

The Law Commission
Consultation Paper No 170

LAND, VALUATION AND HOUSING
TRIBUNALS

A Consultation Paper

London: TSO

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THE LAW COMMISSION

LAND, VALUATION AND HOUSING

TRIBUNALS

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PART I

INTRODUCTION

BACKGROUND TO THE CONSULTATION PAPER

- 1.1 On 18 May 2000 the Lord Chancellor appointed Sir Andrew Leggatt to undertake a review of tribunals. The report of the review was published on 16 August 2001.¹ The key recommendation of the report was that there should be a single tribunals service under the administrative control of the Lord Chancellor's Department. A consultation paper about the Leggatt Review report was also issued by the Lord Chancellor's Department in August 2001.
- 1.2 The Leggatt Review noted that, in the context of land, property and housing tribunals "[t]here are confusing overlaps of jurisdiction between courts and tribunals, as well as between tribunals" and that "an expert decision-making forum, without overlapping jurisdictions, is a precondition of effective procedural reform".² The Review therefore recommended that the Law Commission should be instructed to work out "a comprehensive solution", with a view to removing these overlaps and the current scope for forum shopping. The matter was formally referred to us on 8 November 2002.

THE TERMS OF REFERENCE

- 1.3 Our terms of reference are as follows.

"In the context provided for the future of tribunals by the report of the Leggatt Review of Tribunals³ and the Modernising Tribunals programme, to review the law relating to the tribunals listed below, including their procedures and composition, and in particular the relationship between the jurisdictions of those tribunals and of the courts or other tribunals, with the aim of making recommendations to ensure that the objectives of the Leggatt Review, as identified in its terms of reference⁴, are met in relation to the work of those tribunals.

¹ Report of the Review of Tribunals by Sir Andrew Leggatt: Tribunals for Users – One System, One Service (August 2001), ("the Leggatt Review").

² Leggatt Review, para 3.30.

³ Tribunals for Users: One System, One Service (2001). (footnote in original).

⁴ The terms of reference were "To review the delivery of justice through tribunals other than ordinary courts of law, constituted under an Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions; in resolving disputes, whether between citizens and the state, or between other parties, to ensure that:

There are fair, timely, proportionate and effective arrangements for handling those disputes, within an effective framework for decision-making which encourages the systematic development of the area of law concerned, and which forms a coherent structure, together with the superior courts, for the delivery of administrative justice;

The administrative and practical arrangements for supporting those decision-making procedures meet the requirements of the European Convention on Human Rights for independence and impartiality;

The tribunals are as follows:

- (1) the Agricultural Lands Tribunal,⁵
- (2) the Commons Commissioners,
- (3) the Lands Tribunal,
- (4) the Leasehold Valuation Tribunal,⁵
- (5) the Rent Assessment Committees,⁵
- (6) the Rent Tribunal,⁵
- (7) the Valuation Tribunal,⁵ and
- (8) such other related tribunals as the Law Commission and the Lord Chancellor's Department may agree.”

1.4 The Law Commission and the Lord Chancellor's Department have agreed that the adjudicator to HM Land Registry, which was established under the Land Registration Act 2002, will also be included within the terms of this review.

1.5 It will be noted that the terms of reference refer only to tribunals in England. Consideration of tribunals in Wales is therefore outside of our terms of reference. The administration of five of the seven land, valuation and housing tribunals has been transferred to the National Assembly for Wales.⁶

1.6 Our terms of reference have not lead us to consider the procedures of the land, valuation and housing tribunals in detail. Primary legislation should contain a

There are adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities in relation to such disputes, and that tribunals and other bodies function in a way which makes those rights and responsibilities a reality;

The arrangements for the funding and management of tribunals and other bodies by Government departments are efficient, effective and economical; and pay due regard both to judicial independence, and to ministerial responsibility for the administration of public funds;

Performance standards for tribunals are coherent, consistent, and public; and effective measures for monitoring and enforcing those standards are established; and

Tribunals overall constitute a coherent structure for the delivery of administrative justice.

The review may examine, insofar as it considers it necessary, administrative and regulatory bodies which also make judicial decisions as part of their functions.” (footnote in original).

⁵ The review will not cover these tribunals in so far as they operate in Wales. (footnote in original).

⁶ The devolved tribunals are the Leasehold Valuation Tribunal, the Rent Assessment Committee, the Rent Tribunal, the Agricultural Land Tribunal and the Valuation Tribunal. The Lands Tribunal and the Commons Commissioners are not devolved.

relatively broad rule-making power which would enable tribunals' procedures to be changed if and where necessary.

SCOPE OF THE CONSULTATION PAPER

- 1.7 The Lord Chancellor's Department has asked us to complete our project within the timescale provided for implementing the wider changes to the tribunals system resulting from the Leggatt Review. Given those time constraints, we have produced this short consultation paper which is somewhat different from a standard Law Commission consultation paper. We put forward broad options for reform and raise some open-ended questions. Our aim is that these should be used as a basis for discussion between the Law Commission and interested parties. Consultation questions are listed at the end of Parts IV and V of the paper.
- 1.8 The consultation questions are also summarised in tabular form in a separate document with this consultation paper. Consultees may wish to use this document to set out their responses, which can then be either posted to us or emailed to housingandadmin@lawcommission.gsi.gov.uk.

CONTENT OF THE CONSULTATION PAPER

- 1.9 Part II contains a brief summary of the seven land, valuation and housing tribunals and of the adjudicator to HM Land Registry.
- 1.10 In Part III we seek to identify the need for reform.
- 1.11 In Part IV we present our three suggested options for structural reform.
- 1.12 In Part V we consider the question of jurisdictional overlaps.
- 1.13 In Part VI we discuss the way forward.
- 1.14 This consultation paper also contains eight appendices, one for each of the land, valuation and housing tribunals covered by our terms of reference. These appendices contain our review of each tribunal and, in particular, a comprehensive list of the jurisdictions of each as we have identified them. The appendices set out the tribunals' jurisdictions as a matter of law. They do not reflect the realities of tribunals' practice. For example, although we have compiled a detailed summary of Rent Tribunal jurisdictions, we understand from the Residential Property Tribunal Service that the Rent Tribunals only deal with about five cases a year.

ADVISORY GROUP

- 1.15 We will be holding meetings with representatives of the land, valuation and housing tribunals and with representatives of their user groups and other interested parties. The first meeting of this advisory group was held on 2 December and further meetings are planned. We are grateful to members of the advisory group for their time commitment. Their views and the responses of consultees to this consultation paper will be of valuable assistance in shaping our final proposals. The current members of the advisory group are listed in Appendix A to this paper. The members of the group have not been involved in the drafting of this consultation paper, and nothing in it should be taken as representing their views, or the views of the organisations they represent.

PART II

BACKGROUND TO THE LAND, VALUATION AND HOUSING TRIBUNALS

OVERVIEW OF THE EXISTING STRUCTURE

- 2.1 The unifying feature of the tribunals considered in this consultation paper is that they all have a role that, to a greater or lesser extent, requires them to value or adjudicate upon interests connected with land. In this consultation paper these land, valuation and housing tribunals are referred to as “the LVH tribunals”. This includes the adjudicator to HM Land Registry, even though the adjudicator is not strictly speaking a tribunal.
- 2.2 The LVH tribunals have grown up over time in an ad hoc manner and now have diverse jurisdictions. The tribunals do not form any coherent structure. Some of the tribunals exercise jurisdiction over disputes between citizens and the state, while others are concerned with disputes between private parties.¹ There are a variety of procedural methods employed by the different tribunals. Some charge fees to users, whilst others do not.² Although most of the tribunals have a legally qualified chairperson supported by an appropriate expert, this is not universal. The jurisdictional borders between the tribunals, the courts, and other dispute resolution methods are complicated.

THE INDIVIDUAL TRIBUNALS

- 2.3 Paragraphs 2.4 – 2.15 below are intended to provide an overview of each of the relevant LVH tribunals. A comprehensive list of the areas of jurisdiction of each tribunal is contained in the tables in the appendices to this consultation paper.³

Adjudicator to HM Land Registry

- 2.4 The adjudicator to HM Land Registry (“the adjudicator”) is established under section 107 of the Land Registration Act 2002.⁴ Although not a tribunal, the adjudicator will exercise jurisdiction over disputes concerning land, and so is somewhat akin to the LVH tribunals. The adjudicator has jurisdiction to resolve

¹ In Part IV of this consultation paper we attempt a comprehensive breakdown of the tribunals which are concerned with disputes between citizens and the state and those which deal with disputes between private parties. See paras 4.9 – 4.12 of that Part.

² The fees charged to users vary between different tribunals. For example, the Leasehold Valuation Tribunal has set fees, depending on the subject matter, up to a maximum of £500. The Lands Tribunal has a variable lodging fee of £50 – £300 and a usual hearing fee of 5% of the rateable value of the property.

³ Statistical data on the LVH tribunals is available in the Council on Tribunals’ Annual Report 2001/2002 (November 2002) HC 14.

⁴ The Land Registration Act 2002 is not in force at the time of writing. Most of the main provisions will come into force on 13 October 2003: *Hansard* (HC) 2 July 2002, vol 388, col 197W.

certain disputes arising under the Land Registration Act 2002. Appeals lie to the High Court.⁵

The Agricultural Land Tribunal

- 2.5 The Agricultural Land Tribunal exercises first instance jurisdiction over a wide range of disputes relating to agricultural holdings, mostly under the Agricultural Holdings Act 1986. Further jurisdiction over certain issues arising in relation to agricultural holdings is granted by the Hill Farming Act 1946 and the Land Drainage Act 1991. The decisions of the tribunal may be appealed to the High Court on a point of law.⁶ The tribunal has three members for each hearing: the Chairman (or deputy chairman), who must be a barrister or solicitor of at least seven years standing, a member of an appointed panel representing the interests of owners, and a member of an appointed panel representing the interests of tenants.

The Commons Commissioners

- 2.6 The Commons Commissioners have jurisdiction over certain disputes relating to land registered as common land before 2 January 1970 under the Commons Registration Act 1965. As a result of this time limit, the tribunal has limited temporal jurisdiction. These disputes arise from the entry of land on the register of common land by the relevant local authority. The Commissioners adjudicate to dispose of such disputed claims. They may also ascertain who is the owner of unclaimed registered land, and remove certain land from the register.⁷ Commissioners must be barristers or solicitors of seven or more years standing.⁸ Decisions of the Commons Commissioner may be appealed to the High Court on a point of law.⁹ The Government's common land consultation document would, if its proposals were implemented, give the Commissioners an expanded role.¹⁰

The Lands Tribunal

- 2.7 The Lands Tribunal exercises first instance and appellate jurisdictions. It may also determine certain matters that are referred to it for arbitration. The tribunal exercises first instance jurisdiction under a wide range of statutes and statutory instruments. Many of the tribunal's cases concern land compensation and compulsory purchase. The tribunal also has jurisdiction to determine certain taxation matters in relation to land and a range of disparate miscellaneous matters, including the discharge and modification of restrictive covenants. The tribunal has appellate jurisdiction over decisions of the Leasehold Valuation Tribunal and

⁵ Land Registration Act 2002, s 111. Appeals under the jurisdiction over the Land Registry Network may be made only on a point of law.

⁶ Agricultural (Miscellaneous Provisions) Act 1958, s 6.

⁷ Common Land (Rectification of Registers) Act 1989, s 1(4).

⁸ Commons Registration Act 1965, s 17(1).

⁹ Commons Registration Act 1965, s 18(1).

¹⁰ "Greater Protection and Better Management of Common Land in England and Wales" consultation document, Department for Environment, Food and Rural Affairs (February 2000).

certain decisions of the Valuation Tribunal.¹¹ Appeals from the Lands Tribunal are to the Court of Appeal on a point of law.¹² The President of the tribunal must be legally qualified, and other members may be either legally qualified or experienced in land valuation.¹³ All members have at least seven years' experience post-qualification.

The Residential Property Tribunal Service

- 2.8 The Leasehold Valuation Tribunal, Rent Tribunal and Rent Assessment Committees together form the Residential Property Tribunal Service. We refer to the three tribunals collectively as the "RPTS tribunals".¹⁴ The generic name was formerly the Rent Assessment Panels.¹⁵
- 2.9 To a large extent, the RPTS tribunals function as one unit. The tribunals all carry out broadly similar work in the field of residential tenancies. They share a common administration and have a common legislative basis in Schedule 10 of the Rent Act 1977.¹⁶
- 2.10 The Leasehold Valuation Tribunal has emerged as the most important of the three RPTS tribunals. The Leasehold Valuation Tribunal's jurisdiction will expand further as a result of the Commonhold and Leasehold Reform Act 2002.¹⁷ The other two tribunals have been increasingly marginalised following changes to the law on rent regulation.

¹¹ The Lands Tribunals' appellate jurisdiction over the Leasehold Valuation Tribunal is contained in s 175 of the Commonhold and Leasehold Reform Act 2002. Although this section is not yet in force, it in fact only simplifies the legislative basis of the appeal route which already exists from the Leasehold Valuation Tribunal to the Lands Tribunal. The Lands Tribunal's appellate jurisdiction over the Valuation Tribunal is more complex and is set out in Part IV of this consultation paper, para 4.20, notes 15 –17.

¹² Lands Tribunal Act 1949, proviso to s3(4). By s3(11), the court referred to is the Court of Appeal.

¹³ Lands Tribunal Act 1949, s 2(2).

¹⁴ The term "Residential Property Tribunal Service" took effect from 7 July 2002. See Department for Transport Local Government and the Regions news release dated 1 May 2002, available on www.press.dtlr.gov.uk.

¹⁵ The term "Rent Assessment Panels" did not have any statutory basis. Under the Rent Act 1977, Sched 10, the generic term should have been "Rent Assessment Committee". This led to the risk of terminological confusion, given that the Rent Assessment Committee is a tribunal in its own right.

¹⁶ Under s 173 of the Commonhold and Leasehold Reform Act 2002, any jurisdiction conferred on a Leasehold Valuation Tribunal is exercisable by a Rent Assessment Committee in accordance with Sched 10 to the Rent Act 1977, and when so constituted for exercising a Leasehold Valuation Tribunal jurisdiction is known as a Leasehold Valuation Tribunal. Under s 72 of the Housing Act 1980, Rent Tribunals are constituted as Rent Assessment Committees under Sched 10 of the Rent Act 1977, and when carrying out any of the functions of a Rent Tribunal, they are known as Rent Tribunals. Leasehold Valuation Tribunals and Rent Tribunals are therefore categories of Rent Assessment Committees.

¹⁷ See the Leasehold Valuation Tribunal appendix for the jurisdictions which will be added by the Act.

The Leasehold Valuation Tribunal

- 2.11 The Leasehold Valuation Tribunal's jurisdictions relate to the landlord and tenant relationship in the private rented housing market. This jurisdiction is conferred by a number of statutes.¹⁸ The main categories of jurisdiction are disputes as to the valuation of interests on leasehold enfranchisement; service, estate and administration charges; insurance; and the appointment of managers. The appellate route from the Leasehold Valuation Tribunal is to the Lands Tribunal.¹⁹ Each tribunal typically consists of a legally qualified chairman, a lay member, and a surveyor or valuer. At least one of the members of the tribunal must have experience in the valuation of land.²⁰

The Rent Assessment Committee

- 2.12 The Rent Assessment Committee essentially determines rents of regulated and assured tenancies and hears appeals against fair rent determinations by rent officers. The appellate jurisdiction is in decline as, under the Housing Act 1988, rent officers cannot issue certificates of fair rent for lettings made on or after 15 January 1989. Parties may appeal the Rent Assessment Committee's decisions on a point of law to the High Court, or require the committee to state a case for the opinion of the High Court.²¹ The sitting tribunal consists of a legal chairman, a lay member, and a valuer or surveyor.

The Rent Tribunal

- 2.13 The jurisdiction of the Rent Tribunal concerns restricted contracts under the Rent Act 1977, principally relating to rent and notices to quit. Under the Housing Act 1988, no new restricted contracts could be entered into on or after 15 January 1989 except in very limited circumstances. The jurisdiction of the Rent Tribunal has dwindled almost to nothing. Appeals on a point of law may be made to the High Court, or the tribunal may be made to state a case for the opinion of the High Court. Each tribunal typically consists of a legally qualified chairman, a lay member, and a surveyor or valuer.

The Valuation Tribunal

- 2.14 The Valuation Tribunal exercises jurisdiction over valuation decisions relating to local government finance. Its jurisdictions cover community charges, non-domestic rates, council tax, "old rates"²² and drainage rates. Appeals from the tribunal may go to either the High Court or the Lands Tribunal depending on the nature of the dispute. The High Court hears community charge and council tax valuation appeals. The Lands Tribunal hears appeals on its remaining areas of jurisdiction.²³

¹⁸ See the Leasehold Valuation Tribunal appendix for a full list of the Leasehold Valuation Tribunal's jurisdictions.

¹⁹ Commonhold and Leasehold Reform Act 2002, s 175(1). See also para 2.7, n11.

²⁰ Housing Act 1980, Sched 22, para1.

²¹ Tribunals and Inquiries Act 1992, s 11(1).

²² These "old rates" cases are essentially the residual jurisdiction of the old Local Valuation Courts. See also Part IV, para 4.20.

²³ See further Part IV, paras 4.20 and 4.21.

The tribunal consists of three people who are local volunteers. They are supported by a clerk.

- 2.15 The workload of the tribunal arises mainly from appeals from property valuations made by the Valuation Office Agency, which is an executive agency of the Inland Revenue. If proposals made by the public in response to their decisions are not settled within three months, they are automatically referred to a Valuation Tribunal as an appeal. The intention is that this will act as a catalyst for the parties to settle, and most cases do in fact settle before a hearing takes place. Most cases decided by the tribunal are simply the tribunal's ratification of a settlement.

PART III

THE LEGGATT REVIEW AND THE NEED FOR REFORM

INTRODUCTION

- 3.1 The impetus for reform of the LVH tribunals comes from the Leggatt Review. The Review asks the Law Commission to look at the jurisdictional overlaps between the LVH tribunals and the county courts. It also notes the need for an expert decision-making forum for land, property and housing disputes.¹ We have considered not only the narrow question of jurisdictional overlaps but have additionally thought about how the LVH tribunals could be more fundamentally reformed in the light of the general principles that came out of the Leggatt Review, as part of a comprehensive solution.
- 3.2 The Lord Chancellor's Department has not yet published its final response to the Leggatt Review's proposals. Whatever the Government's final position in relation to the Leggatt Review's substantive proposals, this paper sets out possible reform options for these tribunals in the light of the principles behind the Review. Our review makes no assumptions about exactly how the LVH tribunals would fit in to any larger reform of tribunals as a result of the Leggatt Review.
- 3.3 We understand that there have been some recent reviews and reforms to the LVH tribunals and that other reforms may be in the pipeline.² Consultees may wish to consider how any overall reform of the LVH tribunals will fit with any other proposed changes to these tribunals of which they are aware.

THE LEGGATT REVIEW PRINCIPLES

- 3.4 In Part I, we gave an indication of the Leggatt Review's proposals for reform of the tribunals system.³ The main recommendation was that there should be a single tribunals service under the administrative control of the Lord Chancellor's Department.
- 3.5 The Leggatt Review emphasises that tribunals should bring two distinctive advantages for users. These are first, the advantage of expert knowledge and secondly, simpler and more informal procedures and hearings which lead to more direct user participation. The Review states that tribunals do not always deliver these advantages to users because of the lack of a coherent and visibly independent tribunal system.⁴ The two key principles to come out of the Leggatt Review are therefore that tribunals should be structured coherently and that they should be seen to be independent.

¹ Leggatt Review, para 3.30.

² For example, certain aspects of the Leasehold Valuation Tribunals have recently been changed by the Commonhold and Leasehold Reform Act 2002.

³ See para 1.1.

⁴ Leggatt Review, paras 1.2 –1.4.

Coherence

- 3.6 The Leggatt Review's argument for greater coherence in the tribunal system runs as follows. The delivery of the tribunals' key advantages is hindered by the lack of a coherent structure and the current system as a whole does not meet what the modern user needs and expects.⁵ There are several problems with tribunals that could be addressed by a more coherent structure. The most striking feature of tribunals is their isolation, which as well as engendering a narrowness of outlook, leads to a duplication of effort. Each tribunal has its own IT systems and its own internal procedures. There is under-investment in training in many tribunals; most find it difficult to retain suitable staff because of limited career prospects and some tribunals have under-used accommodation while others find it difficult to obtain suitable hearing venues.⁶ The current systems of administrative support do not meet the needs of tribunals and users. Users and their advisers are confused by the differing requirements of the current collection of tribunals.⁷ A more coherent framework would create greater opportunities for improvement than can be achieved by tribunals acting separately, and that framework will enable tribunals to develop a more coherent approach to the services which users must receive to be enabled to prepare and present cases themselves.⁸ A programme of improvements could not be taken forward in the absence of greater co-ordination between tribunals without disproportionate expenditure and wasteful duplication of effort.⁹
- 3.7 The LVH tribunals have grown up in an ad hoc way and do not form a coherent structure. In Part IV, we set out three suggested options for structural reform of the LVH tribunals which will be designed to meet the problems identified in the Leggatt Review.

Independence

- 3.8 The Leggatt Review also attached considerable importance to tribunals being seen by users to be independent. The Review's argument is as follows. Users need to be sure that decisions in their cases are being taken by people with no links with the body they are appealing against.¹⁰ Tribunals are often not perceived as independent, and the disadvantages of Government departments with policy responsibilities also providing administrative support and funding are seen to outweigh any advantages. There are therefore doubts about whether the current arrangements give users the necessary confidence in tribunal independence.¹¹
- 3.9 The Council on Tribunals has also highlighted the importance of tribunal independence, stating that it should be the "principal hallmark" of the tribunal system. The Council has recommended that a judicial head be created in each tribunal, with responsibility for the creation and maintenance of the conditions

⁵ Leggatt Review, para 1.4.

⁶ *Ibid*, para 1.18.

⁷ *Ibid*, para 3.4.

⁸ *Ibid*, para 1.4.

⁹ *Ibid*, para 3.5.

¹⁰ *Ibid*, para 1.4.

¹¹ *Ibid*, para 2.2.

fostering independence and to consult with the sponsoring department on policy, administration and funding issues.¹²

- 3.10 The Leggatt Review stated that in the interests of securing the independence of tribunals, all tribunals should be administered by the Lord Chancellor.¹³ We agree that for tribunals to be seen to be independent, they should not be linked closely to sponsoring Government departments.¹⁴ We have not examined the issue of the perceived independence of the LVH tribunals in this consultation paper.

JURISDICTIONAL ISSUES

- 3.11 As well as the incentives for positive reform of the structure of the LVH tribunals, there are also perceived problems with jurisdictional issues, as raised in the Leggatt Review. The Review states that some of the disputes handled by the LVH tribunals are very similar to those handled by the courts, and in some jurisdictions can be heard in whole or in part by both courts and tribunals.¹⁵ The Review's concerns are the overlaps and scope for forum shopping which the current system permits.¹⁶
- 3.12 Our review of the LVH tribunals shows that the disputes where overlaps cause problems are those between private parties as opposed to those between citizens and the state, and mostly concern cases heard by the RPTS tribunals. We think that overlaps could be confusing for users if they are unsure about whether to start a case in the courts or in one of the LVH tribunals. Confusion over the correct jurisdiction could deter potential users from commencing proceedings and thus effectively hinder access to justice. Tribunals may have limits to their jurisdictions, resulting in the need for users to start two separate sets of proceedings. The system as a whole may seem unnecessarily complicated to users if discrete but similar aspects of their case have to be dealt with in different forums. Deliberate forum shopping might allow users to take advantage of uncertainties and inconsistencies in the system. The possibility of forum shopping may give an advantage to those who are experienced in bringing LVH cases or who have the funds to obtain legal advice when their opponents do not. In Part V of this consultation paper, we outline the areas of jurisdictional overlap which we have identified and ask consultees whether these overlaps do cause problems in practice.

OUR APPROACH

- 3.13 Given that the LVH tribunals have an important role to play in the resolution of land, valuation and housing disputes, how can their advantages best be delivered to users? Following the principles of the Leggatt Review, we have first considered how the tribunals could be restructured and how a more coherent framework can be put into place.¹⁷ We secondly consider jurisdictional overlaps and question how

¹² Council on Tribunals, "Tribunals: their Organisation and Independence" (August 1996) Cm 3744.

¹³ Leggatt Review, para 2.13.

¹⁴ Leggatt Review, chapter 2.

¹⁵ Leggatt Review, para 3.30.

¹⁶ *Ibid.*

¹⁷ See Part IV of this consultation paper.

these can best be dealt with.¹⁸ The overall structure of the LVH tribunals system will to some extent influence whether, where there are currently unnecessary jurisdictional overlaps, jurisdictions should more properly be dealt with by the tribunals or in the county court. If the LVH tribunals are reformed in a way that ensures they are a coherent expert forum for the resolution of land, valuation and housing disputes, there is a greater argument that jurisdictions should be allocated to these tribunals than if they are not so reformed. In this way we seek to build up a rationally structured expert decision-making forum, without unnecessary overlapping jurisdictions, as recommended by the Leggatt Review.

¹⁸ See Part V of this consultation paper.

PART IV

OPTIONS FOR STRUCTURAL REFORM

INTRODUCTION

- 4.1 We have considered three options for structural reform of the LVH tribunals. These options are at present broadly drawn, and we would be grateful for consultees' views on them. A list of consultation questions is set out at the end of this Part.
- 4.2 Our three suggested options for reform all broadly follow a single basic model. This is that the LVH tribunals should be organised within a two tier system. Most, if not all, cases should first be heard by a tribunal which is dedicated to first instance hearings. An appeal would then lie from first instance decisions to a single appellate tribunal.
- 4.3 A theme which is common to all of our three suggested options is therefore that we provisionally propose that there should be a single appeal route from all the LVH tribunals to an appeal tribunal. The differences between the options lie in how the first instance tribunals are structured.
- 4.4 Both option 2 and option 3 envisage a single first instance tribunal. We use the terminology of "amalgamated" and "unified" tribunals to differentiate between two different types of system within this single first instance structure. The "amalgamated" tribunal system retains administrative divisions based to a certain extent on the existing LVH tribunals. The "unified" tribunal does not retain any such division. These two different options are explained further in paragraphs 4.39 – 4.59 of this Part.
- 4.5 Our three options are presented in ascending order of radical reform. They can be summarised as follows.
 - (1) Option 1: essentially retain the current system, but restructure some elements of it by creating a common appeal route for all LVH tribunals, rationalising the structure of the Lands Tribunal and unifying the RPTS tribunals.
 - (2) Option 2: create an amalgamated LVH tribunal system with a single first instance tribunal. In this option, although the present tribunals would no longer exist in law, they would to some extent be reflected in the administrative allocation of cases within the amalgamated tribunal. There would be a single appeals body. This option represents a "half way house" between option 1 and option 3.
 - (3) Option 3: create a completely unified LVH tribunal system with a single first instance tribunal. In this option, the first instance tribunal would have jurisdiction to determine all land, valuation and housing matters without consideration of the divisions between the present LVH tribunals. The present tribunals would not be reflected in the administrative allocation of cases. There would be a single appeals body.

- 4.6 These three options are outlined in paragraphs 4.19 – 4.59 below. We first consider some general points relating to structural reform.

Retaining the current system?

- 4.7 One possibility is of course to retain the current LVH tribunal system in its entirety, subject to any changes made to the tribunals' jurisdictional remits as a result of the removal of any unnecessary jurisdictional overlaps with the courts.¹ Some may argue that maintaining the status quo may be the best way forward if the areas of difficulty which we have identified do not in fact cause problems or if reform would create unnecessary practical difficulties. The disadvantage of retaining the current structure is, however, a missed opportunity to reform the LVH tribunals within the context of the wider reform prompted by the Leggatt Review.
- 4.8 A variation on the retention of the current system would be to keep the current system in law, but to move in practice towards a common administration for all the LVH tribunals. This would have the advantage of needing little legislative change. It would, however, also be a missed opportunity for the more extensive reform which is suggested by the Leggatt Review.

Party and party v citizen and state disputes

- 4.9 The LVH tribunals deal both with disputes between the citizen and the state and those between private parties. In line with the terminology used in the Leggatt Review, we refer to these respectively as “citizen and state” and “party and party” disputes. The Leggatt Review discusses the separation of these two types of dispute. The Review notes that disputes between private parties are qualitatively different from those between citizens and the state. According to the Leggatt Review, party and party disputes are more likely to be adversarial in nature. Tribunal staff will probably be involved with case management to a greater extent in disputes between parties, and different administrative procedures will be needed.²
- 4.10 The dividing line between the two types of dispute is not always a clear one. For example, the Rent Assessment Committee has jurisdiction to confirm or vary the determination of the rent officer under the Rent Act 1977.³ As the Rent Assessment Committee is reviewing the decision of a public authority, that is the rent officer, this could be viewed as a citizen and state, or public law, dispute. Alternatively, it could be seen as essentially a private dispute between two parties, in other words the landlord and the tenant, as to the correct amount of fair rent.
- 4.11 We have categorised the LVH tribunals as follows.

Party and party tribunals

- (1) Leasehold Valuation Tribunal.

¹ See Part V of this consultation paper.

² See the Leggatt Review, para 3.17.

³ Schedule 11 para 9.

- (2) Rent Tribunal.⁴
- (3) Rent Assessment Committees.⁵
- (4) Agricultural Land Tribunal.
- (5) The adjudicator to HM Land Registry.⁶

Citizen and state tribunals

- (1) The Commons Commissioners.
- (2) Valuation Tribunal.

Hybrid tribunal

The Lands Tribunal deals with both citizen and state and party and party disputes. The majority of the tribunal's jurisdictions are public law matters.⁷ A relatively small number of its first instance jurisdictions are properly categorised as party and party disputes. The most important of these is the discharge or modification of restrictive covenants under section 84 of the Law of Property Act 1925, which makes up an appreciable amount of the tribunal's workload. Others with a private law flavour are

- (1) final determination of rateable values under section 37(5) of the Landlord and Tenant Act 1954 for the purpose of calculating compensation payable by the landlord under that Act,
- (2) apportionment of rentcharges under section 6 of the Rentcharges Act 1977 and
- (3) resolution of disputes relating to rights of way over common land under regulation 10 of the Vehicular Access Across Common and Other Land (England) Regulations 2002.⁸

⁴ With the possible exception of the slightly anomalous jurisdiction exercised by Rent Tribunals under the Housing Act 1985, s 389(1)(b) to determine compensation for possession of furniture under s 383 in default of agreement between the dispossessed proprietor and the local housing authority. This appears to have a predominantly public law flavour.

⁵ The Rent Assessment Committee's jurisdiction to confirm or vary the determination of the rent officer under the Rent Act 1977, Sched 11 para 9 has an element of a citizen and state dispute to it. It could be argued, however, that the dispute is in reality between two parties, ie the landlord and tenant, as to the amount of the fair rent. See para 4.10 above.

⁶ The adjudicator's jurisdiction will primarily be over party and party disputes, but will also cover appeals against decisions of the registrar regarding access the Land Registry Network, which are citizen and state based.

⁷ A number of jurisdictions are not related to citizen and state disputes in the strict sense, eg the jurisdiction under the Electricity Act 1989, Sched 3 Part II para 9, which grants the Lands Tribunal power to determine disputes relating to compulsory purchase by electricity licence holders. We consider these types of dispute have a public law flavour. Bodies such as privatised utilities are here acting in place of the state, not as private parties.

⁸ SI 2002 No 1711.

- 4.12 The LVH tribunals deal with both types of disputes without any obvious difficulties. We have therefore not addressed in detail the issue of whether the two types of dispute should be separated out, for example by creating separate tribunals to deal with each type of dispute. We invite consultees' views on whether the division between citizen and state and party and party disputes does in fact need to be addressed in this way. If consultees do take the view that this is an important division, we would be grateful for comments on whether consultees agree with our categorisation in paragraph 4.11 above.

Alternative Dispute Resolution

- 4.13 A point that consultees might want to bear in mind when considering our options is the extent to which each option provides opportunities for the use of Alternative Dispute Resolution ("ADR"). The Leggatt Review states that there may be scope for ADR to be used in the work of the LVH tribunals as "mediation has a proven record of efficacy in cases involving a number of parties with conflicting interests, and that is a common feature of leasehold disputes before the Leasehold Valuation Tribunal and the county courts." The Leggatt Review therefore suggests that the Law Commission's consideration of the LVH tribunals should examine the scope for the use of formal and informal ADR procedures.⁹
- 4.14 The Leggatt Review points out the benefits of ADR. The Review states that ADR can be particularly helpful when parties want to maintain good relations following a dispute. It can provide a chance in citizen and state disputes for regulators and applicants to discuss their differences in relation to complex statutory schemes. ADR provides scope for negotiation rather than resulting in a "win" or "lose" situation, and can reduce the number of contested cases.¹⁰
- 4.15 Consultees may want to consider what types of ADR would be suitable for the resolution of disputes in the LVH tribunals. The Leggatt Review mentions mediation in particular. Mediation involves a neutral third party working with the parties to facilitate their discussions so they can reach a mutually acceptable settlement. The mediator does not make a binding decision.
- 4.16 A different type of ADR, arbitration, is already a possible means of dispute resolution for some land and property disputes. Arbitration is a binding method of dispute resolution in which the appointed arbitrator issues an award that is enforceable in the courts. The Lands Tribunal has jurisdiction to act as an arbitrator under section 1(5) of the Lands Tribunal Act 1949. We understand that this power is usually used in disputes concerning the value of land under agreements for the sale of land to authorities which have compulsory purchase powers.¹¹ There is provision in the Agricultural Holdings Act 1986 for the use of an arbitrator to resolve certain disputes over agricultural holdings.¹² Arbitration is

⁹ Leggatt Review, para 8.22.

¹⁰ Leggatt Review, para 8.19.

¹¹ This information is taken from a note on the Lands Tribunal's jurisdictions posted on the Lands Tribunal's website at www.courtservice.gov.uk/tribunals/lands.

¹² Schedule 11.

the prescribed means of dispute resolution under the Agricultural Tenancies Act 1995 for most disputes regarding farm business tenancies.¹³

- 4.17 We provisionally agree with the Leggatt Review that ADR could be a useful tool for the resolution of land, valuation and housing disputes, in appropriate cases. Consultees may want to consider further opportunities for the use of mediation in particular. Cases that might not be suitable for mediation are those in which the relationship between a landlord and a tenant has become acrimonious and both parties have deeply entrenched positions.

OPTIONS FOR REFORM

- 4.18 We now turn to look in detail at our three suggested options for reform.

Option 1: Rationalise the current structure

- 4.19 The first option is to leave the tribunals broadly as they are, but to restructure some discrete elements of the system. We have identified three areas of the current system which would seem to benefit from some restructuring. The changes we have considered are the reorganisation of the appeal routes for the LVH tribunals, the rationalisation of the Lands Tribunal's jurisdictions and the unification of the RPTS tribunals. These changes are not necessarily all dependent upon each other and each issue can be considered in isolation to some extent. Our provisional view is, however, that this option would work best if each of the areas were reformed together. The implementation of this option would not, as far as we can see, have any impact on the use of ADR in the LVH tribunals.

A common appeal route for all LVH tribunals

- 4.20 At present appeals from the various LVH tribunals are either to the Lands Tribunal or to the High Court. The Lands Tribunal exercises an appellate jurisdiction over all decisions of the Leasehold Valuation Tribunal.¹⁴ It also has appellate jurisdiction over the following decisions from the Valuation Tribunal: non-domestic rates,¹⁵ drainage rates¹⁶ and "old rates". These "old rates" cases are the residual jurisdiction of the old Local Valuation Courts, which was transferred

¹³ See s 28. The parties can instead make their own ADR arrangements. The Act applies to farm business tenancies which were created after 1 September 1995.

¹⁴ Commonhold and Leasehold Reform Act 2002, s 175. Although this section is not yet in force, it in fact only simplifies the legislative basis of the appeal route which already exists from the Leasehold Valuation Tribunal to the Lands Tribunal.

¹⁵ See reg 47(1) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 291) and reg 37(4) of the Non-Domestic Rating (Chargeable Amounts)(England) Regulations 1999 (SI 1999 No 3379). These regulations were made under the Local Government Finance Act 1988, Sched 11 para 11(1)(b).

¹⁶ See the Land Drainage Act 1991, s 46(6) and the Land Drainage Act 1976, s 79(5) (although this latter provision has been repealed by the Water Consolidation (Consequential Provisions) Act 1991, the savings therein allow for appeals to be made to the Lands Tribunal from the Valuation Tribunal exercising this jurisdiction).

to the Valuation Tribunal by the Valuation and Community Charge (Transfer of Jurisdiction) Regulations 1989.¹⁷

- 4.21 The High Court has appellate jurisdiction over decisions of the Rent Tribunal and the Rent Assessment Committees,¹⁸ as well as decisions of the Commons Commissioners¹⁹ and the Agricultural Land Tribunal.²⁰ It also has appellate jurisdiction over community charge and council tax decisions from the Valuation Tribunals.²¹
- 4.22 The Valuation Tribunal additionally has an internal review mechanism which enables it to review decisions on the application of one of the parties to the original appeal. The grounds for this review are clerical error, that the party did not appear at the original hearing but can show reasonable grounds why he did not do so, or that the Valuation Tribunal decision is affected by a decision of the High Court or the Lands Tribunal. This internal review mechanism cannot be used once an appeal has been made to the Lands Tribunal or the High Court.²²
- 4.23 Appeal from the Lands Tribunal is to the Court of Appeal on a point of law.²³
- 4.24 To create a coherent system and one which is readily comprehensible to users, we provisionally take the view that there should be one clearly defined common appeal route from all the LVH tribunals. In line with the proposals of the Leggatt Review,²⁴ this common appeal route would most rationally be a system of appeals to the Lands Tribunal rather than to the High Court. A change of name may be desirable, for example, “the Land, Valuation and Housing Appeal Tribunal”²⁵ or

¹⁷ SI 1989 No 440. The enabling primary legislation is the Local Government Finance Act 1988, Sched 11 para 3. Appeals to the Lands Tribunal against the Valuation Tribunal’s decisions in “old rates” cases are saved by the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990 (SI 1990 No 777), reg 3(1) and the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (SI 1990 No 776).

¹⁸ Tribunals and Inquiries Act 1992, s 11(1) and Sched 1, para 37.

¹⁹ Commons Registration Act 1965, s 18(1).

²⁰ Agricultural (Miscellaneous Provisions) Act 1958, s 6.

²¹ The High Court has jurisdiction under the Valuation and Community Charge Regulations 1989 (SI 1989 No 439). Regulation 32 confers jurisdiction in respect of community charge matters heard pursuant to the Local Government Finance Act 1988, s 23. Regulation 51 confers jurisdiction in respect of council tax decisions made under the Local Government Finance Act 1992, s 16 and Sched 3 para 3(1) and the Local Government Finance Act 1988 Sched 4A para 4. The High Court also has appellate jurisdiction under the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 32, in respect of appeals made pursuant to regs 8(3) and 13. The primary legislation is the Local Government Finance Act 1988 Sched 11, para 11.

²² See the Valuation and Community Charge Tribunals Regulations 1989 (SI 1989 No 439), reg 49; the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 221), reg 45 and the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 30.

²³ Lands Tribunal Act 1949, proviso to s 3(4). By s 3(11) the court referred to in the proviso to s 3(4) is the Court of Appeal.

²⁴ Leggatt Review, paras 6.9–6.11 and Table C in chapter 6.

²⁵ The Leggatt Review suggests the name “Land and Valuation Appeal Tribunal”. See the Leggatt Review, Table C in chapter 6.

the “Property Appeal Tribunal”. Some training and drafting in of extra expertise may be necessary at the outset to ensure that Lands Tribunal members were able to deal with the added jurisdictions.

- 4.25 The Lands Tribunal currently exercises jurisdiction in both first instance and appeal cases. If the Lands Tribunal were to become the appellate body for all the LVH tribunals, it could either retain both these tiers of jurisdiction, or it could become an appellate body only. This is discussed further in paragraphs 4.28 – 4.33 below.
- 4.26 Appeals to the High Court are on a point of law only. Appeals to the Lands Tribunal are not confined to questions of law. The recommendation in the Leggatt Review is for a single right of appeal from all tribunals on a point of law only.²⁶ We welcome the views of consultees on whether, in our suggested new appeals structure, an appeal to the Lands Tribunal should be a rehearing on the facts, an appeal on a point of law only, or whether the type of appeal should vary depending on the type of hearing that took place at first instance. It seems to us that a key factor is what type of members heard the case at first instance. Cases may be heard by lawyers, by other experts such as valuers or surveyors or by lay members, that is those with no legal or other technical expertise. If a case was originally heard by lay members, there is perhaps more of an argument that an appeal should be a complete rehearing before a panel of experts in the Lands Tribunal. On the other hand, if an appeal is heard as a rehearing on the facts of the case, this may call into question the point of having the first instance hearing at all. Our provisional view is that appeals from decisions of lay tribunals should be heard as a rehearing on the facts whereas appeals from expert tribunals should be appeals on a point of law only.
- 4.27 In our suggested appeals system, applicants would be able as now to appeal from the Lands Tribunal to the Court of Appeal and further, subject to the granting of permission. The Leggatt Review states that it would be to users’ benefit to use a reformed comprehensive and systematic appeal system rather than the more limited remedies of judicial review, and that the possibility of judicial review should therefore be excluded. We provisionally agree that judicial review should be excluded for the LVH tribunals in a similar way.²⁷

Rationalisation of the Lands Tribunal

- 4.28 We have provisionally proposed that there should be a single appeal route from all LVH tribunals and that this should be to the Lands Tribunal.²⁸ If the Lands Tribunal were to become the single appellate body for all LVH tribunals, this would provide a strong incentive for considering the rationalisation of the tribunals’ jurisdictions. However, even within the current system it is worth considering which types of cases the tribunal should properly deal with.

²⁶ Leggatt Review, para 6.12.

²⁷ Leggatt Review, paras 6.29 and 6.30, and recommendations 106 and 107.

²⁸ See para 4.24 above.

- 4.29 The Lands Tribunal currently has jurisdiction over both appellate and first instance cases. In this section we discuss two types of first instance jurisdiction which could be dealt with by the Lands Tribunal. We use the terms “original” and “transferred” jurisdiction to distinguish these two types of first instance jurisdiction. By original jurisdictions we mean those which statute (or statutory instrument) states are within the jurisdiction of the Lands Tribunal to decide at first instance. These include, for example, the Lands Tribunal’s first instance jurisdiction to determine compensation disputes under the Land Compensation Act 1973, compulsory purchase disputes under the Compulsory Purchase Act 1965 and matters relating to the discharge and modification of restrictive covenants under section 84 of the Law of Property Act 1925.²⁹ We use “transferred” jurisdiction to denote first instance disputes which are in fact usually within the jurisdiction of other LVH tribunals, but which could be referred to the Lands Tribunal if to do so would be advantageous in terms of expertise or because the Land Tribunal’s procedures would be more appropriate. For example, a case which was within the jurisdiction of the Leasehold Valuation Tribunal could be transferred to be heard by the Lands Tribunal at first instance if it was of especially high value or was particularly complex.
- 4.30 We are not aware of any statutory procedure which enables the Lands Tribunal to exercise this transferred jurisdiction, but there is a rarely used procedure by which the Lands Tribunal can exercise a type of transferred jurisdiction in relation to the Valuation Tribunal. Instead of bringing a case before the Valuation Tribunal, parties may agree to refer the question to arbitration.³⁰ Parties also agree to appoint the Lands Tribunal as the arbitrator.³¹ This can save parties intending to take a case before the Lands Tribunal the time and cost of a hearing before the Valuation Tribunal.
- 4.31 There are therefore three separate potential types of jurisdiction for any reformed Lands Tribunal, that is, the appellate jurisdiction, the jurisdiction for original first instance cases and the jurisdiction for transferred first instance cases. Our provisional view is that the Lands Tribunal should in the main function as an appellate body and where possible its special expertise should be reserved for only the most complex first instance cases. At the moment, the issue of which first instance cases are heard by the Lands Tribunal is determined by subject matter, that is the original first instance jurisdictions. We ask consultees whether these are in fact complex cases which are suitable for determination by the Lands Tribunal or whether a better system would be for any case to be potentially transferable to the Lands Tribunal if it were of the appropriate complexity on its facts. Our provisional view is that the question of what is a complex case should be decided on the facts of each case rather than being determined by the subject matter of the original first instance jurisdiction.

²⁹ A full list of the Lands Tribunal’s original first instance jurisdictions is set out in the Lands Tribunal appendix.

³⁰ Non-Domestic Rating (Alteration of Lists and Appeals) Regulations (SI 1993 No 291), reg 48.

³¹ This jurisdiction is conferred by Lands Tribunal Act 1949, s 1(5).

- 4.32 There is a disadvantage to this view. If most of the cases within any particular subject matter are very complex ones, the Lands Tribunal will be the only body which has expertise in this subject matter. This might argue for all cases within that subject area to be considered by the Lands Tribunal, whatever their level of complexity. For example, the Government has agreed with the Compulsory Purchase Policy Review Advisory Group (CPPRAG) that it makes sense to concentrate the determination of all compulsory purchase disputes within a single body with the relevant expertise and experience.³²
- 4.33 If there are some original first instance jurisdictions which should not routinely be considered by the Lands Tribunal, there would have to be an alternative mechanism for dealing with these cases. These could either be dealt with in a new first instance tribunal or by another mechanism. We ask consultees what other dispute resolution mechanisms would be suitable for the original first instance jurisdictions. Our provisional view is that the original first instance jurisdictions should be transferred to a new first instance body.

Unification of the RPTS tribunals

- 4.34 As previously noted,³³ the RPTS tribunals are made up of the Leasehold Valuation Tribunal, the Rent Tribunal and the Rent Assessment Committee. To a large extent, these three tribunals already function as one unit. The tribunals now have a common legislative basis in Schedule 10 to the Rent Act 1977.³⁴ The tribunals all carry out similar work in the field of residential tenancies and share a common administration. In practice the workload of the Rent Tribunals has declined sharply and that of the Rent Assessment Committees is rapidly declining. The three tribunals within the RPTS tribunals could therefore be completely unified. The change would largely seem to be changes in nomenclature, possibly with some additional consequences relating to membership of the tribunal. Complete unification of the tribunals might also present further opportunities for some streamlining of their appeal routes and procedures. These two aspects are discussed below.
- 4.35 A unified tribunal should have one common route of appeal. At present, appeals from the Leasehold Valuation Tribunal are to the Lands Tribunal, whereas appeals from the Rent Tribunal and the Rent Assessment Committee are to the High Court.³⁵ This is not an issue if reform of the RPTS tribunals is tied into the

³² Compulsory Purchase and Compensation – the Government’s proposals for change (December 2001). See also the report of the Compulsory Purchase Policy Review Advisory Group (July 2000). Both of these documents are available on the website of the Office of the Deputy Prime Minister, at www.planning.odpm.gov.uk.

³³ See Part II of this consultation paper, para 2.8.

³⁴ By s 173 of the Commonhold and Leasehold Reform Act 2002 any jurisdiction conferred on a Leasehold Valuation Tribunal is exercisable by a Rent Assessment Committee in accordance with Sched 10 to the Rent Act 1977 and when so constituted it is known as a Leasehold Valuation Tribunal. By s 72 of the Housing Act 1980, Rent Tribunals are constituted as Rent Assessment Committees under Sched 10 of the Rent Act 1977 and when carrying out any of the functions of a Rent Tribunal, Rent Assessment Committees are known as Rent Tribunals. Leasehold Valuation Tribunals and Rent Tribunals are therefore categories of Rent Assessment Committees.

³⁵ See paras 4.20 – 4.21 above.

creation of a common appeals route for all LVH tribunals.³⁶ If the unification of the RPTS tribunals is not tied into the reform of the appellate structure, our provisional view is that a unified RPTS tribunal should have a single route of appeal to the Lands Tribunal.

- 4.36 The implementation of a common set of procedures for a unified tribunal would largely be a matter for secondary legislation. The possibility of streamlining the RPTS tribunals' current procedures is, however, a point to bear in mind when considering the overall viability of this option. The composition of each of the three tribunals is dealt with within the same piece of legislation.³⁷ Each tribunal has its own set of regulations regarding other procedural matters.³⁸ The procedures of the tribunals seem on paper to be fairly similar, although the Leasehold Valuation Tribunal has a wider range of case-management type powers.³⁹ We ask consultees whether any procedural differences are necessary, and whether the unification of the RPTS tribunals would be a useful opportunity to consider whether there could be any further streamlining of the tribunals' procedures.
- 4.37 The current disparities between the three RPTS tribunals in their charging of fees to users would need to be examined. There would also need to be some consideration of where the regional offices of the new tribunal should be.
- 4.38 The jurisdiction of a single RPTS tribunal would be a combination of the jurisdictions now exercised by the Leasehold Valuation Tribunal, the Rent Tribunal and the Rent Assessment Committees, subject to any changes made to the tribunals' jurisdiction as a result of this project.⁴⁰

Option 2: An amalgamated tribunal

- 4.39 Option 2 assumes the suggested reforms in option 1 have been accepted, that is, there is a single appeal route to the Lands Tribunal, the Lands Tribunal's jurisdictions have been rationalised and that the RPTS tribunals have been unified.
- 4.40 This option involves a more comprehensive remodelling of the overall structure of the LVH tribunals. It entails the amalgamation of the jurisdictions of the first instance LVH tribunals, with a single appeals body. This option is a "half way

³⁶ See paras 4.20 – 4.27 above.

³⁷ Rent Act 1977, Sched 10.

³⁸ For the Rent Tribunal, see the Rent Assessment Committees (Rent Tribunal) Regulations 1980 (SI 1980 No 1700). For the Rent Assessment Committee, see the Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971 No 1065). For the Leasehold Valuation Tribunal, see the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993 (SI 1993 No 2408) as amended by the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) (Amendment) Regulations 1997 (SI 1997 No 1854). Schedule 12 of the Commonhold and Leasehold Reform Act 2002 contains power for new regulations to be made on the procedure of Leasehold Valuation Tribunals, but at the time of writing no such regulations have been made.

³⁹ These additional powers were granted by the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) (Amendment) Regulations 1997 (SI 1997 No 1854).

⁴⁰ See Part V of this consultation paper.

house” between option 1, the rationalisation of the current system, and option 3, the fully unified tribunal.

- 4.41 Broadly speaking, the jurisdictions currently exercised by the first instance LVH tribunals would all be transferred in law to one new large tribunal called, for example, “the Land, Valuation and Housing Tribunal”.⁴¹ This tribunal would have regional offices. The tribunal would have a single administrative service to deal with all the administration relating to cases within its jurisdiction, called perhaps “the Land, Valuation and Housing Tribunal Service”. There would be one President in charge of the amalgamated tribunal and another President for the appeals tribunal.
- 4.42 In an amalgamated tribunal, users would submit their application through the single administrative service. The President would then determine how cases were to be allocated within the tribunal, including which members should hear the case and which procedures would be used. In practice, this function would probably be delegated either to a newly created registrar or would be dealt with by the administrative service.
- 4.43 This system of Presidential allocation of cases would result in the present LVH tribunals continuing to exist to a certain extent in fact if not in law, under the umbrella structure of the single amalgamated tribunal. The precise level of integration of the currently existing tribunals within the new body is determined by the way in which cases are allocated.
- 4.44 At one end of the spectrum one could opt for a “hard-edged” jurisdictional approach and at the other end one could opt for a “soft-edged” discretionary approach. In a hard-edged jurisdictional system, the operation of the existing LVH tribunals would largely remain the same. The tribunals would not exist in name, but administrative divisions based on them could be established and cases could be allocated accordingly. For instance, when a dispute previously dealt with by the Leasehold Valuation Tribunal was submitted through the administrative service, it would be allocated to a tribunal member who previously worked as a Leasehold Valuation Tribunal member and would be determined to a large extent by current Leasehold Valuation Tribunal procedures. The main changes that would result from the hard-edged option would be administrative, that is, there would be a centralisation of administrative functions and a pooling of administrative resources which could be beneficial. The actual determination of disputes would largely remain the same, though there would be room for some rationalisation of procedures and fee structures.
- 4.45 The “soft-edged” system is similar, but would involve a greater degree of internal reorganisation and would be more flexible. Again the existing tribunals would not exist in name. The administrative divisions established within the amalgamated structure would reflect to some extent the jurisdiction of the existing tribunals, but would also take into account other factors. Cases would be allocated taking into account a wide range of factors in addition to the jurisdictions of the currently existing tribunals. Relevant factors could include, for example, the complexity of

⁴¹ Subject to any overall change made to the jurisdictions. See Part V of this consultation paper.

the case, the type of expertise that was most appropriate and the monetary value involved. These factors would allow more flexibility in which procedures were used, including the degree of case management applied. To take our earlier example, when a dispute formerly dealt with by the Leasehold Valuation Tribunal was submitted, the current Leasehold Valuation Tribunal procedures would not necessarily be used. If, for example, the case were a complex one involving large sums of money, it might be allocated to a procedural route requiring a large degree of case management.

- 4.46 Different “streams” could be developed for different sorts of cases. The top stream, for example, might comprise cases where a high level of legal or technical expertise was needed together with a large degree of case management. The bottom stream might suit cases which needed a lower level of expertise and case management or for which ADR might be suitable. A hierarchy of streams would operate in between these, and cases could be streamed into whichever was most appropriate, taking into account the precise facts of the case as well as the jurisdictional issues involved. Even if not explicit in the system of allocation of cases, this hierarchy of streams would probably develop in practice within this sort of model.
- 4.47 This could work similarly to the way in which cases can be streamed under existing Lands Tribunal procedures. When cases come into the Lands Tribunal, they are allocated to one of four procedural streams. The first is the special procedure, used for cases which require a large degree of case management by a tribunal member because of their complexity. The second is the standard procedure in which case management is in the hands of the registrar and in which there is usually a lesser degree of case management. The third is the simplified procedure which aims to provide for the speedy and economical determination of cases in which no substantial issue of law or valuation practice, or substantial conflict of fact, is likely to arise, and which is often used where the amount at stake is small. It is a procedure in which costs are not awarded. The fourth is a written representations procedure which is used when, having regard to the issues in the case and the desirability of minimising costs, the tribunal is of the view that oral evidence and argument can properly be dispensed with.⁴²
- 4.48 As well as being allocated to one of the procedural streams, consideration would have to be given to which tribunal member should hear each case. Different personnel would be allocated, or “ticketed” to different types of case. In the “hard-edged” variant, the appropriate personnel would be decided upon on a jurisdictional basis. For example, a case that would now be heard by a Leasehold Valuation Tribunal member would be allocated to a member who used to sit in the Leasehold Valuation Tribunal. In the “soft-edged” variant, there would be more flexibility and other factors could be taken into account. A case that would now be

⁴² The written procedure and the simplified procedure are provided for by statutory instrument. See the Lands Tribunal Rules 1996 (SI 1996 No 1022), rules 27 and 28. Rule 48 states that subject to the Rules and to any direction by the President, the procedure at the hearing of any proceedings shall be such as the tribunal may direct. The Lands Tribunal’s Practice Direction 3.1 provides that every case will be allocated to one of the four procedures: the standard procedure, the special procedure, the simplified procedure or the written procedure. The Practice Directions are available at www.courtservice.gov.uk/tribunals/lands.

heard by a Leasehold Valuation Tribunal member would not necessarily be heard by a Leasehold Valuation Tribunal in the amalgamated tribunal if the complexity of the case, for example, meant it was more appropriate for it to be heard by a former Lands Tribunal member.

- 4.49 At this stage we believe that the “hard-edged” variant would result in largely superficial changes, whereas the “soft-edged” variant offers a more promising avenue for meaningful reform in the spirit of the Leggatt Review. We therefore provisionally recommend that it be preferred over the “hard-edged” variant and outline the features of option 2 on this basis. We do, however, invite consultees’ views on both variants.
- 4.50 One issue that is relevant to both variants is the regional structure of the amalgamated tribunal. At present the LVH tribunals’ regional division vary. It seems that as a single regional structure will have to be chosen for the amalgamated tribunal, one or more of the existing regional structures will inevitably therefore have to be replaced. We invite consultees to consider the most appropriate regional structure for an amalgamated LVH tribunal.

Summary of the amalgamated tribunal option

- 4.51 The following are the principal features of this option (assuming the soft-edged variant referred to above).
- (1) The first instance jurisdictions of the existing tribunals are transferred to a single first tier LVH tribunal. Although the existing first instance tribunals no longer exist, they may be reflected to some degree in the administrative organisation of divisions. The Lands Tribunal is the sole appellate body for appeals from the new LVH tribunal.
 - (2) Applicants apply through a single administrative service. Cases are allocated to procedural streams on a discretionary basis by reference to a range of factors such as the jurisdictional issues raised, the degree of expertise required, the complexity of the case and the monetary value involved. A hierarchy of streams would be created for different types of case.
 - (3) The existing procedures and fee structures are adapted so as to reflect the allocative criteria referred to in (2) above. There would probably be more commonality of procedure than exists between the LVH tribunals that currently exist. The details of procedure would largely be a matter for secondary legislation.
 - (4) Tribunal members generally continue to exercise the same functions as they do at present, with the proviso that certain complex and/or important cases be dealt by a higher stream within the amalgamated tribunal structure.
- 4.52 This option is more flexible than option 1. In the soft-edged variant at least, cases could be dealt with in the most effective way without the restriction of

jurisdictional issues as between the different individual tribunals. As the jurisdictions of the individual LVH tribunals have grown up in an ad hoc fashion, it may be that some jurisdictions would in fact be more appropriately be dealt with in a different tribunal to that which has jurisdiction for a particular matter.⁴³ This option also allows a large degree of flexibility in terms of procedure and case management. The specialist expertise of the tribunal members is retained as members would usually hear cases within their current areas of expertise. This option leaves open the possibility for future development towards a unified tribunal, as described in option 3, without undertaking such a radical move at this stage.

Option 3: A Unified Tribunal

- 4.53 Option 3 also assumes that the suggested reforms in option 1 have been accepted, that is, there is a single appeal route to the Lands Tribunal, the Lands Tribunal's jurisdictions have been rationalised and that the RPTS tribunals have been unified.
- 4.54 This option, which entails the creation of a unified LVH tribunal system, is the most radical reform option. The basic structure is similar to that of the amalgamated tribunal discussed in option 2. There would be a single first instance LVH tribunal, a single appeals body and a single administrative body. The unified first instance tribunal could be known as the "Land, Valuation and Housing Tribunal", and would have regional offices. There would be one President at the head of the unified tribunal and another President for the appeals tribunal.
- 4.55 The difference between the two options is that in option 3, there would be no procedural divisions within the first instance tribunal and no divisions relating to tribunal composition. Whereas in option 2 the current procedural rules of the LVH tribunals would remain at least to some extent, in a fully unified tribunal there would be a single set of procedures. The precise nature of these procedural rules would be a matter for secondary legislation, but consultees may want to consider the extent to which a single procedural code would be possible. Within the single set of procedures, there would of course be room for variations in the exact procedures used in different cases, and for different degrees of case management where necessary, as already happens in courts and tribunals.
- 4.56 Under a fully unified tribunal system each sitting of the tribunal would have jurisdiction to hear any land, valuation or housing dispute for which the unified tribunal had jurisdiction. However, in practice, at least at first, a "ticketing" system would be put into place whereby members would be designated to hear those cases which were within their areas of expertise. In this way, the unified tribunal would make use of the existing expertise of the current members of the LVH tribunals. Tribunal members would also be able to gain more extensive expertise by sitting in different types of cases. There would probably be more ticketing of this sort in the early stages of the unified tribunal's development. As tribunal members would gain expertise in a wider range of land, valuation and housing matters over the course of

⁴³ It has been suggested, for example, that the Lands Tribunal's jurisdiction relating to the discharge of restrictive covenants under s 84 of the Law of Property Act 1925 could be more suitably be placed within the jurisdiction of one of the RPTS tribunals. See Professor Alan Prichard, "New Jurisdictions for Rent Assessment Committees?" (1991) Conv 447.

time, there could be some movement towards members being able to hear all types of cases within the unified tribunal's jurisdiction.

- 4.57 In the same way as in the amalgamated tribunal, consideration would have to be given to the regional structure of the unified tribunal and to how fee structures might be rationalised.

Summary of the unified tribunal option

- 4.58 The following are the principal features of this option:

- (1) The first instance jurisdiction of the existing tribunals is transferred to a single first tier LVH tribunal. The existing first instance tribunals are accordingly abolished. The Lands Tribunal becomes the sole appellate body for appeals from the new LVH tribunal.
- (2) There is no allocation or streaming of cases by the single administrative body. There are no administrative divisions reflecting the existing LVH tribunals. Tribunals utilise case management in this powers in the same way as do ordinary courts and tribunals.
- (3) A single set of procedures and fee structures is adopted for the new first instance tribunal. The exact procedures and fee structures may of course vary according to the type of dispute being heard.
- (4) Tribunal members may deal with any dispute that arises before the new tribunal, but in practice a ticketing system would operate under which the expertise of different members would be matched to appropriate cases. The ticketing system may become less important over time, as members became experienced in different land, valuation and housing matters.

- 4.59 The advantage of this option is that in time it would offer a simple one-stop shop for users for all LVH tribunal disputes. This model would greatly simplify matters for users and could lead to the speedier and more efficient resolution of disputes, especially if eventually all tribunal members could hear all land, valuation and housing disputes. This would also allow for much greater flexibility in the use of judicial expertise. A fully unified tribunal could also produce efficiency savings. A unified tribunal has the advantage of complete flexibility, as well as the potential for new jurisdictions to be easily added where this would be in the interests of a coherent system of administrative justice.

OUR PROVISIONAL CONCLUSIONS

- 4.60 We have set out three possible options for structural reform of the LVH tribunals. Our provisional preference is for option 3, the unified tribunal. Option 1 may leave the problem of user confusion over where to start a case unsolved and would merely modify the current system where a more radical overhaul might be more beneficial. Options 2 and 3 both envisage a single first instance tribunal. While options 2 and 3 are conceptually different, in practice they may only differ in the way in which the new single tribunal would operate. It may be better therefore to opt for a unified tribunal system and recognise that the way in which cases would be allocated to different members and to different procedures should depend partly on the tribunal's rules and partly on practical matters of management and administration.

CONSULTATION QUESTIONS

- 4.61 We welcome the views of consultees on any of the matters raised in this consultation paper or any other suggestions consultees may have. In particular we invite comments on the following consultation questions.

General points

- 4.62 We have set out three possible options for reform. Which of these options do consultees think is most workable in practice? Why?
- 4.63 What practical problems have consultees noted with any of the options?
- 4.64 What would be the financial impact of these options?
- 4.65 Is the division between party and party disputes and citizen and state disputes an important one in the work of the LVH tribunals? Would it be beneficial in any reformed tribunal system to separate out these two types of dispute? If so, do consultees agree with our categorisation of the LVH tribunals? (See paragraphs 4.9 – 4.12).
- 4.66 What scope do consultees see for the use of ADR in the work of the LVH tribunals? (See paragraphs 4.13 – 4.17).

Option 1: Rationalise the current structure

- 4.67 Within option 1, we have suggested three changes to the current system: a common appeals route, the rationalisation of the Lands Tribunal and the unification of the RPTS tribunals. Do consultees see a need in practice for the these changes? (See paragraphs 4.19 – 4.38).

A common appeal route for all LVH tribunals

- 4.68 Do consultees think there should be a single route of appeal from the LVH tribunals? If so, should this be a single route of appeal to the Lands Tribunal? What would be an appropriate name for this tribunal? See paragraphs 4.20 – 4.27).
- 4.69 What factors should influence whether an appeal should be a rehearing on the facts or an appeal on a point of law only? Which of these should be the basis for appeals in the context of our suggested single appeal route to the Lands Tribunal? (See paragraph 4.26).
- 4.70 Do consultees think that the possibility of judicial review should be excluded? (See paragraph 4.27).

Rationalisation of the structure of the Lands Tribunal

- 4.71 Do consultees agree that the Lands Tribunal should in the main function as an appellate body and where possible its special expertise should be reserved for only the most complex first instance cases? (See paragraph 4.31).
- 4.72 Do consultees think that the original Lands Tribunal first instance jurisdictions are in fact complex cases which are suitable for determination by the Lands Tribunal, or would a better system be for any case to be potentially transferable to the Lands

Tribunal if the case were of appropriate complexity on its facts? (See paragraph 4.31)

- 4.73 What other dispute resolution mechanisms do consultees think would be suitable for the original first instance jurisdictions if they were moved from an appellate Lands Tribunal? (See paragraph 4.33)

Unification of the RPTS tribunals

- 4.74 Do consultees see any advantages in the complete unification of the RPTS tribunals? (See paragraphs 4.34 –4.38).
- 4.75 Do consultees agree that a unified RPTS tribunal should have a single route of appeal and, if so, should this be an appeal to the Lands Tribunal? (See paragraph 4.35).
- 4.76 Would a unification of the RPTS tribunals provide an opportunity to consider streamlining of the tribunals' procedures? (See paragraph 4.36).

Option 2: An amalgamated tribunal

- 4.77 In paragraph 4.51, we summarise our model for an amalgamated tribunal. Do consultees think this is workable in practice? Please give reasons as far as possible.
- 4.78 In paragraphs 4.44 – 4.49 we discuss “hard-edged” and “soft-edged” variants within this option. Do consultees agree that the “soft-edged” variant is the more promising route for reform?
- 4.79 What do consultees think would be the most appropriate regional structure for an amalgamated LVH tribunal? (See paragraph 4.50).

Option 3: A unified tribunal

- 4.80 In paragraph 4.58 we summarise our model of a unified tribunal. Do consultees think this is workable in practice? Please give reasons as far as possible.
- 4.81 A unified tribunal would have a single procedural code. Do consultees see a single procedural code as a possibility? (See paragraph 4.55).
- 4.82 What do consultees think would be the most appropriate regional structure for a unified LVH tribunal? (See paragraph 4.57).

PART V

JURISDICTIONAL RELATIONSHIPS

INTRODUCTION

- 5.1 The Leggatt Review concluded that there are confusing overlaps of jurisdiction between the courts and LVH tribunals. It recommended the removal of such overlaps and related forum shopping opportunities.¹ As a result of these recommendations we have undertaken a preliminary review of the jurisdictional relationship between the courts and the LVH tribunals. The Leggatt Review's reference to the "courts" is taken to mean in the main the county courts, as it seems likely that in practice this is the forum in which the potential for overlap in jurisdiction is most likely to arise.²
- 5.2 The issue of concern raised by the Leggatt Review appears to be limited to party and party disputes, as opposed to citizen and state disputes. The former involve private law matters over which the courts may also possess jurisdiction, whereas the latter involve administrative law matters over which the courts normally exercises no jurisdiction.³ It follows therefore that overlaps in jurisdiction are most likely to arise in relation to tribunals that deal mainly with party and party disputes.
- 5.3 The jurisdiction of tribunals and courts can be shared in a number of conceptually distinct ways. The following terms are used to distinguish the different types of relationship involved.
- (1) **Joint jurisdiction:** jurisdiction is directly conferred by way of express statutory provision on both a tribunal and the courts.⁴ The sharing of jurisdiction is therefore clearly intended.
 - (2) **Overlapping jurisdiction:** shared jurisdiction arises from two separate legislative sources.⁵ The sharing of jurisdiction may not, on the face of it, be intended.

¹ Leggatt Review, para 3.30.

² It seems most likely that when land, valuation or housing cases are dealt with by the "courts" applications will in practice almost always be made to the county court. Where individual statutes do not specify that cases are to be brought in the county court, there remains the possibility of applicants choosing the High Court instead. There is also a potential overlap between the adjudicator to HM Land Registry and the High Court – see para 5.6 below. This review concentrates in the main, however, on the county court.

³ See further Part IV, paras 4.9 – 4.12.

⁴ For example, para 8(2) of the Schedule to the Landlord and Tenant Act 1985 states "The tenant or landlord may apply to a county court or leasehold valuation tribunal for a determination...".

⁵ For example, Leasehold Valuation Tribunals have jurisdiction under s 159(6) of the Commonhold and Leasehold Reform Act 2002 in relation to estate charges, whereas the county court has a general contractual jurisdiction, which may include contracts under which estate charges arise. See also para 5.12(2) below.

- (3) **Contingent jurisdiction:** the courts' shared jurisdiction is contingent on a related matter being brought before it.⁶
 - (4) **Interlocking jurisdiction:** the tribunal and the court determine distinct matters that may arise in the context of a single dispute.⁷
- 5.4 The aim of this part is to examine the nature of the relationship between the LVH tribunals and the courts, summarise the instances where shared jurisdiction arises and raise questions as to the need for reform.
- 5.5 We have not at this stage set out any suggestions for jurisdictional reform. We have rather set out our understanding of some of the problematic issues in this area and invite consultees to let us know how the LVH tribunals work in practice. Consultees are invited to provide information on the instances where shared jurisdiction arises, and their views on whether individual instances of shared jurisdiction are beneficial or detrimental to the determination of disputes. We believe, depending on the circumstances, that there may be both advantages and disadvantages to shared jurisdiction. It may be desirable where it enables a single adjudicative body to determine all elements of a dispute (rather than splitting the issue between the courts and the relevant tribunal). However, where it permits forum shopping or gives rise to confusion without any attendant benefits it may require reform.⁸ We have not considered the much wider and more general question of which of all the LVH jurisdictions should be allocated to the courts and which to tribunals.

INDIVIDUAL TRIBUNALS

Adjudicator to HM Land Registry

- 5.6 There are two areas where there seems to be some element of joint jurisdiction between the adjudicator and the High Court. The following is one example.
- (1) **Joint jurisdiction:** under section 108(2) of the Land Registration Act 2002, the adjudicator may make any order which the High Court could make for the rectification or setting aside of various documents. It would seem that the High Court continues to exercise whatever jurisdiction it already has to rectify and set aside these documents. Such jurisdiction would usually be exercised in the context of another matter before the High Court, such as an application for rescission of contract.

⁶ For example, under s 90(4) of the Leasehold Reform, Housing and Urban Development Act 1993, the county court may assume the Leasehold Valuation Tribunal's jurisdiction when exercising jurisdiction conferred on the county court under ss 90(1) and (2) of the Act.

⁷ For example in relation to enfranchisement under the Leasehold Reform Act 1967. See para 5.12(4) below.

⁸ See Part III, para 3.12 for further discussion of the problems of overlaps and forum shopping.

Agricultural Land Tribunal

- 5.7 The Agricultural Land Tribunal exercises party and party jurisdiction in relation to certain matters pertaining to agricultural land.⁹ There is no indication from the statutory frameworks within which its jurisdiction is conferred of any sharing of jurisdiction with the county court. The Agricultural Land Tribunal forms one part of a complex system of dispute resolution in matters concerning agricultural land, with several different jurisdictions handling a variety disputes over agricultural property. Jurisdiction for different disputes relating to agricultural land is divided between the Agricultural Land Tribunal, the courts, the Rent Assessment Committee, ADR, and legislatively prescribed arbitration.¹⁰ The Lands Tribunal also has jurisdiction over compensation disputes concerning agricultural land under the Land Compensation Act 1973. The various dispute resolution methods fit together in a form of loosely interlinking jurisdiction, and there is no sharing of jurisdiction as defined in this paper.¹¹

Commons Commissioners

- 5.8 The Commons Commissioners exercise jurisdiction over certain determinations by registration authorities concerning the registration of common land. Thus they are a citizen and state tribunal and therefore unlikely to share jurisdiction with the county courts.

Lands Tribunal

- 5.9 There appears to be no real sharing of jurisdiction between the Lands Tribunal and the courts. The Lands Tribunal's first instance jurisdiction is almost entirely in the public law field.¹² The Lands Tribunal does exercise jurisdiction in relation to a relatively small number of disputes that have a private law flavour,¹³ however, no provision within the respective statutory frameworks relating to these jurisdictions indicates the existence of a joint or contingent jurisdiction between the Lands Tribunal and the courts.¹⁴
- 5.10 A type of jurisdictional overlap between the Lands Tribunal and the courts was raised in our consultation paper on compulsory purchase.¹⁵ Rights to compensation for injurious affectation under section 7 or section 10 of the Compulsory Purchase Act 1965 arise only in respect of the *lawful* use of statutory

⁹ See the Agricultural Land Tribunal appendix.

¹⁰ Note also the Agricultural Dwelling House Advisory Committee. See further the Agricultural Land Tribunal appendix.

¹¹ See the Agricultural Land Tribunal appendix for a more in depth explanation of the jurisdictions relating to agricultural land.

¹² See Part II of this consultation paper, para 2.7 and the Lands Tribunal appendix.

¹³ See Part IV of this consultation paper, para 4.11.

¹⁴ Note that with regard to the party and party type jurisdiction under the Landlord and Tenant Act 1954, the county court determines compensation under s 37 of that Act, whereas the Lands Tribunal has jurisdiction to hear appeals about the rateable value for the purpose of calculating that compensation. There is no real overlap in jurisdiction.

¹⁵ Towards a Compulsory Purchase Code: (1) Compensation (2002) Law Com Consultation Paper No 165.

powers. If the damage results from those powers being exceeded, the proper remedy is a common law claim to the courts. As the boundary is not clear, there may be confusion over the proper forum in which to start the claim.

- 5.11 The Lands Tribunal's appellate jurisdiction (that is, over decisions of Valuation Tribunals and Leasehold Valuation Tribunals) does not raise any issue in relation to the sharing of jurisdiction with the county court. The possible exercise of review jurisdiction by the High Court in respect of decisions made by lower tribunals over which there is an appeal to the Lands Tribunal does not directly impact on the issue of shared jurisdiction.¹⁶

Leasehold Valuation Tribunals

- 5.12 Leasehold Valuation Tribunals and county courts both exercise jurisdiction in relation to private landlord and tenant matters. The county court's jurisdiction in relation to landlord and tenant matters is both of a general and a special nature. It has a general jurisdiction to hear any claim for the recovery of land and any claim in which the title to any hereditament (including leasehold interests¹⁷) comes into question,¹⁸ and it has special jurisdiction to determine specific landlord and tenant related matters provided for under individual enactments. Leasehold Valuation Tribunals exercise jurisdiction in relation to such matters as the valuation of interests on leasehold enfranchisement, lease renewals and extensions, and estate, service and administration charges. There is therefore a close relationship between Leasehold Valuation Tribunals and county courts in terms of their jurisdictional remits. Our review of Leasehold Valuation Tribunals identified the existence of joint, contingent, overlapping and interlocking jurisdictions between the Leasehold Valuation Tribunals and the county courts.¹⁹ The following are some examples.

- (1) **Joint jurisdiction:** under paragraph 8 of the Schedule to the Landlord and Tenant Act 1985, jurisdiction is given to either the Leasehold Valuation Tribunal *or* the county court to deal with disputes between landlords and tenants relating to insurance.
- (2) **Overlapping jurisdiction:** under sections 27A(1) and 27A(3) of the Landlord and Tenant Act 1985, the Leasehold Valuation Tribunal has jurisdiction to determine actual and prospective liability to pay service charge. Section 27A(7) of that Act states that the jurisdiction conferred on a Leasehold Valuation Tribunal under section 27A is in addition to any jurisdiction of a court in respect of the matter. Section 27A(7) does not itself confer jurisdiction on any court. The purpose of the section seems to be to make sure that county courts (and small claims courts) can continue to exercise jurisdiction in relation to the collection of unpaid service

¹⁶ We provisionally recommend, as does the Leggatt Review, that the judicial review option be excluded. See para 4.27.

¹⁷ *Tomkins v Jones* (1889) 22 QBD 599.

¹⁸ County Courts Act 1984, ss 21(1) and (2). The county court also has a general jurisdiction to determine any claim founded on contract or tort. See the County Courts Act 1984, s 15.

¹⁹ See the Leasehold Valuation Tribunal appendix.

charge as debts. When exercising such jurisdiction they may be required to consider the matters referred to in sections 27A(1) and 27A(3).

- (3) **Contingent jurisdiction:** under section 52(3) of the Landlord and Tenant Act 1987, where a county court hears a proceeding in exercise of a jurisdiction conferred on it, it may also assume jurisdiction to hear matters that are joined with those proceedings that it would not otherwise have jurisdiction to hear. County courts could therefore potentially hear all Leasehold Valuation Tribunal matters under the Landlord and Tenant Act 1987.
- (4) **Interlocking jurisdiction:** the Leasehold Valuation Tribunal and the county courts determine separate but closely related matters relating to leasehold enfranchisement. Under section 20 of the Leasehold Reform Act 1967, county courts have jurisdiction to determine such matters as the tenant's entitlement to acquire the freehold. Under section 21 of that Act the Leasehold Valuation Tribunal determines disputes in relation to the amount payable for a freehold so acquired.

Rent Assessment Committees

5.13 Rent Assessment Committees determine a number of specific matters in relation to regulated and assured tenancies in the private rented sector. The review of Rent Assessment Committees²⁰ identified the existence of joint, contingent and interlocking jurisdictions between Rent Assessment Committees and the county courts. The following are examples.

- (1) **Joint jurisdiction:** Schedule 10 of the Local Government and Housing Act 1989 provides for the establishment of assured tenancies on the termination of long residential tenancies that are held at low rents. Paragraph 19(3) of that Schedule applies (with modifications) Schedule 5 of the Landlord and Tenant Act 1954 for the purposes of Schedule 10. Schedule 5 of the 1954 Act makes detailed provision for when the intermediate landlord of a tenancy is not the freeholder. Paragraph 19(3)(d) of Schedule 10 provides that any reference to the court in Schedule 5 of the 1954 Act includes a reference to a Rent Assessment Committee. The court²¹ and the Rent Assessment Committees therefore here have joint jurisdiction.²²
- (2) **Contingent jurisdiction:** section 40(3) of the Housing Act 1988 provides that whenever the county court exercises jurisdiction conferred

²⁰ See the Rent Assessment Committee appendix.

²¹ By s 63(1) of the Landlord and Tenant Act 1954, reference to the "court" is to the county court.

²² The court has adjudicative jurisdiction under paras 4(2), 5, 7(2) and 11 of Sched 5 of the Landlord and Tenant Act 1954. Paragraph 19(3)(e) of Sched 10 of the Local Government and Housing Act 1989 disapplies paras 7 and 11 of Sched 5 of the 1954 Act for the purposes of Sched 10 of the 1989 Act. Rent Assessment Committees therefore only share jurisdiction with the court in respect of matters under the court's jurisdiction by virtue of paras 4(2) and 5 of Sched 5 of the 1954 Act, ie compensation for failure to obtain consent and order deeming other landlord's consent.

on it under that Act,²³ it may also hear any other joined proceedings notwithstanding that those proceedings would otherwise be outside of its jurisdiction. It can therefore in these circumstances hear cases that would otherwise be within the jurisdiction of the Rent Assessment Committee.

- (3) **Interlocking jurisdiction:** under paragraph 9 of Schedule 11 of the Rent Act 1977, Rent Assessment Committees have jurisdiction to determine individual disputes pertaining to the assessment of fair rent by a rent officer. County courts have jurisdiction under section 141(1)b of that Act to determine the maximum fair rent chargeable in respect of a dwelling that falls within the Act.²⁴

Rent Tribunals

- 5.14 Rent Tribunals determine a number of matters relating to dwellings that are let under restricted contracts pursuant to the Rent Act 1977. The review of Rent Tribunals²⁵ identified the existence of interlocking jurisdictions between Rent Tribunals and the county courts. The following is an example.

- (1) **Interlocking jurisdiction:** county courts have jurisdiction under section 141 of the Rent Act 1977 to determine whether a particular contract is within the Rent Tribunal's jurisdiction, whereas the Rent Tribunal has power under section 78 of that Act to make a determination of the rent payable under the contract.

Valuation Tribunal

- 5.15 The Valuation Tribunal exercises jurisdiction in relation to disputes over non-domestic rates, drainage rates and council tax. These are public law and local government matters. There is no evidence of any sharing of jurisdiction with the county court or the High Court.
- 5.16 There is a loose form of sharing of jurisdiction with the magistrates' court. The magistrates' court has jurisdiction to determine who is liable for payment of non-domestic ratings. This is done by making a liability order under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations.²⁶ Conversely, jurisdiction over determinations of liability in non-payment of council tax falls to the Valuation Tribunal under the provisions of the Local Government Finance Act 1992.²⁷ This is therefore an example of "interlinking" jurisdiction, in that the areas of jurisdiction are clearly demarcated by the legislative instruments, and the confusion created by overlapping jurisdiction does not arise.

²³ The Housing Act 1988, s 40(1) provides that county courts have jurisdiction to determine any question other than a question falling within the jurisdiction of Rent Assessment Committees.

²⁴ See *Tingey v Sutton* [1984] 3 All ER 561, in which it was stated that the county court had no jurisdiction under s 141(b) to fix the registered rent or alter it in any way.

²⁵ See the Rent Tribunals appendix.

²⁶ SI 1989 No 1058. See reg 12.

²⁷ Section 16.

SHARING OF JURISDICTION BETWEEN TRIBUNALS

- 5.17 The Leggatt Review indicated that there is some sharing of jurisdictions between the individual LVH tribunals themselves.²⁸ Our review of tribunal jurisdictions did not reveal the existence of any clear overlaps. The jurisdiction of each tribunal appears to be self-contained (except to the extent that jurisdiction is shared with the courts). While the statutory schemes do not reveal any shared jurisdiction, there may in practice be confusion over each tribunal's functions. We should be grateful for information from consultees about whether there are any overlaps between the individual LVH tribunals or any confusion in practice about the exact functions of each. There is also the possibility of problematic overlap between LVH tribunals and tribunals dealing with different but related subject areas, for example the tax tribunals. We invite consultees' view of whether any such problematic overlaps exist in practice.

THE NEED FOR REFORM

- 5.18 From the above review of the relationship between the courts and the LVH tribunals we have concluded the following.
- (1) No jurisdiction appears to be shared between the courts and the Lands Tribunal, Valuation Tribunal, Commons Commissioners or Agricultural Land Tribunal.
 - (2) Jurisdiction is shared between the county court and the Leasehold Valuation Tribunals, Rent Assessment Committees and Rent Tribunals. There is some element of jurisdictional overlap between the adjudicator to HM Land Registry and the High Court.
 - (3) There is no sharing of jurisdiction between the tribunals themselves.
- 5.19 The above review has focused primarily on the relationship between the courts and the tribunals from the perspective of the legislative instruments under which the tribunals derive *their* jurisdiction. County courts also have a general jurisdiction in relation to contract and title matters under the County Courts Act 1984. It may be the case that in practice the greatest source of confusion arises in the context of the exercise by the county court of its general jurisdiction. The same may be true in relation to the High Court. It is not possible however at this preliminary stage to state conclusively the extent of the overlap in jurisdiction between the courts and the LVH tribunals and the problems to which they give rise.
- 5.20 In conclusion, our review has not revealed any obvious flaws in the existing jurisdictional arrangements. There is undoubtedly a close relationship between the county courts and the RPTS tribunals and in some cases the division of functions appears to be unnecessarily complicated. There may be problems if jurisdictional overlaps deter potential users from bringing cases or allow some applicants to take unfair advantage of any confusion by forum shopping. However, the question of whether jurisdiction should be rationalised by clearly allocating functions to

²⁸ Paragraph 3.30 of the Leggatt Review states "There are confusing overlaps of jurisdiction between the courts and tribunals, *as well as between tribunals.*" (emphasis added).

tribunals as opposed to courts or vice versa can only be decided after consultation with persons experienced in the day-to-day practice of tribunals and the courts.

CONSULTATION QUESTIONS

- 5.21 Does this Part adequately summarise the jurisdictional relationship between the courts and the LVH tribunals?
- 5.22 Does the county courts' or the High Court's general jurisdictions give rise to further overlaps in jurisdiction with the LVH tribunals which have not been identified in this Part? Please give specific examples where possible.
- 5.23 Are there any overlaps between the individual LVH tribunals? Is there confusion in practice regarding the appropriate tribunal in which to have a land, valuation or housing matter resolved? Please give specific examples where possible.
- 5.24 Do the current jurisdictional arrangements permit forum shopping? What are the factors that influence which forum is chosen?
- 5.25 Is there a need for a rationalisation of functions between the courts and the LVH tribunals? Please give specific examples of problematic areas and particular experiences where possible.
- 5.26 If so, should functions that are now shared be transferred to the exclusive jurisdiction of the relevant tribunal or to the exclusive jurisdiction of the courts?

PART VI

THE WAY FORWARD

- 6.1 In Part IV of this consultation paper we set out in broad terms three options for structural reform of the LVH tribunals. Our provisional view is that a unified tribunal would be the best option for structural reform of the LVH tribunals. We have looked at in Part V at areas of jurisdictional overlap between these tribunals and the courts. We have at present made no suggestions for reform of jurisdictional overlaps. We initially invite the views of consultees on where problems exist in the present system in practice.
- 6.2 Parts IV and V of the paper contain questions for consultees. We should be grateful for replies to these questions and for thoughts on any other issues raised by this paper. We are interested in general in how our suggested options for structural reform would work in practice. We also welcome the input of consultees on problematic jurisdictional overlaps in practice and how these would best be dealt with. A table summarising the consultation questions raised is attached to this consultation paper as a separate document. Consultees can use this table to set out their responses to the consultation questions if this is helpful.
- 6.3 The consultation period will close on Friday 14 March 2003. Our final report is due to be published at the end of July 2003.

APPENDIX A: ADVISORY GROUP MEMBERS

<i>Name</i>	<i>Position</i>	<i>Organisation</i>
Mr George Bartlett QC	President	The Lands Tribunal
Mr Steve Benton	Official	Office of the Deputy Prime Minister
Mr Phil Carey	Head of the Housing Private Sector Division	Office of the Deputy Prime Minister
Mr Tony Chase	Chartered Surveyor	Gerald Eve
Mr Edward Cousins	Chief Commons Commissioner	Commons Commissioners
Mr Chris Davies	Policy Manager – Tribunals for Users	Lord Chancellor’s Department
Mr John Ebdon	Deputy Chief Executive	Valuation Office Agency
Ms Pat Fairbairn	Secretary to the Council on Tribunals	Council on Tribunals
Mr Andrew Gunz	Solicitor	Inland Revenue Solicitors Office
Mr Alex Hermon	Legal Adviser	Council on Tribunals
Mr Joe Ismail	Establishments Officer	Valuation Tribunals
Ms Judith Marsden		DEFRA
Mr Bryan Massen	National Officer	Valuation Tribunal Management Board
Mr James Macmillan	Policy Manager – Tribunals for Users	Lord Chancellor’s Department
Ms Siobhan McGrath	President	Residential Property Tribunal Service
Mr George Newsom	Representative Chairman	Agricultural Land Tribunal
Mr Nick Wilson	Clerk to the Commons Commissioners	Commons Commissioners
Mr Paul Wood	Chairman	Valuation Tribunal Management Board

APPENDIX B: ADJUDICATOR TO HM LAND REGISTRY

PART I LEGISLATIVE BACKGROUND AND FUNCTIONS

- B.1 The Adjudicator to Her Majesty’s Land Registry (the “adjudicator”) is established by section 107 of the Land Registration Act 2002 (the “Act”).¹ The Lord Chancellor appoints the Adjudicator, and his or her purpose is to deal with disputes between parties under the Act. The adjudicator has two main roles. Firstly, determination of matters referred to under section 73(7), and the determination of appeals under paragraph 4 of Schedule 5 to the Act.² Further, the adjudicator may make, on application, any order that the High Court could make for the rectification or setting aside of certain documents regarding “qualifying dispositions”.³
- B.2 Schedule 9 to the Act sets out matters relating to practicalities such as remuneration, staffing and so on. A number of provisions of the Act relating to the adjudicator allow for rules of procedure to be laid down by the Lord Chancellor.⁴

PART II SUBSTANTIVE JURISDICTION

- B.3 The jurisdiction of the adjudicator flows exclusively from the 2002 Act.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal
2002 Act	Section 73	Objection to an Application to the Registrar	High Court
2002 Act	Section 110(4)	Satisfaction of Equity in Adverse Possession	High Court

¹ *Hansard* (HC) 2 July 2002, vol 388, col 197 W. The Parliamentary Secretary, Lord Chancellor’s Department, provided a written answer to a question in which it was stated that the Act would come into force on 13 October 2003. However, Sched 5, concerning the Land Registry Network, will not come into force on that date.

² Land Registration Act 2002, s 108(1).

³ See n 4, below.

⁴ Land Registration Act 2002, ss 109 and 110, and para 4 of Sched 5.

2002 Act	Paragraph 4 of Schedule 5 and Section 92	Appeals against the decision of the Registrar on the Land Registry Network	High Court (Only on a Point of Law)
2002 Act	Section 108	Rectification or Setting Aside of Certain Documents	High Court

OBJECTION TO AN APPLICATION TO THE REGISTRAR

- B.4 Section 73 of the Act allows persons to object to an application to the registrar. The registrar must then give notice of the objection to the applicant, and the application may not be determined until the objection has been disposed of. However, these requirements do not apply if the registrar is satisfied the objection is groundless. If the registrar is unable to dispose of the objection by agreement, it must be referred to the adjudicator.

SATISFACTION OF EQUITY IN ADVERSE POSSESSION

- B.5 Paragraph 1 of Schedule 6 to the Act grants the right to apply to be registered as the proprietor of a registered estate in land to persons who have been in adverse possession for 10 years ending at the date of application. If a reference on this matter comes before the adjudicator under section 73, and he or she determines that, because of an equity by estoppel, it would be unconscionable for the registered proprietor to seek to dispossess the applicant, the adjudicator must determine how the equity due to the applicant is to be satisfied. For this purpose, the adjudicator may make any order that the High Court can make in the exercise of its equitable jurisdiction.

APPEALS AGAINST THE DECISION OF THE REGISTRAR ON THE LAND REGISTRY NETWORK

- B.6 Schedule 5 to the Act concerns the Land Registry Network, which is constituted by section 92 of the Act.⁵ Access to the land registry network for non-members of the land registry is subject to the authorisation of the registrar. Paragraph 2 of Schedule 5 outlines the terms of access, and paragraph 3 concerns termination of access. Under paragraph 4, anyone who feels aggrieved by a decision of the registrar in these matters may appeal against the decision to the adjudicator. The adjudicator may give such directions as he or she considers appropriate.

RECTIFICATION OR SETTING ASIDE OF CERTAIN DOCUMENTS

- B.7 The adjudicator may, on application, make any order which the High Court can make for the rectification or setting aside of a document which either: affects a

⁵ The Land Registry Network is defined as an electronic communications network for such uses as the registrar sees fit that are related to registration, or to the carrying on of transactions related to registration that can be effected electronically.

qualifying disposition⁶ of a registered estate or charge; is a contract to make such a disposition; or effects a transfer of an interest which is the subject of a notice in the register.⁷ Such an order shall operate under the same general law, and have the same effects, as an order of the High Court.⁸

PART III TERRITORIAL JURISDICTION

- B.8 The jurisdiction of the adjudicator flows exclusively from the Act. Therefore, the nature and extent of his or her territorial jurisdiction is identical to the Act, which is restricted to England and Wales.⁹

PART IV RELATIONSHIP WITH THE COURTS AND FURTHER APPEALS

- B.9 There are two areas where there seems to be some element of joint jurisdiction between the adjudicator and the High Court. Under section 108(2) of Act, the adjudicator may make any order that the High Court could make for the rectification or setting aside of various documents. The High Court may exercise this jurisdiction over rectification of documents in the context of a case before it, brought on another matter. The same is true of the jurisdiction of the High Court to determine the satisfaction of equity due to an applicant under paragraph 1 of Schedule 6.
- B.10 Section 110 of the Act grants the adjudicator the power to direct a party to the proceedings to commence proceedings within a specified time in the court¹⁰ in order to obtain the court's decision on the matter.
- B.11 A person aggrieved by a decision of the adjudicator may appeal to the High Court. However, appeals made under paragraph 4 of Schedule 5 to the Act (that is, regarding the Land Registry Network) may be made only on a point of law.¹¹ If the matter under appeal concerns adverse possession,¹² the High Court must determine the same issue as the adjudicator, that is, how the equity due to the applicant is to be satisfied.

⁶ Land Registration Act 2002, s 108 (3) states that a qualifying disposition is a registrable disposition or a disposition that creates an interest that may be the subject of a notice in the register.

⁷ Land Registration Act 2002, s 108(2).

⁸ Land Registration Act 2002, s 108(4).

⁹ Land Registration Act 2002, s 136(3).

¹⁰ "Court" means High Court or County Court. Land Registration Act 2002, s 132(3)(a).

¹¹ Land Registration Act 2002, s 111.

¹² Land Registration Act 2002, para 1 of Sched 6.

APPENDIX C

AGRICULTURAL LAND TRIBUNALS

PART I

LEGISLATIVE BACKGROUND

- C.1 Agricultural Land Tribunals principally determine matters arising from the application of the Agricultural Holdings Act 1986 (the “1986 Act”). The majority of cases that come before the Tribunals relate to questions of security of tenure and succession to agricultural holdings. The 1986 Act defines ‘agricultural holdings’ in section 1(1) as ‘the aggregate of the land (whether agricultural or not) comprised in a contract of tenancy which is a contract for an agricultural tenancy, not being a contract under which the land is let to the tenant during his continuance in any office, appointment or employment held under the landlord.’ Section 2 further defines a contract for an agricultural tenancy.
- C.2 Agricultural Land Tribunals were established under section 73 of the Agriculture Act 1947. Under this act, the jurisdiction of the Tribunals was essentially limited to the hearing of appeals from decisions of the Minister to grant, or refuse, consent to notices to quit. The Agricultural Holdings Act 1958 (the “1958 Act”) greatly extended the jurisdiction of the Tribunals, transferring the Minister’s jurisdiction to the Agricultural Land Tribunals and conferring certain of the Minister’s functions regarding the Tribunals to the Lord chancellor. The 1958 Act also amended some of the legislation granting extra jurisdiction to the Tribunals.

PART II

SUBSTANTIVE JURISDICTION

- C.3 The jurisdiction exercised by the Agricultural Land Tribunals is primarily referable to the 1986 Act. The 1986 Act grants jurisdiction on an array of issue to be considered in this section. Agricultural Land Tribunals also have jurisdiction over a number of further issues, such jurisdiction being constituted by the Agricultural Holdings (Arbitration on Notices) Order 1987,¹ Hill Farming Act 1946 (the “1946 Act”) and Land Drainage Act 1991 (the “1991 Act”).

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal
1986 Act	Section 11	Application by Tenant for the Provision of Fixed Equipment	High Court

¹ SI 1987 No 710.

1986 Act	Section 11(7)	Application by Landlord for Extension of Period in which to make such Provisions	High Court
1986 Act	Section 25(4) and Paragraph 9 of Part II of Schedule 3	Application by Landlord for a Certificate that the Tenant is not Fulfilling his Responsibilities Regarding Good Husbandry	High Court
1986 Act	Section 27(1)	Consent to Notice to Quit	High Court
1986 Act	Section 27(5)	Variation/Revocation of Conditions of Notice to Quit on Application by Landlord	High Court
1986 Act	Section 27(6)	Declaration Landlord has Failed to Comply with Conditions on Consent on Application on Behalf of Crown	High Court
1986 Act	Section 39	Succession After Death of Tenant	High Court
1986 Act	Section 41	Application by Not Fully Eligible Person to be Treated as Eligible for Succession	High Court
1986 Act	Section 53	Succession on Retirement of Tenant	High Court
1986 Act	Section 67(3)	Approval for Carrying Out of Long Term Improvements by Tenant	High Court
1986 Act	Section 67(6)	Declaration Landlord has Failed to Carry Out Improvements in Reasonable Time	High Court
1986 Act	Section 80(2)	Declaration that Holding is to be Treated as a Market Garden	High Court
1986 Act	Section 80(7)	Application by Landlord to Divide Holdings that are Part Market Garden	High Court
1946 Act	Section 21	Avoiding/Relaxing Covenants Against Heather and Grass Burning	High Court

1987 Order	Section 13	Application for Postponement of the Operation of a Notice to Quit	High Court
1991 Act	Section 28	Order to Carry Out Work on Ditches	High Court
1991 Act	Section 30	Order Authorising Applicant to Enter Specified Land to do Specified Drainage Work related to a Ditch	High Court

APPLICATION BY TENANT FOR THE PROVISION OF FIXED EQUIPMENT

- C.4 On an application by the tenant of an agricultural holding, the Tribunal may direct the landlord to provide, alter or repair such fixed equipment as is necessary for the tenant to carry out an agricultural activity specified in the application in accordance with the rules of good husbandry and in compliance with the requirements imposed on him or her by, or under, any enactment. Section 11 provides the Tribunal with further guidance on the circumstances in which such directions may be made.

APPLICATION BY LANDLORD FOR EXTENSION OF PERIOD IN WHICH TO MAKE SUCH PROVISIONS

- C.5 Section 11(7) grants the Tribunal the power to extend the period, specified in a direction under section 11, in which the landlord must complete the work required by the direction. Such extensions may be made if the Tribunal is satisfied that the period granted is insufficient for the completion of both the necessary preliminary arrangements and the actual specified work.

APPLICATION BY LANDLORD FOR A CERTIFICATE THAT THE TENANT IS NOT FULFILLING HIS RESPONSIBILITIES REGARDING GOOD HUSBANDRY

- C.6 Paragraph 9(1) of Part II of Schedule 3 provides that the landlord may apply to the Tribunal for a certificate that the tenant is not fulfilling his duties to the farm in accordance with the rules of good husbandry. This provision is only applicable to the scenario outlined in Part I of Schedule 3, that is Case C. Part I of Schedule 3 describes the cases where the consent of the Tribunal to the operation of a notice to quit is not required. Case C is a case where a certificate under Paragraph 9 of Part II of Schedule 3 has been granted not more than six months before the giving of the notice to quit, and that fact is stated in the notice. To clarify, if such a certificate is issued, the landlord has six months to serve notice to quit without requiring the consent of the Tribunal. Section 25(4) grants the Tribunal the power to specify in the certificate a minimum period for termination of the tenancy (not less than two months).

CONSENT TO NOTICE TO QUIT

- C.7 Section 26 allows a tenant to respond to a notice to quit by the landlord with a counter-notice requiring the application of section 26, which renders the notice to quit without effect unless the Tribunal consents to its operation. The power to consent is granted to the Tribunal by section 27, which provides the Tribunal with the criteria to assess each situation. Under section 27(4), the Tribunal may impose

conditions on consent to ensure the land is used for the purpose for which the landlord wishes to terminate the tenancy.²

VARIATION/REVOCAION OF NOTICE TO QUIT ON APPLICATION BY LANDLORD

- C.8 Section 27(5) allows the landlord to apply for a variation or revocation of a condition under section 27(4),³ on the basis of change of circumstances or otherwise.

DECLARATION LANDLORD HAS FAILED TO COMPLY WITH CONDITIONS ON CONSENT ON APPLICATION ON BEHALF OF THE CROWN.

- C.9 If it is proven that the landlord has acted in contravention of a condition, or failed to fulfil it, the Tribunal may impose a penalty of not more than two years rent at the rate rent was payable before termination of the tenancy, or if the notice only applied to part of the holding, the penalty rate is worked out proportionately. In this matter, applications are made to the Tribunal on behalf of the Crown.⁴

SUCCESSION AFTER DEATH OF TENANT

- C.10 On the death of a tenant, any eligible person⁵ may apply under section 39 to the Tribunal for a direction entitling them to a tenancy of the holding unless excluded by section 36(2), section 37 or section 38.⁶ If only one application is made, the Tribunal shall satisfy themselves the applicant is and continues to be an eligible person. If so, the Tribunal must then determine whether the applicant is a suitable person to become the tenant. If more than one application is made, then the Tribunal shall apply this test to each individual as if he or she was the only applicant. However, section 39(4) gives priority in such a situation to a person designated in the will of the deceased as the preferred successor. If only one person is suitable, the Tribunal will direct said person to become tenant. If more than one person is suitable, then the Tribunal must determine which person is the most suitable.⁷

² See the Agricultural Holdings Act 1986, s 28(2) for additional restrictions on the operation of a notice to quit in relation to Case D situations.

³ See para C.7 above.

⁴ Agricultural Holdings Act 1986, s 27(6).

⁵ Agricultural Holdings Act 1986, s 36(3)(b) defines an "eligible person" as any surviving close relative of the deceased who is not the occupier of a commercial unit of agricultural land, and further under s 35(a), for five years of the seven years preceding the death (be it in one segment of five years or discontinuous periods amounting to five years), received their only or principle income from agricultural work on the holding or on an agricultural unit of which the holding is part. "Close relative" is defined in s 35(2) as a spouse, sibling, child or stepchild (on this, see further s 35(2)(d)).

⁶ Agricultural Holdings Act 1986, s 36(1)

⁷ Agricultural Holdings Act 1986, ss 39(5) and 39(6).

APPLICATION BY NOT FULLY ELIGIBLE PERSON TO BE TREATED AS ELIGIBLE FOR SUCCESSION

- C.11 Section 41 applies to any close relative of the deceased who engaged in agricultural work on the holding for some part of the seven years preceding the death, is not the occupier of a commercial unit of land, and satisfies the criteria in section 36(3)(a)⁸ not fully, but to a material extent. Such a person may apply to the Tribunal within three months beginning with the date of the death for a determination that he or she is to be treated as an eligible person. The Tribunal will determine if the criteria outlined above are met, and if it is fair and reasonable in all the circumstances for the person to apply for a section 39 direction.

SUCCESSION ON RETIREMENT OF TENANT

- C.12 If the holding is held under a tenancy from year to year then notice may be given to the landlord by the tenant or, if a joint tenancy, by all the tenants, that they wish a single eligible person named in the notice to succeed them on their retirement.⁹ Within one month, starting the day after the retirement notice was given, the named successor may apply to the Tribunal for a declaration entitling him to a tenancy of the holding under section 53. The Tribunal must determine that the applicant is an eligible person,¹⁰ and a suitable person to become the tenant of the holding.

APPROVAL FOR CARRYING OUT OF LONG TERM IMPROVEMENTS BY TENANT

- C.13 If, in the case of an improvement to the holding specified in part II of Schedule 7,¹¹ a tenant is aggrieved by the refusal of the landlord to consent, or the tenant refuses to agree with any of the landlord's terms of consent, the tenant may apply to the Tribunal for approval of the carrying out of the improvement. This power is granted by section 67(3).

DECLARATION LANDLORD HAS FAILED TO CARRY OUT IMPROVEMENTS IN REASONABLE TIME

- C.14 If the Tribunal grants their approval under section 67(3), the landlord may then, with the approval of the Tribunal, serve notice that he will carry out the improvements himself.¹² Should such notice be served, and the landlord fail to act, the tenant may, under section 67(6)(b), apply to the Tribunal for a determination that the landlord has failed to carry out the improvement within a reasonable time. Should the Tribunal grant such a determination, or the landlord choose not to serve any such notice, then the approval of the Tribunal shall have effect as if it was the consent of the landlord to the improvement.

⁸ See n 4 above.

⁹ Agricultural Holdings Act 1986, s 49(1).

¹⁰ See n 4 above.

¹¹ A general list of improvements requiring the consent of the landlord or the approval of the Tribunal, including, for example, construction of buildings or silos.

¹² Agricultural Holdings Act 1986, s 67(5).

DECLARATION THAT THE HOLDING IS TO BE TREATED AS A MARKET GARDEN

- C.15 Schedule 10 provides a list of the improvements that may be made to a holding treated as a market garden. Should a tenant wish to make such an improvement, it is necessary for the landlord to agree. Should the landlord refuse to agree (or fails to respond within a reasonable time) that the holding or the relevant part of it is to be treated as a market garden, the tenant may apply to the Tribunal for a direction under section 80(2). This section grants the Tribunal the power to direct that the holding or the relevant part of it is suitable for the purposes of market gardening, with regard to some or all of the proposed improvements.

APPLICATION BY LANDLORD TO DIVIDE HOLDINGS THAT ARE PART MARKET GARDEN

- C.16 If the direction by the Tribunal to treat the holding as a market garden applies only to a part of the holding, the landlord may apply that the direction is given only on the condition that the tenant consents to the division of the holding into two parts. One part is the part to which the direction applies, and it shall be held at rents settled and on the same terms and conditions as the rest of the holding.

AVOIDING/RELAXING COVENANTS AGAINST HEATHER AND GRASS BURNING

- C.17 Section 21 of the Hill Farming Act 1946 applies where a lease of land in England or Wales contains a covenant, condition or agreement restricting or prohibiting the burning of heather or grass by the tenant. In such a situation, the tenant may apply to the Tribunal to avoid or relax the covenant, condition or agreement as they see fit. The Tribunal may take such action if it is apparent that the restriction is to prevent the proper use of the land for agricultural purposes comprised in the lease.

APPLICATION FOR POSTPONEMENT OF THE OPERATION OF A NOTICE TO QUIT

- C.18 After arbitration or proceedings, a notice to quit may have effect as a result of the arbitration or the granting of consent by the Tribunal. Section 13 of the 1987 Order provides that should the notice be due to come into effect on or within six months after the end of the arbitration or the grant of consent, the Tribunal (or the arbitrator) may of their own motion, or on the application of the tenant, postpone the termination of the tenancy for a period up to twelve months.

ORDER TO CARRY OUT WORK ON DITCHES

- C.19 Where the condition of a ditch is such that it may cause injury to any land, or prevents the improvement of the drainage of any land, the owner or occupier of the land may, under section 28 of the Land Drainage Act 1991, apply to the Tribunal for an order requiring persons named in the order to carry out such remedial work as is specified in the order. The named persons may be the owner or occupier of land through which the ditch passes, or which abuts the ditch, and any person who has a right to carry out the work specified, even if not an owner or occupier. If more than one person is named, the Tribunal may specify the work to be done by each person, or require that the work is done jointly. If the work is to be done

jointly, the Tribunal may specify the proportions by which such persons must contribute to the work or the cost of the work.¹³

ORDER AUTHORISING APPLICANT TO ENTER SPECIFIED LAND TO DO SPECIFIED DRAINAGE WORK RELATED TO A DITCH

- C.20 If the drainage of any land requires work to be carried out on a ditch passing through other land, the construction of such a ditch, or the alteration or removal of drainage work, the Tribunal may make an order under section 30(1) of the 1991 act. Such an order may be made on application from the owner or occupier of the land the drainage of which requires the work to be done. Such an order authorises the specified work to be done, and further authorises the applicant to enter, as far as is necessary, any land specified in the order.
- C.21 The Lord Chancellor must constitute a panel of persons experienced in matters relating to the drainage of land. For hearings under section 28 and section 30 of the 1991 act, one of the members of the Tribunal must be a person nominated by the chairman from the aforementioned panel.¹⁴

PART III TERRITORIAL JURISDICTION

- C.22 Section 73(1) of the Agriculture Act 1947 constitutes the Tribunal, directing the Lord Chancellor to establish a number of separate areas comprising, as a whole, England and Wales. The devolution of Wales has had very little practical effect on the jurisdiction of the Tribunal. The National Assembly of Wales (Transfer of Functions) Order¹⁵ has amended the Agricultural Act 1947 to the extent that any powers left to be exercised by the Minister in relation to the Tribunal¹⁶ are, so far as they are related to Wales, transferred to the National Assembly for Wales. Further, the Government of Wales act gives the power to audit those Tribunals based entirely in Wales to the Auditor general for Wales.
- C.23 The relevant amendments under the Agriculture Act 1958 are restricted, by section 8, to England and Wales. The relevant acts of the Agricultural Holdings Act 1986, by virtue of section 102(3), are also limited to England and Wales. The Hill Farming Act 1946 and the Land Drainage Act 1991 are limited to England and Wales by section 21 and section 76(3) respectively.

¹³ See also para C.20 below.

¹⁴ Land Drainage Act 1991, s 31.

¹⁵ SI 1999 No 672, art 2 and Sched 1.

¹⁶ In ss 74 and 75.

PART IV OTHER JURISDICTION ISSUES

- C.24 The Agricultural Tenancies Act 1995¹⁷ renders the Agricultural Holdings Act 1986 inapplicable to any tenancy beginning on or after 1 September 1995. There are a number of exceptions to this, including tenancies obtained by virtue of a direction of succession by the Tribunal under section 39 or 53 of the 1986 Act. Essentially, the Agricultural Tenancies Act 1995 excludes the jurisdiction of the Tribunal from any farm business tenancy.¹⁸ Such tenancies are outside the ambit of the Tribunal, and are decided by ADR or arbitration.

PART V FURTHER APPEALS

- C.25 The decisions of the Tribunal may be appealed to the High Court on a point of law. Section 6 of the Agricultural (Miscellaneous Provisions) Act 1958 provides that any party to the proceedings may request the Tribunal to refer any question of law to the High Court for decision. Such requests may be made before or after the Tribunal has given its decision. If the Tribunal has already given its decision, and refuses a request for referral, any aggrieved person may apply to the High Court directing the Tribunal to so refer.

JUDICIAL REVIEW

- C.26 It may be possible in some circumstances to judicially review the conduct and decisions of the Tribunal. Judicial review is available where the Tribunal has acted without jurisdiction, where fraud has been used to obtain the decision or the Tribunal is shown to be biased, and where the Tribunal has breached a rule of natural justice.

PART VI OVERVIEW OF DISPUTE RESOLUTION RELATING TO AGRICULTURAL PROPERTY

- C.27 Determination of disputes concerning agricultural property has developed into a complex system encompassing several jurisdictions and a number of major statutes. Jurisdiction is divided between the Agricultural Lands Tribunal, the courts, the Rent Assessment Committee, ADR, legislatively prescribed arbitration, and the Agricultural Dwelling House Advisory Committee. The various dispute resolution methods fit together in a form of interlinking jurisdiction. The relationship between the jurisdictions is not “interlocking” in the sense described in Part V of this paper. The various bodies and methods do not determine distinct matters that may arise in a single dispute. Rather, each method and jurisdiction is itself distinct and separate. A dispute over a given piece of agricultural property

¹⁷ Section 4.

¹⁸ See para C.35.

will activate the jurisdiction of one method of dispute resolution, be it a tribunal, a court or ADR. Therefore, in any particular dispute, only one form of dispute resolution has jurisdiction, or a claim to jurisdiction, at any time. The confusion inherent in “interlocking” or “overlapping” jurisdiction is not an issue here.¹⁹

- C.28 There are clear demarcations between the appropriate methods to be employed, and between the appropriate bodies to resolve the dispute. The prescribed method of dispute resolution depends on a number of factors. Firstly, it must be asked whether or not the tenancy is of an agricultural holding or a farm business tenancy, as defined in the 1986 Act and the 1995 Act respectively.²⁰ These definitions are rather complex, but essentially involve a contract of tenancy to use the land for agricultural purposes.²¹ Although a range of factors, such as succession, are relevant in determining the nature of the tenancy, the position can be roughly summarised by saying that if the tenancy was created before 1 September 1995, the Agricultural Holding Act 1986 applies. Conversely, if it was created on or after this date, the Agricultural Tenancies Act 1995 applies.
- C.29 If the tenancy is of an agricultural holding or a farm business tenancy, then the dispute resolution methods prescribed by the 1986 Act and the 1995 Act are activated, involving either arbitration, ADR, the Agricultural Land Tribunal, or the County Court.
- C.30 If the tenancy is for a dwelling house (also known as a “farm cottage” or “tied accommodation”), one begins with the date at which the tenancy was created. If created on or after 15 January 1989, The Housing Act 1988 applies.²² Otherwise, the Rent Act 1977 or the Rent (Agricultural) Act 1976 will govern it. If the tenancy was created before 15 January 1989, and the tenant pays a normal rate of rent, they will be governed, as a “Protected Tenancy”, by the Rent Act 1977. The 1977 Act enables the jurisdiction of the County Court, and the claimant may also opt to use the High Court.²³ Note also that the Rent Assessment Committees have jurisdiction to resolve some matters under this act.²⁴
- C.31 If the tenant pays little or no rent, and is a ‘qualifying worker’,²⁵ then the tenancy is a “Protected Agricultural Occupancy”, and the Rent (Agriculture) Act 1976 is the protecting legislation. The County Court and the High Court have jurisdiction on identical terms to those outlined above regarding the Rent Act 1977. Further, section 29 of the Rent (Agriculture) Act 1976 constitutes the Agricultural

¹⁹ There is, however, an overlap in jurisdiction between the Rent Assessment Committee and the courts. This problem is not confined to matters of agricultural land, and is dealt with in Annex G.

²⁰ See para C.35, below.

²¹ See s 1 of both Acts.

²² See para C.36, below.

²³ Rent Act 1977 s 141(4) provides that a person bringing an action in the High Court that could have been brought in the County Court will not be allowed to recover costs. However, nothing in the acts excludes the jurisdiction of the High Court.

²⁴ See Annex G.

²⁵ Rent (Agriculture) Act 1976, Sched 3 para 4. The tenant must have worked in agriculture, not necessarily on the land in question, for 91 out of the preceding 101 weeks.

Dwelling House Advisory Committee. Briefly, the Committee provides non-binding guidance to the housing authority in the event of an application by a landlord to the authority that vacant possession of a dwelling house subject to either a protected or an assured occupancy will be needed to house persons to be employed by the landlord in agriculture.²⁶

- C.32 Returning to the Housing Act 1988, the Act excludes from its protection those who control the farming of the land.²⁷ No definition of control is given. Under the Act, a tenancy of a dwelling house on agricultural land may be an “Assured Tenancy”, an “Assured Shorthold Tenancy” or, if certain criteria²⁸ are met, it may be an “Assured Agricultural Occupancy”. These distinctions, however, do not have any bearing on a jurisdictional analysis. Here, the nature of the dispute may grant jurisdiction to the Rent Assessment Committee, or the County Court or the High Court. The jurisdiction of the High Court, in relation to the County Court, operates in an identical fashion to the Rent Act 1977 and the Rent (Agriculture) Act 1976.²⁹

AGRICULTURAL LAND TRIBUNAL

- C.33 The Agricultural Land Tribunal has jurisdiction over certain disputes regarding agricultural holdings created before 1 September 1995.³⁰

ARBITRATION AND ADR

- C.34 The Agricultural Holdings Act 1986 makes provision for the use of an arbitrator to resolve certain disputes over agricultural holdings.³¹ As Rogers notes, the matters referable to an arbitrator are those which can be settled by a valuer, surveyor, or land agent with relevant expertise.³² Examples include valuing rent payable on review,³³ valuation of damage by game,³⁴ and securing a written tenancy agreement.³⁵
- C.35 Arbitration is the prescribed means of resolution for most disputes under the Agricultural Tenancies Act 1995, which concerns farm business tenancies created on or after 1 September 1995.³⁶ The 1995 Act imposes arbitration for a range of matters, which can be divided into two classes.³⁷ Firstly, any dispute over the rights

²⁶ See para C.45, below.

²⁷ Housing Act 1988, s 10.

²⁸ For instance, that the tenant is an agricultural worker, as required by Housing Act 1988, Sched 1, paras 3 and 7.

²⁹ See Annex G.

³⁰ See Parts I to V, above.

³¹ Agricultural Holdings Act 1986, Sched 11.

³² C Rodgers, *Agricultural Law* (2nd ed 1998) p 521, para 17.39.

³³ Agricultural Holdings Act 1986, s 12(1).

³⁴ Agricultural Holdings Act 1986, s 20(4).

³⁵ Agricultural Holdings Act 1986, s 6(1).

³⁶ See also the Arbitration Act 1996.

³⁷ C Rodgers, *Agricultural Law*, p 533, para 17.80.

and obligations of the parties under the 1995 Act, the tenancy, or any custom. Note that within this class, the parties may opt for ADR rather than arbitration, if they so wish. The second class of case essentially covers statutory rent reviews, disputes over refusal to consent to the provision of improvements or the terms on which the landlord gives consent, and disputes as to compensation on the termination of a tenancy.³⁸ In this class, arbitration is the only means of dispute resolution.

COUNTY COURT AND HIGH COURT

C.36 Regarding the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1985, the jurisdiction of the County Court is, to some extent, implicit. That is to say, if the dispute in question is not covered by the 1986 Act or the 1995 Act (or another piece of legislation), then one must turn to pre-existing jurisdiction which will usually rest in the County Court, and in some instances in the High Court. Concerning agricultural holdings, section 97 of the 1986 Act preserves all existing rights, powers and remedies regarding agricultural holdings so far as they are not expressly altered by the Act. Therefore, it is assumed that any dispute not dealt with in the Act, or by any of the alternative methods below, is referable to the County Court. The main areas of jurisdiction preserved for the court by section 97.³⁹

1. Actions for forfeiture, pursuant to a proviso for re-entry in the lease;
2. Any question as to the applicability of sections 2 and 3 of the 1986 Act;⁴⁰
3. Actions for damages for breach of repairing covenant, if brought during the continuance of the tenancy;⁴¹
4. Any question regarding the construction of notices to quit,⁴² and contracts of tenancy;
5. Proceedings for possession of agricultural land (for example, after termination of tenancy with the consent of the tribunal, by notice to quit).

C.37 The County Court appears to have jurisdiction over farm business tenancies regarding termination of tenancies and construction of notices to quit.⁴³ There is no explicit "saving" provision, equivalent to section 97 of the 1986 Act, in the 1995 Act.

C.38 Certain tenancies for agricultural land fall within the ambit of the Rent Act 1977, the Rent (Agriculture) Act 1976 or the Housing Act 1988.⁴⁴ Disputes under these

³⁸ *Ibid.*

³⁹ C Rodgers, *Agricultural Law* (2nd ed 1998) p 512, para 17.03.

⁴⁰ Regarding protected tenancies.

⁴¹ *Goldsack v Shore* [1950] 1 KB 708 CA.

⁴² *Kent v Coniff* [1953] 1 QB 361 CA.

⁴³ C Rodgers, *Agricultural Law* (2nd ed 1998) p 511, para 17.02.

⁴⁴ Primarily if the occupant of a dwelling house on agricultural land.

Acts may fall within the jurisdiction of the County Court, the High Court, or the Rent Assessment Committees, depending on the nature of the dispute and the governing legislation.⁴⁵

RENT ASSESSMENT COMMITTEE

- C.39 The Rent Assessment Committee has jurisdiction to assess the rent and terms of assured agricultural occupancies, assured Shorthold tenancies and assured tenancies under the Housing Act 1988. It also has jurisdiction to determine disputes under the Rent Act 1977, which can include land that was once agricultural, or a dwelling house on an agricultural holding that does not house either the farmer or an agricultural employee.⁴⁶

AGRICULTURAL DWELLING HOUSE ADVISORY COMMITTEE

- C.40 Should a landlord require vacant possession of a protected or assured occupancy, he or she must apply to the relevant housing authority. The Landlord must show that the dwelling house is, or will be, needed to house a person who is, or will be, employed by the landlord for agricultural work. The landlord must also show that he or she cannot, by any reasonable means, provide alternative suitable accommodation. Finally, the landlord must establish that provision by the housing authority of vacant possession would be in the interests of “efficient agriculture”.⁴⁷ The housing authority may seek guidance from the Agricultural Dwelling House Committee, as constituted by section 29 of the Rent (Agriculture) Act 1976. The rulings of the Committee are not binding, but are extremely influential and are always followed by the authority. Decisions of the Committee are judicially reviewable.⁴⁸

LANDS TRIBUNAL

- C.41 The Land Compensation Act 1973 gives the Lands Tribunal jurisdiction to determine certain matters concerning compensation and agricultural land. For example, section 34 of the 1973 Act bestows a right to farm loss payments for persons displaced from an agricultural unit, payable by the acquiring authority. Section 37 of the 1973 Act bestows a right to disturbance payments payable by the acquiring authority. There are a number of other provisions in the Act granting a right to compensation from the acquiring authority in a range of circumstances, and bestowing jurisdiction for dispute resolution upon the Lands Tribunal.
- C.42 This jurisdiction is separate from those dealt with above in that it is a “citizen and state” dispute, as opposed to the “party to party” issues handled in the other tribunals.

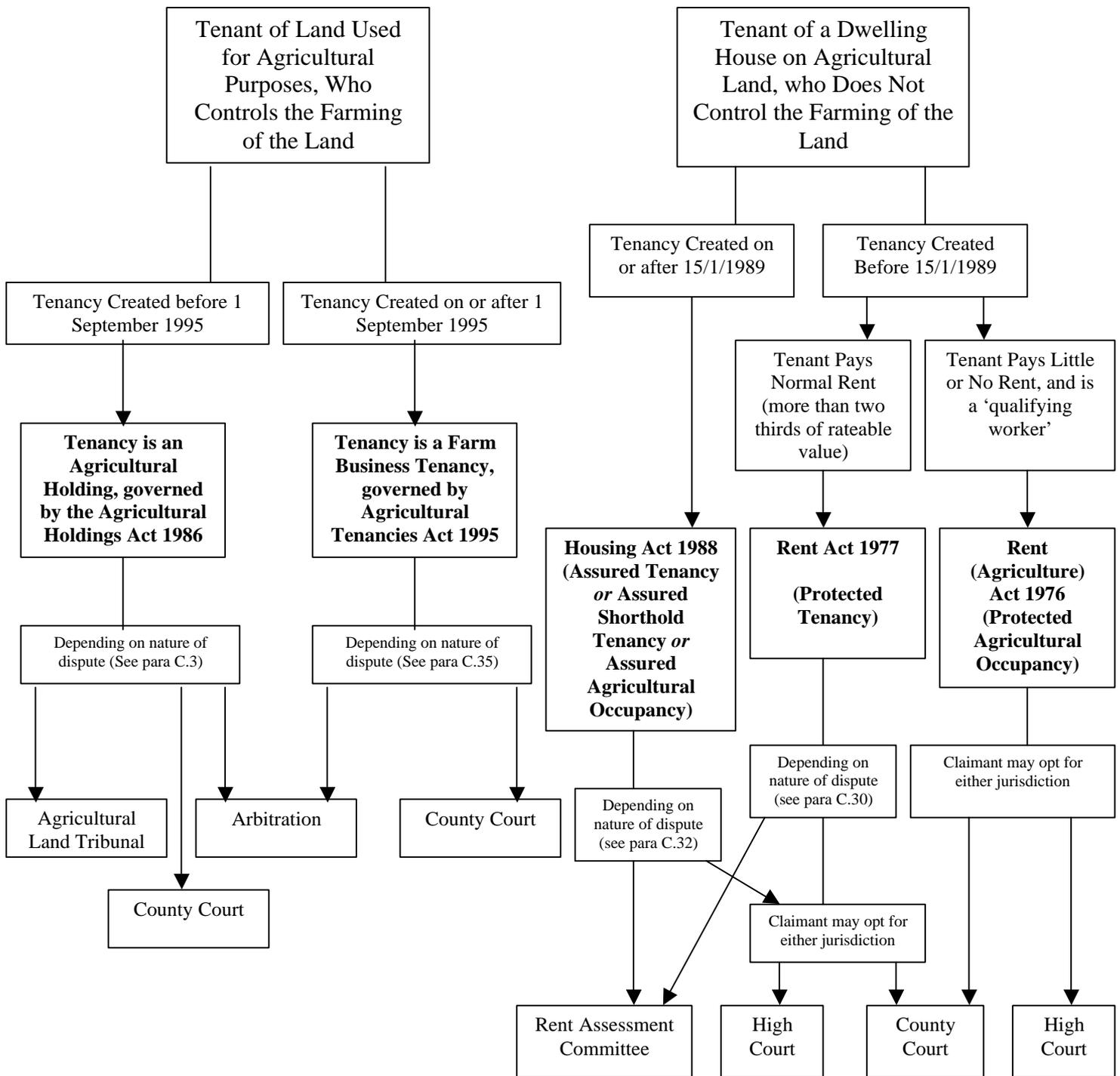
⁴⁵ See Annex G and paras C.30 to C.32 above.

⁴⁶ See Annex G.

⁴⁷ Rent (Agriculture) Act 1976, s 28.

⁴⁸ *R v Agricultural Dwelling House Advisory Committee for Bedfordshire, Cambridgeshire and Northamptonshire, ex p Brough* [1987] 1 EGLR 106.

AGRICULTURAL LAND AND PROPERTY – JURISDICTION CHART



Note the existence of the Agricultural Dwelling House Advisory Committee, constituted by the Rent (Agriculture) Act 1971. See paragraph C.40.

Note also the jurisdiction of the Lands Tribunal to award compensation relating to agricultural land under the Land Compensation Act 1973. See paragraph C.41.

APPENDIX D

COMMONS COMMISSIONERS

PART I

LEGISLATIVE BACKGROUND

- D.1 The Commons Registration Act 1965 (the “1965 Act”) required registration authorities¹ in England and Wales to create and maintain registers of common land, and land which is a town or a village green. Registration authorities must also register the rights of common over such land, and the persons claiming to be the owners of such land, or becoming the owners thereof by virtue of the Act.² Under s 5 of the 1965 Act, persons may make an objection such a registration,³ and unless the objection is withdrawn or the registration cancelled, the registration authority shall refer the matter to a Commons Commissioner. Section 8 of the Act requires Commons Commissioners to enquire into, and determine the ownership of, unclaimed land that has been registered under the Act.
- D.2 Commons Commissioners are constituted under section 17 of the 1965 Act, and the procedure for hearings can be found in the Commons Commissioners Regulations 1971.⁴ Essentially, Commons Commissioners only have jurisdiction over applications for registration made before 2 January 1970.⁵ However, the Common Land (Rectification of Registers) Act 1989 granted a three year window, beginning with the date of passing of the Act, to object to the inclusion of certain land on the registers. Objections could be lodged if there was a dwellinghouse on the land, or the land was ancillary to the dwellinghouse, and this was the case since 5 August 1945.⁶ On the event of such an objection, the registration authority notified the Commons Commissioner who must then inquire into the matter and determine if the above requirements are satisfied.⁷ The procedure for these hearings can be found in the Common Land (Rectification of Registers) Regulations 1990.⁸

¹ That is: County Councils; Metropolitan District Councils; and London Borough Councils. See the Commons Registration Act 1965, s 2(1).

² Commons Registration Act 1965, s 1.

³ For example, on the issues of boundaries, ownership, or the existence of rights in common.

⁴ SI 1971 No 1727.

⁵ Commons Registration (General) Regulations SI 1966 No 1471.

⁶ Common Land (Rectification of Registers) Act 1989, s 1(2)(a).

⁷ Common Land (Rectification of Registers) Act 1989, s 1(4).

⁸ SI 1990 No 311.

PART II

SUBSTANTIVE JURISDICTION

- D.3 The jurisdiction of the Commons Commissioner is referable to the 1965 Act and the Common Land (Rectification of Registers) Act 1989 (the “1989 Act”).

Power to Act

- D.4 The Commons Commissioners may only act if a registration authority refers the matter to it. They have no power to directly intervene.

Temporal Jurisdiction

- D.5 Under the 1965 Act, the Commons Commissioners have no jurisdiction over any application for registration made after 2 January 1970. There were two registration periods.⁹ Firstly, between 2 January 1967 and June 30 1968. Objections to registrations in this period could be made between 1 October 1968 and 30 September 1970. Secondly, registrations could be made between 1 July 1968 and 2 January 1970, to which objections could be made between 1 May and 31 July 1972.¹⁰ Commons Commissioners have no jurisdiction over registrations made outside the above periods. The registration authority itself deals with these.
- D.6 Temporal jurisdiction under the 1989 Act is limited to the investigation and adjudication of objections to inclusion on the registers, such objections being made between 21 July 1989 and 20 July 1992.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal
1965 Act	Section 6(1)	Disposal of Disputed Claims	High Court
1965 Act	Section 8(1)	Vesting of Unclaimed Land	High Court
1989 Act	Section 1(4)	Removal From Registers	High Court

Disposal of Disputed Claims

- D.7 After provisional registration of any land as common land, the local authority (known in this context as the registration authority) had to give such notice to the

⁹ SI 1966 No 1471, reg 5; Commons Registration (Objections and Maps) Regulations SI 1968 No 989.

¹⁰ Objections had to be withdrawn by 31 July 1973. Commons Registration (Second Period References) Regulations SI 1973 No 815.

public as prescribed.¹¹ In the event that an objection was made to the registration, the registration could not become final unless the objection was withdrawn. Section 5 of the Commons Registration Act 1965 required the registration authority to refer any non-finalised registrations to the Commons Commissioner who must inquire into the matter, and either confirm registration with or without modifications, or refuse to confirm.¹² If confirmed, section 6(1)(a) renders the registration final. If refused, the registration is void, subject to appeal.¹³

Vesting of Unclaimed Land

- D.8 Where a section 4 registration has become final but no person is registered as the owner of the land, the registration authority must refer the question of ownership to a Commons Commissioner.¹⁴ The Commons Commissioner will enquire into the matter, and if satisfied that any person is the owner shall direct the registration authority to register that person. If no person can be found, and the land is a town or a village green, then the relevant registration authority under section 8(5) shall be registered as owner. If the land is common land, the Commons Commissioner will take no action, and the registration authority may act to protect the land against unlawful interference.¹⁵

Removal from Registers

- D.9 During the three years after the passing of the 1989 Act it was possible to object to inclusion on the registers if three criteria were met. Firstly, there had to be a dwellinghouse on the land, or it had to be land ancillary to a dwellinghouse, or the land had to be ancillary to a dwellinghouse not on the land. Secondly, one of these requirements had to be satisfied at all times since 5 August 1945. If notice of objection was given to the registration authority, they had to refer the matter to a Commons Commissioner to inquire into the matter. If satisfied the requirements are met, he or she will give notice to the registration authority to make the necessary amendments to the registers.

PART III TERRITORIAL JURISDICTION

- D.10 The 1965 Act,¹⁶ and all other acts regarding common land, apply only in England and Wales. As the Commons Commissioners can only act after a referral by a registration authority, it follows that the territorial jurisdiction of the Commons Commissioners is limited to England and Wales. The devolution of Wales has not affected the territorial jurisdiction of the Commons Commissioners, save that any duties or powers falling to the Minister or Treasury, so far as exercisable in relation

¹¹ Commons Registration Act 1965, s 5(1).

¹² Commons Registration Act 1965, s 6(1).

¹³ See Part IV, below.

¹⁴ Commons Registration Act 1965, s 8(1).

¹⁵ Commons Registration Act 1965, s 9.

¹⁶ Section 25(3).

to Wales, are transferred to the Welsh Assembly by the National Assembly of Wales (Transfer of Functions) Order.¹⁷

PART IV

RELATIONSHIP WITH COUNTY COURT, AND FURTHER APPEALS

Residual jurisdiction in the Courts

- D.11 Essentially, the Commons Commissioners have exclusive first instance jurisdiction. However, G D Gadsen has suggested the possibility of a residual jurisdiction in the courts, given the extreme delays that arose in the dispute resolution procedure (upwards of 20 years in some cases). Gadsen posits that hardship might allow the Commissioners' jurisdiction to be set aside and exercised immediately by the courts.¹⁸

Before the commissioners were appointed it was held that the courts would intervene and the question might arise in the future whether there was a residual jurisdiction "for instance, to deal with cases where the registration, on the face of it, represents an abuse of the right to registration conferred by the act."¹⁹ Meggery J. could not see "what there is in the Act of 1965 which so plainly excludes the jurisdiction of the courts that the remedy of declaration and injunction is taken away. The matter seems to me to be one not of jurisdiction but discretion."²⁰ The Court of Appeal, whilst not deciding that a residual jurisdiction lay in the courts, thought that it could be used only "in a case in which it was established beyond a peradventure that the applicant for registration was, at the time of the application, or has since become, other than *bona fide* in his suggestion that this is, or may turn out to be when the whole matter comes before a Commons Commissioner, common land."²¹

- D.12 For Gadsen, it may still be possible to use the courts if one can show bad faith in an applicant for registration, *and* the Commissioner's hearing is a substantial period of time away²². It should be noted that Gadsen was writing in 1988. Further, the temporal jurisdiction of the Commons Commissioners is finite. The caseload should only decrease, not increase, notwithstanding the statutory extension of jurisdiction, as with the Common Land (Rectification of Registers) Act 1989. Therefore, the massive backlog Gadsen speaks of is less of an issue today, and given this fact, it is likely that any residual jurisdiction in the courts will have disappeared, unless substantial delays remain or reoccur.

¹⁷ SI 1999 No 672, art 2, Sched 1.

¹⁸ G D Gadsen, *The Law of Commons* (1988) p 396, para 14.06.

¹⁹ *Booker v James* [1968] 19 P & CR 525 at 530 *per* Pennycuik J.

²⁰ *Trafford v Ashby* [1969] 21 P & CR 293 at 297.

²¹ *Wilkes v Gee* [1973] 1 WLR 742 at 747 *per* Russell L.J.

²² G D Gadsen, *The Law of Commons* (1988) p 396, para 14.07.

Further Appeals

- D.13 Appeals may be made by any person aggrieved by the decision. An aggrieved person may be a person other than those entitled to be heard at the hearing. Appeals are to the Chancery Division of the High Court, and lie only on a point of law.²³

Judicial Review

- D.14 Gadsen has highlighted that “the actions and decisions of a Commissioner may be subject to review by the court.”²⁴ An application will lie where the Commons Commissioner has made no error of law, but where “all parties were under different misapprehensions, so that in the end justice is not achieved.”²⁵ An application will also lie where a Commissioner has exceeded his jurisdiction, or failed to exercise it.²⁶

²³ Commons Registration Act 1965, s 18(1).

²⁴ G D Gadsen, *The Law of Commons* (1988) p 402, para 14.36.

²⁵ *R v Commons Commissioner, ex p. Bostock G. S.* [1982] CLY 288 per Comyn J.

²⁶ *R v Chief Commons Commissioner, ex p Winnington* [1982] *The Times*, 26 November 1982.

APPENDIX E

LANDS TRIBUNAL

PART I

LEGISLATIVE BACKGROUND

- E.1 The Lands Tribunal was established under the Lands Tribunal Act 1949 (“the 1949 Act”). Section 1(1) of the 1949 Act established two separate Lands Tribunals: one for Scotland and another for the remainder of the United Kingdom.¹ A Lands Tribunal for Northern Ireland was separately constituted under the Lands Tribunal and Compensation Act (Northern Ireland) 1964. This review is concerned with the Lands Tribunal for England and Wales. The Lands Tribunal is a court of law and is situated in Chancery Lane, though it sits wherever the proper disposal of the case requires.
- E.2 The Lands Tribunal consists of a President and other members, all of whom are appointed by the Lord Chancellor.² The President of the Lands Tribunal must be legally qualified, and the other members may be a mixture of legally qualified persons and persons experienced in the valuation of land, all of whom must be at least seven years post-qualification.³ One or more of the members, except where there is statutory provision to the contrary, may exercise the jurisdiction of the Lands Tribunal.⁴
- E.3 The jurisdiction of the Lands Tribunal comes in two forms: first instance and appellate. Part II below lists the many areas where the Lands Tribunal exercises first instance jurisdiction and Part III reviews the jurisdiction of the Lands Tribunal to hear appeals from the Valuation Tribunal and Leasehold Valuation Tribunal. The Lands Tribunal also has jurisdiction under section 1(5) of the 1949 Act to determine matters that are referred to it for arbitration. In this review the Lands Tribunal’s arbitration jurisdiction is treated as a first instance jurisdiction. Broadly speaking, the Lands Tribunal exercises jurisdiction in matters pertaining to land, in particular in relation to compulsory purchases of land and land compensation in general.
- E.4 The procedure and format of proceedings before the Lands Tribunal are contained in the Lands Tribunal Rules 1996.⁵ The Lands Tribunal (Fees) Rules 1996⁶ set out the fees payable by users of the Lands Tribunal.

¹ See Part IV below.

² Land Tribunal Act 1949, s 2(1).

³ Land Tribunal Act 1949, s 2(2). The Lord Chancellor is required to consult with the President of the Royal Institution of Chartered Surveyors in relation to the appointment of non-legal members.

⁴ Land Tribunal Act 1949, s 3.

⁵ SI 1996 No 1022 as amended by the Lands Tribunal (Amendment) Rules, SI 1997 No 1965 and the Lands Tribunal (Amendment) Rules, SI 1998 No 22.

⁶ SI 1996 No 1021.

PART II

JURISDICTION – FIRST INSTANCE

- E.5 The Lands Tribunal exercises first instance jurisdiction under a wide range of statutes and statutory instruments. Despite the large breadth of jurisdiction it is likely that many of the matters identified below are not of practical relevance, either because they relate to once of public-work schemes, or because they relate to disputes that rarely arise between parties. In addition, the majority of grounds identified below stipulate that the Lands Tribunal only acquires jurisdiction once the parties have failed to reach agreement. Many matters over which the Lands Tribunal potentially has jurisdiction may therefore never arise.
- E.6 There is no common theme to the matters over which the Lands Tribunal exercises first instance jurisdiction, other than the fact they concern disputes over land. However, as can be seen from the table below land compensation and compulsory purchase issues tend to predominate. The following headings have been chosen to delineate the different types of first instance jurisdiction exercised by the Lands Tribunal: (a) Compensation Disputes; (b) Compulsory Purchase; (c) Matters Specific to London; (d) Taxation Disputes; (e) Miscellaneous. The Schedule to this review contains a table of abbreviations used to refer to legislative instruments.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal
Section A – Compensation Disputes			
1973 Act	Section 16(1)	Compensation for Depreciation in Value of Land	Court of Appeal
1981 Act	Paragraph 3(4) of Schedule 2	Compensation for Refraining from Mining	Court of Appeal
1979 Act	Section 47	Compensation for Various Matters	Court of Appeal
1979 Act	Section 8(4)	Clawback of Compensation	Court of Appeal
1990a Act	Paragraph 7 of Schedule 2	Compensation for Work in Harbour Area	Court of Appeal

1982 Act	Paragraph 7 of Schedule 1	Compensation for Work in Aerodrome Area	Court of Appeal
1995 Act	Section 11	Compensation for Entry onto Land	Court of Appeal
1993 Act	Paragraph 13(2) of Schedule 2	Compensation for Cardiff Bay Barrage Development (1)	Court of Appeal
1993 Act	Paragraph 6(2) of Schedule 5	Compensation for Cardiff Bay Barrage Development (2)	Court of Appeal
1993 Act	Paragraph 16(4) of Schedule 7	Compensation for Cardiff Bay Barrage Development (3)	Court of Appeal
1982a Act	Section 44(6)	Compensation for Entry onto Land	Court of Appeal
1982a Act	Section 50(7)	Compensation for Entry onto Land	Court of Appeal
1982a Act	Section 51(1)	Compensation of Statutory Undertakers	Court of Appeal
1982a Act	Paragraph 5 of Schedule 8	Compensation for section 45 Order	Court of Appeal
1982a Act	Paragraph 9 of Schedule 9	Compensation for section 46 Direction	Court of Appeal
1972 Act	Section 60(5)	Compensation for Entry onto Land	Court of Appeal
1984 Act	Section 5(3)	Compensation for Construction of Cycle Tracks	Court of Appeal
1989 Act	Paragraph 11(3) of Schedule 4	Compensation for Damage to Moveables	Court of Appeal

1990b Act	Paragraph 14(3) of Part I of Schedule 2	Compensation for Transition to Waste Disposal Company	Court of Appeal
2000 Act	Section 5(6)	Fur Farming Compensation Scheme	Court of Appeal
1965a Act	Section 23(1)(a)	Compensation for Various Matters	Court of Appeal
1965a Act	Section 23(1)(b)	Clawback of Compensation	Court of Appeal
1980 Act	Section 307	Compensation for Various Matters	Court of Appeal
1980a Act	Section 296(3)	Compensation for Removal or Alteration of Apparatus	Court of Appeal
1980a Act	Section 584B(5)	Clawback of Compensation	Court of Appeal
1991 Act	Section 14(6)	Compensation for Works on Land	Court of Appeal
1991 Act	Section 22(7)	Compensation for Drainage Works Order	Court of Appeal
1991 Act	Section 29(6)	Compensation for Ditch Works Order	Court of Appeal
1991 Act	Section 64(5)	Compensation for Entry onto Land	Court of Appeal
1958 Act	Section 10(5)	Compensation for Air Defence Obstruction Order	Court of Appeal
1958 Act	Section 18(5)	Compensation for Restrictions/Wayleave Orders	Court of Appeal
1958 Act	Section 22	Matters before General Claims Tribunal	Court of Appeal
1958 Act	Paragraph 3 of Schedule 4	Compensation for Entry onto Land	Court of Appeal
1976 Act	Section 15(6)	Compensation for Entry onto Land	Court of Appeal

1976 Act	Section 24(5)	Compensation for Making Tree Safe	Court of Appeal
1980b Act	Section 167(9)	Compensation for Entry onto Land	Court of Appeal
1985 Act	Section 7(13)	Compensation for Entry onto Former Mining Land	Court of Appeal
1985 Act	Section 8(11)	Compensation for Works on Former Mining Land	Court of Appeal
1983 Act	Section 36(9)	Compensation for Entry onto Land	Court of Appeal
1949a Act	Section 107	Compensation for Damage by Nature Conservancy Council	Court of Appeal
1981a Act	Paragraph 3 of Schedule 7	Compensation for Damage to Land	Court of Appeal
1958a Act	Section 40	Compensation for Damage by British Coal Corporation	Court of Appeal
1958a Act	Paragraph 9 of Schedule 3	Well-foundedness of Objection	Court of Appeal
1962 Act	Section 48	Compensation under Pipe-lines Act 1962	Court of Appeal
1990c Act	Section 31(4)	Compensation for Listed Buildings	Court of Appeal
2000a Act	Paragraph 5(2) of Schedule 6	Compensation for Entry onto Land	Court of Appeal
1941 Act	Section 45(6)	Compensation for Attachment of Street Lamps	Court of Appeal
1845 Act	Section 6	Compensation for Injurious Affection to Land	Court of Appeal
1845 Act	Section 78	Compensation for Refraining from Mining	Court of Appeal

1975 Act	Section 18(2)	Compensation for Reservoir Survey	Court of Appeal
1984a Act	Paragraph 22 of Part IV of Schedule 4	Compensation for Refusal of Licence	Court of Appeal
1984b Act	Paragraph 4(6) of Schedule 2	Compensation for Removal of Telecom Apparatus	Court of Appeal
1974 Regulations	Regulation 7	Apportionment of Compensation	Court of Appeal
1990 Act	Section 118	Compensation under Part IV of 1990 Act	Court of Appeal
1990 Act	Section 186(6)	Compensation for Stop Notices	Court of Appeal
1990 Act	Section 205	Compensation for Tree Order	Court of Appeal
1990 Act	Section 223(2)	Compensation for Advertisement Removal	Court of Appeal
1990 Act	Section 250(6)	Compensation for Extinguishing Highway Use	Court of Appeal
1990 Act	Section 282	Compensation of Statutory Undertakers	Court of Appeal
1968a Act	Section 105(7)	Compensation for Extinguishing Inland Waterway Rights	Court of Appeal
1968a Act	Section 112(4)	Compensation for Extinguishing Canal Rights	Court of Appeal
1992 Act	Section 53(6)	Compensation for Placing of Signs and Barriers	Court of Appeal
1991a Act	Paragraph 11(3)(a) of Part II of Schedule 6	Compensation for Entry onto Land	Court of Appeal

1991a Act	Paragraph 8(6) of Schedule 11	Compensation for Non-Acquisition Depreciation	Court of Appeal
1191a Act	Paragraph 3 of Schedule 12	Compensation for Pipe-Laying	Court of Appeal
1991a Act	Paragraph 2(4) of Schedule 14	Compensation for Refraining from Mining	Court of Appeal
1991b Act	Section 62(5))	Compensation for Revocation of Licences	Court of Appeal
1991b Act	Paragraph 3 of Schedule 9	Compensation for Drought Order	Court of Appeal
1991b Act	Paragraph 8(6) of Schedule 19	Compensation for Non-Acquisition Depreciation	Court of Appeal
1991b Act	Paragraph 6(3)(a) of Schedule 20	Compensation for Entry onto Land	Court of Appeal
1991b Act	Paragraph 3 of Schedule 21	Compensation for Pipe-Laying	Court of Appeal
1991b Act	Paragraph 2(4) of Schedule 23	Compensation for Refraining from Mining	Court of Appeal
1975a Act	Paragraph 15 of Part IV of Schedule 4	Compensation for Entry onto Land	Court of Appeal

2001 Regulations	Paragraph 9 of Schedule 3	Compensation in Connection with European Habitat Site	Court of Appeal
2000 Regulations	Paragraph 6(3) of Schedule 2	Compensation for Damage to Land (England)	Court of Appeal
2001a Regulations	Paragraph 6(3) of Schedule 2	Compensation for Damage to Land (Wales)	Court of Appeal
2000a Regulations	Paragraph 7(3) of Schedule 6	Compensation for Damage to Land (England & Wales)	Court of Appeal
1999 Regulations	Paragraph 6 of the Schedule	Compensation for Grant of Rights	Court of Appeal
1999a Regulations	Regulation 8(3)	Compensation under Environment Protection Act 1990	Court of Appeal
1997 Regulations	Regulation 14(3)	Compensation for Damage to Land/Chattels	Court of Appeal
1994a Regulations	Regulation 92(3)	Compensation for Making a European Site Order	Court of Appeal
1994a Regulations	Regulation 96(2)	Compensation for Making Byelaws	Court of Appeal
1994a Regulations	Regulations 59(3), 74(4), 78(4) and 82(4)	Compensation for Revocation of Permissions	Court of Appeal
1994 Order	Paragraph 7 of Schedule 2	Compensation for Channel Tunnel Security Order	Court of Appeal
Section B – Compulsory Purchase			
1965 Act	Section 6	Compensation for Compulsory Purchase	Court of Appeal

1965 Act	Section 5(2D)	Compensation for Expired Notice to Treat	Court of Appeal
1965 Act	Section 8(1)	Compensation for Severed Land/Buildings	Court of Appeal
1965 Act	Section 8(3)	Connection of Severed Land	Court of Appeal
1965 Act	Section 10(1)	Compensation for Injurious Affection	Court of Appeal
1965 Act	Section 11(3)	Compensation for Entry onto Land	Court of Appeal
1965 Act	Section 15(1)	Determination in Respect of Mortgaged Land	Court of Appeal
1965 Act	Section 16(1)	Determination in Respect of Partially Mortgaged Land	Court of Appeal
1965 Act	Section 17(2)	Compensation for Interest Income Difference	Court of Appeal
1965 Act	Section 18(1)	Compensation for Release of Rentcharges	Court of Appeal
1965 Act	Section 18(2)	Apportionment of Land Subject to Rentcharge	Court of Appeal
1965 Act	Section 19(2)	Apportionment of Rent	Court of Appeal
1965 Act	Section 20(3)	Compensation for Tenants at Will	Court of Appeal
1965 Act	Paragraph 4 of Schedule 2	Compensation for Absent/Untraced Owners	Court of Appeal
1965 Act	Paragraph 5(4) of Schedule 4	Compensation for Common Land	Court of Appeal
1961 Act	Section 1	Compensation for Compulsory Purchase of Land	Court of Appeal
1961 Act	Section 4	Determination of Costs	Court of Appeal
1961 Act	Section 31(4)	Compensation for Withdrawal of Notice to Treat	Court of Appeal

1961 Act	Section 35	Certification of Value	Court of Appeal
1973 Act	Section 30(3)	Determination of Market Value of Dwelling	Court of Appeal
1973 Act	Section 35(9)	Calculation of Farm Loss Payment	Court of Appeal
1973 Act	Section 38(4)	Calculation of Disturbance Payment	Court of Appeal
1973 Act	Section 54(1)	Determination of section 53 Notice	Court of Appeal
1973 Act	Section 56(1)	Determination of section 55 Counter-Notice	Court of Appeal
1968 Act	Paragraph 1 of Schedule 3	Compulsory Purchase of Agricultural Holding	Court of Appeal
1968 Act	Paragraph 2 of Schedule 3	Consideration of Excessive Compensation	Court of Appeal
1981b Act	Section 11(4)	Clawback of Compensation	Court of Appeal
1981b Act	Paragraph 4(1) of Part I of Schedule 1	Determination of Severance Objection	Court of Appeal
1987 Act	Paragraph 3 of Schedule 5	Compulsory Purchase for Channel Tunnel	Court of Appeal
1996 Act	Paragraph 11 of Part III of Schedule 4	Compulsory Purchase for Channel Tunnel Rail Link	Court of Appeal
1989 Act	Paragraph 9 of Part II of Schedule 3	Compulsory Purchase by Electricity Licence Holders	Court of Appeal

1989 Act	Paragrph 9 of Part II of Schedule 3	Compulsory Purchase of Wayleaves	Court of Appeal
1980 Act	Section 250 and Schedule 19	Compulsory Purchase under Highways Act 1980	Court of Appeal
1980 Act	Section 271(3)	Compulsory Transfer of Toll Highway	Court of Appeal
1988 Act	Section 77 and Part I of Schedule 10	Compulsory Purchase by Housing Action Trust	Court of Appeal
1993a Act	Section 162 and Schedule 20	Compulsory Purchase by Urban Regeneration Agency	Court of Appeal
1976 Act	Section 13(2) and Schedule 1	Compulsory Purchase by Local Authorities	Court of Appeal
1980b Act	Schedule 28	Compulsory Purchase by Urban Development Corporations	Court of Appeal
2000a Act	Paragraph 6 of Schedule 5	Compulsory Purchase by Universal Service Provider	Court of Appeal
1998 Act	Paragraph 4 of Part II of Schedule 5	Compulsory Purchase by Regional Development Agency	Court of Appeal
1990 Act	Section 146	Validity of section 145 Notice	Court of Appeal
1991a Act	Section 155 and Schedule 9	Compulsory Purchase by Water Industry Undertaker	Court of Appeal

1991b Act	Section 154 and Schedule 18	Compulsory Purchase by Environment Agency	Court of Appeal
2001 Order	Article 19 and Schedule 7	Compulsory Purchase by London Underground	Court of Appeal
2002 Order	Article 30	Compulsory Purchase by Docklands Light Railway	Court of Appeal
Section C – Matters Specific to London			
1965b Act	Section 6(9)	Compensation for Underpinning Building	Court of Appeal
1967 Act	Section 16(7)	Compensation for Provision of Support	Court of Appeal
1969 Act	Section 21(7)	Compensation for Construction of Walkway	Court of Appeal
1969 Act	Section 22(6)	Compulsory Purchase for Public Walkways	Court of Appeal
1969 Act	Section 25(7)(c)	Compensation Payable by Statutory Undertakers	Court of Appeal
1986a Act	Section 4(11)	Compensation for Refusal to Carry Out Works	Court of Appeal
1962a Act	Section 24(2)	Compensation for Closure of Building	Court of Appeal
1963 Act	Section 9(8)	Compensation for Underpinning Houses	Court of Appeal
1972a Act	Sections 20(1)(c), 25(3)(e), 44(2) and 60(3)(b)	Compensation in Connection with Thames Barrier Work	Court of Appeal
1956 Act	Sections 3 and 4	Compensation for Vesting of Underground Works	Court of Appeal

Section D – Taxation Disputes			
1970 Act	Section 46D	Various Disputes Relating to Value of Land for Chargeable Gains	Court of Appeal
1970 Act	Section 47B	Disputes Relating to Value of Land for BES Schemes	Court of Appeal
1984c Act	Section 222(4)	Value of Land for Certain Transfers	None
1986 Regulations	Regulation 8(4)	Valuation of Land in Stamp Duties Appeals	Court of Appeal
Section E - Miscellaneous			
1949 Act	Sections 1(3)(b), 1(3)(c), 1(3)(e), 1(4)(a)	Determination of Matters under Lands Tribunal Act, 1949	Court of Appeal
1949 Act	Section 1(5)	Matters Referred for Arbitration	Court of Appeal
1925 Act	Section 84	Modification/Discharge of Restrictive Covenant	Court of Appeal
1959 Act	Section 3	Rights of Light Application	Court of Appeal
1991c Act	Section 40	Disputes in Relation to Coal Mining Subsidence	Court of Appeal
1991c Act	Section 6(6)	Variation to Schedule of Remedial Works	Court of Appeal
1994 Act	Section 47	Other Coal Subsidence Disputes	Court of Appeal
1949b Act	Section 24	Various Disputes Relating to Coastal Protection	Court of Appeal
1967a Act	Sections 11(6), 14(4), 21(2), 22(3)	Forestry Disputes	Court of Appeal
1954 Act	Section 37(5)	Determination of Rateable Value	Court of Appeal

1977 Act	Section 6	Appeal of Rentcharge Apportionment Order	Court of Appeal
1974 Regulations	Regulation 12	Disputes as to Rentcharges	Court of Appeal
1990 Act	Section 153	section 150 Blight Notices	Court of Appeal
1990 Act	Section 159	section 158 Blight Notice	Court of Appeal
2002 Regulations	Regulation 10	Objection to Creation of Right of Way	Court of Appeal
Various	Various	Residual Jurisdiction – See Paragraph 2.167	Court of Appeal

SECTION A: DETERMINATION OF COMPENSATION DISPUTES

E.7 The Lands Tribunal has jurisdiction under a large number of statutes and statutory instruments to determine compensation disputes that arise in connection with land. In the main a right to compensation will arise where a public body or privatised utility causes damage to land or chattels as a result of the exercise by it of a statutory right of entry or right to carry out works on land. The compensation jurisdiction of the Lands Tribunal does not extend to claims for compensation outside of a statutory scheme, that is claims in contract or tort for damage will generally give rise to a separate cause of action before the ordinary courts. Compensation disputes usually involve a private land owner and a public body or privatised utility. In the majority of cases a claim for compensation may only be made in the event of a failure by the parties to reach agreement. The following list summarises the jurisdiction of the Lands Tribunal in respect of compensation disputes. A number of these grounds of jurisdiction are likely to be defunct (for example compensation for Cardiff Bay Barrage), however because they remain on the statute books they have been included in this review.

Compensation under the Land Compensation Act 1973

E.8 The Land Compensation Act 1973 confers a right to compensation for depreciation in value of interests in private land caused by the use of highways, aerodromes and other public works. The general scheme for claiming entitlement to compensation is laid out in section 1 of the 1973 Act. The Lands Tribunal has jurisdiction under section 16(1) to determine any dispute that arises in relation to a claim for compensation under Part I of the 1973 Act.

Compensation for Refraining from Mining

E.9 Under paragraph 3(3) of Schedule 2 to the Acquisition of Land Act 1981 the acquiring authority can require the owner of underlying mines or minerals to refrain from working them in return for the payment of compensation. If the acquiring authority and owner cannot agree on the compensation payable the Lands Tribunal has jurisdiction under paragraph 3(4) of Schedule 2 to the 1981 Act to determine the matter.

Compensation under the Ancient Monuments and Archaeological Areas Act 1979

- E.10 The Lands Tribunal has jurisdiction under section 47 of the Ancient Monuments and Archaeological Areas Act 1979 to determine disputes that arise in relation to the payment of compensation under the Act.⁷ Compensation is payable under sections 7, 9, 10 and 46 of the 1979 Act.

Determination of Recoverable Compensation

- E.11 Section 8 of the 1979 Act makes provision for the recovery of compensation paid pursuant to section 7 where the Secretary of State subsequently grants Scheduled monument consent (and compensation was already paid). The Lands Tribunal has jurisdiction under section 8(4) of the 1979 Act to determine the compensation recoverable when the person with an interest in the monument is aggrieved by the amount specified by the Secretary of State to be recoverable.

Compensation for Work in Harbour Area

- E.12 The Secretary of State may, pursuant to section 24 of the Aviation and Maritime Security Act 1990, direct the owner of land in a harbour area to carry out certain works on that land. The owner can apply under section 43 and Schedule 2 to the 1990a Act for compensation in respect of measures taken by him on foot of the direction made by the Secretary of State under section 24. The Lands Tribunal has jurisdiction under paragraph 7 of Schedule 2 to the 1990a Act to determine any dispute that arises in relation to the right to and amount of compensation payable under the section 43 and Schedule 2.

Compensation for Work in Aerodrome Area

- E.13 The Secretary of State may, pursuant to section 14 of the Aviation Security Act 1982, direct the owner of land in an aerodrome area to carry out certain works on that land. The owner can apply under section 22 and Schedule 1 to the 1982 Act for compensation in respect of measures taken by him on foot of the direction made by the Secretary of State under section 14. The Lands Tribunal has jurisdiction under paragraph 7 of Schedule 1 to the 1982 Act to determine any dispute that arises in relation to the right to and amount of compensation payable under section 22 and Schedule 1.

Payment and Compensation under the British Waterways Act 1995

- E.14 The British Waterways Act 1995 empowers the British Waterways Board to enter land and carry out works on waterways. Under section 9 of the 1995 Act the Board is required to pay the occupier of land a sum for entering his land and under section 10 the occupier is entitled to be compensated for any damage that arises as a consequence the Board exercising its functions under the Act. The Lands Tribunal has jurisdiction under section 11 of the 1995 Act to determine disputes that arise in connection with section 9 payments or section 10 compensation.

⁷ Part I of the Schedule to the Ancient Monuments (Claims for Compensation) (England) Regulations, SI 1991 No 2512 and the Schedule to the Ancient Monuments (Claims for Compensation) (Wales) Regulations, SI 1991 No 2647 contain the forms for making a claim for compensation under the Ancient Monuments and Archaeological Areas Act 1979.

Compensation for Cardiff Bay Barrage Development (1)

- E.15 The Cardiff Bay Barrage Act 1993 established a Development Corporation for constructing a barrage across the mouth of Cardiff Bay. Schedule 2 of the 1993 Act grants various powers to the Development Corporation to enable it to construct the barrage. Any person who suffers damage as a result of the exercise by the Development Corporation of its powers under paragraphs 1, 2, 3, 6, and 10 is entitled to be paid compensation. The Lands Tribunal has jurisdiction under paragraph 13(2) of Schedule 2 to the 1993 Act to determine any dispute that arises in relation to a person's right to compensation or the amount of compensation payable.

Compensation for Cardiff Bay Barrage Development (2)

- E.16 Paragraphs 1 and 2 of Schedule 5 to the 1993 Act grant power to the Development Corporation to take possession and make use of lands for the purpose of constructing the Cardiff Bay Barrage. Any person who suffers loss or damage as a result of the exercise by the Development Corporation of its powers under paragraphs 1 and 2 is entitled to be paid compensation. The Lands Tribunal has jurisdiction under paragraph 6(2) of Schedule 5 to the 1993 Act to determine any dispute in relation to a person's right to compensation or the amount of compensation payable.

Compensation for Cardiff Bay Barrage Development (3)

- E.17 Schedule 7 to the 1993 Act makes provisions for groundwater damage protection that may arise as a result of the construction of the Cardiff Bay Barrage. Paragraph 15 of Schedule 7 lays down the terms on which compensation for remedial work carried out on foot of paragraph 12 is payable. The Lands Tribunal has jurisdiction under paragraph 16(4) of Schedule 7 to the 1993 Act to determine disputes that arise under paragraph 15 (though the application of paragraph 15(3) is determined by arbitration pursuant to paragraph 25).

Compensation for Entering Land for Civil Aviation Purposes

- E.18 Section 44 of the Civil Aviation Act 1982 grants power to the Secretary of State to make orders that permit the entry onto land for various purposes in connection with civil aviation. Where any land is damaged in exercise of this power the person with an interest in the land is entitled to compensation. The Lands Tribunal has jurisdiction under section 44(6) of the 1982a Act to determine any dispute that arises in connection with the right to and amount of compensation payable under section 44.

Compensation for Entering Land for Purpose of Making a Relevant Survey

- E.19 Section 50 of the 1982a Act confers power on the Secretary of State and Civil Aviation Authority to make a "relevant survey"⁸ of land that is being considered for compulsory acquisition. Section 50(2) allows authorised persons to enter the said land for the purpose of carrying out the survey. Where land is damaged as a result

⁸ As defined by the Civil Aviation Act 1982, s 50(3).

of an exercise of this power, the person interested in the land is entitled to compensation. The Lands Tribunal has jurisdiction under section 50(7) of the 1982a Act to determine any dispute that arises in connection with the right to and amount of compensation payable under section 50.

Compensation of Statutory Undertakers

- E.20 The Lands Tribunal has jurisdiction under section 51(1) of the 1982a Act to determine any dispute⁹ that arises in connection with the compensation to be paid to a statutory undertaker in respect of the compulsory purchase of land, the creation of easements of servitude or directions in relation to building apparatuses under the 1982a Act.

Compensation in Connection with section 45 Order

- E.21 The Secretary of State may by order, pursuant to section 45 of the 1982a Act, impose restrictions on the use of land for the purpose of securing the safe arrival and departure of aircraft in the United Kingdom. A person with an interest in the said land is entitled to be compensated for any diminution in value of the land as the result of making such an order in accordance with the provisions of Schedule 8 to the 1982a Act. The Lands Tribunal has jurisdiction under paragraph 5 of Schedule 8 to the 1982a Act to determine any dispute in connection with the right to and amount of compensation payable under Schedule 8.

Compensation in Connection with section 46 Direction

- E.22 Section 46 of the 1982a Act grants a general power to the Secretary of State to make directions that affect land to secure the safe and efficient operation of civil aviation. A person with an interest in the said land is entitled to be compensated for any diminution in value of the land that results from the making of such an order in accordance with the provisions of Schedule 9 to the 1982a Act. The Lands Tribunal has jurisdiction under paragraph 9 of Schedule 9 to the 1982a Act to determine any dispute that arises in connection with the right to and amount of compensation payable under Schedule 9.

Compensation for Damage in Respect of Entry with View to Acquiring Land for Prisons

- E.23 The Secretary of State can acquire land for prisons under section 36 of the Prisons Act 1952. Sections 60(1) and 60(2) of the Criminal Justice Act 1972 grant power to the Secretary of State to authorise a person to enter land and carry out surveys for the purpose of determining whether he should exercise his powers to acquire land for prisons. Where any land is damaged in the exercise of these powers the person with an interest in the land is entitled to compensation. The Lands Tribunal has jurisdiction under section 60(5) of the 1972 Act to determine any dispute that arises in connection with the compensation payable.

⁹ Except disputes in connection with compensation payable under the Civil Aviation Act 1982, s 42.

Compensation for Construction of Cycle Tracks

- E.24 The Cycle Tracks Act 1984 grants certain powers to highway authorities to execute works necessary for the construction of cycle tracks. A person who suffers damage as a result of the execution of such works is entitled to compensation. Where the parties cannot agree the Lands Tribunal has jurisdiction under section 5(3) of the 1984 Act to determine the claim for compensation.¹⁰

Compensation for Damage to Moveables

- E.25 Electricity licence holders have the power under paragraph 9 and 10 of Schedule 4 to the Electricity Act 1989 to enter land for the purpose of felling and lopping trees and for exploring potential applicable uses of land. Where in the exercise of those powers the licence holder causes damage to moveables or their quiet enjoyment is interfered with, the occupier of land is entitled to compensation. The Lands Tribunal has jurisdiction under paragraph 11(3) of Schedule 4 to the 1989 Act to determine disputes in relation to any such claims for compensation.

Compensation for Losses arising as a Result of Transition to Waste Disposal Company

- E.26 Part I of Schedule 2 to the Environmental Protection Act 1990 makes detailed provision in relation to the transition from disposal authorities to waste disposal companies. Paragraph 6 of Part I of Schedule 2 provides for the making of schemes transferring property to waste disposal companies. The Lands Tribunal has jurisdiction under paragraph 14(3) of Part I of Schedule 2 to the 1990b Act to determine compensation payable to third parties as a consequence of the transfer of property under a transfer scheme.

Compensation under Fur Farming Compensation Scheme

- E.27 Section 1 of the Fur Farming (Prohibition) Act 2000 makes it an offence to farm animals solely or primarily for the purpose of slaughtering or breeding progeny for the value of their fur. Section 5 of the 2000 Act makes provision for the making of compensation schemes for businesses that are adversely affected by the prohibition. The Lands Tribunal has jurisdiction under section 5(6) of the 2000 Act to determine disputes that arise in connection with a person's entitlement to or the amount of payments under any such scheme.¹¹

Compensation under the Gas Act 1965

- E.28 The Lands Tribunal has jurisdiction under section 23(1)(a) of the 1965a Act to determine any dispute that arises in relation to compensation that is payable under Part II of the 1965a Act. The gas transporter is liable to pay compensation under the following provisions: (a) section 7 – compensation for general effect of storage authorisation order; (b) section 8 – compensation for refusal of consent to controlled operations, or consent granted subject to conditions; (c) section 9 –

¹⁰ Cycle Tracks Act 1984, s 5(3) applies s 307(1) to (3) of the Highways Act 1980 to such disputes.

¹¹ Fur Farming (Compensation Scheme) (England) Order SI 2002 No 221 and the Fur Farming (Compensation Scheme) (England) Order SI 2001 No 3853 contain detailed provisions on the compensation payable.

compensation for withdrawal of consent or variation of conditions; and (d) section 15 – compensation for interference with the water supply.

Clawback of Compensation by Gas Transporter

- E.29 The gas transporter’s liability to pay compensation under sections 8 and 9 of the 1965a Act arises where the Minister refuses or withdraws consent to operate underground gas storage facilities pursuant to section 5. If the Minister subsequently consents to the operations and the person has already received compensation under sections 8 or 9, that person is liable to repay a portion of that compensation to the gas transporter together with interest. In the event of a dispute as to the amount of compensation to be clawed back the Lands Tribunal has jurisdiction under section 23(1)(b) of the 1965a Act to determine the matter.

Compensation under the Highways Act 1980

- E.30 The Lands Tribunal has jurisdiction under section 307 of the 1980 Act to determine any dispute that arises in connection with a claim for compensation under the following provisions of the 1980 Act: (a) section 21(4)/(4A) – compensation of persons who suffer loss as a result of a removal of apparatus of public utility undertaker; (b) section 28(1) – compensation of persons for damage suffered as a result of public path creation order; (c) section 73(9) – compensation of persons whose property is injuriously affected as a result of the prescription of an improvement line for widening streets; (d) section 74(8) – compensation of persons whose property is injuriously affected as a result of the prescription of a building line; (e) section 109(2) – compensation of persons for damage that is a consequence of the diversion of a navigable watercourse; (f) section 110(4) – compensation of persons for damage that is a consequence of a diversion of a non-navigable watercourse; (g) section 121(2) – compensation of persons for damage suffered as a result of public path extinguishment orders, rail crossing extinguishment orders, special extinguishment orders, public path diversion orders, rail crossing diversion orders, special diversion orders and SSSI diversion orders; (h) section 126(2) – compensation of persons for a depreciation of their interest in a premises as a consequence of a highway authority “stopping up” a means of access to a private premises; (i) section 292(1) - compensation of persons for damage to land or chattels as a consequence of the exercise by a highway authority of powers of entry under section 289 and 291 of the 1980 Act.

Compensation for Removal or Alteration of Apparatus

- E.31 A local housing authority has power under section 296(2) of the Housing Act 1980 to order the removal or alteration by a statutory undertaker of certain apparatuses. The statutory undertaker is entitled to compensation in respect of damage sustained as a result of the exercise of this power by the local housing authority. The Lands Tribunal has jurisdiction under section 296(3) of the 1980a Act to determine any question in relation to compensation that is so payable.

Clawback of Compensation for Closing Order

- E.32 Where a closing order is determined in pursuance of section 278 of the 1980 Act a person who was granted compensation on foot of the making of the closing order

is obliged to repay to the local housing authority all or part of that amount. The amount to be repaid is the lesser of the amount by which the recipient's interest in the premises increases as a result of the determination of the closing order¹² or the amount of compensation actually paid.¹³ The Lands Tribunal has jurisdiction under section 584B(5) of the 1980a Act to determine any dispute regarding the calculation of the amount under section 584B(3)(a).

Compensation for Injury Caused by Drainage Board or Local Authority

- E.33 Drainage boards and local authorities (as the case may be) have power under section 14 of the Land Drainage Act 1991 to carry out certain works for the purpose of maintaining, improving or constructing watercourses and drainage works. They are liable under section 14(5) to compensate persons who sustain an injury as a result of the exercise by them of these powers. The Lands Tribunal has jurisdiction under section 14(6) of the 1991 Act to determine disputes as to the amount of compensation payable.

Compensation for Drainage Works Order

- E.34 The Minister has power under section 22 of the 1991 Act to order the carrying out of drainage works on land on application to him. Every person interested in land that is subject to such an order is entitled to compensation for injury suffered by reason of the works. The Lands Tribunal has jurisdiction under section 22(7) of the 1991 Act to determine any dispute as to the amount of compensation payable.

Compensation for Ditch Works Order

- E.35 The Agricultural Lands Tribunal has power under section 28 of the 1991 Act to permit the carrying out of works by an interested owner or occupier of land on ditches that are in a dangerous condition. Section 29 enables the person to enter land and carry out works for the purpose of carrying out works permitted by a section 28 order. Any person who sustains injury by reason of the exercise of the powers contained in section 29 is entitled to compensation, except where the exercise of powers was for the purposes permitted by the section 28 order. The Lands Tribunal has jurisdiction under section 29(6) of the 1991 Act to determine disputes as to the amount of compensation payable.

Compensation for Entry to Land

- E.36 A person authorised by an internal drainage board or local authority may, under section 64 of the 1991 Act, enter land for the purposes of carrying out any functions of the board or local authority. A person who sustains injury by reason of the exercise of this power of entry is entitled to compensation under section 64(4). The Lands Tribunal has jurisdiction under section 64(5) of the 1991 Act to determine disputes as to the amount of compensation payable.

¹² Section 584B(3)(a).

¹³ Section 584B(3)(b).

Compensation for Air Defence Obstruction Order

- E.37 The Minister has power under section 10(1) of the Land Powers (Defence) Act 1958 to order the removal of objects within two miles of an airfield that is used for defence purposes where the objects are likely to interfere with the safe and efficient operation of the airfield. The person to whom the order is directed is entitled to compensation and the Lands Tribunal has jurisdiction under section 10(5) of the 1958 Act to determine disputes as to the right to and amount of compensation.

Compensation for section 16 Restrictions and Wayleave Orders

- E.38 Section 14 of the 1958 Act permits the Minister to make wayleave orders over land for the purpose of laying oil pipelines. In addition section 16 of the 1958 permits the Minister to impose restrictions on the use of land that is in close proximity of an oil pipeline. Persons are entitled to compensation under section 18 for depreciations in value of their land or other damage sustained as a result of the making of a wayleave order or the imposition of section 16 restrictions. The Lands Tribunal has jurisdiction under section 18(5) of the 1958 Act to determine disputes that arise as to the right to and amount of compensation payable.

Compensation under the Compensation (Defence) Act 1939

- E.39 Section 22 of the 1958 Act abolishes the General Claims Tribunal as constituted under the Compensation (Defence) Act 1939. The Lands Tribunal has jurisdiction under section 22 of the 1958 Act to consider the matters previously within the jurisdiction of the General Claims Tribunal under the 1939 Act.

Compensation for Entry to Land

- E.40 Sections 9, 10, 15, 16 and 21 of the 1958 Act permit the entry onto land of authorised persons for the purpose of exercising powers contained in the 1958 Act. Schedule 4 to the 1958 Act makes general provisions in relation to the exercise of these rights of entry. A person who suffers loss or damage by reason of the exercise of a right of entry is entitled to compensation. The Lands Tribunal has jurisdiction under paragraph 3 of Schedule 4 to the 1958 Act to determine disputes as to the right to and amount of compensation payable.

Compensation for Damage from Land Survey by Local Authority

- E.41 Local authorities have power under section 15 of the Local Government (Miscellaneous Provisions) Act 1976 to authorise persons to enter land for the purpose of carrying out surveys with a view to compulsorily acquiring an interest in that land or rights over it. Where a person suffers damage as a result of the carrying out of the survey by the authorised officer of the local authority, that person is entitled to compensation. The Lands Tribunal has jurisdiction under section 15(6) of the 1976 Act to determine disputes as to the right to and amount of compensation payable.

Compensation for Making Tree Safe

- E.42 Local authorities have power under section 23 of the 1976 Act to authorise a person to enter land and carry out work where they consider that a tree is in such a condition that there is imminent danger of damage to persons or property. A person interested in land who suffers damage by reason of the entry and carrying out of work by an authorised officer is entitled to compensation. The Lands

Tribunal has jurisdiction under section 24(5) of the 1976 Act to determine disputes as to the right to and amount of compensation payable.

Compensation for Damage from Survey by Urban Development Corporation

- E.43 Urban development corporations can authorise persons under section 167 of the Local Government and Planning Act 1980 Act to enter land for the purpose of carrying out surveys or valuations with a view to compulsorily acquiring interests in the land in question. A person with an interest in land who suffers damage as a result of the exercise by the corporation of this power is entitled to compensation. The Lands Tribunal has jurisdiction under section 167(9) of the 1980b Act to determine disputes as to right to or amount of compensation payable.

Compensation for Entry to Former Mining Land

- E.44 Local authorities have power under section 7 of the Mineral Workings Act 1985 to enter former mining land to carry out reclamation works on that land or to survey land with a view to carry out such works. A person with an interest in land or chattels is entitled to compensation for any damage caused to the land or chattels as a result of the local authority's exercise of these powers. The Lands Tribunal has jurisdiction under section 7(13) of the 1985 Act to determine any dispute as to the right to or amount of compensation payable.

Compensation for Works on Former Mining Land

- E.45 Local authorities have power under section 8 of the 1985 Act to carry out works on former mining land without the consent of persons who hold an interest in the land provided that certain conditions are met. A person with an interest in land or chattels is entitled to compensation for any damage caused to the land or chattels as a result of the local authority's exercise of this power. The Lands Tribunal has jurisdiction under section 8(11) of the 1985 Act to determine any dispute as to the right to or amount of compensation payable.

Compensation for Entry on Land by Historic Buildings and Monuments Commission

- E.46 The Historic Buildings and Monuments Commission has power under section 33(2)(d) of the National Heritage Act 1983 to make and maintain records in relation to ancient monuments and historic buildings situated in England. The Commission may authorise a person under section 36(1) to enter land for the purposes of inspecting it with a view to obtaining information for the inclusion in these records. A person with an interest in land or chattels is entitled to compensation for any damage caused to the land or chattels as a result of the Commission's exercise of this power. The Lands Tribunal has jurisdiction under section 36(9) of the 1983 Act to determine any dispute as to the right to or amount of compensation payable.¹⁴

¹⁴ Part 2 of the Schedule to the Ancient Monuments (Claims for Compensation) (England) Regulations SI 1991 No 2512 contain the form for making a claim for compensation under the National Heritage Act 1983, s 36.

Compensation under National Parks and Access to the Countryside Act 1949

- E.47 The Nature Conservancy Council is liable to pay compensation to persons with interests in land who sustains damage as a result of the exercise by it of powers pursuant to sections 20 and 70 of the 1949a Act. The Lands Tribunal has jurisdiction under section 107 of the 1949a Act to determine disputes that arises on a claim for any such compensation.

Compensation for Statutory Undertakers under New Towns Act 1981

- E.48 Statutory undertakers (for example public utilities) are entitled to compensation under sections 15 and 26(7) of the 1981b Act for damage sustained by them as a result of injurious affections to land, disturbances and the extinguishment of rights over land by the relevant authorities exercising functions under the 1981a Act. The Lands Tribunal has jurisdiction under paragraph 3 of Schedule 7 to the 1981a Act to determine disputes that arise as to the amount of compensation payable.

Claims for Compensation under Opencast Coal Act 1958

- E.49 The Lands Tribunal has jurisdiction under section 40 of the 1958a Act to determine any dispute as to the right to and amount of compensation payable by the British Coal Corporation to any person under the 1958a Act.

Well-Foundedness of Objection

- E.50 Schedule 3 to the 1958 Act deals with the assessment of compensation by way of payment of works under section 22 of the 1958a Act. The final operator¹⁵ can object to a notice requiring compensation by an applicant under paragraph 2 of Schedule 3. The Lands Tribunal has jurisdiction under paragraph 9 of Schedule 3 to the 1958a Act to determine the well-foundedness of any such objection.

Compensation under Pipe-lines Act 1962

- E.51 Compensation is payable under sections 4, 11 and 14 of the 1962 Act. The Lands Tribunal has jurisdiction under section 48 of the 1962 Act to determine any disputes that arise as to the right to and amount of compensation that is payable under these provisions.

Compensation for Listed Buildings

- E.52 Where a local authority revokes or modifies a listed building consent order made pursuant to section 23 of the Planning (Listed Buildings and Conservation Areas) Act 1990 a person who has incurred expenditure or otherwise sustained loss is entitled to compensation under section 28 of the 1990c Act. In addition, a person who sustains a loss or damage as a result of a building preservation order ceasing to have effect is entitled to compensation in respect of that loss or damage under section 29 of the 1990c Act. The Lands Tribunal has jurisdiction under section

¹⁵ “Final operator” is defined in para 1 to Sched 3 of the Land Powers (Defence) Act 1958 as “the person who immediately before the period of occupation is entitled to the rights conferred by the order”.

31(4) of the 1990c Act to determine disputes that arise in connection with claims for compensation under sections 28 and 29.

Compensation for Entry onto Land by Universal Service Provider

- E.53 Paragraph 2 of Schedule 6 to the Postal Services Act 2000 provides that a universal service provider may enter land and survey it for the purpose of ascertaining whether it would be suitable for any purpose in connection with the provision a universal postal service. A person with an interest in land or moveables is entitled to compensation for any damage caused to the land or moveables as a result of the universal service provider's exercise of this power. The Lands Tribunal has jurisdiction under paragraph 5(2) of Schedule 6 to the 2000a Act to determine any question as to the right to or amount of compensation payable.

Compensation for Attachment of Street Lamps to Buildings

- E.54 Street lighting authorities (for example county councils, local authority or parish councils) have power under section 45 of the Public Health Act 1941 to attach street lamps and connected apparatus to any building as may be required for the purpose of street lighting. The owner of any building who suffers damage as a result of the exercise of this power is entitled to compensation. The Lands Tribunal has jurisdiction under section 45(6) of the 1941 Act to determine disputes that arise in relation to a claim for such compensation.

Compensation for Injurious Affection to Land Arising from Railway Construction

- E.55 The Railways Clauses Consolidation Act 1845 makes general provisions for where a company is established by statute for the purpose of constructing a railway. Owners and occupiers of land are entitled to be compensated for any injurious affection to their land that results from the construction of a railway. The Lands Tribunal has jurisdiction under section 6 of the 1845 Act¹⁶ to determine the amount of compensation payable.

Compensation for Refraining from Mining

- E.56 The owner or occupier of mines or minerals that lie under a railway or in close proximity to it, is obliged to refrain from mining if the railway company offers to compensate it for so refraining in accordance with the provisions of the 1845 Act. The Lands Tribunal has jurisdiction under section 78 of the 1845 Act¹⁷ to determine disputes that arise as to amount of compensation payable.

Compensation for Reservoir Survey

- E.57 The relevant authorities have power under section 17 of the Reservoirs Act 1975 to enter upon land for the purpose of carrying out various surveys and inspections in connection with the maintenance of reservoirs. A person whose interest in land is damaged or enjoyment of land is disturbed as a result of the exercise of this

¹⁶ The Lands Tribunal acquired jurisdiction under the Railway Clauses Consolidation Act 1845, s 6 by virtue of the Compulsory Purchase Act 1965, s 39(3) and Sched 7.

¹⁷ *Ibid.*

power is entitled to compensation. The Lands Tribunal has jurisdiction under section 18(2) of the 1975 Act to determine any dispute as to the right to or amount of compensation payable.

Compensation for Refusal of Licences under Road Traffic Regulation Act 1984

- E.58 Part IV of Schedule 4 to the 1984a Act provides that certain persons are entitled to compensation in the event that the local authority refuses them certain licences under the 1984a Act. The Lands Tribunal has jurisdiction under paragraph 22 of Part IV of Schedule 4 to the 1984a Act to determine disputes as to compensation that arise under paragraphs 19, 20 and 21 of Part IV of Schedule 4.

Compensation for Removal of Telecommunications Apparatus

- E.59 The owner of an interest in land is entitled to require the removal of a telecommunications apparatus installed on his land on foot of an agreement with a telecommunications operator provided certain conditions arise and certain procedures as laid down in Schedule 2 to the Telecommunications Act 1984 are followed. A person whose interest in land is depreciated as a result of following those procedures is entitled to compensation from the telecommunications operator under paragraph 4(4) of Schedule 2 to the 1984b Act. The Lands Tribunal has jurisdiction under paragraph 4(6) of Schedule 2 to the 1984b Act to determine disputes as to the right to and amount of compensation payable.

Apportionment of Compensation for Depreciation in Value

- E.60 A right of compensation in respect of the refusal or modification of planning permission arises under certain circumstances under section 107 of the Town and Country Planning Act 1990. The local planning authority may, pursuant to section 109 of the 1990 Act, apportion the compensation for depreciation in value of an interest in land between different parts of the land to which the claim relates. Section 109(4) provides that Regulations may be made to enable disputes as to the apportionment to be determined by the Lands Tribunal. No such Regulations have been made, however section 2 of the 1990d Act deems the 1974 Regulations¹⁸ to have been made on foot of section 109(4). The Lands Tribunal has jurisdiction under Regulation 7 thereof to determine disputes as to the apportionment of compensation for depreciation in value of an interest in land that is payable under section 107 of the 1990 Act.

Compensation Determined under Part IV of the Town and Country Planning Act 1990

- E.61 Compensation is payable under sections 107, 108, 115, 144, 196C and 325 of the 1990 Act; section 37(4) of the 1984c Act; section 16 of the Planning (Hazardous Substances) Act 1990; section 163 of the Leasehold Reform, Housing and Urban Development Act 1993; section 21 of the 1998 Act; paragraph 31(5) of Schedule 24 to the Greater London Authority Act 1999; and section 190 of the Transport Act 2000. The Lands Tribunal has jurisdiction under section 118 of the 1990 Act

¹⁸ SI 1974 No 1242.

to determine any question of disputed compensation that arises under these provisions.¹⁹

Compensation for Stop Notices

- E.62 A local planning authority may serve a “stop notice” under section 183 of the 1990 Act ordering the cessation of any activity on land before the coming into effect of an enforcement notice where it believes that it is expedient to do so. A person on whom a stop notice is served can apply to the local planning authority under section 186 for compensation. The Lands Tribunal has jurisdiction under section 186(6) of the 1990 Act to determine questions of disputed compensation.

Compensation for Tree Preservation/Replanting Order

- E.63 Persons may be entitled to compensation in respect of a tree preservation order or a direction to replant trees under sections 203 and 204 of the 1990 Act respectively. The Lands Tribunal has jurisdiction under section 205 of the 1990 Act to determine questions of disputed compensation under these provisions.

Compensation for Removing pre-1948 Advertisements

- E.64 A person may be required to remove advertisements under the Town and Country Planning (Control of Advertisement) Regulations 1992.²⁰ There is a limited entitlement under section 223 of the 1990 Act to compensation in respect of the removal of advertisements that were on display prior to 1 August 1948. The Lands Tribunal has jurisdiction under section 223(2) of the 1990 Act to determine any disputed question as to compensation payable.

Compensation for Order Extinguishing Right to Use Vehicles on Highway

- E.65 A local planning authority may issue an order under section 149 of the 1990 Act extinguishing the right of persons to use vehicles on a particular highway. A person who sustains depreciation in an interest in land or any other loss as a result of this order is entitled to compensation from the local planning authority. The Lands Tribunal has jurisdiction under section 250(6) of the 1990 Act to determine any disputed question as to the compensation payable.

Compensation of Statutory Undertakers

- E.66 Statutory undertakers are entitled to be compensated for the matters listed in section 280(1) of the 1990 Act. The Lands Tribunal has jurisdiction under section 282 of the 1990 Act to determine disputes as to the amount of compensation payable.

¹⁹ The repeal of the Town and Country Planning Act 1971 (in relation to claims under Part VII of that Act) means that the jurisdiction of the Lands Tribunal under reg 15 of the Town and Country Planning (Compensation and Certificate) Regulations SI 1974 No 1242 has effectively been subsumed within the s 118 jurisdiction.

²⁰ SI 1992 No 666.

Compensation for Extinguishment of Inland Waterway Rights

- E.67 Sections 105(5) and (6) of the Transport Act 1968 provide that public or private navigation rights or other rights over inland waterways that arise under a local enactment shall cease to have effect. Any person who suffers a loss as a result of the extinguishment of such a right is entitled to be compensated by the Waterways Board. The Lands Tribunal has jurisdiction under section 105(7) of the 1968a Act to determine disputes as to the amount of compensation payable.

Compensation for Extinguishment of Canal Rights

- E.68 The Minister has power under section 112(1) of the 1968a Act to direct the cessation of navigation rights or other rights over canals (which are not comprised in the undertaking of the Waterways Board) that arise under a local enactment. Any person who suffers a loss as a result of the extinguishment of such a right is entitled to compensation. The Lands Tribunal has jurisdiction under section 112(4) of the 1968a Act to determine disputes as to the amount of compensation payable.

Compensation for Placing of Signs and Barriers

- E.69 A railway or tramway operator has power under section 52 of the Transport and Works Act 1992 to place signs or barriers in places where a railway or tramway crosses a private road or path. In order to do so the operator must receive an authorisation from the Secretary of State, which may stipulate that compensation is payable on certain grounds. The Lands Tribunal has jurisdiction under section 53(6) of the 1992 Act to determine any dispute as to compensation that may be able.

Compensation for Entry onto Land under Water Industry Act 1991

- E.70 Certain persons are entitled to enter onto land for specific purposes under Part II of Schedule 6 to the Water Industry Act 1991. A person who suffers damage as a result of the exercise of this power is entitled to compensation. The President of the Lands Tribunal has jurisdiction under paragraph 11(3)(a) of Part II of Schedule 6 to the 1991a Act to determine disputes as to the compensation payable where the Secretary of State is a party to that dispute (in all other cases the Secretary of State exercises this jurisdiction under paragraph 11(3)(b)).

Compensation for Non-acquisition Depreciations in Value

- E.71 Persons who sustain a depreciation in the value of their land as a result of the exercise of compulsory powers (not being acquisition powers) or the carrying out of operations by undertakers under the 1991a Act are entitled to compensation under paragraph 8 of Schedule 11 to the 1991a Act. The Lands Tribunal has jurisdiction under paragraph 8(6) of Schedule 11 to the 1991a Act to determine disputes as to the compensation payable.

Compensation for Pipe-Laying Works

- E.72 Persons who sustain a depreciation in the value of their land as a result of the exercise by an undertaker of pipe-laying powers under the 1991a Act are entitled to compensation under Schedule 12 to the 1991a Act. The Lands Tribunal has jurisdiction under paragraph 3 of Schedule 12 to the 1991a Act to determine disputes as to the compensation payable.

Compensation for Refraining from Mining

- E.73 Where the owner of mines or minerals underlying a water industry undertaker's undertaking proposes to work them, he must serve a notice on the undertaker under paragraph 2 of Schedule 14 to the 1991a Act. The undertaker will then have the option of obliging the mine owner to refrain from mining in return for the payment of compensation. The Lands Tribunal has jurisdiction under paragraph 2(4) of Schedule 14 to the 1991a Act to determine disputes as to the amount of compensation payable.

Compensation for Revocation or Modification of Water Abstraction Licences

- E.74 The Environment Agency has powers under sections 54 and 55 of the Water Resources Act 1991 to revoke or modify certain water abstraction licences. A licence holder is entitled to compensation for expenditure incurred and loss or damage sustained as a result of the revocation or modification under section 61 of the 1991b Act. The Lands Tribunal has jurisdiction under section 61(5) of the 1991b Act to determine questions as to disputed compensation.

Compensation for Owner of Fishing Rights

- E.75 The owner of fishing rights is entitled to compensation under section 62 of the 1991b Act for damage that he sustains as a result of the decision of the Environment Agency under section 55 of the 1991b Act. The Lands Tribunal has jurisdiction under section 62(5) of the 1991b Act to determine questions as to disputed compensation.

Compensation for Drought Orders

- E.76 Persons with an interest in land are entitled to compensation under Schedule 9 to the 1991b Act where they sustain damage as the result of the entry onto their land by persons in pursuance of a drought order. The Lands Tribunal has jurisdiction under paragraph 3 of Schedule 9 to the 1991b Act to determine disputes as to the right to or amount of compensation payable.

Compensation for Non-acquisition Depreciation in Value

- E.77 Persons who sustain a depreciation in the value of their land as a result of the exercise of compulsory powers (not being acquisition powers) or the carrying out of operations by the Environment Agency under the 1991b Act are entitled to compensation under paragraph 8 of Schedule 19 to the 1991b Act. The Lands Tribunal has jurisdiction under paragraph 8(6) of Schedule 19 to the 1991b Act to determine disputes as to the compensation payable

Compensation for Entry onto Land under Water Resources Act 1991

- E.78 Certain persons are entitled to enter onto land for specific purposes under Schedule 20 to the 1991b Act. A person who suffers damage as a result of the exercise of these powers is entitled to compensation. The President of the Lands Tribunal has jurisdiction under paragraph 6(3)(a) of Schedule 20 to the 1991b Act to determine disputes as to the compensation payable where the Environment Agency is a party to that dispute (in all other cases the Environment Agency exercises this jurisdiction under paragraph 6(3)(b)).

Compensation for Pipe-Laying Works

- E.79 Persons who sustain a depreciation in the value of their land as a result of the exercise by the Environment Agency of pipe-laying powers under the 1991b Act are entitled to compensation under Schedule 21 to the 1991b Act. The Lands Tribunal has jurisdiction under paragraph 3 of Schedule 21 to the 1991b Act to determine disputes as to the compensation payable.

Compensation for Refraining from Mining

- E.80 Where the owner of mines or minerals underlying the Environment Agency's undertaking proposes to work them, he must serve a notice on the Environment Agency under paragraph 2 of Schedule 23 to the 1991b Act. The Environment Agency will then have the option of obliging the mine owner to refrain from mining in return for the payment of compensation. The Lands Tribunal has jurisdiction under paragraph 2(4) of Schedule 23 to the 1991b Act to determine disputes as to the amount of compensation payable

Compensation for Entry onto Land by Welsh Development Agency

- E.81 The Welsh Development Agency has power under section 21A of the Welsh Development Agency Act 1975 to acquire land. The Agency may survey and inspect land in accordance with the provisions of Part IV of Schedule 4 to the 1975 Act with a view to exercising its power of acquisition. A person with an interest in land is entitled to compensation where that land is damaged as a result of the exercise of these powers. The Lands Tribunal has jurisdiction under paragraph 15(4) of Part IV of Schedule 4 to the 1975a Act to determine disputes as to compensation payable.

Compensation for Revocation of Decision or Consent in Connection with European Habitat Sites

- E.82 Where a project is affected by the revocation of a decision or consent under paragraph 3 of Schedule 3 to the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 1001,²¹ an entitlement to compensation may arise under paragraphs 5 and 7 of Schedule 3. The Lands Tribunal has jurisdiction under paragraph 9 of Schedule 3 to the 2001 Regulations to determine disputes as to the amount of compensation payable.

Compensation for Damage to Lands (England)

- E.83 There is an entitlement to compensation for damage to lands under section 78G of the 1990b Act. Schedule 2 to the Contaminated Land (England) Regulations 1000²² makes provision for the assessment of such compensation in respect of land in England. Paragraph 5(3) of Schedule 2 provides that no account shall be taken of any enhancement of the value of an interest in land by reason of work done on the land where the work in question was not necessary and was carried out for the purpose of obtaining compensation. The Lands Tribunal has jurisdiction under

²¹ SI 2001 No 3966.

²² SI 2000 No 227.

paragraph 6(3) of Schedule 2 to the 2000 Regulations to decide whether paragraph 5(3) is applicable to a claim for compensation.

Compensation for Damage to Lands (Wales)

- E.84 There is an entitlement to compensation for damage to lands under section 78G of the 1990b Act. Schedule 2 to the Contaminated Land (Wales) Regulations 2001²³ makes provision for the assessment of such compensation in respect of land in Wales. Paragraph 5(3) of Schedule 2 provides that no account shall be taken of any enhancement of the value of an interest in land by reason of work done on the land where the work in question was not necessary and was carried out for the purpose of obtaining compensation. The Lands Tribunal has jurisdiction under paragraph 6(3) of Schedule 2 to the 2001a Regulations to decide whether paragraph 5(3) is applicable to a claim for compensation.

Compensation for Damage to Lands (England and Wales)

- E.85 There is an entitlement to compensation for damage to lands under Regulation 12 and Schedule 6 to the Pollution Prevention and Control (England and Wales) Regulations 2000.²⁴ Paragraph 6(3) of Schedule 6 provides that no account shall be taken of any enhancement of the value of an interest in land by reason of work done on the land where the work in question was not necessary and was carried out for the purpose of obtaining compensation. The Lands Tribunal has jurisdiction under paragraph 7(3) of Schedule 6 to the 2000a Regulations to decide whether paragraph 6(3) is applicable to a claim for compensation.

Compensation for Grant of Rights under Water Resources Act 1991

- E.86 Regulation 7 and the Schedule to the Anti-Pollution Works Regulations 1999²⁵ make provision for the payment of compensation in respect of a grant of rights under section 161B of the 1991b Act. The Lands Tribunal has jurisdiction under paragraph 6 of the Schedule to the 1999 Regulations to determine any question of disputed compensation.

Compensation under the Environment Protection Act 1990

- E.87 Section 35A of the 1990 Act gives rise to an entitlement to compensation in respect of the grant of certain rights under the 1990b Act. The Waste Management (Consultation and Compensation) Regulations 1999 make provision for the assessment of compensation payable under section 35A. Regulation 7(3) of the 1999a Regulations states that no account shall be taken of any enhancement of the value of an interest in land by reason of work done on the land where the work in question was not necessary and was carried out for the purpose of obtaining compensation. The Lands Tribunal has jurisdiction under Regulation 8(3) of the 1999a Regulations to decide whether Regulation 7(3) is applicable to a claim for compensation.

²³ SI 2001 No 2197.

²⁴ SI 2000 No 1973.

²⁵ SI 1999 No 1006.

Compensation under Hedgerow Regulations 1997

- E.88 Persons may be authorised to enter land under Regulations 12 and 13 of the Hedgerow Regulations 1997.²⁶ Any person who suffers damage to his land or chattels as a result of the exercise of these rights of entry is entitled to compensation. The Lands Tribunal has jurisdiction under Regulation 14(3) of the 1997 Regulations to determine any question of disputed compensation.

Compensation for Making a European Site Order

- E.89 Regulation 25 of the Conservation (Natural Habitats, etc) Regulations 1994²⁷ grants a right of compensation in respect of decreases in value to agricultural land that arise as a result of the making of a European conservation site order. The Lands Tribunal has jurisdiction under Regulation 92(3) of the 1994a Regulations to determine questions of disputed compensation.

Compensation for Effect of Byelaws in Connection with European Site Order

- E.90 Regulation 30 of the 1994a Regulations grants a right of compensation in respect of the loss of any right that arises as a result of the making of Byelaws under section 20 of the 1949b Act (pursuant to Regulation 28 of the 1994a Regulations). The Lands Tribunal has jurisdiction under Regulation 96(2) of the 1994a Regulations to determine questions of disputed compensation.

Compensation for Revoking Permissions in Connection with a European Site Order

- E.91 Competent authorities have power under Regulations 50, 71, 75 and 79 of the 1994a Regulations to order the revocation of permissions or consents in relation to land once that land has been designated a European conservation site. Compensation is payable under sections 97 and 115 of the 1990b Act in respect of revocations and modifications of planning permission and other consents. The Lands Tribunal has jurisdiction under Regulations 59(3), 74(4), 78(4), and 82(4) of the 1994a Regulations to determine disputes as to the amount of compensation payable under sections 97 and 115 of the 1990b Act that arise as a result of the making of an order under Regulations 50, 71, 75 and 79 of the 1994a Regulations.

Compensation for Channel Tunnel Security Order

- E.92 The Secretary of State has power under Part III of the Channel Tunnel (Security) Order 1994²⁸ to order the carrying out of works on land for the purpose of protecting channel trains and the tunnel system from acts of violence. Landowners are entitled to compensation under Article 34 of the 1994 Order for losses sustained as a result of the exercise of these powers. The Lands Tribunal has jurisdiction under paragraph 7 of Schedule 2 to the 1994 Order to determine questions of disputed compensation.

²⁶ SI 1997 No 1160.

²⁷ SI 1994 No 2716.

²⁸ SI 1994 No 570.

SECTION B: COMPULSORY PURCHASES

- E.93 The Lands Tribunal exercises jurisdiction over certain disputes that arise in the context of a compulsory purchase of land by a public authority. The Compulsory Purchase Act 1965 lays down the general procedure for compulsory purchases to be followed by public authorities and the instances where the Lands Tribunal has jurisdiction to resolve disputes. The Land Compensation Act 1961 sets out the basic framework for calculating compensation that is payable as a result of a compulsory acquisition of land. In addition the Land Compensation Act 1973 provides for the payment of compensation in relation to specific matters. The Lands Tribunal has jurisdiction under both these enactments to determine disputes as to compensation payable. The foregoing list summarises the jurisdiction of the Lands Tribunal in connection with compulsory purchase disputes. The jurisdiction of the Lands Tribunal under the 1965 Act has been extended with modification on a number of occasions to deal with specific instances of compulsory purchases by public authorities or privatised utilities. These are treated as separate grounds of jurisdiction.

Compensation in respect of Compulsory Purchase

- E.94 A “notice to treat” is the initial notice served by an acquiring authority on interested persons in respect of land or buildings that it intends to purchase. It states, inter alia, the compensation proposed to be paid in respect of land that is being compulsorily purchased. The Lands Tribunal has jurisdiction under section 6 of the 1965 Act, to determine disputes in respect of compensation to be paid that are referred to it.

Compensation in respect of Expired Notice to Treat

- E.95 Sections 5(2A) and 5(2B) of the 1965 Act list the circumstances under which a notice to treat may expire. Section 5(2C) provides that the acquiring authority shall be liable to pay compensation to interested persons in respect of losses or expenses that result from the giving of the notice and its ceasing to have effect. In default of agreement between the parties the Lands Tribunal has jurisdiction under section 5(2D) of the 1965 Act to determine the compensation payable under section 5(2C).

Compensation in Respect of Severed Land/Buildings (1)

- E.96 Section 8 of the 1965 Act lays down the general rule that a person is not required to sell part only of land or premises if he is willing to sell the whole and the remaining part would be materially affected by the severance. The Lands Tribunal has jurisdiction under section 8(1) of the 1965 Act to determine whether the remaining part will be materially affected and to award compensation in respect of any detriment that will occur as a result of the severance.

Dispute in Relation to Connection between Severed Land

- E.97 Where land is severed as a result of a compulsory acquisition the acquiring authority may construct a connecting structure between the severed pieces of land. Where a severed piece of land is less than half an acre or is of less value than the proposed connecting structure and the owner has no other land adjoining it, the acquiring authority may compulsorily purchase the piece of land. The Lands Tribunal has jurisdiction under section 8(3) of the 1965 Act to determine any

dispute as to the value of the piece of land or as to the cost of constructing a connecting structure.

Compensation for Injurious Affection

- E.98 A person with an interest in land that is “injuriously affected” by the execution of works carried out by an acquiring authority is entitled to be compensated for the loss suffered. The Lands Tribunal has jurisdiction under section 10(1) of the 1965 Act to determine any dispute that arises in relation to the compensation payable in respect of an injurious affection.

Compensation for Entry

- E.99 Once a notice to treat has been served the acquiring authority may enter the land in question. In particular the acquiring authority may enter the land for the purpose of carrying out surveys and ascertaining the nature of the soil. When any damage is thereby occasioned, the owners or occupiers are entitled to compensation. The Lands Tribunal has jurisdiction under section 11(3) of the 1965 Act to determine any dispute in connection with compensation that is so payable.

Determination in Respect of Mortgaged Land

- E.100 The acquisition authority has a general power under section 14 of the 1965 Act to purchase or redeem the interest of a mortgagee of any land that is subject to compulsory purchase. If the value of mortgaged land is less than the principal, interest and costs secured on the land, the value of the land or the compensation to be paid is required to be settled by agreement between the mortgagee, the person entitled to the equity of redemption and the acquiring authority. If the parties fail to reach agreement the Lands Tribunal has jurisdiction under section 15(1) of the 1965 Act to determine the matter.

Determination in Respect of Partially Mortgaged Land

- E.101 The Lands Tribunal has an identical jurisdiction to determine disputes that arise in connection with *partially* mortgaged land under section 16(1) of the 1965 Act.

Compensation for Interest Income Difference

- E.102 Where a mortgagee’s interest has been acquired and the mortgagee was required to accept payment of the principal at a time earlier than stipulated in the mortgage deed, the mortgagee is entitled to be compensated where the rate of interest secured by the mortgage exceeds the amount that can reasonably be expected to accrue on re-investment of the paid-off principal. The Lands Tribunal has jurisdiction under section 17(2) of the 1965 Act to determine the compensation in respect of the interest income shortfall in the event of a dispute between the parties.

Compensation for Release of Rentcharge

- E.103 The holder of a rentcharge²⁹ is entitled to be compensated for releasing the rentcharge on land that is compulsorily acquired. The Lands Tribunal has jurisdiction under section 18(1) of the 1965 Act to determine any dispute that arises between the acquiring authority and the holder of the rentcharge in respect of the compensation payable.

Apportionment of Land Subject to Rentcharge

- E.104 Where only part of land that is being compulsorily purchased is subject to a rentcharge the apportionment of the rentcharge may be settled by agreement. The Lands Tribunal has jurisdiction under section 18(2) of the 1965 Act to determine the apportionment in the event that the parties fail to reach agreement.

Apportionment of Rent

- E.105 Section 19 of the 1965 Act provides that the rent payable in respect of land that is partially acquired shall be apportioned accordingly. The apportionment may be settled by agreement between the lessor, lessee and acquiring authority. The Lands Tribunal has jurisdiction under section 19(2) of the 1965 Act to determine the apportionment when the parties fail to agree.

Compensation for Tenants at Will

- E.106 A person who holds an annual tenancy or one that is renewable annually in respect of land or part of land that is compulsorily acquired is entitled to compensation for the value of his unexpired term or interest in the land. The Lands Tribunal has jurisdiction under section 20(3) of the 1965 Act to determine the compensation payable in the event that the parties fail to reach agreement.

Compensation for Absent and Untraced Owners

- E.107 Where a person is prevented from treating with the acquiring authority on account of being absent from the UK or because he cannot be traced, the compensation to be paid in respect of the compulsory purchase of land is determined by a surveyor appointed by the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949. Where the absent or untraced person is dissatisfied with the amount of compensation so decided the Lands Tribunal has jurisdiction under paragraph 4 of Schedule 2 to the 1965 Act to determine the matter.

Compensation for Common Land

- E.108 Schedule 4 to the 1965 deals with the compensation payable in respect of compulsorily acquired land that is subject to rights in common. Where common land is not held of a manor, a committee of persons entitled to the common rights negotiates on behalf of all the holders of common rights.³⁰ The Lands Tribunal

²⁹ Compulsory Purchase Act 1965, s 18(6) defines a “rentcharge” as “in relation to any land, includes any other payment or encumbrance charged on the land not provided for in the foregoing provisions of this Act.”

³⁰ If the holders of common rights fail to appoint a committee the Lands Tribunal can appoint a surveyor to determine the compensation payable.

has jurisdiction under paragraph 5(4) of Schedule 4 to the 1965 Act to determine the compensation in the event that the committee and the acquiring authority fail to reach agreement.

General Power to Determine Compensation for Compulsorily Acquired Land

- E.109 The 1961 Act grants a general jurisdiction to the Lands Tribunal to determine certain matters that arise in connection with the compulsory acquisition of land under any statute. The Lands Tribunal has jurisdiction under section 1 of the 1961 Act to determine (a) any question of disputed compensation in relation to compulsorily acquired land, and (b) any question as to the apportionment of rent payable under a lease where any part of the land to be acquired is subject to a lease which also contains land not acquired.

Determination of Costs

- E.110 The Lands Tribunal has jurisdiction under section 4 of the 1961 Act to make determinations in relation to the costs of compulsory acquisition proceedings before it.

Determination of Compensation for Withdrawal of Notice to Treat

- E.111 When an acquiring authority withdraws a notice to treat in respect of a compulsory acquisition proposed by it, the authority is liable under section 31(3) of the 1961 Act to pay compensation to the person to whom it was given in respect of any loss or expenses occasioned by them as a consequence of the withdrawal of the notice. The Lands Tribunal has jurisdiction under section 31(4) of the 1961 Act to determine the amount of compensation payable in the event the parties fail to reach agreement.

Certification of Value

- E.112 The Lands Tribunal has a general jurisdiction under section 35 of the 1961 Act to certify the value of land being sold by a person to an authority possessing compulsory acquisition powers, on application by that person. Section 35 provides that the certified value shall be deemed to be a sale at the best price that can reasonably be expected to be obtained.

Determination of Market Value of a Dwelling for Purpose of Home Loss Payment

- E.113 Part III of the 1973 Act makes provision for the payment of special compensation where a person is displaced from a dwelling as a result of a compulsory acquisition. The amount of the home loss payment is calculated by reference to the market value of the person's interest in the dwelling. The Lands Tribunal has jurisdiction under section 30(3) of the 1973 Act to determine disputes as to the market value of the interest in the dwelling that is calculable in accordance with section 30(3)(b).

Calculation of Farm Loss Payment

- E.114 Section 35 of the 1973 Act makes provision for the payment of special compensation where an agricultural holding is compulsorily acquired. The amount of the farm loss payment is calculated by reference to the average annual profits

derived from the agricultural purposes of the agricultural holding. The Lands Tribunal has jurisdiction under section 35(9) of the 1973 Act to determine any dispute as to the amount of farm loss payment payable.

Calculation of Disturbance Payment

- E.115 A person who is in lawful possession of land that is compulsorily acquired, but who is without a compensatable interest, is entitled to a “disturbance payment” under section 37 of the 1973 Act. Section 38 provides the method for calculating the disturbance payment. The Lands Tribunal has jurisdiction under section 38(4) of the 1973 Act to determine any dispute as to the amount of disturbance payment payable.

Determination of section 53 Counter Notice

- E.116 When an acquiring authority intends to compulsorily purchase land it serves a notice to treat on the persons with an interest in the land. In the case of agricultural land (which is held under a greater interest than a tenancy at will), the interested person can serve a counter-notice under section 53 of the 1973 Act on the acquiring authority. A section 53 counter-notice is a claim requiring the acquiring authority to purchase from the interested person the remaining land in the same agricultural unit where it cannot reasonably be farmed as a result of the purchase of part of the unit. If the acquiring authority does not agree in writing to accept the section 53 counter notice within two months of it being served, the Lands Tribunal has jurisdiction under section 54(1) of the 1973 Act to determine the matter.

Determination of section 55 Counter-Notice

- E.117 When an acquiring authority serves a notice of entry under section 11 of the 1965 Act on the person in occupation of an agricultural holding whose interest therein is no greater than an annually renewable tenancy and the notice covers just part of the holding, the said person can serve a counter-notice under section 55 of the 1973 Act. A section 55 counter-notice is a claim requiring the acquisition authority to extend the entry notice to include the remaining land in the agricultural unit. If the acquiring authority does not agree in writing within two months to accept the section 55 notice, the Lands Tribunal has jurisdiction under section 56(1) of the 1973 Act to determine the matter.

Compensation for Compulsory Acquisition of Agricultural Holding

- E.118 Section 12(1) of the Agriculture (Miscellaneous Provisions) Act 1968 applies the compensation provisions of section 60(2)(b) of the Agricultural Holdings Act 1986 to acquisitions by the acquiring authority of an agricultural holding from an agricultural tenant. The tenant is entitled to be compensated for the disturbance suffered as a result of such an acquisition. The Lands Tribunal has jurisdiction under paragraph 1 of Schedule 3 to the 1968 Act to determine any dispute that arises in connection with the payment of compensation under section 12(1).

Consideration of Excessive Compensation

- E.119 If by virtue of section 12 of the 1968 Act the compensation payable falls to be ascertained in pursuance of section 60(4) of the 1986 Act by reference to the rent of the holding and the acquiring authority considers it unduly high, it may apply to

the Lands Tribunal under paragraph 2 of Schedule 3 to the 1968 Act, who may consider the matter.

Recovery of Excess Compensation

- E.120 The Compulsory Purchase (Vesting Declarations) Act 1981 applies the compensation provisions of the 1965 Act to situations where land specified in a general vesting declaration vests in an acquiring authority by virtue of the 1981a Act. Where it emerges that compulsorily acquired land was subject to an undisclosed encumbrance, the acquiring authority is entitled, pursuant to section 11 of the 1981b Act, to recover compensation and interest paid in respect of that land. The Lands Tribunal has jurisdiction under section 11(4) to determine any question as to the amount of compensation and interest that the claimant was entitled to, and the apportionment of the same.³¹

Determination of Severance Objection Notice

- E.121 Part 1 of Schedule 1 to the 1981b Act deals with the situation where a general vesting declaration executed in accordance with section 4 of the 1981b Act comprises of part only of a premises or its adjoining land. A person who is subject to such a declaration may serve a notice on the acquiring authority requiring them to purchase his interest in the whole. The acquiring authority may, pursuant to paragraph 4(1)(c) of Part 1 of Schedule 1 to the 1981b Act, refer the notice of objection to severance to the Lands Tribunal for its determination.

Compulsory Purchase in Connection with the Channel Tunnel

- E.122 Paragraph 3 of Part III of Schedule 5 to the Channel Tunnel Act 1987 makes provision for the compulsory purchase of part of certain properties in connection with the development of the channel tunnel. Paragraph 3 of Part III applies in place of section 8(1) of the Compulsory Purchase Act 1965 in relation to the service of a counter notice objecting to the sale of the part of the property subject to a compulsory acquisition notice. The effect of paragraph 3 of Part III of Schedule 5 to the 1987 Act is to extend the Lands Tribunal's jurisdiction under the 1965 Act to include compulsory purchases in connection with the channel tunnel.

Compulsory Purchase in Connection with the Channel Tunnel Rail Link

- E.123 Paragraph 11 of Part III of Schedule 4 to the Channel Tunnel Rail Link Act 1996 makes provision for the compulsory acquisition of part of certain properties in connection with the development of the channel tunnel rail link. Paragraph 11 applies in place of section 8(1) of the 1965 Act in relation to the service of a counter notice objecting to the sale of the part of the property subject to the compulsory acquisition notice. The effect of paragraph 11 of Part III of Schedule 4 to the 1996 Act is to extend the Lands Tribunal's jurisdiction under the 1965 Act to include compulsory purchases in connection with the channel tunnel rail link.

³¹ New Towns Act 1981, s 11(5) provides that the action for recovery of payment takes place in the ordinary courts.

Compulsory Purchase by Electricity Licence Holders

- E.124 Schedule 3 to 1989 Act authorises electricity licence holders to compulsorily purchase land required for the carrying on by them of the activities of which they are licensed. The 1965 Act is applied with modifications to land or buildings that are so acquired. In particular paragraph 9 of Part II of Schedule 3 to the 1989 Act grants a modified jurisdiction to the Lands Tribunal to determine disputes that arise in connection with compensation for severed lands/buildings.

Compulsory Purchase of Wayleaves by Electricity Licence Holders

- E.125 An electricity licence holder can acquire wayleaves in respect of electricity transmission under paragraph 6 of Schedule 4 to the 1989 Act. The occupier of land over which a wayleave is acquired is entitled to compensation. The Lands Tribunal has jurisdiction under paragraph 7(4) of Schedule 4 to the 1989 Act to determine disputes that arise in connection with the payment of such compensation.

Compulsory Acquisitions under the Highways Act 1980.

- E.126 The Minister may compulsorily purchase certain lands and interests under sections 239 – 246 of the 1980 Act. Section 250 and Schedule 19 to the 1980 Act apply with modification the 1965 Act to compulsory purchases made under these sections. Their combined effect is to confer jurisdiction on the Lands Tribunal to determine disputes as to compensation that arise in respect of the compulsory purchase of such lands or interests. Section 261 lists specific factors to be taken into account by the Lands Tribunal in determining claims for compensation under the 1980 Act.

Consideration for Compulsory Transfer of Toll Highway

- E.127 The appropriate authority can compulsorily acquire the right to charge tolls in respect of a highway and the property in the said highway under section 271(1) of the 1980 Act. In the event of a dispute as to the consideration payable for such a compulsory transfer the Lands Tribunal has jurisdiction under section 271(3) of the 1980 Act to determine the matter.

Compulsory Purchases by Housing Action Trusts

- E.128 Housing action trusts can (when authorised by the Secretary of State) compulsorily purchase lands and certain rights³² under section 77 of the Housing Act 1988. Section 77(7) applies the 1965 Act to compulsory purchases of land under section 77. In addition Part 1 of Schedule 10 to the 1988 Act applies a modified version of the 1965 Act to compulsory purchases of rights under section 77(5). The combined effect of sections 77(7) and Part 1 of Schedule 10 to the 1988 Act is to grant jurisdiction to the Lands Tribunal to determine disputes as to compensation payable in respect of land and rights compulsorily acquired under section 77.

^s Section 77(5).

Compulsory Purchase of Land by Urban Regeneration Agency

- E.129 The Urban Regeneration Agency has power under section 162 of the 1993a Act to compulsorily acquire land and rights over land. Part III of Schedule 20 to the 1993a Act applies with modification the provisions of the 1965 Act in relation to compulsory purchases made by the Agency. The combined effect of section 162 and Part III of Schedule 20 to the 1993a Act is to extend the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to include compulsorily purchases of land or rights over land by the Agency.

Compulsory Purchase of “Rights over Land” by Local Authorities

- E.130 Local authorities have power under section 13 of the 1976 Act to compulsorily purchase “rights over land”. Section 13(2) and Part II of Schedule 1 to the 1976 Act apply with modifications the 1965 Act to compulsory purchases that are made pursuant to section 13. The combined effect of section 13(2) and Part II of Schedule 1 to the 1976 Act is to extend the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to include determinations in relation to the compulsory purchases of rights over land by local authorities.

Compulsory Purchase of Land by Urban Development Corporations

- E.131 Urban development corporations can compulsorily purchase land under section 142 of the Local Government, Planning and Land Act 1980. Schedule 28 to the 1980b Act applies with modifications the 1965 Act to compulsory purchases that are made under section 142. The effect of Schedule 28 to the 1980b Act is to extend the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to include determinations in relation to the compulsory purchase of land by urban development corporations.

Compulsory Purchase of New Rights by Universal Service Provider

- E.132 Schedule 5 to the 2000a Act allows the Secretary of State to authorise a universal service provider (of postal services) to compulsorily purchase land and rights over land. In particular the universal service provider is empowered to compulsorily purchase “new rights”. The 1965 Act is applied by paragraph 5 of Schedule 5 to the 2000a Act to compulsory purchases of “new rights” by a universal service provider. The Lands Tribunal’s jurisdiction under section 8 of the 1965 Act is extended by paragraph 6 of Schedule 5 to the 2000a Act to include determinations in relation to the compulsory purchase of new rights.

Compulsory Purchase of Land by Regional Development Agency

- E.133 Regional development agencies have power under section 20 of the Regional Development Agencies Act 1998 to compulsorily acquire land when authorised to do so by the Secretary of State. Part II of Schedule 5 to the 1998 Act applies the 1965 Act to compulsory purchases that are made on foot of this power. The effect of paragraph 4 of Part II of Schedule 5 to the 1998 is to extend the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to include compulsory purchases by regional development agencies.

Validity of section 145 Counter-Notice

- E.134 A person with an interest in land greater than a tenancy at will can serve a counter-notice under section 145 of the 1990 Act demanding that the acquiring authority acquire the whole of an agricultural unit where only a part of it is proposed to be

acquired. Where the acquiring authority fails within two months to agree to the terms of the section 145 counter-notice, the Lands Tribunal has jurisdiction under section 146 of the 1990 Act to determine the validity of such a notice.

Compulsory Purchase by Water Industry Undertakers

- E.135 Water industry undertakers have power under section 155 of the 1991a Act to compulsorily purchase land when authorised to do so by the Secretary of State. Section 155(5), 155(6) and Schedule 9 apply with modification the 1965 Act to compulsory purchases made by undertakers. The combined effect of section 155 and Schedule 9 to the 1991a Act is to extend the Lands Tribunal's jurisdiction under section 8 of the 1965 Act in relation to compulsory purchases by water industry undertakers.

Compulsory Purchase by Environment Agency

- E.136 The Environment Agency has power, when authorised by the Secretary of State, to compulsorily purchase lands and new rights over land under section 154 of the 1991b Act. Schedule 18 to the 1991b Act applies with modification the 1965 Act to compulsory purchases made on foot of this power. The combined effect of section 154 and Schedule 18 to the 1991b Act is to extend the Lands Tribunal's jurisdiction under section 8 of the 1965 Act to include determinations arising from the compulsory purchase of new rights by the Environment Agency.

Compulsory Purchase in Relation to East London Line Extension

- E.137 The London Underground (East London Line Extension) Order 1997 and London Underground (East London Line Extension) (No. 2) Order 2001 enable the compulsory purchase of land in connection with the East London tube extension. Article 19 of the 1997 Order and Schedule 7 to the 2001 Order respectively extend with modification the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to determine disputes that arise in connection with compulsory purchases.

Compulsory Purchase in Relation to Silvertown and London City Airport Extension

- E.138 The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002³³ enables the compulsory purchase of land in connection with the Docklands Light Railway extension. Article 30 of the 2002 Order extends with modification the jurisdiction of the Lands Tribunal under section 8 of the 1965 Act to determine disputes that arise in connection with compulsory purchases.

SECTION C: MATTERS SPECIFIC TO LONDON

- E.139 The Lands Tribunal has jurisdiction under a number of enactments that deal specifically with the carrying out of public works in London. In the foregoing list the term of reference for the relevant London local authority is the term used in each specific enactment despite the fact that the particular local government unit may have subsequently been reformed and renamed.

³³ SI 2002 No 1066.

Compensation for Underpinning City of London Houses

- E.140 The Corporation of the City of London has power under section 6 of the City of London (Various Powers) Act 1965 to underpin or otherwise strengthen any house or building within 100 feet of any street improvement carried out by it. The Corporation is liable under section 6(3) to compensate the owners or occupiers of any house or building for any loss or damage suffered by them as a result of the exercise by the Corporation of its powers under section 6. The Lands Tribunal has jurisdiction under section 6(9) of the 1965b Act to determine any dispute that arises in connection with a claim for compensation under section 6.

Compensation under the City of London (Various Powers) Act 1967

- E.141 An entitlement to compensation in relation to the provision of support for city walkways and affixing of drainage apparatuses arises under section 16 of the City of London (Various Powers) Act 1967. The Lands Tribunal has jurisdiction under section 16(7) of the 1967 Act to determine any dispute that arises in connection with a claim for compensation under section 16.

Compensation for Construction of Walkway

- E.142 The Greater London Council can grant planning permission under section 12 of the Greater London Council (General Powers) Act 1969 with a condition that public walkways be provided. Section 21(1) of the 1969 Act provides that persons are entitled to be compensated for expenditure that arises as a result of the fulfilment of such a condition. The Lands Tribunal has jurisdiction under section 21(7) of the 1969 Act to determine disputes that arise in connection with a claim for such compensation.

Compulsory Purchase of Land for Public Walkways

- E.143 The Greater London Council has the power under section 22 of the 1969 Act to compulsorily purchase land for the purpose of laying out public walkways. A person adversely affected by the exercise of this power is entitled to compensation for the loss suffered. The Lands Tribunal has jurisdiction under section 22(6) of the 1969 Act to determine the amount of compensation payable.

Compensation Payable by Statutory Undertakers

- E.144 When the laying out of a public walkway is proposed, statutory undertakers (for example utility providers)³⁴ are entitled to be consulted in accordance with the provisions of section 25 of the 1969 Act. They can make a claim to acquire certain rights over the proposed walkways. Persons or local authorities that incur expenditure as a result of the acquisition of any such rights are entitled to be compensated by the statutory undertakers. The Lands Tribunal has jurisdiction under section 25(7)(c) of the 1969 Act to determine any dispute that arises in connection with the compensation payable.

³⁴ See the Greater London Council (General Powers) Act 1969, s 9.

Compensation for Refusal to Carry Out Works

- E.145 Section 4 of The Greater London Council (General Powers) Act 1986 allows the Council to incorporate any natural or artificial feature in London's flood defences. Section 25(2)(c) provides that a person who proposes to carry out works on any natural or artificial feature that has been incorporated into London's flood defences must first obtain the Council's consent. If the Council refuses consent it is obliged to pay the owner compensation. The Lands Tribunal has jurisdiction under section 4(11) of the 1986a Act to determine any dispute as to the compensation payable.

Compensation for Closure of Building by London Councils

- E.146 London councils have power under section 23 of the London County Council (General Powers) Act 1962 to close buildings for the purpose of flood prevention. A person whose interest in a building is depreciated as a result of a closure is entitled to compensation. The Lands Tribunal has jurisdiction under section 24(2) of the 1962a Act to determine disputes as to the amount of compensation payable.

Compensation for Underpinning of Houses by London Councils

- E.147 London councils have power under section 9 of the London County Council (General Powers) Act 1963 to underpin or otherwise strengthen any building within one hundred feet of any "improvement" carried out by them. Owners and occupiers of houses are entitled to compensation for any loss or damage suffered as a result of the exercise of this power by a London council. The Lands Tribunal has jurisdiction under section 9(8) of the 1963 Act to determine any dispute as to the amount of compensation payable.

Compensation in Connection with Thames Barrier Work

- E.148 The Thames Barrier and Flood Prevention Act 1972 empowered the Greater London Council to construct and operate the Thames flood prevention barrier. The Lands Tribunal has jurisdiction under the 1972a Act to determine various disputes that may arise in connection with the operation of the barrier:³⁵

- (1) Section 20(1)(c): the Council may from time to time carry out certain work on delineated land. A person who suffers certain damage as a result of the exercise of these powers is entitled to compensation, which in the event of a dispute is determined by the Lands Tribunal;
- (2) Section 25(3)(e): the Council may carry out dredging work under section 25 and persons who suffer certain damage as a result thereof are entitled to compensation, which in the event of a dispute is determined by the Lands Tribunal;

³⁵ The Lands Tribunal also exercised jurisdiction under ss 7 and 8 to determine matters that arose in connection with the compulsory purchase of land and easements over land by the Greater London Council for the purpose of constructing the Thames barrier. Since the power to acquire land expired on 31 December 1975 by virtue of s 5, this jurisdiction is now defunct, despite remaining on the statute books.

- (3) Section 44(2): disputes as to compensation for damage to undefended lands, existing jetties and buildings (that is ones constructed before 4 December 1971) caused by the closing of the Thames barrier gates are determined by the Lands Tribunal;
- (4) Section 60(3)(b): disputes as to compensation for interference to watercourses resulting from execution of sea defence works by the River Authority are determined by the Lands Tribunal.

Compensation in Connection with the Vesting of Underground Works

E.149 The Underground Works (London) Act 1956 granted certain powers to the Minister to traverse private lands in connection with the vesting of underground works that were constructed during the war. Compensation is payable to persons whose land is depreciated in value as a result of the exercise of these powers. The Lands Tribunal has jurisdiction under sections 3 and 4 of the 1956 Act to determine disputes as to the compensation payable. It is likely that this jurisdiction is now defunct.

SECTION D: TAXATION DISPUTES

E.150 The Lands Tribunal has jurisdiction to determine certain taxation matters in relation to land. Principally, the Lands Tribunal has jurisdiction to hear appeals in relation to the value of land for chargeable gains purposes under the Taxes Management Act 1970. These tax “appeals” are not included in the appellate jurisdiction of the Lands Tribunal described in Part III below on the basis that they are not appeals from an independent administrative tribunal, but from officers of the Inland Revenue.

Appeals under the Taxes Management Act 1970

E.151 The Lands Tribunal has jurisdiction under section 46D of the 1970 Act to hear appeals from decisions that relate to questions of the value of land or leases of land in the context of the taxation of chargeable gains. The Lands Tribunal has jurisdiction to hear appeals from the following decisions insofar as they concern valuation in the context of chargeable gains: (a) section 9C of the 1970 Act or paragraph 30 of Schedule 18 to the Finance Act 1998 - Inland Revenue officer’s amendment of self-assessment form; (b) Paragraph 34(2) of Schedule 18 to the 1998a Act – Inland Revenue officer’s amendment of return; (c) section 28A and 28B of the 1970 Act - Inland Revenue officer’s statement or conclusion; (d) any decision of an Inland Revenue officer that is a non-self assessment of tax; (e) Paragraph 7(2) of Schedule 1A to the 1970 Act – Inland Revenue officer’s statement or conclusion relating to a claim or election made otherwise than by being included in a return; (f) Paragraph 7(3) of Schedule 1A to the 1970 Act – Inland Revenue officer’s decision to disallow a claim or election made otherwise than by being included in a return.

E.152 The Lands Tribunal also exercises an appellate jurisdiction in relation to Business Expansion Scheme relief. The Lands Tribunal has jurisdiction under section 47B of the 1970 Act to hear appeals, insofar as they relate to the value of an interest in land, where there has been a refusal by the Inland Revenue of BES relief under Chapter III of Part IV of the Income and Corporation Taxes Act 1988.

Determination of Value of Property that is Deemed a Transfer of Value

- E.153 The Board of the Inland Revenue has power to deem a particular transfer of land to be a “transfer of value” that may be subject to tax under section 221 of the Inheritance Tax Act 1984. A person affected by that determination may appeal it under section 222 of the 1984c Act. The Lands Tribunal has jurisdiction under section 222(4) of the 1984c Act to determine any question as to the value of land in connection with such an appeal.

Determination of Value of Land in Stamp Duties Appeal

- E.154 The Inland Revenue can serve a notice under Regulation 6 of the Stamp Duty Reserve Tax Regulations 1986³⁶ where it appears to it that certain transactions or surrenders have taken place. A person on whom such a notice has been served can appeal to the Special Commissioners or the High Court. The Lands Tribunal has jurisdiction under Regulation 8(4) of the 1986 Regulations to determine, on appeal, any question as to the value of land that is disputed.

SECTION E: MISCELLANEOUS

- E.155 The Lands Tribunal exercises jurisdiction over matters that do not fall directly into categories A to D above. They possess in common, like all grounds of jurisdiction exercised by the Lands Tribunal, a connection to differences that arise in relation to land. The jurisdiction granted to the Lands Tribunal under the enabling Lands Tribunal Act 1949 has declined in significance over the years (though the arbitration jurisdiction remains important). Also included in this section are matters over which the Lands Tribunal has a residual jurisdiction only on account of the repeal of legislation.

Determination of Matters under Lands Tribunal Act 1949

- E.156 The Lands Tribunal has jurisdiction to consider the following matters under the 1949 Act:³⁷
- (a) Section 1(3)(b): any question as to compensation under the Land Clauses Acts, where the claim is for injurious affection of any land;
 - (b) Section 1(3)(c): any question as the apportionment of charges under section 116 of the Lands Clauses Consolidation Act 1845;
 - (c) Section 1(3)(e): any question as to water rates appeals which can be appealed to the County Court under sections 62 and 87 of the Local Government Act 1948;
 - (d) Section 1(4)(a): matters that are within the jurisdiction of the Authority under section 84 of the Law of Property Act 1925.³⁸

³⁶ SI 1986 No 1711.

³⁷ The jurisdiction conferred on the Lands Tribunal by ss 1(3)(a) and 1(4)(b) of the Lands Tribunal Act 1949 is effectively defunct because of the repeal of the Acquisition of Land (Assessment of Compensation) Act 1919 by s 40(3) and Sched 5 of the Land Compensation Act 1961 and the Finance Act 1910 by s 320 and Sched 12 of the Customs and Excise Act 1952.

Arbitration

- E.157 The Lands Tribunal has jurisdiction under section 1(5) of the 1949 Act to act as arbitrator in matters that are referred to it on consent of the parties concerned.³⁹ One facet of this jurisdiction is that it creates a kind of “transferred” jurisdiction in relation to the Valuation Tribunal. Instead of bringing a case before the Valuation Tribunal, parties may agree to refer the question to arbitration.⁴⁰ Parties may agree to appoint the Lands Tribunal as arbitrator. This can save parties intending to take a case before the Lands Tribunal the time and cost of a hearing before the Valuation Tribunal, but it is rarely used in practice.

Discharge or Modification of Restrictive Covenants that Affect Land

- E.158 The Lands Tribunal has jurisdiction under section 84 of the 1925 Act (as conferred by section 1(4)(a) of the 1949 Act) to wholly or partially modify restrictive covenants on application to it by any person interested in the freehold of land.⁴¹

Rights of Light Applications

- E.159 Where a building is erected the owner may acquire a prescriptive right to light across adjacent land if it is enjoyed for 20 years without interruption of a year or more. Under section 2 of the Rights of Light Act 1959 the owner of adjacent land may apply to the local authority for the registration of a notice stating that it intends to erect a structure that would be equivalent to an obstruction of the right of light. A certificate of the Lands Tribunal must accompany the application to the local authority. The Lands Tribunal has jurisdiction under section 3 of the 1959 Act to issue a certificate stating that adequate notice of the proposed application has been given to all affected persons or a temporary certificate in the case of exceptional urgency.⁴²

Disputes under the Coal Mining Subsidence Act 1991

- E.160 The Lands Tribunal has jurisdiction under section 40 of the Coal Mining Subsidence Act 1991 to determine any question (except as otherwise provided) arising under the 1991c Act in default of agreement between the parties concerned.

³⁸ Law of Property Act 1969, s 28 substituted references to the “Authority” with “Lands Tribunal” in s 84. The jurisdiction exercised under s 84 of the Law Of Property Act 1925 might therefore be said to accrue directly to the Lands Tribunal under that section. Notwithstanding, this review adopts the position that the Lands Tribunal’s jurisdiction under s 84 is referable to the Lands Tribunal Act 1949.

³⁹ See Lands Tribunal Rules SI 1996 No 1022, part VII for the arbitration procedure, in which certain sections of the Arbitration Act 1996 are applied.

⁴⁰ Non-Domestic Rating (Alteration of Lists and Appeals) Regulations. SI 1993 No 291, reg 48.

⁴¹ See Lands Tribunal Rules SI 1996 No 1022, part V for the special procedure to be followed for s 84 applications

⁴² Lands Tribunal Rules SI 1996 No 1022, part V describes the application procedure.

Variation to Schedule of Remedial Works

- E.161 Section 6 of the 1991 Act provides that the British Coal Corporation shall send to a claimant and other interested parties a Schedule specifying the remedial works to be carried out in respect of damage covered by the 1991c Act. An interested party can request that a variation to the Schedule of remedial works be made and where there is no agreement on the proposed variation the Lands Tribunal has jurisdiction under section 6(6) of the 1991c Act to determine the matter.

Disputes in Relation to Subsidence Matters

- E.162 Section 47 of the Coal Industry Act 1994 includes disputes that relate to subsidence that affect particular land covered by the 1994 Act within the jurisdiction of Lands Tribunal, as exercised pursuant to section 40 of the 1991c Act.

Disputes under the Coastal Protection Act 1949

- E.163 The Coastal Protection Act 1949 provides in sections 7(7), 14(2) and 19(3) that disputes arising under sections 7, 14 and 19 respectively shall be determined by arbitration. The Lands Tribunal has jurisdiction under section 24 of the 1949b Act to determine matters under the 1949b Act that must be determined by arbitration.

Determination of Forestry Disputes

The Lands Tribunal has jurisdiction under section 31 of the Forestry Act 1967 to determine disputes that fall to be considered by it under the 1967 Act. There are four instances under the 1967a Act where the Lands Tribunal may be required to determine a dispute:

- (a) Section 11(6): compensation for refusal of felling licence;
- (b) Section 14(4)(b): price payable by Forestry Commission for trees felled in accordance with approved working plan;
- (c) Section 21(2): terms of easement or other right over adjoining land where a forced sale of land is made;
- (d) Section 22(3): price of trees in respect of land transferred under section 21.

Determination of Rateable Value

- E.164 A tenant is entitled to compensation under section 37 of the Landlord and Tenant Act 1954 where an order for a new tenancy is precluded on certain grounds. The compensation is calculated by reference to the rateable value of the property in question. A dispute between the landlord and tenant as to the amount of compensation payable by reference to the rateable value is, at first instance, referred to the valuation officer. The Lands Tribunal has jurisdiction under section 37(5) of the 1954 Act to hear an appeal of the decision of the valuation officer. The Lands Tribunal's decision is final.

Appeal of Rentcharge Apportionment Order

- E.165 The owner of land that is partially affected by a rentcharge may apply to the Secretary of State for an order under section 5 of the Rentcharges Act 1977 to apportion the rentcharge. A rentcharge is any periodic sum charged on or issuing

out of land (except rent and sum payable by way of interest).⁴³ The Lands Tribunal has jurisdiction under section 6 of the 1977 Act to hear appeals from decisions of the Secretary of State where a person is aggrieved by the apportionment order. The Lands Tribunal may set aside or confirm the apportionment order.

Disputes as to Rentcharges

- E.166 A rentcharge claim can be made pursuant to Regulation 10 of the Town and Country Planning (Compensation and Certificates) Regulations 1974⁴⁴ in respect of claims arising under Part VII of the Town and Country Planning Act 1971 (as continued in force by the Planning (Consequential Provisions) Act 1990). The Lands Tribunal has jurisdiction under Regulation 12 of the 1974 Regulations to determine disputed claims as to rentcharges.

Objection to section 150 Blight Notice

- E.167 A person with an interest in agricultural land that is blighted by the proposals of a public authority may serve a notice under section 150 of the 1990 Act requiring the authority to purchase that interest. The authority can object to this demand by serving a counter-notice under section 151 of the 1990 Act. The Lands Tribunal has jurisdiction under section 153 of the 1990 Act to decide whether or not to uphold the authority's objection.

Objection to section 158 Blight Notice

- E.168 A person with an interest in agricultural land that is partially blighted by the proposals of a public authority can serve a notice under section 158 of the 1990 Act requiring the authority to purchase the whole of agricultural unit that he owns. The authority may object to this notice and the Lands Tribunal has jurisdiction to decide whether or not to uphold an objection under section 159 of the 1990 Act.

Objections to Creation of Right of Way

- E.169 Section 68 of the Countryside and Rights of Way Act 2000 make provision for the establishment of rights of way for vehicular access across common land. The Vehicular Access Across Common and Other Land (England) Regulations 2002⁴⁵ establish the procedure for persons wishing to establish a right of way. The Lands Tribunal has jurisdiction under Regulation 10 of the 2002 Regulations to resolve disputes when there is an objection to the creation of a right of way for vehicular access.

Residual Jurisdiction

- E.170 The Lands Tribunal has jurisdiction to determine disputed questions as to compensation under (a) Article 22 of the Control of Off-Street Parking (England and Wales) (Metropolitan Districts) Order 1986,⁴⁶ (b) Article 22 of the Control of

⁴³ Rentcharges Act 1977, s 1.

⁴⁴ SI 1974 No 1242.

⁴⁵ SI 2002 No 1711.

⁴⁶ SI 1986 No 225.

Off-Street Parking (England and Wales) Order 1978, (c) Regulation 7 the Government Oil Pipelines Regulations 1959,⁴⁷ (d) Regulation 3 of the Lands Tribunal (Statutory Undertakers Compensation Jurisdiction) Order 1952⁴⁸ and (e) Regulation 3 of the Lands Tribunal (War Damage Appeals Jurisdiction) Order 1950. The enactments under which the above compensation arises have been repealed and therefore the Lands Tribunal only exercises a residual jurisdiction.

PART III

JURISDICTION – APPELLATE

- E.171 The Lands Tribunal exercises an appellate jurisdiction over all decisions of the Leasehold Valuation Tribunal (see review of Leasehold Valuation Tribunal) and certain decisions of the Valuation Tribunal (see review of Valuation Tribunal). The table below summarises the position.

Appellate Jurisdiction Table

Tribunal	Matter	Legislative Basis
Leasehold Valuation Tribunal	Any decision	Section 175 of the 2002 Act
Valuation Tribunal	Non-Domestic Rates	Regulation 47 of the 1993 Regulations and Regulation 13 of the 1995 Regulations
Valuation Tribunal	Old Rates	See Paragraphs D.176 and D.177 below
Valuation Tribunal	Drainage Rates	Section 46(6) of the 1991 Act and section 77 of the General Rate Act 1967

- E.172 The appellate jurisdiction of the Lands Tribunal in respect of decisions by the Leasehold Valuation Tribunal is straightforward. Section 175(1) of the Commonhold and Leasehold Reform Act 2002 simply states that a party to proceedings before a Leasehold Valuation Tribunal may appeal the matter to the Lands Tribunal. The Lands Tribunal is not restricted to considering questions of law and under section 175(3) may exercise any power that was available to the Leasehold Valuation Tribunal. Section 175(8) of the 2002 Act makes it clear that the only appeal route out of the Leasehold Valuation Tribunal is to the Lands Tribunal.

⁴⁷ SI 1959 No 715.

⁴⁸ SI 1952 No 161.

- E.173 The appellate jurisdiction of the Lands Tribunal in respect of decisions by the Valuation Tribunal is more complicated. Only decisions of the Valuation Tribunal relating to (i) non-domestic rates, (ii) old rates⁴⁹ and (iii) drainage rates may be appealed to the Lands Tribunal. Decisions of the Valuation Tribunal in relation to community charges and council tax can be appealed to the High Court. The paramount appellate provision is paragraph 11(1)(b) of Schedule 11 to the Local Government Finance Act 1988, which permits the granting of appellate jurisdiction to the Lands Tribunal in respect of decisions under paragraph 4 of Schedule 4A and the Regulations made pursuant to section 55 of the 1988a Act.
- E.174 The appellate jurisdiction of the Lands Tribunal in respect of non-domestic rate decisions of the Valuation Tribunal derives from Regulation 47(1) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993⁵⁰ (England) and Regulation 13 of the Valuation Tribunal Wales, Regulations 1995⁵¹ (Wales).
- E.175 The appellate jurisdiction of the Lands Tribunal in respect of old rates is very complex. The appellate jurisdiction previously exercised by Local Valuation Courts was transferred to Valuation Tribunals under the Valuation and Community Charge (Transfer of Jurisdiction) Regulations 1989.⁵² These Regulations did not make provision for further appeals to the Lands Tribunal. However, savings to the relevant legislation mean that if an appeal against a Local Valuation Court decision previously lay to the Lands Tribunal, it continues to do so in respect of the transferred appellate jurisdiction exercised by Valuation Tribunals. Regulation 3(1) of the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990⁵³ saves provisions in the 1967 Act insofar as they continue to have effect after 1 April 1990. The residual jurisdiction once exercised by Local Valuation Courts under sections 73(2)(b), 74(3), 75 and 83(6) is now exercised by Valuation Tribunals. Under section 77 of the 1967b Act, decisions on appeal by a Local Valuation Court under section 73(2)(b), 74(3) and 75 could be appealed to the Lands Tribunal. The effect of the savings Regulations is to permit an appeal to the Lands Tribunal of decisions now made by Valuation Tribunals under these sections. An appeal to the Lands Tribunal also lies against a decision made by a Valuation Tribunal under the section 83(6) jurisdiction by virtue of section 83(8)⁵⁴ of the 1967b Act that also survives as a result of the savings Regulations.
- E.176 By virtue of section 2(5C) and paragraph 11(3) of Schedule 1 to the Rating (Disabled Persons) Act 1978 a decision by a Local Valuation Court under section 2(5B) and paragraph 11(2) respectively could be appealed to the Lands Tribunal. The Local Government Finance (Repeals, Savings and Consequential

⁴⁹ This is the term used in the Valuation Tribunal review to refer to residual jurisdiction of the Valuation Tribunal transferred by the Valuation and Community Charge (Transfer of Jurisdiction) Regulations SI 1989 No 440.

⁵⁰ SI 1993 No 291.

⁵¹ SI 1995 No 3056.

⁵² SI 1989 No 440.

⁵³ SI 1990 No 777.

⁵⁴ S 83(8) provided that a decision under s 83(6) could be appealed as if it were a decision in valuation proceedings to which the application related.

Amendments) Order 1990⁵⁵ saved this appellate jurisdiction insofar as it relates to the transferred jurisdiction now exercised by Valuation Tribunals. Such decisions may therefore be appealed to the Lands Tribunal. A similar situation pertains to appeals to a Valuation Tribunal in relation to the transferred jurisdiction previously exercised by Local Valuation Courts pursuant to Regulation 6 of the Mixed Hereditaments (Certificate) Regulations 1967⁵⁶ as a result of the savings made by Regulation 4(1) of the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990. Regulation 8 of the 1967 Regulations permitted a further appeal to the Lands Tribunal in accordance with section 77 of the 1967b Act. Likewise an appeal by a Valuation Tribunal on foot of the transferred jurisdiction may be appealed to the Lands Tribunal. The jurisdiction of the Lands Tribunal in respect of old rates appeals is fully accounted for in this and the previous paragraph.

- E.177 Finally, appeals heard by a Valuation Tribunal in relation to drainage rates may be appealed to the Lands Tribunal. Section 46(6) of the Land Drainage Act 1991 applies section 77 of the 1967b Act to appeals heard by a Valuation Tribunal pursuant to section 45 of the 1991 Act, that is an appeal of a decision thereunder may be made to the Lands Tribunal. Similarly section 79(5) of the Land Drainage Act 1976 applied section 77 of the 1967 Act to appeals heard by a Local Valuation Court pursuant to section 78 of the 1976a Act. While these provisions were repealed by the Water Consolidation (Consequential Provisions) Act 1991 the savings therein allow for appeals to be made to the Lands Tribunal from decisions of a Valuation Tribunal exercising the section 78 jurisdiction that was transferred by Regulation 3(1)(d) of the 1989 Regulations.

PART IV

TERRITORIAL JURISDICTION AND FURTHER APPEALS

- E.178 Two separate Lands Tribunals were established under the 1949 Act. One for Scotland and another for the remainder of the United Kingdom. A separate Lands Tribunal for Northern Ireland was established under the Lands Tribunal and Compensation Act (Northern Ireland) 1964. The Lands Tribunal for England and Wales is therefore a distinct tribunal. The Lands Tribunal for England and Wales does not subdivide into regions. Its territorial jurisdiction is as a homogenous one over the whole of England and Wales. The devolution of powers to the National Assembly for Wales has not affected the territorial jurisdiction of the Lands Tribunal. The Lord Chancellor's supervisory functions over the Lands Tribunal were not transferred by the National Assembly for Wales (Transfer of Functions) Order 1999.⁵⁷
- E.179 The matter of appeals from the Lands Tribunal itself is straightforward. Section 3(4) of the 1949 Act states that a decision of the Lands Tribunal is final. The

⁵⁵ SI 1990 No 776.

⁵⁶ SI 1967 No 637.

⁵⁷ SI 1999 No 672. Art 2(f) expressly reserved the Lord Chancellor's powers in respect of transfers effected by the Order.

proviso to that section states, however, that an aggrieved person may appeal to the Court of Appeal⁵⁸ on a point of law. An appeal on a point of law to the Court of Appeal therefore lies from a decision of the Lands Tribunal. There is possibly one exception to this right of appeal. Section 222(4)(c) of the 1984c Act states that decisions of the Lands Tribunal thereunder are final. It is unclear whether this would be read in light of the proviso to section 3(4) of the 1949 Act.

⁵⁸ Lands Tribunal Act 1949, s 3(11) states that the court referred to in s 3(4) is the Court of Appeal.

SCHEDULE

TABLE OF ABBREVIATIONS

STATUTES

1845 Act	Railway Clauses Consolidation Act 1845
1925 Act	Law of Property Act 1925
1939 Act	Compensation (Defence) Act 1939
1941 Act	Public Health Act 1941
1949 Act	Lands Tribunal Act 1949
1949a Act	National Parks and Access to the Countryside Act 1949
1949b Act	Coastal Protection Act 1949
1954 Act	Landlord and Tenant Act 1954
1956 Act	Underground Works (London) Act 1956
1958 Act	Land Powers (Defence) Act 1958
1958a Act	Opencast Coal Act 1958
1959 Act	Rights of Light Act 1959
1961 Act	Land Compensation Act 1961
1962 Act	Pipelines Act 1962
1962a Act	London County Council (General Powers) Act 1962
1963 Act	London County Council (General Powers) Act 1963
1965 Act	Compulsory Purchase Act 1965
1965a Act	Gas Act 1965
1965b Act	City of London (Various Powers) Act 1965
1967 Act	City of London (Various Powers) Act 1967
1967a Act	Forestry Act 1967
1967b Act	General Rate Act 1967
1968 Act	Agriculture (Miscellaneous Provisions) Act 1968
1968a Act	Transport Act 1968
1969 Act	Greater London Council (General Powers) Act 1969

1970 Act	Taxes Management Act 1970
1972 Act	Criminal Justice Act 1972
1972a Act	Thames Barrier and Flood Prevention Act 1972
1973 Act	Land Compensation Act 1973
1975 Act	Reservoirs Act 1975
1975a Act	Welsh Development Act 1975
1976 Act	Local Government (Miscellaneous Provisions) Act 1976
1976a Act	Land Drainage Act 1976
1977 Act	Rentcharges Act 1977
1979 Act	Ancient Monuments and Archaeological Areas Act 1979
1980 Act	Highways Act 1980
1980a Act	Housing Act 1980
1980b Act	Local Government, Planning and Land Act 1980
1981 Act	Acquisition of Land Act 1981
1981a Act	New Towns Act 1981
1981b Act	Compulsory Purchase (Vesting Declarations) Act 1981
1982 Act	Aviation Security Act 1982
1982a Act	Civil Aviation Act 1982
1983 Act	National Heritage Act 1983
1984 Act	Cycle Tracks Act 1984
1984a Act	Road Traffic Regulation Act 1984
1984b Act	Telecommunications Act 1984
1984c Act	Inheritance Tax Act 1984
1985 Act	Mineral Workings Act 1985
1986 Act	Agricultural Holdings Act 1986
1986a Act	Greater London Council (General Powers) Act 1986
1987 Act	Channel Tunnel Act 1987
1988 Act	Housing Act 1988

1988a Act	Local Government Finance Act 1988
1989 Act	Electricity Act 1989
1990 Act	Town and Country Planning Act 1990
1990a Act	Aviation and Maritime Security Act 1990
1990c Act	Planning (Listed Buildings and Conservation Areas) Act 1990
1990d Act	Planning (Consequential Provisions) Act 1990
1991 Act	Land Drainage Act 1991
1991a Act	Water Industry Act 1991
1991b Act	Water Resources Act 1991
1991c Act	Coal Mining Subsidence Act 1991
1992 Act	Transport and Works Act 1992
1993 Act	Cardiff Bay Barrage Act 1993
1993a Act	Leasehold Reform, Housing and Urban Development Act 1993
1994 Act	Coal Industry Act 1994
1995 Act	British Waterways Act 1995
1996 Act	Channel Tunnel Rail Link Act 1996
1998 Act	Regional Development Agencies Act 1998
1998a Act	Finance Act 1998
2000 Act	Fur Farming (Prohibition) Act 2000
2000a Act	Postal Services Act 2000
2002 Act	Commonhold and Leasehold Reform Act 2002

STATUTORY INSTRUMENTS

1974 Regulations	Town and Country Planning (Compensation and Certificate) Regulations 1974
1986 Regulations	Stamp Duty Reserve Tax Regulations 1986
1989 Regulations	Valuation and Community Charge (Transfer of Jurisdiction) Regulations 1989
1994 Regulations	Conservation (Natural Habitats &c) Regulations 1994

1994 Order	Channel Tunnel (Security) Order 1994
1997 Order	London Underground (East London Line Extension) Order, 1997
1997 Regulations	Hedgerow Regulations 1997
1999 Regulations	Anti-Pollution Works Regulations 1999
1999a Regulations	Waste Management (Consultation and Compensation) Regulations 1999
2000 Regulations	Contaminated Land (England) Regulations 1000
2000a Regulations	Pollution Prevention and Control (England and Wales) Regulations 1000
2001 Regulations	Environmental Impact Assessment (Uncultivated and Semi-natural Areas) (England) Regulations 1001
2001a Regulations	Contaminated Land (Wales) Regulations 1001
2001 Order	London Underground (East London Line Extension) Order, 2001
2002 Regulations	Vehicular Access Across Common and Other Land (England) Regulations 1002
2002 Order	Docklands Light Railway (Silverton and London City Airport Extension) Order 2002

APPENDIX F

LEASEHOLD VALUATION TRIBUNALS

PART I

LEGISLATIVE BACKGROUND

- F.1 Leasehold Valuation Tribunals (LVTs) determine various matters and disputes that may arise between landlords and tenants in the private rented housing market. Except in relation to matters involving local authority or Crown interests in property, they are a “party and party tribunal”.¹ They are not an appellate body, rather, matters and disputes that they consider arise directly from the landlord and tenant relationship and not from a decision of an intermediary administrative body.
- F.2 LVTs’ are designated under various enactments as a category of Rent Assessment Committee (RAC) for the purpose of carrying out functions provided under statute. Section 65 and Schedule 10 to the Rent Act 1977 (the “1977 Act”) grant power to the Secretary of State to establish RACs. In particular, paragraph 1 of Schedule 10 enables the Secretary of State to draw up from time to time panels of persons to act as chairmen and other members of RACs. At least one member of every Tribunal must be experienced in the valuation of land.² On foot of this power LVTs have been designated as the duly constituted RAC to determine certain matters arising under the following enactments: the Leasehold Reform Act 1967 (the “1967 Act”), as conferred by the Housing Act 1980 (the “1980 Act”); the Landlord and Tenant Act 1985 (the “1985 Act”); the Landlord and Tenant Act 1987 (the “1987 Act”); the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) and the Commonhold and Leasehold Reform Act 2002 (the “2002 Act”).³
- F.3 LVTs are a category of what was known as a “Rent Assessment Panel”. “Rent Assessment Panel” was the collective term for LVTs, Rent Tribunals and RACs.⁴ On a literal reading of the 1977 Act, however, there is no legislative basis for using this term. The generic term should be “Rent Assessment Committees”, and LVTs and Rent Tribunals should be termed categories or divisions of RACs. In addition there are a number of functions exercised by RACs *qua* RACs. It is important to note that this issue has recently been superseded. On 1 May 2002 the Department of Transport Local Government and the Regions issued a press release declaring that the “Rent Assessment Panels” will change their name to the “Residential

¹ This is the term used in the report of the Leggatt Review of Tribunals to refer to tribunals that hear disputes between private citizens as opposed to citizen/state disputes.

² Housing Act 1980, Sched 2, para 1.

³ The Housing Act 1996 (the “1996 Act”) also confers jurisdiction on LVTs. However it does so by the insertion of a provision into the previous enactment. No jurisdiction is directly referable to the 1996 Act.

⁴ For example the “Rent Assessment Panels Corporate Plan 2002–3” published by the Residential Property Tribunal Service.

Property Tribunal Service” with effect from 7 June 2002.⁵ We shall employ the current collective noun, and call them “RPTS tribunals”.

- F.4 The procedure of hearings held before LVTs at time of writing is governed by the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993 (as amended).⁶ These regulations make detailed provision in relation to the submission of applications to LVTs. They are likely to be replaced by regulations made under the 2002 Act. Schedule 12 thereto permits the appropriate national authority⁷ to make regulations on the procedure of LVTs. At time of writing no such regulations had been made.
- F.5 LVTs have accumulated jurisdiction in a piecemeal fashion over the past twenty years. The matters that they consider are not easily referable to particular classes of dispute, but rather, are comprehensible only in the context of the particular enactment under which their jurisdiction is granted. Accordingly the approach in this paper will be to analyse LVTs’ jurisdiction as it is granted under the five principal statutes referred to in the paragraph F.2 above. Section 142 of the 1980 Act was the first legislative provision to confer jurisdiction on LVTs, and was therefore the first instance of the establishment of RACs known as LVTs.⁸ Schedule 22 to the 1980 also provided for the membership and operational structure of LVTs in respect of the exercise of jurisdiction conferred on them by the 1980 Act. The jurisdiction of LVTs was extended by the enactments that followed. The 2002 Act has, however, reformed considerably the jurisdictional basis of LVTs.⁹ Prior to its enactment each legislative provision that conferred jurisdiction on LVTs explicitly designated them as RACs constituted under Schedule 10 to the 1977 Act, and provided details on the procedure to be followed by LVTs when exercising the particular jurisdiction concerned.
- F.6 All jurisdiction exercised by LVTs is now referable to the establishment provisions of the 2002 Act. Section 173 consolidates all jurisdiction conferred on LVTs by previous (or future) enactment.¹⁰ Regulations made under Schedule 12 will replace all previous enactments on the membership and operational structure of LVTs. The paramount jurisdictional basis of LVTs is therefore section 173 of the 2002

⁵ Available at www.press.dtlr.gov.uk.

⁶ SI 1993 No 2408. They were considerably amended by the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) (Amendment) Regulations SI 1997 No 1854.

⁷ “Appropriate nationality authority” is defined in s 179(1) as the Secretary of State in respect of England and the National Assembly for Wales in respect of Wales.

⁸ Section 142 transferred the jurisdiction exercised by Lands Tribunals under ss 21(1)–(3) of the 1967 Act to LVTs. See Part II below.

⁹ At time of writing the 2002 Act is not in force. Under s 181 the power rests with the Secretary of State, the National Assembly for Wales and the Lord Chancellor’s (as the case may be) to bring the provisions of the 2002 Act into force. This paper works on the basis that all parts of the 2002 Act are in force and that any repeal or amendment thereunder has taken effect.

¹⁰ Section 173(1) states: “Any jurisdiction conferred on a leasehold valuation tribunal by or under any enactment is exercisable by a rent assessment committee in accordance with Sched 10 to the Rent Act 1977.” Section 173(2) states: “When so constituted for exercising any such jurisdiction a rent assessment committee is known as a leasehold valuation tribunal.”

Act and Schedule 10 to the 1977 Act. The upshot of the recent reform is that jurisdiction conferred by any enactment on LVTs is automatically exercisable by RACs constituted under Schedule 10 to the 1977 Act.

PART II

SUBSTANTIVE JURISDICTION

INTRODUCTION

F.7 As already noted, the jurisdiction exercised by LVTs has been accumulated in stages since the 1977 Act. After the coming into force of the 2002 Act LVTs will exercise jurisdiction under five enactments; the 1967 Act (as conferred by the 1980 Act); the 1985 Act; the 1987 Act; the 1993 Act; and the 2002 Act. The broad categories in which LVTs exercise jurisdiction are: enfranchisement; lease renewal/extension; tenant's right to first refusal; service, estate and administration charges; appointment of managers; estate management schemes; and forfeiture breaches. The extent of power exercised by LVTs has increased over time. For instance, under the 1967 Act it is confined to considering matters incidental to enfranchisement whereas under the 1993 Act LVTs can determine a wider range of matters related to collective enfranchisement. In total there are 57 distinct areas of jurisdiction exercised by LVTs. The table below summarises the position.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal	County Court*
1967 Act	Section 21(1)(a)	Sum Payable for Freehold	Lands Tribunal	A
1967 Act	Section 21(1)(b)	Rent Payable for Extended Lease	Lands Tribunal	A
1967 Act	Section 21(1)(ba)	Cost Payable for Freehold Acquisition/Lease Extension	Lands Tribunal	A
1967 Act	Section 21(1)(c)	Tenant's Compensation for Disentitlement	Lands Tribunal	A
1967 Act	Section 21(1)(cza)	Sum Lodged Court for Freehold Acquisition	Lands Tribunal	A
1967 Act	Section 21(1)(c)a	Landlord's Compensation for Ineffective Claim	Lands Tribunal	A

1967 Act	Section 21(2)(a)	Provisions of a Conveyance/ Lease	Lands Tribunal	A
1967 Act	Section 21(2)(b)	Apportionment of House and Other Property	Lands Tribunal	A
1967 Act	Section 21(2)(c)	Sub-tenant's Compensation	Lands Tribunal	A
1985 Act	Sections 19(2A) and 19(2B)	Reasonableness of Costs Behind a Service Charge	Lands Tribunal	C
1985 Act	Section 20C	Limit Landlord's Power to Add Costs of Proceedings to Future Service Charge Bills	Lands Tribunal	C
1985 Act	Section 27A(1)	Liability to Pay Service Charges	Lands Tribunal	D
1985 Act	Section 27A(3)	Prospective Liability to Pay Service Charges	Lands Tribunal	D
1985 Act	Section 20ZA	Dispensation of Consultation Requirements	Lands Tribunal	A
1985 Act	Section 20C(2)	Order for Costs	Lands Tribunal	A
1985 Act	Section 21A(4)	End Withholding of Service Charge	Lands Tribunal	A
1985 Act	Paragraph 8 of the Schedule	Landlord's Choice of Insurer	Lands Tribunal	C
1987 Act	Section 13(1)(b)	Determination of Non-Monetary Consideration	Lands Tribunal	B
1987 Act	Section 13(1)(a) and (b)	Terms of Purchase Notice	Lands Tribunal	B
1987 Act	Section 24(1)	Appointment of Manager	Lands Tribunal	B

1987 Act	Section 24(9)	Discharge of Appointment of Manager	Lands Tribunal	B
1987 Act	Section 22(3)	Dispensation of Notice	Lands Tribunal	B
1987 Act	Section 31	Terms of Acquisition Offer	Lands Tribunal	B
1987 Act	Section 38(1)	Variation of Lease	Lands Tribunal	B
1987 Act	Section 38(2)	Variation of Other Leases	Lands Tribunal	B
1987 Act	Section 38(3)	Variation of Leases by Majority of Parties	Lands Tribunal	B
1987 Act	Sections 38(9) and 39(5)(b)	Endorsement of Documents	Lands Tribunal	B
1987 Act	Section 38 (10)	Payment of Compensation	Lands Tribunal	B
1987 Act	Section 39(4)	Cancellation or Modification of Variation	Lands Tribunal	B
1987 Act	Section 40(1)	Variation of Insurance Provisions	Lands Tribunal	B
1993 Act	Section 91(2)(a)	Terms of Acquisition – General	Lands Tribunal	B
1993 Act	Section 24	Terms of Acquisition – Specific	Lands Tribunal	B
1993 Act	Section 27	Terms of Vesting Order	Lands Tribunal	B
1993 Act	Section 48(1)	Terms of Acquisition – New Leases	Lands Tribunal	B
1993 Act	Section 51	Terms of Vesting Order – New Leases	Lands Tribunal	B
1993 Act	Section 70(1)	Approval of Estate Management Schemes	Lands Tribunal	B
1993 Act	Section 71(1)	Approval of Joint Estate Management Schemes (1)	Lands Tribunal	B

1993 Act	Section 71(3)	Approval of Joint Estate Management Scheme (2)	Lands Tribunal	B
1993 Act	Section 73	Late Approval of Schemes	Lands Tribunal	B
1993 Act	Section 75(2)	Variation of Existing Schemes	Lands Tribunal	B
1993 Act	Section 94(10)	Application in Relation to Crown Land	Lands Tribunal	B
1993 Act	Section 88	Application in Relation to Crown Land (1967 Act)	Lands Tribunal	B
1993 Act	Section 91(2)(b)	Terms of Lease of Former Freeholder	Lands Tribunal	B
1993 Act	Section 91(2)(c)	Determination of Payment (section 18(2))	Lands Tribunal	B
1993 Act	Section 91(2)(c)a	Determination of Compensation (section 37A)	Lands Tribunal	B
1993 Act	Paragraph 2 of Schedule 14	Determination of Compensation (section 61)	Lands Tribunal	B
1993 Act	Section 91(2)(c)b	Determination of Compensation (section 61A)	Lands Tribunal	B
1993 Act	Section 91(2)(d)	Determination of Costs	Lands Tribunal	B
1993 Act	Section 91(2)(e)	Apportionment of Amounts	Lands Tribunal	B
2002 Act	Section 84(3)	Entitlement of Right to Manage	Lands Tribunal	A
2002 Act	Section 85(2)	Order Where Landlord Not Traceable	Lands Tribunal	A
2002 Act	Section 88(4)	Costs	Lands Tribunal	A

2002 Act	Section 94(3)	Accrued Uncommitted Service Charges	Lands Tribunal	A
2002 Act	Section 99(1)	Objection to Approval	Lands Tribunal	A
2002 Act	Section 159(3)	Variation of Estate Management Scheme	Lands Tribunal	A
2002 Act	Section 159(6)	Estate Charges	Lands Tribunal	D
2002 Act	Section 168(4)	Determination of Forfeiture Breach	Lands Tribunal	A
2002 Act	Paragraph 3 of Schedule 11	Variation of Leases (Administration Charges)	Lands Tribunal	A
2002 Act	Paragraph 5(1) of Schedule 11	Liability to Pay Administration Charges	Lands Tribunal	D

***Column 5 headed “County Court” summarises the jurisdictional relationship between LVTs and the County Court.**

A = LVT exercises exclusive jurisdiction.

B = LVT exercises exclusive jurisdiction except where its jurisdiction is joined to proceedings heard by the County Court.

C = LVT and County Court share jurisdiction.

D = LVT exercises exclusive jurisdiction, when raised as a distinct cause of action though County Court may also consider these matters when debt proceedings are before it – see paragraphs 4.4 and 4.9.

THE 1967 ACT

Introduction

F.8 The 1967 Act facilitates the acquisition by tenants of the freehold title of houses, and the extension by tenants of leases of houses that they rent under certain long tenancies. LVTs have jurisdiction to determine nine separate matters under the 1967 Act.¹¹ The six areas of jurisdiction listed in section 21(1) are exercisable only in default of agreement by the parties (that is, the landlord and tenant), whereas

¹¹ The jurisdiction exercised under the 1967 was formerly exercised by the Lands Tribunal, and was transferred to LVTs under the 1980 Act (see n 6 above). LVTs’ jurisdiction under the 1967 Act has been supplemented by the 1996 Act and the 2002 Act.

the three areas of jurisdiction listed in section 21(2) may be exercised either by agreement between the parties or, where an application is made under section 21(1), with reference to the same transaction that is the subject of a determination by the LVT thereunder. Below are the matters that may be determined by LVTs under the 1967 Act.

Determination of Sum Payable for Freehold

- F.9 A tenant of a house held under certain long tenancies has a right to purchase the freehold from the landlord. Under section 9 of the 1967 Act the price to be paid by the tenant to the landlord of such houses is the price that would be obtained if a willing seller sold the freehold interest in the open market. Under section 21(1)(a), if the parties cannot agree an application can be made to the relevant LVT to determine the price.

Determination of Rent Payable for Extended Lease

- F.10 A tenant of a house held under certain long tenancies is entitled to a term extension of 50 years of the lease. Section 15(2) of the 1967 Act states the conditions for ascertaining the rent to be paid under an extended lease. Under section 21(1)(b) if the parties cannot agree on the rent to be paid an application can be made to the relevant LVT to determine the matter.

Determination of Costs Payable for Freehold Acquisition/Lease Extension

- F.11 Where a person applies for an acquisition of a freehold or an extension of a lease he is liable to pay certain costs that result from such an application. Sections 9(4) and 14(2) of the 1967 Act respectively list the costs that a person is liable to meet. Under section 21(1)(ba)¹² if the parties cannot agree on the costs for which the person applying for the freehold or lease extension is liable an application can be made to the relevant LVT to determine the matter.

Determination of Tenant's Compensation for Disentitlement

- F.12 Under certain circumstances a landlord can defeat the right of a tenant to acquire the freehold title or to be granted a lease extension under s 14. If a lease extension has been granted under s 14 and there is at least 12 months left on the original lease, a landlord can apply to court¹³ pursuant to section 17 to resume possession of the house and premises for the purpose of redevelopment (for instance, demolition or reconstruction). If a person is entitled to acquire the freehold or to be granted a lease extension under section 14 (but has not yet acquired or been granted it), the landlord may apply to court, pursuant to section 18, to resume possession of the house and premises for the purpose of occupation of the house and premises as a main residence, by him or an adult family member. A person who is disentitled by virtue of sections 17 and 18 can claim under section 17(3) and 18(4) respectively for compensation that is calculated in accordance with the provisions of Schedule 2 to the 1967 Act. Under section 21(1)(c), if the parties

¹² Inserted into the 1967 Act by Sched 11 of the 1996 Act.

¹³ Reference to jurisdiction exercised by the "court" in the 1967 Act is the County Court. See 1967 Act s 20.

cannot agree on the compensation payable an application can be made to the relevant LVT to determine the matter.

Determination of Sum Lodged in Court for Freehold Acquisition

- F.13 Where a person has a right to acquire a freehold, but is prevented from so doing because the landlord cannot be found or his identity cannot be ascertained, the tenant can apply to court¹⁴ under section 27 to have the freehold vested in him. Under section 27(3) the court can require the tenant to pay into court a sum as a condition of the property vesting in him and under section 27(5) LVTs are authorised to determine that sum in accordance with Schedule 9. Section 21(1)(ca)¹⁵ expressly acknowledges the jurisdiction of the LVT to determine the amount payable under section 27(5).

Determination of Landlord's Compensation for Ineffective Claim

- F.14 If a tenant applies to acquire a freehold or a lease extension and the claim is not effective¹⁶ and the landlord suffers certain adverse consequences the landlord is entitled to be compensated by virtue of section 27A(2). The amount of compensation is calculated in accordance with section 27A(4). Under section 21(1)(ca) if the parties cannot agree on the compensation payable an application may be made to the relevant LVT to determine the matter.

Provisions of a Conveyance/Lease

- F.15 Where a tenant acquires a lease under section 8 or is granted a lease extension under section 14, certain conditions have to be contained in the conveyance or lease executed thereunder. Section 10 lists various rights to be conveyed to the tenant on enfranchisement, section 14 makes provision in relation to terms of lease extensions and section 29(1) contains special provisions for where the landlord is a local authority. Under section 21(2)(a) where the parties agree, or where an application is made under section 21(1), the LVTs have jurisdiction to determine what provisions ought to be contained in a conveyance or lease in accordance with sections 10, 14 and 29(1).

Apportionment of House and Premises and Other Property

- F.16 Tenants who qualify for enfranchisement or a lease extension under the 1967 Act are only entitled to the freehold title or lease extension in respect of a residential house and premises, as defined by section 2. Where a lease contains a mix of house and premises and other property, only the former portion can benefit from the 1967 Act. Under section 21(2)(b), where the parties agree or where an application is made under section 21(1), LVTs have jurisdiction to apportion the rent payable under any tenancy between the house, premises and other property.

¹⁴ The relevant court is again the County Court (see n 11 above), however prior to the 2002 Act the relevant court was the High Court (changes made by the 2002 Act s 148(1)).

¹⁵ Inserted into the 1967 Act by s 149(2) of the 2002 Act.

¹⁶ As defined by s 27A(5).

Determination of Sub-tenant's Compensation

- F.17 As discussed in paragraph F.6 above, a landlord who exercises his rights under sections 17 and 18 can disentitle a tenant who would otherwise be entitled to acquire a freehold or have a lease extended. When this right is exercised the tenant is entitled to compensation. Under paragraph 6(2) of Schedule 2 certain sub-tenants are entitled to share in the compensation awarded to the tenant. Under section 21(2)(c), where the parties agree or where an application is made under section 21(1), the LVT has jurisdiction to determine the amount of the sub-tenant's share of the compensation.

THE 1985 ACT

Introduction

- F.18 The 1985 Act, insofar as it is relevant to the jurisdiction exercised by LVTs, is concerned with the payment of service charges by a tenant to his landlord. The most significant jurisdiction granted to LVTs by the 1985 Act is the jurisdiction under section 27A to determine the liability and prospective liability of tenants to pay service charges. Again the jurisdiction exercised by LVTs under the 1985 Act has been considerably reformed by the 2002 Act. There are a total of eight areas where LVTs have jurisdiction under the 1985 Act, outlined below.

Reasonableness of Costs Behind a Service Charge

- F.19 A tenant or landlord may apply to an LVT for a determination as to whether costs that are alleged to be payable, or may be payable, for: services; repairs; maintenance; insurance; or management are reasonable. Or, whether services or works for which the costs were incurred meet a reasonable standard, or whether an amount payable before costs are incurred is reasonable. This jurisdiction comes from sections 19(2A) and 19(2B) of the 1985 Act.

Limit Landlord's Power to Add Costs of Proceedings to Future Service Charge Bills

- F.20 Section 20C of the 1985 Act gives the Tribunal the power, on application by the tenant, to limit or prevent the landlord from including the costs of proceedings before a court, the LVT or the Lands Tribunal in the amount payable by the tenant as a service charge.

Determination of Liability to Pay Service Charges

- F.21 Under section 27A(1)¹⁷ LVTs have jurisdiction to determine whether service charges are payable. If it decides that services charges are payable it has jurisdiction to determine; (a) by and to whom it is payable; (b) the amount payable; (c) the date payable; and (d) the manner in which it is payable.

Determination of Prospective Liability to Pay Service Charges

- F.22 An application may also be made to an LVT for a determination on whether, if costs were incurred (for example, for repairs or maintenance), a service charge

¹⁷ Section 155 of the 2002 Act. No such regulations are in force at time of writing.

would be payable. Under section 27A(3) LVTs have jurisdiction to determine such applications, and if they determine that services charges would be payable they may then determine: (a) by and to whom it would be payable; (b) the amount payable; (c) the date payable; and (d) the manner in which it would be payable.

Dispensation of Consultation Requirements

- F.23 The Secretary of State may prescribe by regulation consultation requirements to be adhered to by landlords and tenants where there is a proposed limitation of service charges under section 20.¹⁸ Under section 20ZA¹⁹ an LVT has jurisdiction, on application, to dispense with the consultation requirements. Only when regulations are made under these sections will the details of the LVT's jurisdiction be clear.

Order in Relation to Costs

- F.24 A tenant can make an application to an LVT for an order that costs incurred or to be incurred in relation to proceedings before an LVT shall not be regarded as relevant costs when determining the amount of service charge payable by the tenant. LVTs have jurisdiction under section 20C(2)²⁰ to make such orders.

Determination of Application to End Withholding of Service Charge

- F.25 Under section 21A(1)²¹ a tenant is entitled to withhold payment of service charges owed to his landlord if the landlord does not supply him a document that conforms with the requirements of section 21. However, it is possible for a landlord to apply to an LVT to prevent the tenant withholding the service charge owing. Under section 21A(4) LVTs have jurisdiction to determine whether the landlord had "a reasonable excuse" for failing to supply to the document and can make an order that ends the tenant's right to withhold payment.

Determination of Challenge to Landlord's Choice of Insurer

- F.26 The Schedule to the 1985 Act contains detailed provisions on the rights of tenants with respect to insurance. Where a tenancy agreement requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord the tenant or landlord may apply to an LVT or County Court for a determination on whether the insurance or premiums are unsatisfactory for the dwelling in question. Under paragraph 8 of the Schedule an LVT or County Court has jurisdiction to make an order requiring the landlord to nominate or approve another insurer.

¹⁸ Reference to s 20 is the new s 20 as substituted by 2002 Act, s 151. As already noted the 2002 Act has not yet come into force nor have regulations been made under it. There are therefore no "consultation requirement" regulations in force at time of writing.

¹⁹ 2002 Act, s 151.

²⁰ 1996 Act, s 83(4).

²¹ Section 21A is substituted by 2002 Act, s 152.

THE 1987 ACT

Introduction

- F.27 The 1987 Act, insofar as it is relevant to jurisdiction exercised by LVTs, deals with a number of distinct issues of landlord and tenant law. It confers the right on qualifying tenants to first refusal on the disposal by the landlord of any estate or interest in premises occupied by them (including common areas); it enables tenants to force the appointment of a manager over a shared premises; it enables qualifying tenants to compulsorily acquire their flats; and it allows parties to a lease to obtain an order varying the lease. There are a total of thirteen areas where LVTs exercise jurisdiction under the 1987 Act.

Determination of Non-Monetary Consideration

- F.28 A landlord is obliged under section 5 to serve notice on tenants when he proposes to make a relevant disposal. There are special notice provisions contained in section 5E in relation to a proposed disposal for wholly or substantially non-monetary consideration. Qualifying tenants can elect to apply the provisions of section 8C(3) whenever a non-monetary disposal is proposed. If such an election is made a calculation has to be made of the money value of the non-monetary consideration. Under section 8C(4) a landlord or nominated person (tenants' representative) can apply to an LVT to have the amount determined. Section 13(1)(b) specifically confers jurisdiction on LVTs for this purpose.

Determination of Terms of Purchase Notice

- F.29 Sections 12A, 12B and 12C allow qualifying tenants to take benefit of a disposal of an estate or interest to which they would have been entitled had the landlord informed them of their rights. In each case a notice has to be served by the tenants on the landlord or purchaser as the case may be. The terms of this notice must specify the subject matter of the disposal and the terms on which the disposal is to be made. The tenants have the option to state in the notice that the subject matter of the disposal and the terms are a matter to be determined by the LVT (see sections 12A(5), 12B(4) and 12C(6)). Section 13(1)(a) and (b) specifically confer jurisdiction on LVTs to hear and determine these matters.

Order to Appoint Manager

- F.30 Part II of the 1987 Act deals with the appointment by an LVT of a manager to a property that is comprised of two or more flats.²² A tenant can apply, pursuant to section 21 to an LVT for a manager to be appointed to the premises in which his flat is contained. Section 24(1) grants jurisdiction to the LVT to appoint a manager to premises on foot of an application by a tenant. Sections 24(2)–(7) list the conditions under which a section 24(1) order may be made.

Discharge of Order

- F.31 Section 24(9) grants jurisdiction to the LVT to vary or discharge an order made by it under section 24(1) on application by an interested person. Where appropriate an order to vary or discharge may direct that an entry registered under the Land

²² This Part has been extended to Crown leases by virtue of 2002 Act, s 172.

Charges Act 1972, or the Land Registration Act 2002 under a section 24(1) order, be cancelled.

Dispensation of Notice

- F.32 Before an application for an order under section 24 can be made a notice must be served by the tenant, pursuant to section 22, on the landlord or any other person who owes obligations to the tenant relating to the management of the premises. Section 22(3) grants jurisdiction to LVTs to dispense with the notice requirement in cases where it is satisfied that it would not be reasonably practicable to serve the notice.

Determination of Terms of Acquisition Order

- F.33 Part III of the 1987 Act deals with the compulsory acquisition by qualifying tenants of flats contained in premises to which the Part applies. It permits the making of an application by a tenant to the County Court²³ for an “acquisition order”. When granted the acquisition order contains details of the terms on which the applicant tenant may acquire the flat. Section 31 grants jurisdiction to LVTs to determine the terms on which the landlord’s interest in the premises specified in the acquisition order may be acquired by the tenant to the extent that those terms have not been determined by agreement.

Order for Variation of Lease

- F.34 Part IV of the 1987 Act is concerned with the variation of long leases of flats. Any party to a long lease of a flat can apply to an LVT²⁴ pursuant to section 35 for a variation of the lease. Section 35(2) details the grounds on which such an application may be made. Section 38(1) grants jurisdiction to the LVT to make an order varying the lease.

Order for Variation of Other Leases

- F.35 Where an application is made under section 35 the other party to the lease (the “respondent”) can apply under section 36(1) for an order to make corresponding variations to such other leases as are specified in the application. Section 36(3) states the grounds on which such an application can be made. Section 38(2) grants jurisdiction to LVTs to make an order varying the other lease(s).

Order for Variation of Leases by Majority of Parties

- F.36 Section 37 provides for the making of an application to an LVT to vary leases, which have a common landlord, where the object to be achieved can only be achieved by varying all leases that are held under the common landlord. Section 37(5) contains details on the percentage of parties that need to be in agreement to make such an application. Section 38(3) grants jurisdiction to LVTs to make an order varying all leases subject to a section 37 application.

²³ 1987 Act, s 52.

²⁴ Only with the commencement of the 2002 Act will the jurisdiction to vary leases vest in LVTs. Until that time the County Court will exercise the jurisdiction.

Order for Endorsement of Documents

- F.37 Section 38(9) and section 39(5)(b) grant jurisdiction to LVTs to endorse such documents as specified by it with the memorandum of any variation of a lease, or cancellation or modification of a variation, effected by an order.

Order for Payment of Compensation

- F.38 Section 38(10) grants jurisdiction to LVTs to make an order requiring that a party to the lease pay compensation to a person who is likely to suffer a disadvantage because of the variation to the lease.

Order for Cancellation or Modification of Variation

- F.39 Section 39 declares that any variation effected by an order of an LVT shall be binding on persons who are not party to the lease in question. To protect the interests of third parties, section 35(5) requires that persons affected by a proposed variation be given notice. If no such notice is given a person adversely affected can apply, pursuant to section 39(3) to the LVT for a modification or cancellation of the order under section 38. Section 39(4)(a) grants jurisdiction to LVTs to make an order to cancel or modify the original variation.²⁵

Order for Variation of Insurance Provisions in a Lease

- F.40 Any party to a long lease of a dwelling²⁶ can apply, pursuant to section 40(1), to an LVT for an order varying the lease on the grounds that it fails to make satisfactory provision in respect of insurance of the dwelling. Section 38(1) (as amended by section 40(3) for the purpose of conferring jurisdiction on LVTs in relation to applications made pursuant to section 40(1)) grants jurisdiction to LVTs to make a variation of the lease.

THE 1993 ACT

Introduction

- F.41 The 1993 Act, insofar as it is relevant to the jurisdiction exercised by LVTs is concerned with the enfranchisement of Right to Collective Enfranchisement Companies (“RTCE Companies”);²⁷ the acquisition by qualifying tenants of flats of new leases; and the establishment of estate management schemes. There are a total of nineteen matters that fall within the jurisdiction of LVTs under the 1993 Act.

Determination of Terms of Acquisition – General

- F.42 In default of agreement between the parties section 91(2)(a) grants a general jurisdiction to LVTs to determine the terms of acquisition (including any matter that needs to be determined for the purpose of Schedule 6 or 13) in relation to a

²⁵ Section 39(4)(b) grants jurisdiction to make an order pursuant to section 38(10). See para F.37.

²⁶ “Dwelling” is defined in s 40(5) as any dwelling other than a flat.

²⁷ Section 1(1) defines an RTCE Company as a company, some members of which are qualifying tenants of a flat contained in premises.

collective enfranchisement, pursuant to Chapter I or an individual lease pursuant to Chapter II.

Determination of Terms of Acquisition – Specific

- F.43 Sections 21, 22 and 23 contain provisions on the issue of counter-notices by the reversioner of a long lease where the RTCE Company exercises its right of collective enfranchisement. If after a period of two months from the issue of the counter-notice any term of the acquisition is in dispute the reversioner or RTCE Company can apply to an LVT to have the matters in dispute determined. Section 24 grants jurisdiction to LVTs to determine such disputes.

Determination of Terms of Vesting Order

- F.44 Where a landlord cannot be found or ascertained an RTCE Company that has a right of collective enfranchisement can apply to the County Court²⁸ under section 26(1) for a vesting order of the landlord's interest. Section 27 grants jurisdiction to LVTs to determine the terms on which the landlord's interest can be vested, the form of conveyance and the sum to be lodged in court.

Determination of Terms of Acquisition (New Lease)

- F.45 Chapter II of the 1993 Act gives an individual right to a qualifying tenant of a flat to acquire a new lease. To exercise that right the tenant must serve a notice on the landlord or third party to the lease pursuant to section 42. Sections 45, 46 and 47 make provision for the making of counter-notices by the landlord. Where, two months after the serving of counter-notices by the landlord under sections 45(2)(a), 46(4) or 47(4) any terms of acquisition of the new lease remain in dispute, a leasehold valuation has jurisdiction on application of either tenant or landlord under section 48(1) to determine the matters in dispute.

Determination of Terms of Vesting Order (New Leases)

- F.46 Where a landlord cannot be found or ascertained a tenant of a flat who has a right to a new lease can apply pursuant to section 50(1) for a vesting order of the new lease. Section 51 grants jurisdiction to LVTs to determine the terms on which the new lease can be vested, the form of the lease to be executed, and the sum to be lodged in court.

Approval of Estate Management Scheme

- F.47 Estate management schemes are schemes submitted by a landlord to secure his powers of management of a house or premises that is acquired by tenants either under Part I of the 1967 Act or Chapter I of Part I of the 1993 Act. Section 70(1) grants jurisdiction to LVTs, on application by a landlord, to consider an estate management scheme submitted by the landlord within two years from the coming into force of section 118 of the 1996 Act. LVTs can approve, modify with agreement or dismiss any such application.²⁹

²⁸ Section 90.

²⁹ Sections 70(7) and (9).

Approval of Joint Estate Management Scheme (1)

- F.48 Where two landlords of neighbouring areas jointly apply for approval of an estate management scheme as scheme in respect of a single unit LVTs have jurisdiction pursuant to section 71(1) to approve such schemes.

Approval of Joint Estate Management Scheme (2)

- F.49 A “representative body” of person’s interests of property in an area, landlords, or both jointly, may apply for approval of an estate management scheme in respect of the area in question. Section 71(3) grants jurisdiction to LVTs to approve any such schemes.

Late Approval of Schemes

- F.50 Under section 73 certain public authorities can apply to an LVT for the late approval of an estate management scheme in respect of a conservation area after the expiry of two year period mentioned in section 70, if the scheme would have been approved under section 70. Section 73(1) grants jurisdiction to LVTs to hear such applications.

Variation of Existing Schemes

- F.51 Section 19 of the 1967 Act provided for the establishment of estate management schemes in respect of areas enfranchised under that Act. Under section 19(6) a provision could be included in a scheme requiring the approval of the High Court of any termination or variation of a scheme. Section 75(1) of the 1993 Act substitutes the reference to the High Court in section 19(6) with “leasehold valuation tribunal” and grants jurisdiction to LVTs to vary or terminate such schemes. Furthermore section 75(2) grants jurisdiction to LVTs to extend schemes approved under section 19.

Application in Relation to Crown Land

- F.52 Generally the right of enfranchisement or entitlement to a new lease does not extend to land in which there is a Crown interest.³⁰ However, where there is an agreement between the appropriate authority,³¹ the tenant or tenants and any other interested person, to have the question in relation to enfranchisement or acquisition of a new lease considered, section 94(10) grants jurisdiction to LVTs to determine the question.

Application in Relation to Crown Land – 1967 Act

- F.53 Likewise the right of enfranchisement under the 1967 Act does not generally extend to land in which there is a Crown interest.³² However, where there is agreement between the appropriate authority,³³ the tenant and all other interested

³⁰ “Crown interest” is defined in s 94(11).

³¹ “Appropriate authority” is defined in s 94(11).

³² “Crown interest” is defined in s 88(6).

³³ “Appropriate authority” is also defined in s 88(6).

persons to have the question in relation to enfranchisement considered, section 88 of the 1993 Act grants jurisdiction to LVTs to determine the question.

Determination of Terms of Lease to Former Freeholder

- F.54 Section 36 and Schedule 9 provide that an RTCE Company that acquires a freehold interest shall under certain circumstances lease back the flats of other units contained in the premises enfranchised to the landlord. In default of agreement between the parties, LVTs have jurisdiction under section 91(2)(b)³⁴ to determine the terms of such leases.

Determination of Payment – section 18(2)

- F.55 Section 18(1) places a duty on the RTCE Company to notify the reversioner of any agreement between the RTCE Company and others providing for the disposal of the relevant interest. Section 18(2) provides that where the RTCE Company fails to so notify the reversioner the RTCE Company and its members are liable to pay an amount to the reversioner. In default of agreement LVTs have jurisdiction under 91(2)(c) to determine the amount of any payment due under section 18(2).

Determination of Compensation – section 37A

- F.56 Section 37A entitles a landlord to compensation under certain circumstances where a claim for enfranchisement by an RTCE Company under the 1993 Act is not effective. In default of agreement between the parties LVTs have jurisdiction under section 91(2)(ca) to determine the compensation payable.

Determination of Compensation – section 61

- F.57 Section 61 grants the right to the landlord to resist the granting of a new tenancy to the tenant of a flat under section 56 on the grounds that he intends to redevelop the property in question. The landlord applies to the County Court for an order declaring his redevelopment rights. When such a right is being exercised, section 61(4) entitles the tenant of a flat to compensation, the amount of which is calculated by reference to Schedule 14. Paragraph 2 confers jurisdiction on LVTs to determine the amount of compensation payable.

Determination of Compensation – section 61A

- F.58 Section 61A entitles a landlord to compensation under certain circumstances where a claim for a new lease by a tenant is not effective. In default of agreement between the parties LVTs have jurisdiction under section 91(2)(cb) to determine the compensation payable.

Determination of Costs

- F.59 In default of agreement between the parties LVTs have jurisdiction under section 91(2)(d) to determine the amount of costs payable to any person or persons by virtue of any provision of Chapter I or II. Furthermore, LVTs have jurisdiction to

³⁴ Schedule 9 contains detailed provisions in relation to mandatory leasebacks. Para 4(1) therein recognises the jurisdiction of LVTs to approve provisions in leasebacks that do not conform to the particulars of Part IV of the Schedule.

determine liability of any persons for costs to which sections 33(1) and 60(1) apply.

Apportionment of Amounts

- F.60 In default of agreement between the parties LVTs have jurisdiction under section 91(2)(e) to apportion between two or more persons any amount (whether costs or otherwise) payable by virtue of any provision.

THE 2002 ACT

Introduction

- F.61 The 2002 Act makes provision for commonhold land and amends the law in relation to leasehold property. As noted in paragraph F.6 above, it has rationalised the bases of jurisdiction exercised by LVTs and made detailed amendments to jurisdiction conferred on LVTs by earlier enactment. It also confers a number of new grounds of jurisdiction on LVTs: determination of entitlement of the right to manage premises; certain matters in relation to estate management schemes; and the determination of forfeiture breaches. There are ten matters over which LVTs have jurisdiction under the 2002 Act.

Determination of Entitlement of Right to Manage

- F.62 Chapter 1 of Part 2 grants a right to certain tenants who form a Right to Manage (RTM) Company a right to manage their premises. In order to claim the right to manage, the RTM Company must serve a notice on the landlord (and other parties) in accordance with section 79. A party on whom such a notice is served may, under section 84, serve a counter-notice that either admits the RTM Company's entitlement to acquire the right to manage or, for a specified reason, denies that the RTM Company is so entitled. If the person serving the counter-notice denies its entitlement, the RTM Company may apply, pursuant to section 84(3), to an LVT to determine the matter.

Order Where Landlord not Traceable

- F.63 Section 85 deals with the situation where an RTM Company wishes to assert its right to manage but the landlord cannot be ascertained or identified. In such circumstances an RTM Company may apply, pursuant to section 85(2), to an LVT for an order that it is to acquire the right to manage the premises.

Determination in Relation to Costs

- F.64 Section 88(4) holds that any question in relation to any costs payable by a RTM Company may be, in default of agreement, determined by an LVT.

Determination of Accrued Uncommitted Service Charges

- F.65 Section 94(1) holds that, where a RTM Company exercises its right to manage, the landlord (or other relevant party) must pay to the company any accrued uncommitted service charge. Section 94(2) provides a means of calculating the sum involved. The landlord or the RTM Company may apply, pursuant to section 94(3), to the relevant LVT for a determination on the amount of accrued uncommitted service charge payable.

Determination of Objection to Approval

- F.66 Section 98 vests certain functions in relation to the grant of approvals to a tenant under a long lease to the RTM Company, in place of the landlord. The RTM Company cannot exercise its power to grant approval without first serving notice on the landlord in accordance with section 98(4). If the landlord objects to the granting of approval, an LVT has jurisdiction pursuant to section 99(1) to determine the matter. The parties listed in section 99(5), that is the RTM Company, the tenant, the sub-tenant (if applicable) and the landlord may apply to the LVT under this section.

Order for Variation of Estate Management Scheme

- F.67 Section 159 establishes a uniform dispute resolution procedure for estate management schemes under section 19 of the 1967 Act, Chapter 4 of Part 1 of the 1993 Act and section 94(6) of the 1993 Act (Crown leases) which also include provisions imposing obligations on occupiers or owners to pay estate charges. Any person who is liable to pay an estate charge under such a scheme may apply to an LVT pursuant to section 159(3) for an order varying the scheme on the ground that the amount of estate charge³⁵ payable, or the formula on which it is calculated, is unreasonable.

Determination of Matters Relating to Estate Charges

- F.68 Under section 159(6) an application may be made to an LVT to determine whether an estate charge is payable by a person and if so, (a) the person by and to whom it is payable, (b) the amount payable, (c) the date it is payable and (d) the manner in which it is payable.³⁶ Section 159(8) stipulates that the jurisdiction exercised by LVTs under this section is in addition to jurisdiction exercised by County Courts in respect of these matters.

Determination of Forfeiture Breach

- F.69 Under section 146 of the Law of Property Act 1925 a landlord under a long lease can serve a forfeiture notice after it has been established that the tenant breached a covenant or condition of the lease. A landlord can apply under section 168(4) of the 2002 Act to an LVT for a determination on whether the tenant breached a covenant or condition of the lease. If an LVT makes a positive determination the landlord can issue the forfeiture notice.³⁷

³⁵ “Estate Charge” is defined in s 159(1) as an obligation to make a payment pursuant to one of the aforementioned schemes.

³⁶ This mirrors the new jurisdiction exercisable by LVTs in relation to service charges that arise under the 1985 Act. See paras F.20 and F.21 above.

³⁷ The landlord may also issue the forfeiture notice if the tenant admits the breach or if a court or arbitral tribunal determines that a breach occurred: s 168(2)(b) and (c). An application cannot be made under s 168(4) if the matter is referred to or determined an arbitral tribunal or court: s 168(5).

Order for Variation of Lease

- F.70 Schedule 11 makes provision in relation to “administration charges”³⁸ that arise in connection with the lease by a tenant of a dwelling. Any party to a lease of a dwelling may apply, pursuant to paragraph 3, to an LVT for an order varying the lease on the ground that any administration specified in the lease, or the formula on which it is calculated, is unreasonable. LVTs may also make an order pursuant to paragraph 3 directing that a memorandum of any variation be endorsed on such documents as specified by it.

Determination of Liability to Pay Administration Charges

- F.71 Under paragraph 5(1) of Schedule 11 an application can be made to an LVT for a determination on whether an administration charge is payable and if so, (a) by who and to whom it is payable, (b) the amount payable, (c) the date it is payable and (d) the manner in which it is payable. Paragraph 5(3) stipulates that the jurisdiction exercised by LVTs under paragraph 5(1) is in addition to jurisdiction exercised by County Courts in respect of these matters.

PART III TERRITORIAL JURISDICTION

- F.72 Paragraph 1 of Schedule 10 provides that the Secretary of State shall from time to time draw up panels of persons to act as chairmen and other members of RACs for *such area* as the Secretary of State may from time to time determine. Paragraph 2 provides that each panel shall comprise of persons appointed by both the Lord Chancellor and the Secretary of State. The Schedule does not require the Secretary of State to designate the area of operation of RACs (and by implication LVTs) by statutory instrument or order.
- F.73 The website of the Office of the Deputy Prime Minister³⁹ states that there are currently five Rent Assessment Panels⁴⁰ (now termed RPTS tribunals) for England and one for Wales: the Eastern Rent Assessment Panel; the London Rent Assessment Panel; the Midlands Rent Assessment Panel; the Northern Rent Assessment Panel; the Southern Rent Assessment Panel; and the Wales Rent Assessment Panel. Under section 173(2) of the 2002 Act when an RAC constituted in accordance with Schedule 10 exercises a jurisdiction conferred on an LVT it is known as an LVT. Accordingly the London Rent Assessment Panel is known as the London Leasehold Valuation Tribunal when exercising the jurisdiction of an LVT. In conclusion, the territorial jurisdiction of LVTs is a matter determined by the Secretary of State from time to time and at present there are six area divisions for LVTs in England and Wales.

³⁸ Para 1 lists the items that constitute an administration charge.

³⁹ <http://www.housing.odpm.gov.uk/structure/rap>.

⁴⁰ “Rent Assessment Panels” was the common term for RACs constituted under Sched 10 of the 1977 Act. See para F.3.

- F.74 The 1977 Act and the 2002 Act only have effect in England and Wales.⁴¹ LVTs constituted under section 173 of the 2002 Act and Schedule 10 to the 1977 Act therefore do not have jurisdiction in either Scotland or Northern Ireland. Powers have been devolved to the National Assembly for Wales under the Government of Wales Act 1998 and the National Assembly for Wales (Transfer of Functions) Order 1999⁴² (the “1999 Order”). Paragraph 2 and Schedule 1 to the 1999 Order have transferred the powers previously exercised by the Secretary of State under the 1967 Act, the 1977 Act, the 1985 Act, the 1987 Act and the 1993 Act to the National Assembly for Wales. However, paragraph 1(f) stipulates that Schedule 1 does not transfer any functions of the Lord Chancellor. The Lord Chancellor’s power to appoint RAC members under Schedule 10 to the 1977 Act therefore remains with the Lord Chancellor. The National Assembly for Wales also exercises the power conferred on it directly by the 2002 Act.
- F.75 The devolution of powers to the National Assembly for Wales has not affected the substantive jurisdiction of LVTs. All substantive jurisdiction exercised by LVTs is conferred directly by statute and therefore falls outside of the powers transferred to the Assembly. The Assembly does have power (jointly with the Lord Chancellor) to appoint RAC members, to determine the areas in which RAC panels operate and to make subordinate legislation when so empowered.

PART IV

RELATIONSHIP WITH COUNTY COURTS AND FURTHER APPEALS

LVTs AND COUNTY COURTS

Introduction

- F.76 There are no principles of general application laid down in statute that regulate the jurisdictional relationship between LVTs and County Courts. In fact, the position varies depending on the enactment under which jurisdiction is being exercised. In assessing the relationship one must therefore review the position under each individual enactment. As a general matter of statutory construction, one can work on the assumption that LVTs only exercise jurisdiction where it is expressly conferred on them, and Part III, above, has listed all such grounds. Unlike the superior courts there is no basis for jurisdiction inhering in LVTs unless explicitly provided. Analytically there are three possible scenarios relevant to the relationship: (a) LVTs exercise exclusive jurisdiction; (b) LVTs and County Courts share jurisdiction; and (c) County Courts exercise exclusive jurisdiction. For the purpose of understanding the overlapping of jurisdiction between LVTs and County Courts only (a) and (b) need be considered in detail. Furthermore because Part III has listed all grounds of jurisdiction relevant to both categories (a) and (b), this section will focus on the jurisdiction that falls within category (b). It can be assumed that all other jurisdiction exercised by LVTs is exclusive and therefore falls into category (a).

⁴¹ 1977 Act, s 156(3) and 2002 Act, s 182.

⁴² SI 1999 No 672.

The 1967 Act

- F.77 The jurisdiction of LVTs runs in tandem with, but does not overlap the jurisdiction of County Courts. Section 21 lists the jurisdiction exercised by LVTs and section 20 deals with the jurisdiction of country courts under the 1967 Act. Section 20(1) lays down the general proposition that jurisdiction conferred on the court shall be exercised by the County Court. Section 20(2) lists four specific matters over which County Courts have jurisdiction, all substantive matters of entitlement. The role of LVTs on the other hand is to assess sums that fall to be calculated or other incidental matters that arise by virtue of a legal entitlement. For instance, under section 20(2)(a) County Courts have jurisdiction to decide whether a tenant is entitled to acquire the freehold title, whereas the relevant LVT has jurisdiction to determine the sum payable for the freehold title.⁴³ In other words, whenever there is a dispute as to a legal entitlement under the 1967 Act, the County Court is the appropriate forum to have the matter resolved and whenever legal entitlement is not in doubt, but agreement on incidental matters is disputed the LVT is the appropriate forum.
- F.78 While there is no overlap in jurisdiction exercised by LVTs and County Courts under the 1967 Act, a matter that falls within the jurisdiction of LVTs may potentially arise in proceedings before the country court. Paragraph 3 of Schedule 12 to the 2002 Act makes provision for transferring proceedings that fall to be determined by LVTs when they are raised in proceedings before the County Court. In such a situation the court will transfer the relevant matter to the LVT and either dispose of the remaining matters or adjourn them pending the determination of the relevant question by the LVT. The procedure regulations made under Schedule 12 will provide more detail on the transfer of proceedings from County Courts to LVTs.

The 1985 Act

- F.79 The position under the 1985 Act regarding the jurisdictional relationship between LVTs and the County Court is uneven. Some jurisdiction is exclusive to LVTs and other jurisdiction potentially overlaps. The jurisdiction exercised by LVTs under section 20ZA, section 20C(2) and section 21A(4) is exclusive to LVTs, whereas the jurisdiction exercised by LVTs under paragraph 8 of the Schedule is shared with the County Court. Paragraph 8 of the Schedule provides that an application thereunder can be made to either a County Court or an LVT. The situation regarding the exercise of jurisdiction by LVTs under section 27A(1) and section 27A(3) is more complicated. Section 27A(7) states that the jurisdiction conferred on an LVT under that section is in addition to any jurisdiction of a court⁴⁴ in respect of the matter. This section simply states that LVTs' jurisdiction is in addition to jurisdiction exercised by a court; it does not specifically confer jurisdiction on a court. Clearly it is possible for LVTs and County Courts to share jurisdiction in respect of matters arising under section 27A, however there is no guidance on when a matter thereunder would fall within the country court's jurisdiction. The purpose of section 27A seems to be to make sure that County Courts (and small claims courts) can continue to exercise jurisdiction in relation to

⁴³ See para F.10, above.

⁴⁴ Reference to "court" is not defined.

the collection of unpaid service charge as debts. When exercising such jurisdiction they may be required to consider the matters referred to in section 27A(1) and (3). Section 27A(7) ensures that they can continue to exercise that jurisdiction, though it does not confer jurisdiction on County Courts to exercise section 27A(1) and (3) jurisdiction as distinct causes of action.

The 1987 Act

- F.80 The jurisdiction of LVTs under the 1987 Act runs parallel to, but potentially overlaps, the jurisdiction of country courts. Section 52 deals with the jurisdictional relationship between LVTs and County Courts. Under section 52(1) County Courts are granted jurisdiction to hear and determine any matter arising under Parts 1 and 3, section 42 and sections 46 to 48 that is not within the jurisdiction of LVTs by virtue of section 13(1) and 31(1). Sections 13(1) and 31(1) are the only provisions in Parts 1 and 3 that confer jurisdiction on LVTs; therefore there is no *prima facie* sharing of jurisdiction. There is no issue of shared jurisdiction in relation to section 42 and sections 46 to 48. In respect of jurisdiction exercised by LVTs under Part 2 (i.e. appointment of managers and receivers), section 21(6) states that a tenant cannot make an application to court when the option is available to him to apply under section 24 for the appointment of a manager. In the recent case *Stylli v Hamberton Properties Inc*⁴⁵ the High Court held that the effect of section 21(6) was to vest exclusive jurisdiction in LVTs to consider applications for the appointment of managers and receivers under section 24. It also held that the effect of the vesting of exclusive jurisdiction was to preclude applications for the appointment of a receiver by the High Court under section 37 of the Supreme Court Act 1981. The jurisdiction exercised by LVTs under Part 4 (sections 38, 39 and 40) is also exclusive to LVTs having been transferred to them from County Courts by virtue of section 181 of the 2002 Act. In straightforward cases the jurisdiction of LVTs and County Courts under the 1987 Act do not overlap.
- F.81 However, the potential exists for jurisdiction to be shared by virtue of section 52(3). It provides that where a County Court hears a proceeding in exercise of the jurisdiction conferred on it, it may also assume jurisdiction to hear matters that are joined with those proceedings but which it would not otherwise have jurisdiction to hear. County courts may therefore in such circumstances exercise the jurisdiction conferred on LVTs that would otherwise be exclusive to LVTs.

The 1993 Act

- F.82 The jurisdiction of LVTs under the 1993 Act runs parallel to, but potentially overlaps, the jurisdiction of country courts. Under section 90(1) County Courts are granted the jurisdiction conferred on the “court” in Part I. The jurisdiction of the court and LVTs is clearly discernible in each provision, therefore there is no *prima facie* sharing of jurisdiction with LVTs. Section 90(2) also grants jurisdiction to the County Court to hear any proceedings arising by virtue of “any provision of Chapter I and II” which is not within its jurisdiction under section 90(1) or the jurisdiction of LVTs under section 91. Again this provision does not give rise to an overlap of jurisdiction with LVTs.

⁴⁵ [2002] EWHC 394 (Ch).

F.83 However, the potential exists for jurisdiction to be shared by virtue of section 90(4). It provides that where a County Court hears proceedings in exercise of the jurisdiction conferred on it by section 90(1) or (2), it may also assume jurisdiction to hear matters that are joined with those proceedings but over which it would not otherwise have jurisdiction. County courts may therefore exercise the jurisdiction conferred on LVTs under the 1993 Act in such proceedings. Lastly whenever the High Court exercises jurisdiction conferred on it by the 1993 Act it may also assume, by virtue of section 90(4), the jurisdiction of County Courts under sections 90(1) and (2). This does not give rise to an overlap of jurisdiction between LVTs and the High Court.

The 2002 Act

F.84 Under the 2002 Act some jurisdiction is exclusive to LVTs and other jurisdiction may potentially be shared with County Courts. Exclusive jurisdiction is conferred on LVTs in respect of the jurisdiction exercised by it under sections 84(3), 85(2), 88(4), 94(3), 99(1), sections 159(3), 168(4) and paragraph 3 of Schedule 11. The position regarding jurisdiction that is exercised under 159(6) and paragraph 5(1) of Schedule 11 is not as clear-cut. Section 159(8) and paragraph 5(3) respectively provide that the jurisdiction conferred on LVTs in respect of matters arising under those two provisions is “in addition to any jurisdiction of a court in respect of the matter”. This section simply states that LVTs’ jurisdiction is in addition to jurisdiction exercised by a court; it does not confer jurisdiction on a court. Clearly it is possible for LVTs and County Courts⁴⁶ to share jurisdiction in respect of matters arising under these provisions, but there is no guidance on when a matter thereunder would fall within the county court’s jurisdiction. The purpose of section 159(8) and paragraph 5(3) seems to be to make sure that County Courts (and small claims courts) can exercise jurisdiction in relation to the collection of unpaid estate and administration charges as debts. When exercising such jurisdiction they may be required to consider the matters referred to in section 159(6) and paragraph 5(1). Section 159(8) and paragraph 5(3) ensure that they can exercise that jurisdiction, though they does not confer jurisdiction on County Courts to exercise section 159(6) and paragraph 5(1) as distinct causes of action.

FURTHER APPEALS

F.85 The appeal route out of LVTs has been greatly simplified by section 175 of the 2002 Act. Section 175(1) simply states that a party to proceedings before an LVT may appeal to the Lands Tribunal from a decision of the LVT. All fifty-seven separate areas of jurisdiction identified in the jurisdiction table may therefore be appealed to the Lands Tribunal, pursuant to section 175(1) irrespective of the enactment under which they arise.

F.86 An appeal can only be made to the Lands Tribunal with the permission of the LVT or the Lands Tribunal. Furthermore the Lands Tribunal has exclusive jurisdiction to hear appeals from decisions of LVTs. Sections 175(8) and (9) close off the option of making an appeal or stating a case to the High Court that is provided under section 11 of the Tribunals and Enquiries Act 1992.

⁴⁶ “Court” is not defined for the purpose of this section under the 2002 Act.

APPENDIX G

RENT ASSESSMENT COMMITTEES

PART I

LEGISLATIVE BACKGROUND

- G.1 Rent Assessment Committees (RACs)¹ determine a number of matters relating to regulated and assured tenancies in the private rented sector. They are currently constituted pursuant to section 65 and Schedule 10 to the Rent Act 1977 (the “1977 Act”). In the generic sense, “Rent Assessment Committees” consist of panels of persons selected by the Secretary of State² and Lord Chancellor from time to time to carry out particular functions. There are two sub-categories of “Rent Assessment Committees”, namely Leasehold Valuation Tribunals³ and Rent Tribunals.⁴ These both exercise particular functions designated to them under statute. “Rent Assessment Committees” also exercise *in specie* jurisdiction *qua* RACs. That is, certain statutory functions are specifically conferred on RACs. This review covers the jurisdiction of this category of “Rent Assessment Committees”. The common collective term for Leasehold Valuation Tribunals, Rent Tribunals and *in specie* RACs is “RPTS Tribunals”.⁵ However, the true statutory designatum is “Rent Assessment Committees”.⁶
- G.2 RACs differ from Leasehold Valuation Tribunals and Rent Tribunals in that they are both a first instance and an appellate tribunal. In some cases they hear disputes that are referred directly by the landlord or tenant and in other cases they hear appeals from the decision of a rent officer. The Housing Act 1988 (the “1988 Act”) terminated the jurisdiction of rent officers to issue certificates of fair rent in respect of lettings made after the 15 January 1989. The appellate jurisdiction of RACs in respect of such determinations is therefore in decline. The procedure of hearings before *in specie* RACs are held in accordance with the provisions of the Rent Assessment Committees (England and Wales) Regulations 1971.⁷

¹ The acronym “RACs” is used to refer to *in specie* RACs, whereas “Rent Assessment Committees” (in parenthesis) is used in the generic sense. However, we shall employ the updated terminology of “RPTS tribunals” as the collective term for all three tribunals.

² The National Assembly for Wales in respect of Rent Assessment Committees in existence in Wales.

³ Commonhold and Leasehold Reform Act 2002, s 173. See review of Leasehold Valuation Tribunals.

⁴ Housing Act 1980, s 72. See review of Rent Tribunals.

⁵ See para F.3 of the Leasehold Valuation Tribunal.

⁶ “Rent Assessment Committee” is the phrase used in Sched 10 of the 1977 Act (the common establishment provision of the three tribunals).

⁷ SI 1971 No 1065.

PART II

SUBSTANTIVE JURISDICTION

- G.3 RACs exercise jurisdiction under the 1977 Act, the 1988 Act, the Local Government and Housing Act 1989 (the “1989 Act”) and the Landlord and Tenant Act 1954 (the “1954 Act”) (as applied by the 1989 Act).⁸ The jurisdictional review hereunder is concerned solely with the instances where RACs are empowered to adjudicate matters that arise directly from a disagreement between landlords and tenants or on appeal from a decision of a rent officer. It should, however, be noted that RACs also exercise an administrative function under section 29 of the Landlord and Tenant Act 1985 (the “1985 Act”). It provides that a single member of the local RAC can certify an association of qualifying tenants to be a “recognised tenant’s association” for the purposes of certain matters relating to service charges under the 1985 Act. Any member of the local RAC may also cancel a certificate so issued.⁹
- G.4 The basis of jurisdiction exercised by RACs under the 1954 Act is complex. Paragraph 19 of Schedule 10 to the 1989 Act applies certain provisions of the 1954 Act for the purposes of Schedule 10. In particular paragraph 19(3) applies, with modifications, Schedule 5 to the 1954 Act. Schedule 5 to the 1954 Act makes detailed provision for where the intermediate landlord of a tenancy is not the freeholder. Paragraph 19(3)(d) provides that any reference to the “court”¹⁰ in Schedule 5 to the 1954 Act includes a reference to a RAC. The court has adjudicative jurisdiction under four provisions of Schedule 5: paragraph 4(2); paragraph 5; paragraph 7(2); and paragraph 11(4). Paragraph 19(3)(e) of Schedule 10 disapplies paragraphs 7 and 11 of Schedule 5 for the purposes of the Schedule 10 to the 1989 Act. Therefore, RACs only share jurisdiction with the court in respect of matters within the court’s jurisdiction under paragraphs 4(2) and 5 of Schedule 5. The overall effect of paragraph 19 of Schedule 10 is to apply the provisions of Schedule 5 regarding intermediary landlords to assured tenancies that arise under the 1989 Act.
- G.5 There are a total of 8 distinct areas of jurisdiction exercised by RACs. RACs were granted jurisdiction under section 14B(1) of the 1988 Act to determine the new rent set by a landlord in a notice served under section 14A(1) as a result of the tenant’s liability to pay council tax accruing. Section 14A(4) provided that no such notice could be served after the 31 March 1994. The section 14B(1) jurisdiction is therefore effectively defunct and even though it remains on the statute books it is not treated as being within the jurisdiction of RACs for the purpose of this review. The table below summarises the jurisdictional position.

⁸ See para G.7 below.

⁹ 1985 Act, s 29(3).

¹⁰ Under 1954 Act, s 63(1) reference to “court” is the “County Court”.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal	County Court*
1977 Act	Paragraph 9 of Schedule 11	Variation/Confirmation of Fair Rent Assessment	High Court	A
1988 Act	Section 6(4)	Terms of Statutory Periodic Tenancy	High Court	B
1988 Act	Section 14(1)	Rent under Assured Periodic Tenancy	High Court	B
1988 Act	Section 23	Rent Under Assured Shorthold Tenancy	High Court	B
1989 Act	Paragraph 6(3) of Schedule 10	Interim Rent under Assured Tenancy	High Court	A
1989 Act	Paragraphs 11(3) and (5) of Schedule 10	Terms and Rent under Assured Tenancy	High Court	A
1954 Act	Paragraph 4(2)	Compensation for Failure to Obtain Consent	High Court	C
1954 Act	Paragraph 5	Order Deeming Other Landlords' Consent	High Court	C

*** Column 5 entitled “County Court” summarises the jurisdictional relationship between RACs and the County Courts.**

A = RACs exercise exclusive jurisdiction

B = RACs exercise exclusive jurisdiction except where their jurisdiction is joined to proceedings heard before County Courts.

C= RACs and County Courts share jurisdiction.

DETERMINATION OF FAIR RENT

G.6 The rent officer keeps a register of rents for each registration area. He can register fair rents for most private sector residential accommodation that was let before 15

January 1989. A landlord or tenant can apply under section 67 or 67A of the 1977 Act to a rent officer to register a rent of a dwelling house. The application procedure of the 1977 Act extends to statutory tenancies that were created pursuant to the Rent (Agriculture) Act 1976.¹¹ Schedule 11 to the 1977 Act lays down the procedure to be followed where an application for the registration of a rent has been made to a rent officer. The rent officer, having consulted with the parties, determines or confirms the rent already in the register.¹² The landlord or tenant is entitled to lodge an objection to the rent officer's decision with the relevant RAC within 28 days. The RAC has jurisdiction under paragraph 9 of Schedule 11 to confirm or vary the determination of the rent officer. Under Paragraph 9B the RAC's determination as to rent must not exceed the maximum rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999.¹³

DETERMINATION OF TERMS OF STATUTORY PERIODIC TENANCY

- G.7 On the termination of the former tenancy the landlord or tenant may, pursuant to section 6(2) of the 1988 Act, serve on the other a notice proposing terms of the statutory periodic tenancy different to the implied terms.¹⁴ The statutory periodic tenancy is the periodic tenancy that arises by virtue of section 5 on the termination of an assured tenancy.¹⁵ The landlord or tenant, as the case may be, may refer the notice to the relevant RAC. The RAC has jurisdiction under section 6(4) to determine the terms proposed in the notice as they might reasonably be found in an assured periodic tenancy of the dwelling concerned.

DETERMINATION OF RENT UNDER ASSURED PERIODIC TENANCY

- G.8 An "assured periodic tenancy" is a statutory periodic tenancy or any other periodic tenancy that is an assured tenancy.¹⁶ The landlord of an assured periodic tenancy may serve a notice on the tenant proposing a new rent to take effect at the beginning of the new tenancy. A tenant may refer that notice to the relevant RAC pursuant to section 13(4)(a) for its consideration. RACs are granted jurisdiction under section 14(1) of the 1988 Act to determine the rent such that a willing landlord under an assured tenancy, subject to certain conditions might reasonably let it in the open market.

¹¹ Rent (Agriculture) Act 1976, s 13 applies ss 67–71 and Part 1 of Sched 11 to statutory tenancies created under it. The jurisdiction of RACs under Sched 11 therefore extends to such tenancies.

¹² 1977 Act, Sched 11, paras 3A and 5.

¹³ SI 1999 No 6.

¹⁴ The "implied terms" means the terms of the tenancy that have effect by virtue of s 5(3)(e) of the 1988 Act, s 6(1)(b).

¹⁵ An "assured tenancy" is construed in accordance with s 1 of the 1988 Act.

¹⁶ Section 13(1).

DETERMINATION OF RENT UNDER ASSURED SHORTHOLD TENANCY

- G.9 Under section 23 of the 1988 Act a tenant may apply to the relevant RAC to determine the rent to be paid under an assured shorthold tenancy,¹⁷ which in its opinion the landlord might reasonably expect to obtain.

DETERMINATION OF INTERIM RENT UNDER AN ASSURED TENANCY

- G.10 Section 186 and Schedule 10 to the 1989 Act provide for the establishment of assured tenancies on the termination of long residential tenancies that are held at low rents. A landlord can terminate a long residential tenancy by serving a notice in accordance with paragraph 4 of Schedule 10. Having served that notice he serves a further notice under paragraph 6 of Schedule 10 proposing an interim monthly rent for the new assured tenancy. The tenant may refer the notice within two months of its service to the relevant RAC. The RAC has jurisdiction under paragraph 6(3) to determine the rent as it might reasonably be expected to be let on the open market by a willing landlord.

DETERMINATION OF TERMS AND RENT UNDER AN ASSURED TENANCY

- G.11 Where a landlord proposes an assured tenancy in accordance with paragraph 4 of Schedule 10 the tenant may respond by serving a notice under paragraph 10 of Schedule 10 proposing different terms and rent under the proposed assured tenancy. Within two months of the service of the tenant's notice the landlord may refer the matter to the relevant RAC for its consideration. The RAC must first decide whether there is a dispute between the parties over the terms and rent of the proposed assured tenancy. The RAC has jurisdiction under paragraph 11(3) to determine the terms as they might reasonably be expected to be found in an assured monthly periodic tenancy of the dwelling house. The RAC has jurisdiction under paragraph 11(5) to determine the rent as it might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy.

DETERMINATION OF COMPENSATION FOR FAILURE TO OBTAIN CONSENT

- G.12 Paragraph 4 of the 1954 Act (as applied by paragraph 19 of Schedule 10) provides that where a notice is given by a component landlord under paragraph 4(1) of Schedule 10¹⁸ without the written consent of every other landlord, any other such landlord is entitled to be compensated by the competent landlord for any loss that arises in consequence of the giving of the notice. The RAC has jurisdiction, under paragraph 4(2), in default of agreement between the parties, to determine any amount of compensation payable.
- G.13 The procedure to be followed at RACs in relation to applications made pursuant to Paragraph 4(2) of Schedule 5 to the 1954 Act is unclear. The Rent Assessment Committees (England and Wales) Regulations 1971¹⁹ do not cover applications that

¹⁷ Section 19A and s 20 respectively define post-Housing Act 1996 "assured shorthold tenancies" and pre-Housing Act 1996 "assured shorthold tenancies".

¹⁸ See Para 19(3)(d).

¹⁹ SI 1971 No 1065.

are made under paragraph 4(2) of Schedule 5.²⁰ The omission of such applications from the procedure regulations would seem to be an anomaly.

ORDER DEEMING OTHER LANDLORD'S CONSENT

- G.14 The competent landlord may serve a notice under Paragraph 5 of the 1954 Act (as applied by paragraph 19 of Schedule 10) requiring that any other landlord give his consent to the granting of the assured tenancy. If no consent is given or if it is given on unreasonable terms, the RAC has jurisdiction under paragraph 5 to order, as it thinks fit, that the other landlords be deemed to have consented to the grant of the assured tenancy.

PART III TERRITORIAL JURISDICTION

- G.15 The territorial jurisdiction of RACs is identical to that of Leasehold Valuation Tribunals (as Leasehold Valuation Tribunals are a category of "Rent Assessment Committee").²¹ Comments regarding the transfer of jurisdiction to the National Assembly for Wales apply equally. The substantive jurisdiction of RACs is not affected by the devolution of power to Wales because all jurisdiction exercised by RACs is directly referable to primary legislation.

PART IV RELATIONSHIP WITH COUNTY COURTS AND FURTHER APPEALS

RACs AND THE COUNTY COURTS

- G.16 The relationship between RACs and the County Courts varies according to the enactment under which RACs exercises jurisdiction. To assess what the relationship is, one must therefore examine separately the situation under the 1977 Act, the 1988 Act, the 1989 Act and the 1954 Act (as applied by the 1989 Act).

The 1977 Act

- G.17 The jurisdiction conferred on RACs by paragraph 9 of Schedule 11 to the 1977 Act is exclusive to RACs. As noted in paragraph G.3 above, RACs have jurisdiction to vary the fair rent assessment of a rent officer. Section 141 lists the jurisdiction exercisable by County Courts under the 1977 Act. In particular section 141(1)(b) states that County Courts have jurisdiction to determine any question "as to the rent limit". One possible interpretation of this provision is that County Courts also have jurisdiction to vary the fair rent determination of a rent officer. The Court of Appeal in *Tingey v Sutton*²² ruled on this very point. It held²³

²⁰ The definition of "reference" in Regs 2(2) and 2A does not include references made pursuant to para 4(2) of Sched 5. Reg 2A does include references made pursuant to para 5 of Sched 5 of the 1954 Act (as applied by the 1989 Act para 19 of Sched 10).

²¹ See part III of Annex F.

²² [1984] 3 All ER 561.

that section 141(b) permitted the County Court to determine the maximum rent chargeable in respect of a dwelling that falls within the 1977 Act, but that the County Court has no jurisdiction (on appeal or concurrently) to fix the registered rent or alter it in any way. RACs therefore exercise exclusive jurisdiction under paragraph 9 of Schedule 11 to the 1977 Act.

The 1988 Act

- G.18 RACs generally exercise exclusive jurisdiction under the 1988 Act. However, their jurisdiction may potentially be joined in proceedings before the County Court. The relationship between RACs and the County Court under Part I of the 1988 Act is determined by section 40 of that Act. Section 40(1) provides that County Courts have jurisdiction to determine any question other than a question falling within the jurisdiction of RACs. Section 40(3) qualifies section 40(1) by providing that whenever the County Court exercises jurisdiction conferred on it by section 40(1) that it may also hear any other joined proceedings notwithstanding that those proceedings would otherwise be outside of its jurisdiction. County courts may therefore assume the jurisdiction of RACs when hearing a matter that is within its jurisdiction. Otherwise, RACs exercise exclusive jurisdiction under the 1988 Act.

The 1989 Act

- G.19 It would appear that RACs have exclusive jurisdiction to determine matters within their jurisdiction under Schedule 10 to the 1989 Act. Paragraphs 6(3) and 11(3) of Schedule 11 refer only to RACs and there is no other provision in the 1989 Act to imply that County Courts have any role to play in relation to matters falling to be determined under those paragraphs. This review therefore takes the position that RACs exercise exclusive jurisdiction under the 1989 Act.

The 1954 Act (as conferred by the 1989 Act)

- G.20 The jurisdiction exercised by RACs under the 1954 Act (as conferred by the 1989 Act) runs concurrent to the jurisdiction of the County Courts in respect of the same matters. As noted in paragraphs 2.10–2.12 above, paragraph 19(3) of the 1989 Act applied certain parts of Schedule 5 to the 1954 Act for the purposes of Schedule 10 to the 1989 Act. Section 19(3)(d) provides that any reference to the court includes a reference to a RAC. RACs therefore share jurisdiction with the court to hear matters that are referred to it under paragraphs 4(2) and 5 of the 1954 Act, as applied to Schedule 10 to the 1989 Act. Section 63(1) of the 1954 Act makes it clear that a reference to “court” in Schedule 5 is a reference to the County Court.

FURTHER APPEALS

- G.21 Any party to proceedings before a RAC who is dissatisfied in point of law with a decision of the RAC may, pursuant to section 11(1) of the Tribunals and Inquiries Act 1992 (the “1992 Act”), either appeal to the High Court or require that the RAC state a case for the opinion of the High Court. Schedule 1 to the 1992 Act

²³ Lord Browne-Wilkinson delivered the decision of the court and relied on *Druid Development Co (Bingley) Limited v Kay* (1982) 44 P & CR 76 in support of his conclusions.

lists all tribunals whose decisions may be appealed to the High Court. Paragraph 37 thereof refers to “Rent Assessment Committees” constituted in accordance with Schedule 10 to the 1977 Act. This includes *in specie* RACs.

- G.22 The appeal route from RACs are the same as from Rent Tribunals but differ from Leasehold Valuation Tribunals whose decisions may be appealed to the Lands Tribunal.

APPENDIX H

RENT TRIBUNALS

PART I

LEGISLATIVE BACKGROUND

- H.1 Rent Tribunals determine a number of matters relating to dwellings that are let under restricted contracts pursuant to the Rent Act 1977 (the “1977 Act”). Rent Tribunals have been in existence for a number of decades, but are currently constituted under section 72 of the Housing Act 1980 (the “1980 Act”). A restricted contract is a contract entered into before 15 January 1989¹ and which falls within section 19 of the 1977 Act.² They are distinct from regulated tenancies³ and cover contracts where the tenant has exclusive occupancy of part of a dwelling, together with a right to the common use of another part of the dwelling. Because no new restricted contracts have been entered into since 15 January 1989 the volume of cases dealt by Rent Tribunals is decreasing on an annual basis.
- H.2 Rent Tribunals were established under section 76 and Schedule 13 to the 1977 Act as *sui generis* tribunals. Section 72 of the 1980 Act abolished Rent Tribunals so established and reconstituted them as Rent Assessment Committees (in the generic sense, now termed RPTS tribunals) under Schedule 10 to the 1977 Act. When carrying out the functions of the old Rent Tribunals, these Rent Assessment Committees are still known as “Rent Tribunals”.⁴ Rent Tribunals, like Leasehold Valuation Tribunals, are therefore a category of rent assessment committee. The procedure of hearings before Rent Tribunals is different to that of Leasehold Valuation Tribunals and is provided for specifically under the Rent Assessment Committees (Rent Tribunal) Regulations 1980.⁵

PART II

SUBSTANTIVE JURISDICTION

- H.3 The jurisdiction exercised by Rent Tribunals is, with one exception, referable to the 1977 Act. The jurisdictional review hereunder is concerned with the instances where Rent Tribunals are empowered to *adjudicate* matters between lessors and lessees that are party to a restricted contract. It should, however, be pointed out that Rent Tribunals also exercise an important administrative function under the

¹ Section 36(1) of the Housing Act 1988 states that a restricted contract for the purposes of the 1977 Act cannot be entered into after the commencement of the Act. Section 141(3) determined the date of commencement.

² Section 19 of the 1977 Act was repealed with savings by s 140(2) and Sched 18 of the 1988 Act.

³ Section 19(5)(a) of the 1977 Act.

⁴ Section 72(3) of the 1980 Act.

⁵ SI 1980 No 1700.

1977 Act. Section 79 obliges the president of every “rent assessment panel”⁶ (that is, a Rent Tribunal for the purposes of the 1977 Act) to prepare and maintain a register of the particulars of restricted contracts, the specification of the dwellings to which they relate and the rents as determined by the Rent Tribunal, for the area of the “Rent Assessment Panel” (now RPTS tribunals). This statutory obligation is distinct from the adjudicative jurisdictions listed below. There are three principal legal effects arising from the making an entry into the section 79 register. First, it is an offence to charge a rent in excess of what is entered in the register.⁷ Secondly it is an offence to require the payment of a premium on the condition of a grant, renewal, continuance or assignment of rights under a restricted contract.⁸ Thirdly, where an authorised officer certifies a copy of an entry in the registry it is receivable as evidence in any court and in any proceedings.⁹

H.4 There is a total of seven distinct areas of jurisdiction exercised by Rent Tribunals. Rent Tribunals also exercised jurisdiction under section 80A¹⁰ of the 1977 Act in respect of referrals for raising rents as a result of the introduction of council tax under the Local Government Finance Act 1992. Any referral by a lessor or lessee under that provision had to be made by no later than 31 March 1994.¹¹ The jurisdiction of Rent Tribunals under section 80A is therefore effectively defunct, and despite it remaining on the statute books, it will not be treated as an area of jurisdiction in this review. The table below summarises the jurisdictional position.

Jurisdiction Table

Act	Legislative Provision	Matter	Further Appeal	County Court*
1977 Act	Section 78	Determination of Rent	High Court	A
1977 Act	Section 80(1)	Reconsideration of Rent	High Court	A
1977 Act	Section 81A	Cancellation of Entry	High Court	A
1977 Act	Section 103(2)(a)	Reduction in Notice Period (1)	High Court	A

⁶ Section 152 and Sched 25 of the 1980 Act inserted the term “rent assessment panel” into s 79.

⁷ Section 81 of the 1977 Act.

⁸ Section 122 of the 1977 Act.

⁹ Section 79(5) of the 1977 Act.

¹⁰ Inserted by Art 2(2) and Sched 2 of the Local Government Finance (Housing) (Consequential Amendments) Order 1993, SI 1993 No 651.

¹¹ Section 80A(4) of the 1977 Act.

1977 Act	Section 104(3)	Extension of Notice Period	High Court	A
1977 Act	Section 106(2)	Reduction in Notice Period (2)	High Court	A
1985 Act	Section 389(1)(b)	Compensation for Furniture Possession	High Court	A

*** A = Rent Tribunal exercises exclusive jurisdiction.**

DETERMINATION OF RENT UNDER RESTRICTED CONTRACT

- H.5 Either the lessor or lessee under a restricted contract may refer the contract to a Rent Tribunal pursuant to section 77(1) of the 1977 Act. Section 78 confers jurisdiction on Rent Tribunals to consider the rents payable under restricted contracts that are referred to it. In particular Rent Tribunals are empowered under section 78(2), having afforded the parties an opportunity to be heard, to (a) approve the rent payable under the contract, (b) reduce or increase rent as it thinks reasonable, or (c) dismiss the reference. Section 78(3) prevents the Rent Tribunal reducing the rent below the level that would be recoverable from a tenant under a regulated tenancy.

RECONSIDERATION OF RENT UNDER RESTRICTED CONTRACT

- H.6 Either the lessor or lessee under a restricted contract that is entered in the section 79 register (for instance, its rent has already been considered by a Rent Tribunal), may refer the case, pursuant to section 80(1), to a Rent Tribunal for reconsideration of the rent so entered. Unless the application is made jointly by the lessor and lessee, a Rent Tribunal is not generally required to entertain an application that is made within two years of the last consideration of rent by a Rent Tribunal. It may consider references by one party made within two years if the rent is no longer reasonable because of a change in (a) the condition of the dwelling, (b) the furniture or services provided, (c) the terms of the contract, or (d) any other consideration that was taken into account when the rent was last considered.¹²

CANCELLATION OF ENTRY

- H.7 Rent Tribunals have jurisdiction under section 81A of the 1977 Act, on application by a party, to cancel the entry of a rent payable in the section 79 registry where the dwelling ceases to be the subject of a restricted contract. When exercising the jurisdiction conferred by section 81A, the chairman of the Rent Tribunal must sit alone.¹³

¹² 1977 Act, s 80(2).

¹³ Para 6A of Sched 10 of the 1977 Act.

REDUCTION IN NOTICE PERIOD OF NOTICE TO QUIT (1)

- H.8 Section 103(1) holds that, if a restricted contract has been referred to a Rent Tribunal under sections 77 or 80 and a notice to quit the dwelling is served on the lessee before the Rent Tribunal gives its decision or within six months thereafter, the notice will not take effect until the expiry of the six months period.¹⁴ Rent Tribunals have jurisdiction under section 103(2)(a) to direct that a shorter period be substituted for the six months period.

EXTENSION OF NOTICE PERIOD OF NOTICE TO QUIT

- H.9 The lessee of a dwelling under a restricted contract may apply to a Rent Tribunal, pursuant to section 104(1), for an extension of the notice period to quit, where the restricted contract has been referred to a Rent Tribunal under sections 77 or 80 and the notice period under the contract or section 103 has not expired. Section 104(3) confers jurisdiction on Rent Tribunals to direct that an extension of up to six months on the notice period be granted.¹⁵

REDUCTION IN NOTICE PERIOD FOR NOTICE TO QUIT (2)

- H.10 Where the notice period of a notice to quit has been determined or extended under sections 103 or 104, the lessor can apply to a Rent Tribunal for a reduction in that period pursuant to section 106(2). Section 106(2) confers jurisdiction on Rent Tribunals to direct a reduction in the notice period if the lessee has not complied with the terms of the contract, has been a nuisance or has deteriorated the condition of the dwelling or the furniture contained therein.

DETERMINATION OF COMPENSATION FOR POSSESSION OF FURNITURE

- H.11 Local authorities have power under section 379 of the Housing Act 1985 (the "1985 Act") to make a control order in respect of a multiple occupation house where the living conditions of the house are a risk to the safety, welfare or health of persons living in the house. Section 383 also permits the local authority to take control of furniture in the house that the residents have a right to use in consideration of periodical payments to the dispossessed proprietor. A proprietor who is dispossessed because of a control order is entitled to be paid compensation in accordance with section 389 and Schedule 13 to the 1985 Act. In particular he is entitled to be compensated in respect of the period during which the local authority took possession of furniture pursuant to section 383. If the parties cannot agree on the amount of compensation in respect of the furniture the relevant Rent Tribunal has jurisdiction under section 389(1)(b) to determine the matter.
- H.12 The validity of jurisdiction exercised by Rent Tribunals under section 389(1) is circumspect. It is derived from section 81(3) of the Housing Act 1964 (as amended). Section 81(3) conferred a similar jurisdiction on Rent Tribunals

¹⁴ Section 103 does not apply where a notice to quit is served for the purpose of the owner-occupier reclaiming full occupancy of the dwelling for himself or a family member. See s 105.

¹⁵ Section 104 does not apply to s 105 notices (see *ibid.*) or where a direction has been given under s 106(2).

constituted under section 76 of the 1977 Act.¹⁶ When Rent Tribunals were reconstituted by virtue of section 72 of the 1980 Act, the section 81(3) jurisdiction would have automatically transferred to the new Rent Tribunals. Section 72 of the 1980 Act states that the functions exercised by Rent Tribunals under the 1977 Act are conferred on rent assessment committees, which when constituted to carry out functions so conferred shall be known as Rent Tribunals. Section 81(3) was repealed by Schedule 1 to the Housing (Consequential Provisions) Act 1985 and the jurisdiction of Rent Tribunals thereunder would have then ceased.

- H.13 The manner in which jurisdiction is “re-conferred” on Rent Tribunals by section 389 would seem not to conform to the establishment provisions of section 72. Section 72 only transferred functions that were exercised by old Rent Tribunals under the 1977 Act (which would have included section 81(3) jurisdiction). Furthermore section 72(3) states that “A rent assessment committee shall, when constituted to carry out functions so conferred, be known as a rent tribunal”. The words “so conferred” imply that only when exercising functions transferred under the 1977 Act, will a rent assessment committee be known as a “rent tribunal”. Clearly the functions exercisable under section 389 of the 1985 Act are not conferred by the 1977 Act. To have given effect to the section 389 jurisdiction the 1985 Act would need to have specifically designated Rent Tribunals as constituted under section 72 of the 1980 Act and Schedule 10 to the 1977 Act as being responsible for exercising jurisdiction conferred on Rent Tribunals. There is no such provision in the 1985 Act, therefore there is reason to doubt the validity of the jurisdiction purportedly conferred on Rent Tribunals by section 389 of the 1985 Act.

PART III TERRITORIAL JURISDICTION

- H.14 Rent Tribunals are a category of rent assessment committee, therefore the nature and extent of their territorial composition is identical to Leasehold Valuation Tribunals.¹⁷ Comments regarding the transfer of jurisdiction to the National Assembly for Wales apply equally, i.e. the substantive jurisdiction of Rent Tribunals is not affected by the devolution of powers to Wales because all jurisdiction exercised by Rent Tribunals is directly referable to primary legislation. The name of individual Rent Tribunals is determined by the geographical area of RPTS Tribunals, for example the London Rent Tribunal.

¹⁶ Reference to the 1977 Act was inserted by para 36 of Sched 23 to the 1977 Act in place of Rent Tribunals constituted under s 69 of the Rent Act 1968. The original s 81(3) referred to tribunals constituted under s 1 of the Furnished Houses (Rent Control) Act 1946.

¹⁷ See Part III of Annex F.

PART IV

RELATIONSHIP WITH COUNTY COURTS AND FURTHER APPEALS

RENT TRIBUNALS AND THE COUNTY COURTS

- H.15 There is a close relationship between Rent Tribunals and the County Courts. The jurisdiction of Rent Tribunals runs in tandem with that of country courts, however there is no sharing *per se* of jurisdiction that is expressly conferred on Rent Tribunals. Three sections of the 1977 Act need to be considered.
- H.16 First, as a preliminary matter, a Rent Tribunal has a duty to determine whether it has jurisdiction to entertain a matter that is submitted to it. It is also entitled to determine a collateral issue on which its jurisdiction depends.¹⁸ However, the County Court provides an alternative forum for determining whether a particular contract is within Rent Tribunals' jurisdiction. Section 141(1)(d) of the 1977 Act specifically confers jurisdiction on County Courts to determine whether Part V (restricted contracts) and sections 103 to 106 apply to a contract. Section 141 only grants power to the County Court to determine whether a Rent Tribunal has jurisdiction; it does not confer jurisdiction on the County Court to determine matters that are within the Rent Tribunal's jurisdiction. Where an application is made pursuant to section 141(d) and the County Court decides that a Rent Tribunal has jurisdiction, it refers the matter to the Rent Tribunal for its deliberation.
- H.17 Secondly, one needs to consider the jurisdiction of the County Court when a restricted contract is referred to a Rent Tribunal and the contract relates to a dwelling consisting or comprising part only of a hereditament and no apportionment of the rateable value has been made. Section 25 of the 1977 Act grants exclusive jurisdiction to the County Court to determine matters relating to the apportionment of rateable values. Section 82 provides that where a contract is referred to the Rent Tribunal and no apportionment has been made the lessor can require that the apportionment be made and bring proceedings within two weeks to the country court for the making of the apportionment. If the lessor does not refer the matter to the County Court, the Rent Tribunal can deal with the reference if it appears to it that had the apportionment been made, it would have had jurisdiction. Section 82 does not grant jurisdiction to the Rent Tribunal to apportion rateable values, but rather enables it to proceed as if no apportionment of rateable values had been made, though it must defer to the country court when required by the lessor.
- H.18 Thirdly, section 106(4) confers a similar jurisdiction on County Courts to that exercised by Rent Tribunals under section 106(2).¹⁹ In a case where (a) a notice to quit has been served, (b) the period of that notice has been extended by virtue of sections 103 or 104, (c) the lessor institutes proceedings in the County Court for recovery of possession and (d) and the County Court is satisfied that one of the

¹⁸ *R v London etc Rent Tribunal ex p Honig* [1951] 1 KB 641.

¹⁹ See para H.10 above.

paragraphs of (a) to (d) of section 106(2) apply, it may direct that the notice period be reduced. The jurisdiction exercised by Rent Tribunals under section 106(2) and County Courts under 106(4) is nonetheless distinct. The section 106(2) jurisdiction can be exercised independent of any other cause of action, whereas the section 106(4) jurisdiction only accrues when recovery of possession proceedings is instituted. This review therefore takes the position that they are not an instance of shared jurisdiction, even though they are closely analogous.

FURTHER APPEALS

- H.19 Any party to proceedings before a Rent Tribunal who is dissatisfied in point of law with a decision of the Rent Tribunal may, pursuant to section 11(1) of the Tribunals and Inquiries Act 1992 (the “1992 Act”), either appeal to the High Court or require that the Rent Tribunal state a case for the opinion of the High Court. Schedule 1 to the 1992 Act lists all tribunals whose decisions may be appealed to the High Court. Paragraph 37 thereof refers to rent assessment committees constituted in accordance with Schedule 10 to the 1977 Act.
- H.20 The appeal route from Rent Tribunals therefore differs from Leasehold Valuation Tribunals, whose decisions may be appealed to the Lands Tribunal.

APPENDIX I

VALUATION TRIBUNALS

PART I

LEGISLATIVE BACKGROUND

- I.1 Valuation Tribunals are the direct descendants of Local Valuation Courts that were established under the General Rate Act 1967 (the “1967 Act”), which consolidated various earlier enactments concerning property rating. The 1967 Act was repealed by the Local Government Finance Act 1988 (the “1988 Act”) with effect from 1 April 1990 and Local Valuation Courts were replaced by Valuation and Community Charge Tribunals. The community charge was abolished by the Local Government Finance Act 1992 (the “1992 Act”) with effect from 1 April 1993 and was replaced by the council tax. Valuation and Community Charge Tribunals were accordingly renamed Valuation Tribunals.¹
- I.2 The legislative basis for Valuation Tribunals is found in regulations made pursuant to Schedule 11 to the 1988 Act.²
- I.3 Paragraph 1 of Schedule 11 gives power to the Secretary of State to make regulations providing for the establishment of Valuation Tribunals. In exercise of this power the Secretary of State established Valuation Tribunals under the Valuation and Community Charge Tribunals Regulations 1989.³ These Regulations, which took effect from 1 May 1989, make provision for, inter alia, the membership, administration and appeals procedure of Valuation Tribunals.
- I.4 The Valuation Tribunals system for England and Wales was divided in 1996 (See further Part III on territorial jurisdiction). The Valuation Tribunals (Wales) Regulations 1995⁴ established separate Valuation Tribunals for Wales with their own administrative structure with effect from 1 April 1996. Despite these organisational reforms, Valuation Tribunals in both England and Wales continue to exercise the same substantive jurisdiction.

PART II

SUBSTANTIVE JURISDICTION

- I.5 Valuation Tribunals exercise appellate and review jurisdiction in respect of decisions made at first instance by local government bodies. The reference points for jurisdiction exercised by Valuation Tribunals are paragraphs 2 and 3 of Schedule 11 to the 1988 Act (as amended). Paragraph 2 confers jurisdiction in relation to specific legislative provisions. Paragraph 3 grants power to the Secretary

¹ Section 15(1) of the 1992 Act states that valuation and community charge tribunals established under Sched 11 to the 1988 Act shall be known as valuation tribunals.

² Section 136 of the 1988 Act gives operative effect to Sched 11.

³ SI 1989 No 439.

⁴ SI 1995 No 3056.

of State to transfer, by regulation, the jurisdiction exercised by Local Valuation Courts under the 1967 Act or any other Act to the Valuation Tribunals. There are five areas where Valuation Tribunals on foot of these paragraphs exercise jurisdiction: community charges; non-domestic rates; council tax; old rates; and drainage rates. There are a total of twenty-two separate legislative sources of jurisdiction. The table below summarises the position:

Jurisdiction Table

Area Concerned	Legislative Provision	Matter Appealed	Decision Appealed	Further Appeal
Community Charge	Section 23 of the 1988 Act	Various Decisions pre-April 1993	Charging Authority	High Court
Non-Domestic Rates	Regulation 7(3)b of the 1993 Regulations	Invalidity Notices	Valuation Officer	Lands Tribunal
Non-Domestic Rates	Regulation 12(1) of the 1993 Regulations	Local List Proposal Not Well-Founded	Valuation Officer	Lands Tribunal
Non-Domestic Rates	Regulation 28(1) of the 1993 Regulations	Central List Proposal Not Well-Founded	Central Valuation Officer	Lands Tribunal
Non-Domestic Rates	Regulation 30 of the 1993 Regulations	Certification of Value	Valuation Officer	Lands Tribunal
Non-Domestic Rates	Regulation 36 of the 1994 Regulations	Certification of Value	Valuation Officer	Lands Tribunal
Non-Domestic Rates	Regulation 37 (12- Wales) of the 1999 Regulations	Certification of Value	Valuation Officer	Lands Tribunal
Non-Domestic Rates	Paragraph 4(1) of Schedule 4A to the 1988 Act	Completion Notice	Billing Authority	Lands Tribunal
Council Tax	Section 16 of the 1992 Act	Liability for Council Tax	Billing Authority	High Court

Council Tax	Regulation 8(3) of the 1993 Council Tax Regulations	Invalidity Notice	Listing Officer	High Court
Council Tax	Regulation 13 of the Council Tax Regulations	Alteration Proposal Not Well-Founded	Listing Officer	High Court
Council Tax	Paragraph 3(1) of Schedule 3 to the 1992 Act	Penalty	Billing Authority	High Court
Council Tax	Paragraph 4(1) of Schedule 4A to the 1988 Act (Section 17 of the 1992 Act)	Completion Notice	Billing Authority	High Court
Old Rates	Regulation 3(1)a of the 1989 Jurisdiction Regulations	Proposal to Alter Valuation List (section 73(2)b of the 1967 Act)	Valuation Officer	Lands Tribunal
Old Rates	Regulation 3(1)a of the 1989 Jurisdiction Regulations	Proposal to Alter Valuation List (section 74(3) of the 1967 Act)	Valuation Officer	Lands Tribunal
Old Rates	Regulation 3(1)a of the 1989 Jurisdiction Regulations	Second Proposal to Alter Valuation List (section 75 of the 1967 Act)	Valuation Officer	Lands Tribunal
Old Rates	Regulation 3(1)a of the 1989 Jurisdiction Regulations	Notice of Comparable Hereditament (section 86 of the 1967 Act)	Valuation Officer	Lands Tribunal

Old Rates	Regulation 3(1)b of the 1989 Jurisdiction Regulations	Disabled Rebate (Paragraph 11(2) of Schedule 1 to the 1978 Act)	Valuation Officer	Lands Tribunal
Old Rates	Regulation 3(1)b of the 1989 Jurisdiction Regulations	Disabled Rebate (section 2(5B) of the 1978 Act)	Valuation Officer	Lands Tribunal
Old Rates	Regulation 3(1)c of the 1989 Jurisdiction Regulations	Mixed Hereditament (Regulation 6 of the 1967 Regulations)	Person Objecting	Lands Tribunal
Drainage Rates	Section 45 of the 1991 Act	Annual Value	Drainage Board	Lands Tribunal
Drainage Rates	Regulation 3(1)d of the 1989 Jurisdiction Regulations	Old Annual Value (section 78 of the 1976 Act)	Drainage Board	Lands Tribunal

COMMUNITY CHARGE APPEALS

I.6 Community charges (poll tax) were abolished by the 1992 Act with effect from 1st April 1993 and replaced by the council tax. Under section 23 of the 1988 Act Valuation Tribunals exercised jurisdiction to determine appeals in relation to matters pertaining to community charges.⁵ In line with the abolition of community charges section 23 was repealed by section 117(2) of the 1992. However, section 118(1) of the 1992 Act provided that the repealed provisions of the 1988 Act shall continue to have effect in relation to any community charge arising on a day falling before 1st April 1993. Therefore Valuation Tribunals continue to exercise an appellate jurisdiction in respect of appeals relating to community charges arising before 1st April 1993. Section 23 (2) lists the matters that may be the subject of an appeal to a Valuation Tribunal:

- (a) the fact that the person is or is not at any time entered in a charging authority's register as subject to a community charge of the authority;

⁵ Section 23 is one of the specific legislative provisions listed in para 2 of Sched 11. Despite the repeal of s 23, reference to it has not been deleted from Sched 11.

- (b) the contents of any item which is contained in a charging authority's register and relates to a charge to which the person is there shown as subject at any time;
- (c) any designation of an individual as a certification officer under regulations under section 30;
- (d) the fact that such a designation has not been revoked;
- (e) any estimate made for the purposes of regulations under Schedule 2 of the amount the person is liable to pay in respect of a charging authority's community charge;
- (f) any designation of an individual as a responsible individual under regulations under Schedule 2;
- (g) the fact that such a designation has not been revoked;
- (h) the imposition of a penalty on the person under Schedule 3;
- (i) the fact that a relevant dwelling has been designated under section 5 above and;
- (j) the fact that a designation of a relevant dwelling under that section has not been revoked under that section. In sum, Valuation Tribunals continue to exercise a residual jurisdiction in relation to community charges, however over time this jurisdiction will decrease in significance.

NON-DOMESTIC RATES APPEALS

- I.7 Valuation Tribunals exercise an appellate jurisdiction in respect of certain decisions taken by officers of local authorities concerning non-domestic rates (for instance business rates). The legislative basis for non-domestic rates appellate jurisdiction is both complicated and dispersed.
- I.8 There are two paramount provisions in relation to the appellate jurisdiction of Valuation Tribunals for non-domestic rating matters. First, paragraph 2(b) of Schedule 11 to the 1988 Act states that tribunals shall exercise jurisdiction conferred on them by regulations made pursuant to section 55 of the 1988 Act. Section 55(5) permits the making of regulations for an appeal to a Valuation Tribunal where there is a "disagreement between a valuation officer and another person making a proposal for the alteration of a list that is either: (a) about the validity of the proposal; or (b) about the accuracy of the list". The Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (the "1993 Regulations")⁶ contain appeal provisions made on foot of this section and they have been supplemented by the Non-Domestic Rating (Chargeable Amounts) Regulations 1994; the Non-Domestic Rating (Chargeable Amounts) (England)

⁶ SI 1993 No 291.

Regulations 1999; and the Non-Domestic Rating (Chargeable Amounts) (Wales) Regulations 1999.

- I.9 Secondly, paragraph 2(c) of Schedule 11 to the 1988 Act states that tribunals shall exercise jurisdiction conferred on them by paragraph 4 of Schedule 4A to the 1988 Act.⁷ Schedule 4A is concerned with the completion date of new buildings for non-domestic rating purposes.⁸
- I.10 Thus the non-domestic rates matters listed below may be appealed to a Valuation Tribunal.

Invalidity Notices

- I.11 A valuation officer may serve an “invalidity notice” on the proposer⁹ of a proposal¹⁰ for the alteration of a local¹¹ non-domestic rating list where he is of the opinion that the proposal “has not been validly made”.¹² Under regulation 7(3)(b) of the 1993 Regulations the proposer can appeal against an “invalidity notice” issued against him to the relevant Valuation Tribunal.¹³

Local List Proposal Not Well-Founded

- I.12 Where a valuation officer is of the opinion that a proposal for the alteration of a local non-domestic rating list is not “well-founded” and the proposal is not withdrawn or altered by agreement, the valuation officer refers the disagreement to the relevant Valuation Tribunal. Under regulation 12(1) of the 1993 Regulations this is deemed to be an appeal of the valuation officer’s decision to refuse to alter the local list.

Central List Proposal Not Well-Founded.

- I.13 Where a central valuation officer is of the opinion that a proposal for the alteration of a central non-domestic rating list is not “well-founded” and the proposal is not withdrawn or altered by agreement, the central valuation officer refers the disagreement to the relevant Valuation Tribunal. Under regulation 28(1) of the 1993 Regulations this is deemed to be an appeal of the central valuation officer’s decision to refuse to alter the central list.

⁷ Schedule 4A was inserted into the 1988 Act by s 139 and Sched 5 of the Local Government and Housing Act 1989.

⁸ Schedule 4A has been extended by s 17 of the 1992 Act to cover council tax as well.

⁹ Regulation 2 of the 1993 Regulations defines “Proposer” as “the person making a proposal”.

¹⁰ Regulation 2 defines “Proposal” as “a proposal for the alteration of a local or central non-domestic rating list”.

¹¹ Regulation 7 does not explicitly state that it is confined to *local* rating lists. However Reg 7 falls under Part II of the 1993 Regulations, which deal exclusively with local rating lists; furthermore there is no equivalent provision in respect of central rating lists that are dealt with under Part III of the 1993 Regulations.

¹² Regulation 7(1) of the 1993 Regulations.

¹³ This appeal provision therefore represents a regulation made pursuant to s 55(5)(a) of the 1988 Act.

Appeals Against Certification of Value.

- I.14 Under regulation 30 of the 1993 Regulations an interested person who is dissatisfied with a certification by a valuation officer of a value of a hereditament pursuant to regulations made under paragraphs 10 to 12 of Schedule 7A to the 1988 Act¹⁴ may appeal the decision to the relevant Valuation Tribunal provided that the notice of appeal is not withdrawn or no agreement is reached.
- I.15 Under regulation 36 of the Non-Domestic (Chargeable Amounts) Regulations 1994¹⁵ (the “1994 Regulations”) an interested person could appeal the certification of value of certain hereditaments by a valuation officer to the relevant Valuation Tribunal providing the notice of appeal was not withdrawn or no agreement was reached. These regulations have now expired. Under regulation 36(2) all appeals had to be served before 1 April 2001. The jurisdiction conferred by regulation 36 is therefore only residual in effect. Appeals under this regulation were dealt with in accordance with the general appeals provisions (Part VI) of the 1993 Regulations.
- I.16 The 1994 Regulations have been superseded by the Non-Domestic (Chargeable Amounts) (England) Regulations 1999¹⁶ (the “1999 Regulations”) and the Non-Domestic (Chargeable Amounts) (Wales) Regulations 1999¹⁷ (the “1999 Welsh Regulations”). Under regulation 37 of the 1999 Regulations and regulation 12 of the 1999 Welsh Regulations an interested person may appeal the certification of value of certain hereditaments by a valuation officer to the relevant Valuation Tribunal providing the notice of appeal is not withdrawn or no agreement is reached. Appeals under these regulations are dealt with in accordance with the general appeals provisions (Part VI) of the 1993 Regulations.
- I.17 The appellate jurisdiction granted under regulation 30 of the 1993 Regulations is not clear-cut. First, it is not referable to one of the jurisdictional bases listed in paragraphs 2 and 3 of Schedule 11.¹⁸ Secondly, the reference to certification of hereditaments pursuant to regulations made under paragraphs 10 to 12 of Schedule 7A is obtuse - it is not clear what, if any, relevant regulations have been made pursuant to paragraphs 10 to 12. Paragraphs 10 to 12 permit the Secretary of State to make regulations concerning the determination of chargeable amounts under sections 45¹⁹ and 54²⁰ of the 1988 Act for a “transitional day”.²¹ The

¹⁴ Schedule 7A was inserted into the 1988 Act by s 139 and Sched 5 of the Local Government and Housing Act 1989.

¹⁵ SI 1994 No 3279.

¹⁶ SI 1999 No 3379.

¹⁷ SI 1999 No 3454.

¹⁸ The appellate jurisdiction granted under reg 36 of the 1994 Regulations, reg 37 of the 1999 Regulations and reg 12 of the 1999 Welsh Regulations is similarly circumspect. Neither is referable to one of the jurisdictional bases listed in paras 2 and 3 of Sched 11.

¹⁹ Section 45 provides for the calculation of chargeable amounts in relation to unoccupied hereditaments.

²⁰ Section 54 provides for the calculation of chargeable amounts in relation to central non-domestic rating lists.

²¹ Paragraphs 1 and 2 of Sched 7A define a transitional day as a day falling within the financial years 1990, 1991, 1992, 1993 and 1994. Schedule 7A as a whole is concerned with the

statutory tables in Lexicon and Lawtel do not reveal that any relevant regulations were made on foot of paragraphs 10 and 12.

Appeal Against a Completion Notice.

- I.18 Under paragraph 1(1) and (2) of Schedule 4A to the 1988 Act a billing authority may serve a “completion notice” on the owner of a new building when it expects that construction of the new building will be completed within 3 months or when it comes to the attention of the billing authority that construction of a new building is in fact completed. Paragraph 4(1) of Schedule 4A states that a person on whom a completion notice is served may appeal the notice to a Valuation Tribunal on the ground that the building has not been completed or cannot reasonably be expected to be completed by the date stated in the notice. regulation 29 of the 1993 Regulations contains provision regarding the timeframe for service of notice of appeals in respect of completion notices.

COUNCIL TAX APPEALS

- I.19 Valuation Tribunals exercise an appellate jurisdiction in respect of certain decisions taken by officers of local authorities and the Inland Revenue regarding council tax. The paramount legislative bases for appellate jurisdiction are paragraphs 2(c), (d), (e) and (f) of Schedule 11 to the 1988 Act. These paragraphs respectively provide that Valuation Tribunals shall exercise the jurisdiction conferred on them by paragraph 4 of Schedule 4A to the 1988 Act, section 16 of the 1992 Act, regulations made pursuant to section 24 of the 1992 Act and paragraph 3 of Schedule 3 to the 1992 Act. Thus the following council tax matters may be appealed to a Valuation Tribunal:

General Appeals

- I.20 Under section 16(1)(a) of the 1992 Act a person may appeal against a decision of a billing authority²² that a dwelling is a chargeable dwelling²³ or that he is liable to pay council tax in respect of such a dwelling. In addition, under section 16(1)(b) a person may appeal any calculation made by a billing authority of an amount liable to be paid as council tax.

Alteration of Valuation Lists

- I.21 A listing officer²⁴ of each billing authority is required under section 22 (and section 22A in respect of Wales) of the 1992 Act to compile and maintain a valuation list

calculation of chargeable amounts for these transitional periods in relation to certain hereditaments. Paragraph 12(b) states specifically that regulations made pursuant to 10 and 11 may make provision for appeals of determinations by officers thereunder.

²² A “billing authority” is defined in s 1(2) as “(a) in relation to England, a district council or London borough council, the Common Council or the Council of the Isles of Scilly, and (b) in relation to Wales, a county council or county borough council.”

²³ A chargeable dwelling is defined by s 4(2) as “any dwelling in respect of which council tax is paid”. A “dwelling” is what would have been considered a “hereditament” under the 1967 Act, had it remained in force.

²⁴ A listing officer is the person appointed by the Commissioners of the Inland Revenue pursuant to s 20 of the 1992 Act for the purpose of compiling and maintaining valuation lists.

in respect of dwellings situated in the billing authority's area. A valuation list contains, inter alia, the valuation band of each dwelling in the billing authority's area.²⁵ Section 24 provides for the making of regulations about the alteration by listing officers of valuation lists compiled under Chapter II of the 1992 Act. More particularly section 24(6) provides that such regulations may include provision for an appeal to a Valuation Tribunal where there is a disagreement concerning (a) the validity of a proposal for the alteration of a list or (b) the accuracy of the list.

- I.22 The Council Tax (Alteration of Lists and Appeals) Regulations 1993²⁶ (the "1993 Council Tax Regulations") are the implementing regulations relevant to the alteration of council tax valuation lists and appeals thereof. There are two instances where decisions of the listing officer may be appealed to a Valuation Tribunal. First, under regulation 8(1) a listing officer can serve an "invalidity notice" on a proposer²⁷ of an alteration proposal²⁸ when he is of the opinion that the proposal has not been "validly made".²⁹ Unless the invalidity notice is withdrawn, the proposer may, pursuant to regulation 8(3), appeal against it to the relevant Valuation Tribunal. Secondly, under regulation 13 where the listing officer is of the opinion that a proposal is not "well-founded" and it is not withdrawn or altered by agreement, the listing officer refers the proposal to the relevant Valuation Tribunal as an appeal by the proposer against the listing officer's refusal to alter the list. Appeals under both regulations 8 and 13 are heard in accordance with the provisions contained in Part III of the 1993 Council Tax Regulations.

Penalty Appeals

- I.23 Under paragraph 1 of Schedule 3 to the 1992 Act a billing authority may impose a fine on a person who fails to provide it with information in accordance with requests made pursuant to various provisions under the 1992 Act. Under paragraph 3(1) a person may appeal to a Valuation Tribunal if he is aggrieved by the imposition of a penalty on him under paragraph 1.³⁰

Completion Notices

- I.24 As noted in paragraph 2(II)(e), paragraph 4 of Schedule 4A confers jurisdiction on Valuation Tribunals to hear appeals in relation to completion notices served on owners of new buildings. Section 17 of the 1992 Act applies Schedule 4A (with the exception of paragraph 6) to new buildings that are liable to council tax. A billing authority may therefore issue a completion notice on a new building that is liable for council tax. The person on whom such a notice is served may likewise appeal the notice to the relevant Valuation Tribunal.

²⁵ Section 23 of the 1992 Act.

²⁶ SI 1993 No 290.

²⁷ Regulation 2(1) defines "proposer" as "the person making a proposal".

²⁸ Regulation 2(1) defines "proposal" as "a proposal for the alteration of a list".

²⁹ This regulation is therefore referable to s 24(6)(b) of the 1992 Act.

³⁰ Schedule 3 also deals with the imposition of penalties by local authorities in Scotland and appeals to Scottish "valuation appeal committees".

OLD RATES APPEALS

- I.25 As noted in section 1 above the General Rate Act 1967 was repealed by the 1988 Act subject to the saving that certain provisions will continue to have effect. In particular, appeals relating to matters that fell to be decided under the 1967 Act continue to have effect. Paragraph 3 of Schedule 11 to the 1988 allows for the making of regulations to transfer jurisdiction previously exercised by Local Valuation Courts under the 1967 Act or any other Act to Valuation Tribunals. The Valuation and Community Charge (Transfer of Jurisdiction) Regulations 1989³¹ (the “1989 Jurisdiction Regulations”) have been made on foot of this power. They transfer jurisdiction exercised by Local Valuation Courts in relation to rating matters that arose on or before 1st April 1990 under, inter alia, the 1967 Act, the Rating (Disabled Persons) Act 1978 (the “1978 Act”) and the Mixed Hereditaments (Certificate) Regulations 1967³² (the “1967 Regulations”).³³ Thus, they relate to residual rating matters and will accordingly decrease in importance over time. Regulation 3(1)(a), (b) and (c) of the 1989 Jurisdiction Regulations transfers the following jurisdiction of Local Valuation Courts to Valuation Tribunals:

Alteration of Valuation List Appeals

- I.26 Under section 73(2)(b) and section 74(3) of the 1967 Act where a proposal to alter a valuation list made under section 69 was objected to, whether by the valuation officer (section 73(2)(b)) or another party (section 74(3)), and the proposal was not withdrawn, the valuation officer transferred it to the Local Valuation Court as way of appeal of the refusal to alter the valuation list. Furthermore under section 75 of the 1967 Act, where someone, other than the occupier of the particular hereditament, made a second proposal for the alteration of a valuation list, before the original proposal was settled, it was transmitted by the valuation officer to the Local Valuation Court as an appeal of the original proposal. After 1 April 1990 the relevant Valuation Tribunal hears all such appeals.

Notice of Comparable Hereditament Application.

- I.27 Section 83 of the 1967 Act dealt with the use of returns as evidence in valuation proceedings. Under section 83(3)(a) the valuation officer was obliged to give notice to a person that previous returns made were to be used as evidence. Under section 83(5) any person to whom this notice was made could respond by giving notice to the valuation officer specifying comparable hereditaments and requiring the valuation officer to carry out an inspection of returns relating to it. If the valuation officer refused or failed to comply with the section 83(5) notice, the person who sent the notice could apply to the Local Valuation Tribunal to direct the valuation officer to comply with the said notice. After 1st April 1990 the relevant Valuation Tribunal hears all such applications.

³¹ SI 1989 No 440.

³² SI 1967 No 637.

³³ The 1989 Jurisdiction Regulations also transfer residual jurisdiction in relation to drainage rates appeals. See Part V below.

Disabled Rebates Appeals

- I.28 The 1978 Act established a system of rebate from rates for facilities used and institutions occupied by disabled persons. An applicant for a rebate in respect of facilities used by disabled persons could appeal to the Local Valuation Court, pursuant to paragraph 11(2) of Schedule 1, where he was dissatisfied with the amount of rebate certified by the valuation officer. Similarly under section 2(5B)³⁴ an applicant for a rebate in respect of an institution occupied by disabled persons could appeal to the Local Valuation Court where he was dissatisfied with the amount of rebate certified.
- I.29 The 1978 Act has been repealed with savings by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990.³⁵ However, jurisdiction to hear appeals under the 1978 Act was transferred to the relevant Valuation Tribunal by regulation 3(1)(b) of the 1989 Jurisdiction Regulations. Again this jurisdiction is of residual effect and will decrease in importance over time.

Mixed Hereditament Appeal

- I.30 The 1967 Regulations were concerned with the certification of hereditaments that were a mix of domestic and non-domestic dwellings. A person applied under regulation 3(1) to a valuation officer for certification. The applicant or the rating authority could object under regulation 5 to the giving by the valuation officer of the certificate to the applicant. If the objection was not withdrawn the valuation officer transmitted it, pursuant to regulation 6, to the Local Valuation Court as an appeal by the valuation officer of the objection.
- I.31 The 1967 Regulations were repealed subject to the savings provisions in the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990.³⁶ This jurisdiction is therefore of residual effect and will decrease in importance over time.

DRAINAGE RATES

- I.32 Valuation Tribunals exercise certain appellate jurisdiction in relation to determinations by drainage boards regarding drainage rates. Drainage rates are the rates levied on agricultural lands and buildings pursuant to Part IV of the Land Drainage Act 1991 (the "1991 Act"). Drainage rates are levied for the purpose of financing drainage boards of internal drainage districts. Prior to the 1991 Act drainage rates were governed by the Land Drainage Act 1976 (the "1976 Act") which was repealed with savings by the Water Consolidation (Consequential Provisions) Act 1991.
- I.33 A statutory interpretation problem exists regarding the conferral of jurisdiction on Valuation Tribunals by the 1991 Act. As noted previously the two paramount provisions on Valuation Tribunal jurisdiction are paragraphs 2 and 3 of Schedule

³⁴ Inserted by s 16 and Sched 1 of the Rates Act 1984.

³⁵ SI 1990 No 776.

³⁶ SI 1990 No 777.

11 to the 1988 Act, that is express statutory authority that is listed in paragraph 2 and jurisdiction of local valuation courts that is transferred by regulation. The appellate jurisdiction exercised by Valuation Tribunals under section 45 of the 1991 Act (see below) fits into neither of these categories. For the sake of clarity it may be advisable to amend paragraph 2 of Schedule 11 in order to make explicit reference to the jurisdiction conferred by section 45.

- I.34 Appeals in relation to drainage rates are made to either a Valuation Tribunal or a Crown Court depending on the subject matter of the appeal.³⁷ Under section 51 of the 1991 Act Crown Courts exercise appellate jurisdiction over any matter in relation to drainage rates or amendments to drainage rates that is not designated specifically as within the jurisdiction of Valuation Tribunals. Valuation Tribunals exercise the following jurisdiction in relation to drainage rates:

Annual Value Appeals

- I.35 The drainage board for each internal drainage district is empowered by section 42 of the 1991 Act to determine the annual value of chargeable property in its area. In addition the drainage board has the power under section 43 to adjust the annual value of any chargeable property where it is of the view that the annual value should be increased or decreased. The occupier of land in respect of which a determination has been made under section 42 or 43 may appeal under section 45 the determination of the drainage board to the relevant Valuation Tribunal.³⁸ An objection notice must be served on the drainage board before instituting appeal proceedings.

Old Annual Value Appeals

- I.36 Regulation 3(1)(d) of the 1989 Jurisdiction Regulations transfers to Valuation Tribunals jurisdiction previously exercised by Local Valuation Courts under section 78 of the 1976 Act. This section was repealed with savings by the Water Consolidation (Consequential Provisions) Act 1991. Section 78 was equivalent to the new section 45 (see above) and it also dealt with appeals by occupiers against assessments by drainage boards of annual values and adjustments thereof. Determinations made pursuant to the 1976 Act may therefore be appealed to the relevant Valuation Tribunal. Again this jurisdiction is of residual effect and will therefore decrease in importance over time.

PART III TERRITORIAL JURISDICTION

- I.37 Valuation Tribunals established pursuant to regulations made under Schedule 11 to the 1988 Act only exercise jurisdiction in England and Wales;³⁹ Scotland and

³⁷ To further confuse matters, appeals against s 25 notices are made to magistrates' courts pursuant to s 27 of the 1991 Act (which is derived from the appeal procedure under s 19 of the 1978 Act).

³⁸ Under s 45(7)(b) the appropriate tribunal to hear an appeal in relation to land situated in different tribunal areas is such one of those tribunals as determined by the Drainage Rates (Appeals) Regulations 1970.

³⁹ Section 151 of the 1988 Act

Northern Ireland have their own valuation systems. The territorial jurisdiction of individual Valuation Tribunals is determined by the Valuation and Community Charge Tribunals Regulations 1989⁴⁰ (as amended) (the “1989 Regulations”) for England and the Valuation Tribunals (Wales) Regulations 1995⁴¹ for Wales (the “1995 Regulations”).

- I.38 The specific area governed by each Valuation Tribunal is determined in accordance with the Schedules to the above Regulations. Regulation 3 of the 1989 Regulations⁴² states that there shall be a Valuation Tribunal for each of the areas ascertained in accordance with column 2 of Schedule 1, and that each tribunal shall be known by the name of the area listed in column 1 of Schedule 1 to the 1989 Regulations.⁴³ For instance the “Central London Valuation Tribunal” exercises jurisdiction in respect of the City of London, the City of Westminster, the Inner Temple and the Middle Temple.
- I.39 The territorial jurisdiction of Welsh Valuation Tribunals is similarly constituted under the 1995 Regulations. Regulation 2 thereof states that there shall be a Valuation Tribunal for each of the areas ascertained in accordance with Schedule 1. Thus the East Wales Valuation Tribunal exercises jurisdiction in respect of the counties of Monmouthshire and Powys and the county boroughs of Blaenau Gwent, Caerphilly, Newport and Torfaen. Regulation 13 of the 1995 Regulations transfers the substantive jurisdiction previously exercised by the old Welsh tribunals to the new Welsh tribunals.

PART IV

FURTHER APPEALS AND RELATIONSHIP WITH THE COURTS

- I.40 Decisions of a Valuation Tribunal may be appealed to either the High Court or the Lands Tribunal. The High Court hears appeals related to community charge and council tax matters whereas the Lands Tribunal hears appeals relating to non-domestic rating, old rates and drainage rates. Paragraph 11 of Schedule 11 to the 1988 Act is the paramount legislative basis for High Court and Lands Tribunal appellate jurisdiction of Valuation Tribunals’ decisions.
- I.41 An important decision-making layer lies between an appeal disposed of by a Valuation Tribunal and a further appeal to the High Court or Lands Tribunal. Regulation 49 of the 1989 Regulations, regulation 45 of the 1993 Regulations, regulation 30 of the 1993 Council Tax Regulations and regulation 49 of the 1995 Regulations permits the relevant Valuation Tribunal to review a decision made by it on application by one of the parties to the original appeal. The grounds for such a review are (a) clerical error, (b) the party did not appear at the original hearing

⁴⁰ SI 1989 No 439.

⁴¹ SI 1995 No 3056.

⁴² Inserted by way of substitution of the original reg 3 by the Local Changes for England (Valuation Tribunals) Regulations, SI 1997 No 2954, in order to take account of boundary changes.

⁴³ *Ibid.*

but can show reasonable grounds why he did not do so, (c) the Valuation Tribunal decision is affected by a decision of the High Court or Lands Tribunal. Valuation Tribunals do not, however, have jurisdiction to review a decision once an appeal has been made to the High Court or Lands Tribunal.

High Court

- I.42 An appeal lies to the High Court on a question of law against decisions taken by Valuation Tribunals in relation to community charges and council tax. Paragraph 11(1)(a) allows jurisdiction to be granted to the High Court in respect of appeals on a question of law arising out of decisions made by a Valuation Tribunal under section 23 of the 1988 Act (community charge appeals), section 16 of the 1992 Act (council tax appeals), paragraph 3 of Schedule 3 to the 1992 Act (council tax appeals) or regulations made pursuant to section 24 of the 1992 Act (council tax appeals).
- I.43 Three legislative provisions, made on foot of paragraph 1 and 11 of Schedule 11 to the 1988 Act, confer jurisdiction on the High Court to hear appeals on questions of law arising from decisions made by Valuation Tribunals. Regulation 32 of the 1989 Regulations confers jurisdiction on the High Court in respect of appeals heard pursuant to section 23 of the 1988 Act.⁴⁴ Regulation 51 of the 1989 Regulations⁴⁵ confers jurisdiction on the High Court in respect of decisions made under section 16 of the 1992 Act, paragraph 3(1) of Schedule 3 to the 1992 Act and paragraph 4 of Schedule 4A to the 1988 Act (insofar as it applies to council tax matters).⁴⁶ Finally, regulation 32 of the 1993 Council Tax Regulations confers jurisdiction on the High Court in respect of appeals made pursuant to regulations 8(3) and 13 of the 1993 Council Tax Regulations.

LANDS TRIBUNAL

- I.44 The Lands Tribunal has jurisdiction to hear appeals from decisions of Valuation Tribunals in relation to non-domestic rates, old rates and drainage rates. Appeals to the Lands Tribunal are not confined to questions of law. Paragraph 11(1)(b) of Schedule 11 to the 1988 Act allows jurisdiction to be granted to the Lands Tribunal in respect of an appeal arising out of an appeal to a Valuation Tribunal pursuant to paragraph 4 of Schedule 4A and regulations made pursuant to section 55 of the 1988 Act.⁴⁷
- I.45 Regulation 47(1) of the 1993 Regulations confers jurisdiction on the Lands Tribunal to hear appeals against a decision or order of a Valuation Tribunal made under regulations 7, 12, 28 or 30 of the 1993 Regulations and regulation 36 of the

⁴⁴ Regulation 13 of the 1995 Regulations confers appellate jurisdiction on the High Court in relation to the exercise of the same jurisdiction by Welsh Valuation Tribunals.

⁴⁵ Inserted by reg 22 of the Valuation and Community Charge Tribunals (Amendment) Regulations 1993, SI 1993 No 292.

⁴⁶ Regulation 51 of the 1995 Regulations confers appellate jurisdiction on the High Court in relation to the exercise of the same jurisdiction by Welsh Valuation Tribunals.

⁴⁷ The relevant regulations are the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, the Non-Domestic Rating (Chargeable Amounts) Regulations 1994 and the Non-Domestic Rating (Chargeable Amounts) Regulations 1999.

1994 Regulations.⁴⁸ Regulation 37(4) of the 1999 Regulations applies Part VI of the 1993 Regulations to appeals made pursuant to regulation 37 and therefore a decision of a Valuation Tribunal thereunder may also be appealed to the Lands Tribunal.

- I.46 Regulation 47(1) also confers jurisdiction on the Lands Tribunal to hear an appeal in relation to an “appeal against a completion notice”. This is presumably a reference to appeals made pursuant to paragraph 4 of Schedule 4A to the 1988 Act, which deals with appeals against completion notices. Decisions in pursuance of that paragraph may therefore be appealed to the Lands Tribunal.
- I.47 Appellate jurisdiction previously exercised by Local Valuation Courts was transferred to Valuation Tribunals under the 1989 Jurisdiction Regulations. These regulations do not make provision for further appeals to the Lands Tribunal. However, savings to the relevant legislation mean that if an appeal against a Local Valuation Court decision previously lay to the Lands Tribunal, it continues to do so in respect of the transferred appellate jurisdiction exercised by Valuation Tribunals. Regulation 3(1) of the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990⁴⁹ saves provisions in the 1967 Act insofar as they continue to have effect after 1 April 1990. The residual jurisdiction once exercised by Local Valuation Courts under sections 73(2)(b), 74(3), 75 and 83(6) is now exercised by Valuation Tribunals. Under section 77 of the 1967 Act, decisions on appeal by a Local Valuation Court under sections 73(2)(b), 74(3) and 75 could be appealed to the Lands Tribunal. The effect of the savings regulations is to permit an appeal to the Lands Tribunal of decisions now made by Valuation Tribunals under these sections. An appeal to the Lands Tribunal also lies against a decision made by a Valuation Tribunal under the section 83(6) jurisdiction by virtue of section 83(8)⁵⁰ of the 1967 Act that also survives as a result of the savings regulations.
- I.48 By virtue of section 2(5C) and paragraph 11(3) of Schedule 1 to the Rating (Disabled Persons) Act 1978 a decision by a Local Valuation Court under section 2(5B) and paragraph 11(2) respectively could be appealed to the Lands Tribunal. The Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990⁵¹ has saved this appellate jurisdiction insofar as it relates to the transferred jurisdiction now exercised by Valuation Tribunals. Such decisions may therefore be appealed to the Lands Tribunal. A similar situation pertains to appeals to a Valuation Tribunal in relation to the transferred jurisdiction previously exercised by Local Valuation Courts pursuant to regulation 6 of the Mixed Hereditaments (Certificate) Regulations 1967⁵² as a result of the savings made by regulation 4(1) of the General Rate Act 1967 and Related

⁴⁸ The reference to reg 36 of the 1994 Regulations was inserted by reg 19 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Amendment) Regulations, SI 1995 No 609.

⁴⁹ SI 1990 No 777.

⁵⁰ Section 83(8) provided that a decision under s 83(6) could be appealed as if it were a decision in valuation proceedings to which the application related.

⁵¹ SI 1990 No 776.

⁵² SI 1967 No 637.

Provisions (Savings and Consequential Provision) Regulations 1990. Regulation 8 of the 1967 Regulations permitted a further appeal to the Lands Tribunal in accordance with section 77 of the 1967 Act. Likewise an appeal by a Valuation Tribunal on foot of the transferred jurisdiction may be appealed to the Lands Tribunal.

- I.49 Finally, appeals heard by a Valuation Tribunal in relation to drainage rates may be appealed to the Lands Tribunal. Section 46(6) of the Land Drainage Act 1991 applies section 77 of the 1967 Act to appeals heard by a Valuation Tribunal pursuant to section 45 of the 1991 Act, for instance an appeal of a decision thereunder may be made to the Lands Tribunal. Similarly section 79(5) of the Land Drainage Act 1976 applied section 77 of the 1967 Act to appeals heard by a Local Valuation Court pursuant to section 78 of the 1976 Act. While these provisions were repealed by the Water Consolidation (Consequential Provisions) Act 1991 the savings therein allow for appeals to be made to the Lands Tribunal from decisions of a Valuation Tribunal exercising the section 78 jurisdiction that was transferred by regulation 3(1)(d) of the 1989 Jurisdiction Regulations.
- I.50 The decisions of Welsh Tribunals in relation to non-domestic rating, old rates and drainage rates pursuant to the provisions discussed above may also be appealed to the Lands Tribunal in line with the transfer of jurisdiction provisions of regulation 13 of the 1995 Regulations.
- I.51 It should be noted that the Lands Tribunal can indirectly exercise a kind of “leapfrog” jurisdiction in relation to the Valuation Tribunal. Instead of bringing a case before the Valuation Tribunal, parties may agree to refer the question to arbitration.⁵³ Parties may also agree to appoint the Lands Tribunal as arbitrator.⁵⁴ This can save parties intending to take a case before the Lands Tribunal the time and cost of a hearing before the Valuation Tribunal, but it is rarely used in practice.

MAGISTRATES COURT

- I.52 The Magistrates Court has jurisdiction to determine who is liable for payment of Non-Domestic Ratings. This is done by making a Liability Order under regulation 12 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations.⁵⁵ Conversely, jurisdiction over determinations of liability in non-payment of Council Tax falls with the Valuation Tribunal under section 16 of the 1992 Act. This is therefore an example of “interlinking” jurisdiction, in that the areas of jurisdiction are clearly demarcated by the various legislative instruments, and the confusion created by overlapping jurisdiction does not arise.

⁵³ Non-Domestic Rating (Alteration of Lists and Appeals) Regulations. SI 1993 No 291, reg 48.

⁵⁴ This jurisdiction is conferred by Lands Tribunal Act 1949, s 1(5).

⁵⁵ SI 1989 no 1058.