act order*** – the date of notice of the making of the order;

- (iv) *acquisition by blight notice or a purchase notice* – the date on which notice to treat is deemed to have been served;
- (v) *acquisition by agreement* – the date of the written offer by the acquiring authority to negotiate for the purchase of the land;

Thereafter application may be made at any time, except that after a case has been referred to the Lands Tribunal an application may not be made unless both parties agree, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

8. The National Assembly considers it important as far as possible that the certificate system should be operated on broad and common-sense lines; it should be borne in mind that a certificate is not a planning permission but a statement to be used in ascertaining the fair market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the National Assembly would expect the local planning authority to exercise its planning judgement, on the basis of the absence of the scheme, taking into account those factors which would normally apply to consideration of planning applications eg. the character of the development in the surrounding area, any general policy of the development plan, and national planning policy along with other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard (see paragraphs 16-18 below). Only those forms of development which for some reason or other are inappropriate should be excluded. Local planning authorities will note from section 17(7) that their certificate can be at variance with the use shown by the development plan for the particular site.
9. Where there is no adopted development plan, regard should be had to the draft plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development.

## **MAKING AN APPLICATION FOR A CERTIFICATE**

10. The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 5 and 6 of the Land Compensation Development Order 1974 (SI 1974 No. 539) as amended (by SI 1986 No 435). Article 3(3) of the order requires that if a certificate is issued otherwise than for the class or classes of 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 to the National Assembly (see paragraph 15). 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.

11. Attention is drawn to the following points:
  - (a) 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;
  - (b) 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"); and
  - (c) 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. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

## **ADDITIONAL INFORMAL ADVICE**

12. In order that the valuers acting on either side may be able to assess the fair 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. For example, they may be asked to assist in interpreting the relevant provisions of the development plan in a case falling within section 16. 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 National Assembly suggests that the authority should:-
  - (a) give any such advice to both parties to the negotiation; and
  - (b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.

## **DISREGARDING THE ACQUISITION AND THE UNDERLYING SCHEME (THE "NO SCHEME WORLD")**

13. As referred to in paragraph 5, section 17(4) of the 1961 Act requires the local planning authority (or the National Assembly in relation to an appeal) to certify the alternative development (if any) for which planning permission would have been granted "in respect of the land in question, *if it were not proposed to be acquired by an authority possessing compulsory purchase powers*". For this reason, the purpose for which land is being acquired must always be disregarded, as must any other purpose involving public acquisition. It is not sufficient to ignore the fact of acquisition - the underlying public purpose of the scheme must also be disregarded. This principle was settled by the House of Lords in *Grampian Regional Council and others -v- Secretary of State for Scotland and others* [1983] 1 WLR 1340. The approach to be adopted is considered at paragraph 16.
14. Section 17(7) of the 1961 Act provides that a certificate may not be refused for a particular class of development solely on the grounds that it would be contrary to the relevant development plan. The purpose of this provision is to avoid the whole purpose of the certificate system being defeated, where land is allocated in the development plan for the use for which it is being acquired. It follows that the local planning authority (or the National Assembly as the case may be) must ignore development plan policies with no function beyond the acquisition scheme - for example, policies that earmark land for a road or school. But the decision maker may take account of broader policies - for example, Green Belts and countryside protection policies - if these imply that the classes of alternative development suggested by the applicant or appellant would not have been acceptable in the "no scheme world".

## **APPEALS**

15. The right of appeal against a certificate under section 18 of the 1961 Act, exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the National Assembly. It may confirm, vary or cancel it, or cancel it and issue a different certificate in its place, as it considers appropriate. Before determining an appeal the National Assembly must, if required by either party, give both parties and the local planning authority an opportunity to be heard. Article 4 of the Land Compensation Development Order 1974, as amended, requires that written notice of an appeal 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 National Assembly has no power to extend the appeal period. After notice of appeal has been given, however, the

appellant has a further month to provide the National Assembly with a copy of the application to the local planning authority, a copy of the certificate issued (if any) and a statement of the grounds of appeal. The National Assembly does have the power to extend this period, but only if it receives the request to do so before it expires. If the required documentation is not received within the required time scale, the appeal has to be treated as withdrawn. Any person aggrieved by the National Assembly's decision on the appeal may challenge its validity in the High Court within a period of six weeks from the date of the decision.

## **RELEVANT DATE FOR APPRAISAL OF APPLICATIONS AND APPEALS**

16. As can be concluded from the foregoing, there are three main issues in reaching a decision on any application or appeal:
  - (a) the physical considerations - that is, the state of the land and the area in which it is situated;
  - (b) the current and reasonably foreseeable planning policies; and
  - (c) identifying and disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.
17. Case law, as established by the judgment of the House of Lords in *Fletcher Estates (Harlescott) Ltd -v- the Secretary of State for the Environment and the Secretary of State for Transport and The Executors of J V Longmore -v- the Secretary of State for the Environment and the Secretary of State for Transport*<sup>51</sup>, determined that all these issues must be considered at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers - the section 22(2) event as described at items (i)-(v) of paragraph 7.
18. For issue (c) in paragraph 16 above, the consequences of the scheme underlying the acquisition should be disregarded as they stood at the section 22(2) date, as if the scheme had been cancelled at that date (rather than as if it had never existed at all). And if the method of acquisition changes during the life of the scheme, the relevant date is that of the earliest section 22(2)(a) event.

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<sup>51</sup> [2000] 11 EG 141

### Check list of documents to be submitted to the National Assembly<sup>52</sup>

The following documents should be submitted to the National Assembly with the compulsory purchase order for confirmation:

<b>CATEGORY AND CIRCULAR REF</b>	<b>DOCUMENT REQUIRED</b>	<b>NUMBER OF COPIES</b> (INCLUDING ORIGINALS WHERE APPROPRIATE)
<b>Orders and maps</b>		
Appendix R	sealed order	2
	sealed map	2
	unsealed order	4
	unsealed map	4
<b>Certificates</b>		
Appendix H	a nil return or a certificate regarding, as appropriate: - listed building preservation; - any land and unlisted buildings in a conservation area.	1
Appendix P	general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: - an order made on behalf of a community council; - a listed building in need of repair; or - Church of England property	1
<b>Statements</b>		
Appendix N	Statement of reasons sent by acquiring authority with personal notices, enclosures to the statement of reasons, and wherever practicable any other documents referred to therein. Statement of reasons must include a statement concerning the planning position (see paragraphs 19-20 of the main Circular).	2

<sup>52</sup> See also paragraph 32 of the Circular.

## Appendix N

### Preparing the statement of reasons

The statement of reasons (see paragraphs 33-34 of the Circular) should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):

- (i) a brief description of the order land and its location, topographical features and present use;
- (ii) a justification of the use of the enabling power;
- (iii) an outline of the authority's purpose in seeking to acquire the land;
- (iv) a statement of the authority's case for compulsory purchase;
- (v) a description of the proposals for the use or development of the land;
- (vi) a statement about the planning position of the order site (see paragraphs 19-20 of the Circular);
- (vii) information required in the light of Welsh Assembly Government policy statements where orders are made in certain circumstances, eg. as stated in Annex B where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part IX of the Housing Act 1985); or such information as may be required by any of the other documents mentioned in paragraph 8 of the Circular;
- (viii) any special considerations affecting the order site, eg. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc.;
- (ix) 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;
- (x) details of any views which may have been expressed by a Government department about the proposed development of the order site;
- (xi) any other information which would be of interest to persons affected by the order, eg. proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained;

- (xii) details of any related order, application or appeal which may require a co-ordinated decision by the National Assembly, eg. an order made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application;
- (xiii) 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; and
- (xiv) a statement that the land subject to compulsory purchase is the minimum required for the scheme.

## Appendix P

### General certificate in support of order submission<sup>53</sup>

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 Regulations 1994 (SI 1994 No. 2145) was published in two issues<sup>54</sup> of the ..... dated ..... 20.... and ..... 20.... . 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....
2. Notices in the Form numbered.....in the said Regulations were duly served on every owner, lessee and occupier (except tenants for a month or less) of all land to which the order relates<sup>55</sup>. 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 owners, lessees or occupiers except tenants for a month or less (see paragraph 32 of the Circular);
  - (b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.

<sup>53</sup> This 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 - see paragraph 35 of the Circular.

<sup>54</sup> The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the National Assembly.

<sup>55</sup> 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 Regulations.

- (2) Two copies of the statement of reasons are herewith forwarded to National Assembly.
6. [*Where the order includes ecclesiastical property – (see Appendix Q, paragraph 15 (g))*]. Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).

# Preparing and serving the order and its associated notices

### PRESCRIBED FORM

1. The order and Schedule should comply with the relevant form as prescribed by regulation 3 of, and shown in the Schedule to, the Compulsory Purchase of Land Regulations (SI 1994 No. 2145). 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 the purpose(s) 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 the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. (See Appendices A and H for examples of how orders made under certain powers may be set out. Appendix C 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.)

### TITLE OF ORDER

2. The Regulations require that the title of the order should be at the head of the order, before the titles and years of the Acts, and should indicate the general area within which the order land is situated (see also paragraph 7). The title to an order should include the current year, ie. the year in which the order is actually made and not the year in which the authority resolved to make it, if different. It is good practice, though not a requirement, for the order title to begin with the name of the acquiring authority.

### PLACES FOR THE DEPOSIT OF THE MAPS

3. Paragraph 1 in each of the prescribed forms states that one duplicate of the map is to be deposited in the offices of the acquiring authority and the other in the offices of the National Assembly. As the relevant notes explain, the names of acquiring and confirming authorities should be inserted. In the case of the confirming authority, the order should identify the National Assembly for Wales. Forms 1 to 6 in the Regulations do not require the addresses of the acquiring and confirming authorities to be inserted, though inclusion of accurate address details would be helpful to those named in the Schedule to the order and the public.

## **INCORPORATION OF THE MINING CODE**

4. Parts II and III of Schedule 2 to the 1981 Act, 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.
5. 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. In areas of coal working notified to the local planning authority by the Coal Authority under paragraph (j) of article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (GDPO), authorities are asked to notify the Coal Authority<sup>56</sup> and relevant licensed coal mine operator if they make an order which incorporates the mining code.

## **Extent, Description and Situation of Land Scheduled**

6. The prescribed order formats 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 1981 Act 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.
7. 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 and paragraph 2.)
8. 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".

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<sup>56</sup> The Coal Authority, 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG, E-mail: [thecoalauthority@coal.gov.uk](mailto:thecoalauthority@coal.gov.uk)

9. 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.
10. 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 National Assembly may refuse to confirm the order even though it is unopposed.

## **COMPULSORY ACQUISITION OF NEW RIGHTS**

11. See Appendix J.

## **COMPULSORY ACQUISITION WHERE AUTHORITY ALREADY OWNS INTERESTS**

12. Except for orders made under highway land acquisition powers in Part XII 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 interests already owned by the acquiring authority". The remaining columns should be completed as described in subparagraphs (l) to (n) in paragraph 15. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg. The Welsh Development Agency might decide it wishes to exclude its own interests and local authority interests from an order.
13. 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 Circular, paragraphs 52-54). 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 National Assembly may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.
14. A similar form of words to that described in paragraph 12 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 Appendix K.

## **SCHEDULED INTERESTS**

15. The names and addresses of owners, lessees and occupiers upon whom notice is required to be served should be shown in the Schedule to the order. The following points should be noted in connection with service of notice and the compilation of the order Schedule:
- (a) the Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, eg. persons who have entered into a contract to purchase a freehold or lease;
  - (b) the names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agree that service may be upon a person whom they designate to accept service on their behalf. 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;
  - (c) 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 1981 Act);

*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.*

- (d) individual trustees (including joint tenants and tenants in common) should be named and served separately;
- (e) 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.*

- (f) 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;
- (g) where land is 'ecclesiastical property' (see section 12(3) of the 1981 Act, where this term is defined), notice of the making of the order must be served on the Church Commissioners, (the Church of England retains control over many border parishes)<sup>57</sup> as well as on the owners etc. of the property, irrespective of whether the Church Commissioners have jurisdiction over that property;
- (h) 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 Cadw or the County Archaeologist, according to the circumstances shown below:
  - (i) in respect of a *scheduled* ancient monument – Cadw: Welsh Historic Monuments, Crown Building, Cathays Park, Cardiff, CF10 3NQ
  - (ii) 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;

- (i) 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 the Countryside Council for Wales, Plas Penhros, Bangor, Gwynedd LL57 2LQ;
- (j) when an order relates to land being used for the purposes of sport or physical recreation, the Sports Council for Wales, Sophia Gardens, Cardiff, CF11 9SW, should be notified of the making of the order;
- (k) where a person is served at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make 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;
- (l) owners or reputed owners (column 3) - 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 column and a notice served on

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<sup>57</sup> The Church Commissioners for England, 1 Millbank, Westminster, London SW1 3JZ

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 may include covenants or restrictions which amount to interests in land and which can, therefore, be acquired or extinguished compulsorily. 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, where the owner or occupier of the land and the person benefiting from the right would not normally have been shown in the order Schedule, either (a) the Schedule should include the relevant owner or occupier, or (b) 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 [the land] except those already owned by the acquiring authority". This should avoid giving the impression that the authority have no interest to acquire. (See also advice on Right-to-Buy at sub-paragraph (n) below);

- (m) lessees or reputed lessees (column 4) where there are no lessees or reputed lessees a dash should be inserted, otherwise names and addresses should be shown;
- (n) occupiers other than tenants for a month or less (column 5) - this column should be completed in all cases. Where a named owner or lessee is the occupier, the word "owner" or "lessee" should be inserted or the relevant name given. Where the occupier is a tenant for a month or less a dash should be inserted. If there is doubt whether an occupier really is a tenant for a month or less, his or her name should be shown and he or she should be served with a notice. Where the property is unoccupied the column should be endorsed accordingly. Authorities may consider it necessary to include properties in compulsory purchase orders where tenants have served notice under section 122 of the Housing Act 1985 to exercise the Right-to-Buy and might consequently be in a position to acquire a freehold or leasehold interest. Any such tenant should be shown as an occupier in the order Schedule, on the basis that his or her interest in the property goes beyond that of a tenant for a month or less.

### **SPECIAL CATEGORY LAND (See also Appendices G and J)**

16. Land to which sections 18 and 19 of the 1981 Act apply, (or paragraphs 5 and 6 of Schedule 3 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 Notes (n) and (o) to the prescribed Forms. In the event that an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the National Assembly may need to consider whether confirmation should be refused as a result.

## COMMONS, OPEN SPACES ETC

17. An order may provide for special category land to which section 19 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.
18. 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. See paragraph 21 below.
19. When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 1(ii), adapted as required by Note (j), and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 1(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.
20. In Form 2, there are different versions of paragraphs 3 and 4(2) (see Note (s)). Paragraph 3 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 in accordance with Schedule 3, paragraph 6(1)(b) because they propose to provide additional land in respect of new rights being acquired (over "rights land"), the order should include paragraph 4(1) and the appropriate paragraph 4(2) of the Form (see Note (s)). Paragraph 4 becomes paragraph 3 if only new rights are to be acquired compulsorily. (See Appendix J, paragraph 14 in relation to additional land being given in exchange for a new right.)

21. Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1. Exchange and additional land should be described in Schedule 2 where it is being acquired compulsorily; in Schedule 3 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.

22. Paragraph 3 of Form 3 should identify the order land, by referring to either:

- (a) paragraph 1, 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).

23. An order may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of section 19(1)(aa) or paragraph 6(1)(aa) of Schedule 3. (See also Appendix G, paragraph 26 and Appendix J, paragraph 13.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

## **SEALING, SIGNING AND DATING**

24. 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 should be sealed and dated on the same day*. The order map(s) should similarly be sealed and dated on the same day. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure that this is achieved.

## Appendix R

### The order map(s)

1. 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).
2. Land may be identified on order maps by colouring or any other method (see Note (f) to Forms 1, 2 and 3 and, in relation to exchange land, Note (r) to Forms 4 to 6 in the 1994 Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing 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.
3. 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.
4. 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<sup>58</sup> (see endnote 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.
5. 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.
6. 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 paragraphs 8 and 9 of Appendix J). Land which is

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<sup>58</sup> See Form 1 in the Schedule to the Compulsory Purchase of Land Regulations 1994.

delineated on the map but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.

7. 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 National Assembly may refuse to confirm all or part of the order.

## Appendix S

### **Address to which orders, applications and objections should be sent**

All compulsory purchase and associated orders requiring confirmation by the National Assembly should be sent to:

The Planning Inspectorate  
PINS 3  
Government Building  
Cathays Park  
Cardiff, CF10 3NQ