APPENDIX 3

DETAILED COMMENTS FOR COMPULSORY PURCHASE AND COMPENSATION

(The Governments questions and proposals are shown in italics.)

Response to the Government's Questions

"Should there be a time limit for submitting compensation claims and, if so what should it be?"

1. It is considered a time limit of 6 years from the start of construction, should be applied to the submission off compensation claims, similar to that which exists for Part 1 Compensation. This cut-off date would allow for better financial planning.

"Whether there is any need to provide in statute for the appointment of an independent complaints adviser and, if so how the function should be financed."

2. It is considered that the functions of an independent complaints adviser would overlap with the role of Ombudsmen. As regards the need for a statutory independent complaints adviser, it is difficult for an acquiring authority to be entirely objective. It is imagined that any genuine safeguard - properly incorporated within the process - would be welcomed by the Landowner. We would also expect that an acquiring authority would welcome the opportunity to see an early resolution of a complaint - so an acquiring authority should also welcome it.

Whether there should be a statutory duty placed on acquiring authorities to provide accommodation works when justified in terms of cost.

3. It is not considered necessary to place a statutory duty on the acquiring authorities to provide accommodation works where justified in terms of cost as it is often the case that claimants wish to carry out accommodation works and be compensated for the cost. This is an area in which flexibility of approach is required not hard and fast rules.

Other Detailed Comments

4. The following detailed comments relate to specific paragraphs:

"3.9 In addition we propose to:

- *Grant powers to enable acquiring authorities to confirm their own orders where no statutory objections are sustained. This will, though, need to be subject to a notification procedure to protect the interest of potential objectors;*
- *Remove some of the inflexibility in the current arrangements. For example, we see scope for widening the procedure for amending orders to include cases where the purpose of the compulsory purchase order has been clear from the outset but the wrong statutory provision has been quoted, and by providing a general power to facilitate the <u>partial</u> confirmation of orders;*
- *Take steps to help people check the position as it affects their properties, - by providing a formal notification procedure where an order is withdrawn and*

introducing requirements to register the status of all orders (from the time at which they are made, onwards) as local land charges; and

- *To significantly improve the time taken by the Secretary of State DTLR in deciding whether to confirm orders once the Inspector has reported. In 2000/01 decisions were taken by the Secretary of State DTLR on 25 unopposed compulsory purchase orders and 35 opposed orders. Against targets to issue all decisions within 10 weeks and 13 weeks respectively, performance was 76% and 60%. In the Planning Green Paper we have set out our intention to make dramatic improvements in the way in which we handle call-ins and recovered appeals. We propose to re-engineer our internal processes and establish a dedicated unit within DTLR to deal with these cases. We propose that this unit should also deal with opposed CPOs."*

Comment

The ability to enable acquiring authorities to confirm their own orders when no statutory objections are sustained is likely to be rare in practice, especially as the list of statutory objectors is likely to increase.

It would be extremely useful if orders could be amended to allow for minor additions of land which come to light in final design stages, which would remove the need to instigate supplementary Compulsory Purchase Orders (CPOs).

It is unclear how the power to confirm a CPO in stages will help the situation or how it will work in practice.

"3.10

- *Although it is in everybody's interest for a confirmed compulsory purchase order to be implemented as quickly as possible, an acquiring authority still has a considerable amount of preparatory work to complete following confirmation. We accept that it would not be realistic to seek to reduce the three years statutory time limit between the date on which an order becomes operative and serving the notice to treat or executing the general vesting declaration. However, such a prolonged period of delay and uncertainty can create real hardship for some of those directly affected. We therefore propose to provide in legislation for affected owners and occupiers to have the option to be able to require the acquiring authority to purchase their property (ie by serving a notice to treat on the acquiring authority) once one year has elapsed following the date on which the compulsory purchase order becomes operative."*

Comment

Reverse notice to treat is a sensible proposal as long as the Local Authority has funding or is reimbursed by the Government for expenditure in advance of the start of a scheme

Further clarification will be required as to whether land or no land is required by the Authority to trigger a reverse notice to treat. Will this be in addition to the existing rights to issue a blight notice?

"3.12

- *We support the steps which the Lands Tribunal are taking to make their services more accessible. To help them achieve that end, we propose to legislate to repeal section 4 of the Land Compensation Act 1961 in order to allow the Tribunal full discretion as to costs in all cases. We are also considering imposing a time limit after which compensation disputes have to be referred to the Lands Tribunal, and would welcome further views on this proposal."*

Comment

Time limit could impede a negotiated settlement; the choice of when and whether to refer to the Lands Tribunal should be left to the Parties to decide.

"3.13

- *We have considered the CPPRAG recommendation that there should be an independent 'adviser' to investigate complaints into the handling of compulsory purchase orders by acquiring authorities, but we are not convinced that such an appointment can be justified. Nevertheless, we will, of course, take account of any further views expressed in response to this paper before making any final decision."*

Comment

The important issue is that the acquiring authority receives a proper hearing from a properly qualified independent 'adviser'.

"4.2 We believe that there is a need for simpler compensation arrangements, based on unambiguously defined principles set out in a statutory code, which ensure that:

- *The person from whom land is taken is restored, as far as possible, to the position they would have been in if there had been no compulsory purchase;*
- *In addition to the value of the land taken, all those affected should be entitled to compensation for any and all of the actual losses which they can show that they have sustained as a result of an acquiring authority's actions;*
- *Such an entitlement should apply irrespective of whether land is actually taken from the claimant for the scheme and even if the acquiring authority decides not to proceed after the compulsory purchase order has been confirmed; and*
- *It is not appropriate for there to be any differentiation in entitlement solely as a result of the powers under which a particular order has been made.*

Changes to reflect these points would not only protect the Human Rights of those affected but it would also make a significant contribution to the speeding up of the whole process. Devising a comprehensive compensation code therefore forms a priority task in the Law Commission's current work. They will be incorporating the issues of principle which we identify here in their Consultative Report."

Comment

"Compensation for any and all of the actual losses to the value of land taken" This is too wide a statement. There needs to be a reasonableness test, particularly on disturbance items. The entitlement above for losses is recommended in the paper irrespective of whether land is taken and even if the acquiring authority decides not to proceed. How does this tie in with the existing Part 1 Compensation? Is this replacing that legislation or in addition to? This needs to be defined and account taken of the point at which these costs become claimable.

"4.3 The date to which the valuation of the acquired property relates can be crucial to ensuring a fair compensation package, but it is not currently defined in statute. We therefore propose to confirm the currently accepted practice of defining the date to which the valuation of a property relates as the date on which the acquiring authority take (or have a right to take) possession ('date of entry'), unless the amount of compensation has been agreed, or determined by the Lands Tribunal, before that. The nature of the assets to be valued will be fixed as at the date of the notice to treat (or general vesting declaration), as that is the date on which the authority states that it is willing to negotiate for the purchase of the land. An exception would need to be made where the nature of the asset changes subsequently for other reasons, (for example, because they are destroyed by fire and the owner receives compensation from his Insurance Company)."

Comment

Agreed, the practice of the date of valuation relating to the date of entry is sensible. Alternatively, where a blight notice is served, the valuation date should be the date of the blight notice or if an acquisition is made by agreement the valuation date should be the date of agreement.

"4.5 CPPRAG suggested that time limits should be set for the submission of claims for such losses, but the response to that has been mixed. Nevertheless, subject to any further views received in response to this paper, we are considering imposing a deadline of two years from the date of taking possession for the submission of a formal claim to compensation. We would then propose a maximum of a further one year for the submission of fully documented supporting evidence for the claim."

Comment

While disturbance, which these losses are part of, form part of a full compensation claim, there is no need to set another deadline if the 6 year period suggested above is adopted. The case may be different where no land is taken or where the scheme is eventually aborted.

"4.8 The Law Commission are considering, as part of their project, the extent to which valuations for compulsory purchase purposes should take account of changes in value caused by the effects of the scheme underlying the compulsory purchase proposal ('the no-scheme world') and whether valuations should take account of the development potential of the land."

Comment

The concept of O.M.V. in the no-scheme world is well established and will take account of development potential, as long as the development potential does not arise solely from the scheme. No need for change.

"4.12 We see a case for retaining the principle of paying compensation for severance/injurious affection, but consider that this should be on a basis which ensures parity of treatment between those from whom some land is taken and those from whom no land is taken. This is being considered in detail by the Law Commission. Where 'betterment' arises, (because the new scheme enhances the value of the remaining land), we agree with CPPRAG that it should only be set-off against compensation for severance or injurious affection, and not against the actual value of the land. We also see a case for retaining the principle under which an owner can require an acquiring authority to purchase the whole of his property in certain circumstances, even though they only require a part, ('material detriment'); and for ensuring the fair and consistent application of that principle to all land owners."

Comment

Parity of treatment is proposed where no land is taken. Currently Part 1 Compensation relates to physical factors only not the existence of the road. This statement without further clarification will undoubtedly give rise to more and higher claims. Care needs to be taken in the drafting of any new legislation. If there is any suggestion of "right to views" it could open up wider claims arising out of planning decisions.

Homeless payments to tenants needs to be clarified – suggest for secure tenants.

It seems illogical to set off betterment only against the severance and injurious affection elements considering the amount the value of land could increase. Allowing a proportion of the value say 50% not 100% to go to the owner would be more palatable, (to reflect case law on ransom payments).

"4.14 The current arrangements for assessing the compensation payable for disturbance and other costs not related to the value of the land are based on case law, which means that they are diffuse and inconsistent. The need for new legislation to incorporate a broad but unequivocal statement of the principles upon which such entitlement will be based is therefore urgent. The Law Commission are considering the issue, including the principles to be applied in those cases where it is necessary to determine whether compensation for business activities should be based on the costs of relocation or extinguishment."

Comment

While it is laudable to introduce an unequivocal statement of principles for disturbance compensation, this will in itself eventually give rise to case law on the subject, especially if the statement is in anyway ambiguous.

"4.15 We consider it important that no claimant should be deterred from pursuing a fair compensation settlement by the risk of incurring professional fees for which he would not be fully recompensed. We therefore propose that the new legislation should provide for the reimbursement of all professional fees on the basis of the actual expenditure reasonably incurred. While being aware of a body of opinion within the surveying profession that Ryde's Scale of fees should still prevail, we can see no justification for retaining a different approach to calculating the fees due to surveyors from that applicable to all other profession advisers."

Comment

Ryde's scale, while not perfect, is quick to determine. Based on reasonable actual expenditure could be a different matter.

"4.18 Owners and occupiers are sometimes forced to incur expenditure, or suffer losses, as a direct consequence of the compulsory purchase before the date of taking possession. We therefore propose that acquiring authorities should be given a discretion to make such advance payments as they consider justifiable (in relation to actual expenditure incurred and based on 90% of a detailed and substantiated claim) during the period between the date of notifying those directly affected of the making of the compulsory purchase order and the date of taking possession."

Comment

It is the disturbance side, justifying detailed and substantiated claims from the claimants which is usually the most time consuming and error ridden part of a claim. The suggestion of 90% payment is considered to be unwise and could lead to difficulties in reclaiming compensation already paid.

"4.19 Furthermore, where the land to be acquired is subject to a mortgage (irrespective of whether or not it exceeds 90% of the value placed upon the land by the acquiring authority), we propose that, with the agreement of the owner and the mortgagee, an advance payment of compensation should be payable to the mortgagee."

Comment

It is considered this should be left flexible, it is usually the case that the mortgagee is willing to have compensation paid to the claimant. The suggestion to make payment to the mortgagee will not make CPO popular with claimants – against your objectives.

"4.22 Although the right to compensation where no land is taken does not depend on compulsory acquisition, both types of claim often arise in connection with the same scheme and CPPRAG considered that, so far as is possible, the compensation payable where no land is taken should be the same as the compensation the landowner would have received for the effect of the scheme on that land if part of his land had been being acquired. The Law Commission are looking at this in the context of their work on injurious affection."

Comment

Noted, but the Government should be aware of the ensuing huge increase in compensation levels if Part One claimants are put in the same position as where land is acquired.

*"5.2 We do not propose to put in place a statutory **property purchase guarantee and compensation scheme** as a replacement for the current statutory blight provisions (as recommended by the Interdepartmental Working Group on Blight). However, we do see a role for a discretionary power based on those proposal which could be used in those cases where both the scheme promoter and the affected landowner considered it appropriate. We therefore propose to include an order-making power to that effect in, the new primary legislation enabling detailed arrangements to be specified in secondary legislation following full consultation."*

Comment

Noted and welcomed, provided that there can be no criticism if acquiring authorities choose not to agree to purchase.

"5.4 We consider that the combination of improved procedures and fairer compensation put forward in this policy statement will provide a quicker and less acrimonious mechanism for land assembly than has hitherto been possible. The additional compensation costs should be off-set, at least to some extent, by the savings associated with speed and the fact that a simpler, more clearly defined system should result in fewer professional fees. With careful preparation, it should be possible for an acquiring authority to make and implement a compulsory purchase order to a predictable timetable and in accordance with a planned budget. It should therefore once more become a realistic means of facilitating regeneration and major infrastructure schemes."

Comment

The statements made appear to be naïve. If additional compensation is to be payable and if the scope is changing for Part One claimants the overall impact will be a sizeable increase in the compensation bill, with a minimal amount of savings to offset it.