

# EXECUTIVE SUMMARY

## **Reforming the law of compulsory purchase**

The current law of compulsory purchase of land is difficult to locate, complicated to decipher and elusive to apply. The case for its reform is overwhelming and has been recognised by Government. In July 2000, the Compulsory Purchase Policy Review Advisory Group, which had been established by the DETR, reported that the law was “an unwieldy and lumbering creature”. One of its recommendations was that the Law Commission should be asked to review the law relating to compulsory purchase and to make proposals for its simplification, consolidation and codification. This led to a formal reference by the Lord Chancellor to the Law Commission in July 2001.

The work of the Law Commission has dealt in turn with Compensation and with Procedure. Following a Consultative Report (CP No 165), a Final Report on Compensation (Law Com No 286) was published in December 2003, making recommendations for reform and putting forward a Compensation Code as an indicative framework for legislation. The Appellate Committee of the House of Lords has subsequently supported the case for legislative reform along the lines of the Law Commission’s recommendations in *Waters v Welsh Development Agency* [2004] 1 WLR 1304. A Consultative Report on Procedure (CP No 169) was published in 2002, and this Final Report now deals with the issues we had identified and makes recommendations for the reform of this area of the law. It forms the culmination of the Law Commission’s project on compulsory purchase law.

The central problem we seek to address is the inadequacy of the principal statute, the Compulsory Purchase Act 1965. Many of its parts are out-dated, some are obsolete, and the statutory language throughout is archaic and obscure.

## **Authorisation of compulsory purchase**

A compulsory purchase order comprises two distinct stages. It is initiated by an “acquiring authority” (which may be a local authority, a government department or some other body in the public or private sector), following which there is a process of confirmation. During the process, owners, occupiers and other persons affected are entitled to object or make representations, and there may be a public inquiry. The decision whether or not to confirm the order is for the “confirming authority” (usually a Secretary of State). We recommend that the two-stage authorisation process should be retained, but that it should be rationalised such that there is a unitary procedure applicable whether the order is being made by a government department or by some other body.

Prior to making a compulsory purchase order, an acquiring authority may wish to enter the land for surveying purposes. We consider that the statutory powers to survey are neither clearly prescribed nor applicable to a wide enough range of bodies. We recommend that all acquiring authorities should (subject to appropriate judicial controls) be entitled to enter upon land for necessary

surveys provided that they are considering a distinct project of real substance for which entry is genuinely required.

Compulsory purchase orders are subject to challenge by a statutory review procedure under Part IV of the Acquisition of Land Act 1981 and by (non-statutory) judicial review. These jurisdictions are in need of rationalisation. We recommend that challenges to confirmation (or refusal of confirmation) should be made exclusively by the process of statutory review but that challenges to earlier stages should be by way of judicial review. We further recommend that the court should be empowered to quash the decision to confirm as an alternative to quashing the compulsory purchase order, and on so doing to give appropriate directions to the relevant authority.

### **Implementation of compulsory purchase**

Implementation of a compulsory purchase order may be by “notice to treat” or by “general vesting declaration”. These alternative means are to be retained. We do however recommend that the implementation procedure contained in Schedule 3 to the Compulsory Purchase Act 1965, which we believe is now obsolete, should be repealed without replacement. We consider that the statutory provisions dealing with the persons entitled to receive notice to treat are in need of modernisation, and we make recommendations accordingly.

Once notice to treat is served, implementation will continue with service of notice of entry. We recommend that the provisions for service of such notice should include deployment of site notices, and that the statutory penalties for unauthorised entry should be abolished, on the basis that claimants can bring civil actions for compensation. We recommend that the enforcement provisions should be modernised so that warrants are addressed to High Court enforcement officers rather than sheriffs, that responsibility for the costs of enforcement should be clarified, and that the levying of distress in the compulsory purchase process should be abolished.

The general vesting declaration is of much more recent statutory vintage, and presents fewer difficulties. We do however consider that there are three useful reforms which should be made concerning the effect of a vesting declaration on existing rights, the length of time available to an authority to proceed by vesting declaration, and the operation of vesting declarations on the divided land procedure. These are each dealt with in the relevant parts of the Report.

The local land charges register performs an important function in providing a means for those purchasing, or otherwise dealing with, land to discover whether there are any current compulsory purchase proposals. Currently registrable as local land charges are preliminary notice of a general vesting declaration, the right to claim compensation for injurious affection where no land is taken, and the liability to make an advance compensation payment. We recommend extending the registrable events to include the making of a compulsory purchase order and the service of notice to treat in respect of any land.

## **Time**

Under current law, the powers conferred by a compulsory purchase order are only exercisable for a period of three years from the date the order becomes operative. We recommend clarification of what is required in order to “exercise” powers: that is, service of notice to treat, or execution of a general vesting declaration (according to the implementation procedure chosen.) We also recommend reduction of the period in which powers should be exercised in order to minimise unnecessary delays in land acquisition. We consider the time limit within which notice to treat (once served) should be acted upon, and similarly recommend a reduction in the time available from the current period of three years. We recommend stricter controls on notice of entry, requiring authorities to enter within a prescribed period from the date of service.

It is necessary that compensation claims for compulsory purchase are brought expeditiously to the Lands Tribunal. We recommend standardisation of these limitation provisions as they apply to notices to treat and to vesting declarations such that the claimant should be required to claim compensation within a certain period running from the date when they knew or ought reasonably to have known of the taking of possession of the land or its vesting in the acquiring authority. Under the current Limitation Act (of 1980) this period would be six years: in the event of the Law Commission’s recommendations on Limitation of Actions (contained in its Report Law Com No 270) being implemented, it would be three years (subject to a “long-stop” period of ten years). We also make recommendations for the periods during which compensation (once agreed or determined) may be recovered, and during which a claimant may apply for compensation paid into court by an authority to be paid out.

## **Transfer of title**

The final stage in the implementation of compulsory purchase involves the transfer of title to the acquiring authority. The enforcement of the obligation on the landowner to complete the “statutory contract” may be by order of specific performance. We recommend the retention of this method of enforcement. At the same time, we recommend that the concept of the vendor’s lien (exercisable pending full payment of compensation by the acquiring authority) should be abolished in this context, and that the prescription of specific forms of conveyance for compulsory acquisitions should also cease.

As an alternative means of enforcement, the authority may invoke the “deed poll” procedure vesting title in itself and entitling it to immediate possession of the subject land. The statutory provisions concerning this procedure are archaic and unduly complex. We recommend that the procedure should be restated in a modern statutory form, in so doing making the process as simple and effective as possible. The detailed provisions concerning the defraying of conveyancing costs should be replaced by a simple provision that the acquiring authority should pay all reasonable costs in connection with completion, such costs to be assessed in case of dispute by the costs judge of the High Court. The theme of simplification is furthered by recommendations rationalising the procedures for dealing with persons with “limited powers” and absent or “non-

compliant” owners, adopting a simplified procedure for dealing with payments into and out of court, and repealing the current complex provisions. We also recommend that an acquiring authority should be able retrospectively to rectify accidental omissions (where in the course of the procedure interests have been missed).

### **Service of notices**

The procedures of compulsory purchase are of course heavily reliant on efficient provisions regulating the service of notices on landowners and other persons affected. We review the law of service, and recommend rationalisation of the various applicable statutory provisions.

### **Divided land**

Where part of an owner’s land is subject to compulsory purchase, the owner may in certain circumstances compel the acquiring authority to take the whole. This is a complex area of the law, being contained in several statutory sources, which are nevertheless insufficiently comprehensive. We recommend the adoption of a single unified procedure dealing with divided land applicable irrespective of the method of implementation chosen by the acquiring authority.

### **Interference with rights**

During the acquisition process, the authority must deal with various rights and interests over the land being acquired: private rights (such as easements or covenants benefiting neighbouring properties), minor tenancies (not themselves the subject of compulsory purchase), mortgages and rentcharges secured over the subject land, and public rights of way exercisable over it.

We recommend the rationalisation of the law concerning private rights, in particular providing that there will be a presumption that such rights are “overridden”, subject to the authority electing to extinguish them by serving notice. We recommend amendment of the procedure dealing with minor tenancies (and long tenancies which are about to expire) insofar as implementation by notice to treat (but not by general vesting declaration) is concerned. We review the procedures for dealing with mortgages and rentcharges and public rights of way, but make no substantive recommendations for reform.

### **Abortive orders**

Finally, we consider the extent to which acquiring authorities may abandon or withdraw a compulsory purchase order (before or after service of notice to treat). Government has already accepted that those affected by an order being aborted should be entitled to compensation for consequential losses incurred, and we consider how this policy can best be carried through. We make recommendations as to how (and when) compulsory purchase proposals should be capable of withdrawal, how those affected should be notified of their rights to claim, and what exclusions from the liability to compensate there should be.