

立法會 *Legislative Council*

立法會CB(1)1643/06-07(05)號文件

檔 號：CB1/PL/PLW

2007年5月22日
規劃地政及工程事務委員會會議

關於城市規劃委員會為訂立發展限制而
對分區計劃大綱圖作出的修訂
背景資料簡介

目的

本文件綜述立法會以往曾就城市規劃委員會為訂立發展限制而對分區計劃大綱圖作出的修訂所進行的討論。

《城市規劃條例草案》委員會所作討論

2. 《城市規劃條例草案》(下稱"2000年條例草案")於2000年2月16日提交立法會，以期取代當時的《城市規劃條例》(第131章)。2000年條例草案訂有一套改變規劃程序、諮詢過程及規劃管制的全面方案。立法會遂成立法案委員會，負責審議2000年條例草案，而法案委員會於2000年3月展開工作。作為法案委員會所接見的其中一個團體，鄉議局曾對當局沒有就規劃行動作出補償提出關注意見。法案委員會察悉，除卻根據《收回土地條例》徵收土地的個案之外，當時的《城市規劃條例》以及《城市規劃條例草案》並無訂定條文，規定須就因規劃行動而導致發展權有所減損的業權人作出補償。

3. 應法案委員會的要求，政府當局曾提供一份題為"為規劃行動作出補償的普通法原則"的文件(附錄I)。政府當局在文件內表明，"假如成文法只管制私人土地的用途，普通法的原則是，除非有明文規定，否則無須給予補償。"。立法會秘書處法律事務部亦提供一份文件(附錄II)，以回應政府當局的文件。法律事務部的文件指出，"政府當局的文件並無提述《基本法》"，而截至法案委員會舉行會議當天(亦即2000年4月26日)，法律事務部未能找到任何與《基本法》對現行條例的影響有關的本地案例。

4. 法案委員會承認該問題的重要性和複雜程度。然而，由於在1998-2000年度任期完結之前並無足夠的時間完成條例草案的審議工作，法案委員會於2000年6月終止工作，因而無法進一步跟進該問題。

《2003年建築物(修訂)條例草案》並無涵蓋補償事宜

5. 在《2003年建築物(修訂)條例草案》於2003年5月提交立法會時，政府當局表示決定分階段修訂《城市規劃條例》，詳情如下：

- (a) 第一階段 —— 提出有關簡化和縮短城市規劃過程、提高規劃制度的透明度，以及加強執法管制違例發展的修訂；
- (b) 第二階段 —— 提出政府當局須進一步研究及／或諮詢有關人士的修訂，例如城市規劃委員會的運作、指定特別設計區、環境易受影響的地區和指定發展；及
- (c) 第三階段 —— 檢討極具爭議性的建議，例如中期發展管制和建築物發展的規劃管制。

6. 《2003年城市規劃(修訂)條例草案》屬《城市規劃條例》的第一階段修訂。該條例草案於2004年7月7日獲立法會通過。《2004年城市規劃(修訂)條例》於2005年6月10日正式生效。

7. 過去數年，在立法會議員與鄉議局議員所舉行的會議上，鄉議局議員一再提出當局須對因規劃行動而導致發展權有所減損的土地業權人作出補償的問題。鄉議局認為，當局在規劃過程中應確保私人權利能得到充分考慮。鄉議局議員要求政府當局應在《城市規劃條例》的下一輪檢討工作中，處理有關就發展權有所減損作出補償的問題。

8. 政府當局為回應鄉議局所提出的關注事項而提供的文件載於**附錄III**。政府當局在文件中重申其在**附錄I**所載文件的立場，並補充表示，根據《城市規劃條例》，受影響的土地業權人可反對法定圖則所列土地用途的限制。此外，《2004年城市規劃(修訂)條例》明文規定，容許公眾人士申請修訂圖則，讓土地業權人有機會把本身的情況呈交城市規劃委員會考慮，以期解決可能因規劃行動而引致的問題。

近期事態發展

9. 石禮謙議員在2007年4月25日的立法會會議上，提出一項相關的口頭質詢。政府當局的答覆載於**附錄IV**。立法會議員的跟進質詢提出下列各項事宜 ——

- (a) 分區計劃大綱圖的發展限制是否凌駕於相關土地契約的條款；
- (b) 現時有關規劃的法例與《基本法》第一百零五條的規定是否一致；
- (c) 據觀察所得，政府當局在若干選定地點以及在不同時間就不同地區施加發展限制，此舉使人關注到，政府當局是否偏袒某些發展商；及
- (d) 由於未能肯定政府當局會否施加發展限制(甚至對已獲核准分區計劃大綱圖所涵蓋的用地施加限制)，私營機構的重建發展意欲會因而減低。

10. 事務委員會將於2007年5月22日的會議上與政府當局討論此課題。

立法會秘書處
議會事務部1
2007年5月18日

城市規劃條例草案
法案委員會文件編號 7/00

為規劃行動作出補償的普通法原則

背景

在法案委員會二零零零年三月二十八日的會議席上，鄉議局對條例草案沒有規定為規劃行動作出補償，表示關注。與會人士簡略地討論了成文法與租契的合約條文的關係，當局並同意擬備一份文件，闡釋與補償問題有關的普通法原則。

2. 現行的《城市規劃條例》沒有就補償問題作出規定。這一直是個具爭議性的問題，特別是在一九九一年制定的《城市規劃(修訂)條例》把法定規劃管制範圍擴大至包括新界的鄉郊地區後，這個問題更加受到關注。為此，補償與徵值特別委員會(下稱「委員會」)於一九九一年七月成立，負責考慮補償和徵值方面的複雜問題。委員會詳細研究了其他國家的情況，並於一九九二年三月公布一份報告書。當局在擬備這份文件時已參考該份報告書。

普通法

3. 雖然本港的收地和補償規定是根據法例而制定的，但普通法原則亦同時適用。普通法是由香港和其他普通法適用地區高級法院的判決記錄構成。

4. 法例如規定強制徵用私人土地，也會訂定補償的規定。《城市規劃條例草案》第 6(3)和 6(4)條有關補償的規定便是例子。這兩條條文沿用現行《城市規劃條例》第 4(2)和 4(3)條的字眼。假如法例中有關補償權利的規定不清楚，普通法訂有若干原則，以協助詮釋和應用法定權利和權力。普通法認定須就徵收私人土地作出補償，除非清楚顯示有相反的意圖。

5. 假如成文法只管制私人土地的用途，普通法的原則是，除非有明文規定，否則無須給予補償。管制權可限制或禁止土地的發展，但不會剝奪擁有人的私人土地擁有權。在奉行民事法的國家，公眾利益應凌駕於私人利益，而私人利益受損是除在極端情況外不會獲得補償的這個原則，早已成為法律的特色。

6. 香港的私人土地，差不多全部由政府根據契約批出的。作為批租人的政府，與作為承租人的私人土地擁有人雙方的合約權利，均須符合成文法的規定。如成文法與契約的合約條文有所牴觸，則以成文法為依歸。這正符合本港和英國、澳洲等其他普通法適用地區的法庭所確立的一般原則，即法定條文凌駕於合約條文。一些例子包括 **Discreet Ltd.** 訴城市規劃委員會 [行政申訴 1997 年第 112 號] 和 **Molton Builders Ltd.** 訴 **City of Westminster L.B.C.** [1975] 30 P & CR 182。這些個案已確立按照契約獲批地人使用土地的權利，往往受根據當時的規劃法例實施的管制約束。實際上，這種情況現時也適用於本港多項影響和可能會削弱承租人權利的法定條文，包括《建築物條例》和有關污染的法例的條文。此外，法庭亦認為，因政府行使規劃或其他法定權力而影響承租人的權利，並不等於違背批約，因為上述那些限制，是由於政府行使其立法權力所致，而不是政府以批租人這個合約身分施加的；**Lam Kwok-leung** 訴律政司 [1979] 香港判例匯編英文本第 145 頁的判決便是例子。

7. 除根據《土地收回條例》收地的個案外，現行的《城市規劃條例》和《城市規劃條例草案》均無就因規劃行動而導致發展權有所減損的補償，訂定條文。香港現行的制度已沿用多年，而其他普通法適用地區也普遍採用這個制度。委員會已於一九九一年深入考慮這個具爭議性的問題，並建議最佳的方法，是設立一個以現行制度為根據的新制度。在新制度下，因規劃行動而導致部分發展權損失，仍然不會獲得補償，但當局會改善規劃過程，以確保充分考慮私人土地擁有人的權利和公眾利益。為此，《城市規劃條例草案》內提出了多項建議，以令擬備圖則的過程更加公開和公平。

當局的意見

8. 因規劃行動而侵犯土地擁有權的合約權利，如是基於促進公眾利益，便是合理的。這是確保為了社會利益而採取的整體規劃措施不會因個人利益而受到不必要的阻撓；否則，規劃法例的整個意義便會失去。《城市規劃條例草案》內沒有條文規定為規劃行動作出補償，並沒有偏離普通法的原則。

規劃署

二零零零年四月

《城市規劃條例草案》委員會文件

**對政府當局所擬文件的回應
“為規劃行動作出補償的普通法原則”**

在2000年4月26日法案委員會會議上，議員要求助理法律顧問擬備文件，載述她在該次會議上就規劃署於2000年4月擬備的文件(立法會CB(1)1392/99-00(02)號文件)提出的意見。

政府當局的文件

2. 《城市規劃條例草案》(下稱“條例草案”)第6(3)及6(4)條建議，除根據《收回土地條例》(第124章)收回土地的情況外，不得向土地的所有人或任何具有土地權益的人支付補償。雖然該等條文基本上沿用《城市規劃條例》(第131章)(下稱“現行條例”)第4(2)及4(3)條的措辭，但條例草案就該等條文所訂的適用範圍較現行條例為廣。上述條例草案條文與現行條例相應條文的文本比較載於**附件A**。

3. 政府當局認為，因規劃行動而侵犯土地擁有權的合約權利，若是為了促進公眾利益，則屬合理。條例草案內沒有條文規定為規劃行動作出補償，並無偏離普通法的原則。

4. 政府當局所指的普通法原則是：

- (a) 除非清楚顯示有相反意向，否則須就徵用私人土地支付補償；及
- (b) 若成文法管制私人土地的用途，除非法例明文規定，否則無須支付補償。

徵用與管制的區分

5. 徵用財產與管制財產用途是上述兩項普通法原則的基礎，因此對兩者作出區分相當重要。公認的一點是，該兩種情況不能機械地作出區別，或在概念上予以區分¹。

¹ AJ van der Walt, *Constitutional Property Clauses* (1999) p.19

6. 部分司法管轄區接納，某些對財產用途的管制可列為實際徵用財產，受影響人士因而應獲得補償。在該等司法管轄區，徵用財產與管制財產的區分通常視作程度問題，因此，若過分作出管制，便會被視為實際上徵用財產。在其他司法管轄區，對財產過分作出管制不會被視為實際上徵用財產，但會視作規管過度，該等管制因而變成無效。

《基本法》

7. 政府當局的文件並無提述《基本法》，只曾提到補償與徵值特別委員會在1992年3月發表的報告書。該報告書第1.7段述明，根據議會主權原則，以及在沒有成文憲法的情況下，法院不可以違憲或不合理為理由宣布法規無效。在1997年後，要探討有關問題，就必須考慮《基本法》的影響，否則討論內容不會完整。

8. 《基本法》第八條訂明的事項之一是，除同《基本法》相抵觸或經香港特別行政區的立法機關作出修改者外，普通法予以保留。《基本法》第六及一百零五條保護私有財產權。有關條文的節錄載於**附件B**。

9. 在 *Discreet Limited v Secretary for Justice for and on behalf of the Town Planning Board* 一案[HCAL 112 of 1997]中，法官曾作出評論，指出現行條例第4(3)條面對新的憲制架構能否站得住腳，是個令人關注的問題。然而，法官亦認為，在該次處理司法覆核申請的法律程序中，他不能考慮上述問題。

10. 截至法案委員會舉行會議當天，本部未能找到任何與《基本法》對現行條例的影響有關的本地案例。比較其他國家就財產所訂的憲法條文或會有用。

與其他就財產所訂的憲法條文比較

11. 美國是司法管轄區承認管制財產與徵用財產兩種情況之間存在灰色地帶的典型例子。美國憲法第5條修正案規定，不得在沒有作出公平補償下徵用私人財產作公共用途。美國法院據此訂立了反充公原則 (inverse condemnation)。

12. 若土地不是被強制徵用，但其價值已因管制而受破壞或有所減損，便可援用反充公原則。在再沒有其他補救方法時，受影響的土地擁有人可提出申請，要求政府按照憲法規定作出補償，又或可向法院申請刪除有關的管制條件。凡有規例限制擁有人的權利，以致其失去產權的重要部分，便須作出補償²。

13. 有關的憲法條文一向被認為無須經過立法程序即可自動生效，因此不必靠制定具體法例來執行³。本部亦曾告知議員，美國憲法在保障私人產權方面所涵蓋的範圍較《基本法》為廣。

² G N Cruden, *Land Compensation and Valuation Law in Hong Kong* (2nd Ed.) (1999) p.553

³ *The Pennsylvania Coal Co. v. Mahon* 260 U.S. 393 (1922)

14. 反充公原則在其他司法管轄區如北愛爾蘭、德國、法國及意大利，並未獲得確認。德國及意大利兩國的憲法訂有條文，宣告私人財產擁有人的社會責任，藉以平衡類似的憲法權利。英國上議院在1960年曾研究北愛爾蘭的成文憲法，認為對財產施加管制規劃條件不能等同徵用財產。

法定補償

15. 經 Planning and Compensation Act 1991 修訂的 Town and Country Planning Act 的節錄載於**附件C**。在英國，提供補償款項的範圍包括以下各方面：

- (a) 撤銷或修改規劃許可；
- (b) 拒絕或有條件地批出先前曾藉發展令批出的規劃許可；
- (c) 規劃令；
- (d) 限制礦務工程；
- (e) 廣告；
- (f) 損毀通知；
- (g) 收購通知；
- (h) 法定接管；
- (i) 停止發展通知；及
- (j) 保護林木令。

16. 關於條例草案第6(3)或6(4)條是否可以接受，又或應如何作出修正，須由議員自行決定。若議員決定動議委員會審議階段修正案，就補償事宜作出規定，擬議修正案可能會具有“由公帑負擔的效力”，並須受《議事規則》第57(6)條的規定限制。

結論

17. 為規劃行動作出補償是複雜的事情，須對法律原則、憲法原則及規劃政策作多方面的考慮。如有需要，本人樂意向議員進一步提供協助。

連附件

立法會秘書處
助理法律顧問
黃思敏
2000年5月3日

4. Contents of lay-out plans and powers of the Board

(2) The Board may recommend to the Governor in Council the resumption of any land that interferes with the lay-out of an area shown on a draft or approved plan or on a master lay-out plan approved under section 4A; and resumption to avoid such interference shall be deemed to be resumption for a public purpose within the meaning of the Lands Resumption Ordinance (Cap. 124). (*Amended 2 of 1988 s. 2; 29 of 1998 s. 44*)

(3) Except in the case of resumption under the said Ordinance no compensation shall be paid to the proprietor or any person interested in any holding by reason of the fact that it lies within or is affected by any zone or district set apart under subsection (1)(b).

6. Powers and functions of Board

(3) The Board may recommend to the Chief Executive in Council the resumption of any land which interferes with the layout of an area shown on a draft or an approved plan or on a master layout plan required under section 33(3) and approved in relation to the grant of an application for planning permission under this Ordinance or on a master lay-out plan approved under section 4A of the repealed Ordinance; and resumption to avoid such interference shall be deemed to be resumption for a public purpose within the meaning of the Lands Resumption Ordinance (Cap. 124).

(4) Except in the case of resumption under the Lands Resumption Ordinance (Cap. 124) no compensation shall be paid to the proprietor or any person interested in any holding by reason of the fact that it lies within or is affected by any zone or district set apart under section 4(1)(b) of the repealed Ordinance or is affected by any provision on a plan referred to in section 7.

4. 發展藍圖的內容及規劃委員會的權力

(2) 規劃委員會可向總督會同行政局建議收回對在草圖或核准圖或根據第 4A 條核准的總綱發展藍圖上所示地區的布局設計造成干擾的土地；而為避免該等妨礙而作出的土地收回，須當作《收回土地條例》(第 124 章)所指的為公共用途而作出的收回。(由 1988 年第 2 號第 2 條修訂；由 1998 年第 29 號第 44 條修訂)

(3) 除根據上述條例收回土地的情況外，任何土地的所有人或具有任何土地權益的任何人，不得因為其土地位於根據第 (1)(b) 款所劃出的任何地帶或區域內或受該等所劃出的地帶或區域影響而獲支付任何賠償。

6. 城規會的權力及職能

(3) 城規會可向行政長官會同行政會議建議，收回妨礙草圖或核准圖則、第 33(3) 條規定的並根據本條例就規劃許可申請的批給而核准的總綱發展藍圖或根據舊有條例第 4A 條核准的總綱發展藍圖上所示地區的布局設計的土地；而為消除該等妨礙而收回土地，須當作《收回土地條例》(第 124 章)所指的收回作公共用途。

(4) 除根據《收回土地條例》(第 124 章)收回土地的情況外，不得因為任何土地位於根據舊有條例第 4(1)(b) 條所劃出的任何地帶或區域內或受該等所劃出的地帶或區域影響，或因為該土地受在第 7 條所描述的圖則上的任何規定影響，而向該土地的所有人或具有該土地權益的人支付任何補償。

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

中華人民共和國香港特別行政區基本法

Article 6

The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.

第六條 香港特別行政區依法保護私有財產權。

Article 8

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

第八條 香港原有法律，即普通法、衡平法、條例、附屬立法和習慣法，除同本法相抵觸或經香港特別行政區的立法機關作出修改者外，予以保留。

Article 105

The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

第一百零五條 香港特別行政區依法保護私人和法人財產的取得、使用、處置和繼承的權利，以及依法徵用私人和法人財產時被徵用財產的所有人得到補償的權利。

徵用財產的補償應相當於該財產當時的實際價值，可自由兌換，不得無故遲延支付。

企業所有權和外來投資均受法律保護。

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

The ownership of enterprises and the investments from outside the Region shall be protected by law.

(3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.

(4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.

(5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) The determination of an appeal by the Secretary of State under this section shall be final.

(7) Schedule 6 applies to appeals under this section.]

NOTES

See the first note to s 106 ante.

Sub-s (1): Local planning authority. As to local planning authorities, see s 1(1)–(3) ante. By s 5(2), (3) ante, for the purposes of this section the Broads Authority is the sole district planning authority for the Broads.

Planning obligation. For the meaning of this expression, see s 106(1) ante.

Secretary of State. See the note to s 2 ante.

Sub-s (3): Such period (manner) as may be prescribed. Is prescribed by regulations; see s 336(1) post. See further the note "Regulations under this section" below.

Sub-s (5): Person appointed . . . for the purpose. As to the determination of appeals by such a person, see further sub-s (7) above and Sch 6 post.

Contributions by local authorities, etc; land of local planning authorities, etc. See the notes to s 55 ante.

Tree preservation orders; advertisements; statutory undertakers. See the notes to s 57 ante.

Crown land. See the note to s 57 ante. This section is applied by s 299A(4) post to a planning obligation entered into under s 299A post as it applies to a planning obligation entered into under this section, subject to s 299A(5) post.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt 1 post.

Regulations under this section. The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832 (made under or for the purposes of sub-s (3), (4), (7) above).

For general provisions as to regulations, see s 333(1)–(3) post.

PART IV

COMPENSATION FOR EFFECTS OF CERTAIN ORDERS, NOTICES ETC

Compensation for revocation of planning permission etc

✓107 Compensation where planning permission revoked or modified

(1) Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it—

- has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to

it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect—

- of any work carried out before the grant of the permission which is revoked or modified, or
- of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted[—

- subject to the condition set out in Schedule 10, for any development of the land of a class specified in paragraph 1 of Schedule 3;
- for any development of a class specified in paragraph 2 of Schedule 3.]

(5) In this Part any reference to an order under section 97 includes a reference to an order under the provisions of that section as applied by section 102(3) (or, subject to section 116, by paragraph [1(3)] of Schedule 9).

NOTES

The words in square brackets in sub-s (4) were substituted by the Planning and Compensation Act 1991, s 31(4), Sch 6, paras 8, 13, in relation to claims made on or after 16 November 1990, and the figure in square brackets in sub-s (5) was substituted by s 21 of, and Sch 1, paras 1, 8 to, that Act.

Sub-s (1): Where planning permission is revoked or modified, etc. There is an assumption for the purposes of assessing any loss or damage consisting of depreciation in the value of the land under this section that planning permission will be granted; thus this section will apply notwithstanding the fact that the planning permission at issue is incapable of implementation; see *Canterbury City Council v Colley* [1993] AC 401, [1993] 1 All ER 591, 111.

Local planning authority. As to local planning authorities, see s 1(1)–(3) ante. See, further, as to the construction of this expression in this section (including this section as applied by s 108 post) and s 115(1)–(4) post, s 1(5), (6) ante and Sch 1, paras 16(1), (2), 21, Sch 1A, paras 3, 4(1), (2) post, and as to reimbursement of compensation paid under those provisions see Sch 1, para 16(3), Sch 1A, para 4(3) post.

Within the prescribed time and in the prescribed manner. Is prescribed by regulations under this Act; see s 336(1) post, and for the general power to make regulations, see s 333(1)–(3) post. The Town and Country Planning General Regulations 1992, SI 1992/1492, as amended as noted to s 99 ante, have partly been made for the purposes of sub-s (1) above.

Person interested in the land. This includes any person who has an enforceable interest as against the owner to use the land (*Pennine Railway Ltd v Kirkstall Metropolitan BC* [1983] QB 382, [1982] 3 All ER 628, CA (contractual licence)). See also s 330 post as to the power to require information as to interests in land.

Otherwise sustained loss or damage, etc. The Lands Tribunal has allowed, subject to an allowance for deferment, loss of anticipated future profits under a specific contract which the claimant would almost certainly have been awarded (*Hobbs (Quarries) Ltd v Somerset CC* (1975) 30 P & CR 286), but loss of profit and goodwill from a business which would have been established, but never in fact existed, is too remote (*Halford v Oxfordshire CC* (1952) 2 P & CR 358, Lands Tribunal; *Evans v Cheshire CC* (1952) 3 P & CR 50, Lands Tribunal); and the costs of an appeal against the revocation order do not qualify (*Evans v Cheshire CC* above at 56). The claimant was held to have suffered no loss where the development was carried out under a later permission (*Ellis v Wiltshire CC* (1961) 12 P & CR 178, Lands Tribunal), nor where planning permission for an agricultural cottage was modified by the imposition of a condition restricting occupation to persons employed or last employed in agriculture (*Wilson v West Sussex CC* [1963] 2 QB 764, [1963] 1 All ER 751, CA). Compensation is not payable in respect of liability to development land tax (now abolished) (*Loomish Estates Ltd v London Through of Haringey* (1978) 38 P & CR 234, Lands Tribunal), nor in respect of interest from the date of the order to the date of the award (*Hobbs (Quarries) Ltd v Somerset CC* above; *Loomish Estates Ltd v London Through of Haringey* above; *Burton v Manchester City Council* (1976) 32 P & CR 115, Lands Tribunal).

Compensation. In connection with compensation under this section, see also s 108 post (compensation for refusal or conditional grant of planning permission formerly granted by development order); s 109 post (apportionment of compensation for depreciation); s 110 post (regulation of compensation for depreciation); s 111 post (recovery of compensation under this section on subsequent development); s 116 post (modification of compensation provisions in respect of mineral working

etc); s 144 post (special provisions as to compensation where purchase notice served); and Sch 1, para 16 post (general provisions as to compensation).

Sub-s (2): Expenditure . . . upon other similar matters preparatory, etc. As to the expenditure which qualifies under sub-s (2) above, see *Holmes v Bradfield RDC* [1949] 2 KB 1, [1949] 1 All ER 381; *Evans v Cheshire CC* (1952) 3 P & CR 50, Lands Tribunal; *Southern Olympia (Sundicate) Ltd v West Sussex CC* (1952) 3 P & CR 50, Lands Tribunal; and *Diggs v Buckinghamshire CC* (1953) 3 P & CR 404, Lands Tribunal.

Sub-s (5): This Part, ie Pt IV (ss 107-118, Sch 10).

Airports, etc. In the case of an airport to which the Airports Act 1986, Pt V applies, a local planning authority is entitled to recover from the airport operator a sum equal to any compensation which the planning authority has become liable to pay, if he has become so liable under this section or s 108, 144(2) or 279(1) post, if the liability to pay is attributable to a planning decision which would not have been taken, or, in the case of compensation under this section, to an order under s 97 ante which would not have been made but for certain safety or air traffic control purposes; see s 61(1) of the 1986 Act, Vol 4, title Aviation (see also s 61(5), (6) of the 1986 Act). Where a sum equal to any compensation is payable or paid to a planning authority by an airport operator in pursuance of s 61(1) of the 1986 Act, the planning authority must pay the airport operator any amount received by it in respect of compensation under ss 111, 112 post; see s 61(2) of the 1986 Act. Provisions similar to those in the 1986 Act are made in relation to aerodromes, etc owned by the Civil Aviation Authority by the Civil Aviation Act 1982, s 53(1), (2), (5), (6), Vol 4, title Aviation.

Off-street parking. For the circumstances in which compensation payable by virtue of the Road Traffic Regulation Act 1984, Sch 4, para 22(1), will be taken into account in assessing compensation under this section or s 115 post, see s 43(9) of, and Sch 4, para 22(5) to, that Act, Vol 38, title Road Traffic.

Expenses. As to the payment of sums necessary to enable the Secretary of State to make any payments becoming payable by him under this Part, see s 311(1) post.

Ecclesiastical property. As to the payment of compensation under this Part in respect of land which is ecclesiastical property, see s 318(3), (6) post; and see also s 318(5) as to the recovery of sums under ss 111, 112 post.

Rights of entry. As to rights of entry in connection with compensation payable under this Part, see s 324(5), 325 post.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Definitions. For "development", see s 55 ante; for "land", "minerals", "planning permission" and "prescribed", see s 336(1) post.

✓ 108 Compensation for refusal or conditional grant of planning permission formerly granted by development order

(1) Where—

- planning permission granted by a development order is withdrawn (whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order); and
- on an application made under Part III planning permission for development formerly permitted by that order is refused, or is granted subject to conditions other than those imposed by that order,

section 107 shall apply as if the planning permission granted by the development order—

- had been granted by the local planning authority under Part III; and
- had been revoked or modified by an order under section 97.

(2) Where planning permission granted by a development order is withdrawn by revocation or amendment of the order, this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the revocation or amendment came into operation.

(3) This section shall not apply in relation to planning permission for the development of operational land of statutory undertakers.

[(4) Regulations made by virtue of this subsection may provide that subsection (1) shall not apply where planning permission granted by a development order for

demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.]

NOTES

Sub-s (4) was added by the Planning and Compensation Act 1991, s 13(3).

Where planning permission . . . is withdrawn, etc. Providing that the application for planning permission is for development in respect of which general development order rights have been withdrawn, it does not matter that it is also an application for permission for other development, because there is no requirement in this Act that an application must be limited to the development previously permitted under the general development order; see *Slor v Guildford BC* (1992) 64 P & CR 330, Lands Tribunal.

Part III, ie ss 55-106B ante, Schs 3-9 post.

Local planning authority. Cf the note to s 107 ante.

Further provisions. See further s 109 post (apportionment of compensation for depreciation); s 110 post (registration of compensation for depreciation); s 111 post (recovery of compensation on subsequent development); Sch 1, para 16 post (general provisions as to compensation).

Expenses; minerals. See ss 311(1), 314, 315 and Sch 16, Pt I post.

Airports, etc; ecclesiastical property; rights of entry. See the notes to s 107 ante.

Definitions. For "development", see s 55 ante; for "development order", see s 59 ante and s 336(1) post; for "statutory undertakers", see s 262(1), (3), (4), (6)(a), (7)(a) post; for "operational land", see s 263, 336(3) post; for "building" and "planning permission", see s 336(1) post.

Regulations. Up to 1 December 1997 no regulations had been made by virtue of sub-s (4) above. For general provisions as to regulations, see s 333(1)-(3) post.

109 Apportionment of compensation for depreciation

(1) Where compensation becomes payable under section 107 which includes compensation for depreciation of an amount exceeding £20, the local planning authority—

- if it appears to them to be practicable to do so, shall apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates; and
- shall give particulars of any such apportionment to the claimant and to any other person entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.

(2) In carrying out an apportionment under subsection (1)(a), the local planning authority shall divide the land into parts, and shall distribute the compensation for depreciation between those parts according to the way in which different parts of the land appear to the authority to be differently affected by the order or, in a case falling within section 108, the relevant planning decision, in consequence of which the compensation is payable.

(3) Regulations under this section shall make provision, subject to subsection (4)—

- for enabling the claimant and any other person to whom particulars of an apportionment have been given under subsection (1), or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal;
- for enabling the claimant and every other person to whom particulars of any such apportionment have been so given to be heard by the Tribunal on any reference under this section of that apportionment; and
- for requiring the Tribunal, on any such reference, either to confirm or to vary the apportionment and to notify the parties of the decision of the Tribunal.

(4) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment—

- (a) relates wholly or partly to the same matters as a previous apportionment, and
- (b) is consistent with that previous apportionment in so far as it relates to those matters,

the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

(5) On a reference to the Lands Tribunal by virtue of subsection (3), subsections (1) and (2), so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the local planning authority, of references to the Lands Tribunal.

(6) In this section and [section 110]—

"compensation for depreciation" means so much of any compensation payable under section 107 as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land,

"interest" (where the reference is to an interest in land) means the fee simple or a tenancy of the land and does not include any other interest in it, and

"relevant planning decision" means the planning decision by which planning permission is refused, or is granted subject to conditions other than those previously imposed by the development order.

NOTES

The words in square brackets in sub-s (6) were substituted by the Planning and Compensation Act 1991, s 31(4), Sch 6, paras 8, 14.

Sub-s (1): **Compensation for depreciation.** As to registration of compensation for depreciation, see s 110 post.

Local planning authority. Cf the note to s 107 ante.

Sub-s (3): **Lands Tribunal.** The Lands Tribunal was established by the Lands Tribunal Act 1949, s 1, Vol 9, title Compulsory Acquisition. See also, in particular, s 3 of that Act, and the rules made thereunder, for provisions as to procedure, appeals, costs, etc.

Sub-s (6): **Fee simple.** As to this estate, see the note "Fee simple absolute in possession" to the Law of Property Act 1925, s 1, Vol 37, title Real Property (Pt 1).

Crown land. As to the application of this section to Crown land, see s 298 post.

Expenses; rights of entry. See the notes to s 107 ante.

Minerals; ecclesiastical property. See ss 315, 318 and Sch 16, Pt III post.

Definitions. For "development order", see s 59 ante; for "land", "previous apportionment" and "tenancy", see s 336(1) post; for "planning decision", see s 336(1), (5) post.

Regulations under this section. Up to 1 December 1997 no regulations have been made under this section, but by virtue of the Planning (Consequential Provisions) Act 1990, s 2 post, the Town and Country Planning (Compensation and Certificates) Regulations 1974, SI 1974/1242, have effect thereunder.

For general provisions as to regulations, see s 333(1)–(3) post.

110 Registration of compensation for depreciation

(1) Where compensation becomes payable under section 107 which includes compensation for depreciation of an amount exceeding £20, the local planning authority shall give notice to the Secretary of State that such compensation has become payable, specifying the amount of the compensation for depreciation and any apportionment of it under section 109.

(2) Where the Secretary of State is given such notice he shall cause notice of that fact to be deposited—

- (a) with the council of the district[, Welsh county, county borough] or London borough in which the land is situated, and
- (b) if that council is not the local planning authority, with the local planning authority.

(3) Notices deposited under this section must specify—

- (a) the order, or in a case falling within section 108 the relevant planning decision, and the land to which the claim for compensation relates; and
- (b) the amount of compensation and any apportionment of it under section 109.

(4) Notices deposited under this section shall be local land charges, and for the purposes of the Local Land Charges Act 1975 the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge constituted by it.

(5) In relation to compensation specified in a notice registered under this section, references in this Part to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed as follows—

- (a) if the notice does not include an apportionment under section 109, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
- (b) if the notice includes such an apportionment—
 - (i) the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and
 - (ii) so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part.

NOTES

The words in square brackets in sub-s (2) were inserted by the Local Government (Wales) Act 1994, s 20(4)(b), Sch 6, Pt II, para 24(2).

Sub-s (1): **Compensation for depreciation.** In connection with registration of compensation under this section, see also s 111 post (recovery of compensation on subsequent development); s 112 post (amount recoverable under s 111 post and provisions for payment or remission of it); and s 308 post (recovery from acquiring authorities of sums paid by way of compensation).

Local planning authority. Cf the note to s 107 ante.

Give notice. For provisions as to service of notices, see s 329 post.

Secretary of State. See the note to s 2 ante.

Sub-s (2): **Council of the district; Welsh county; county borough; London borough.** See the corresponding notes to s 1 ante and see also the definition "London borough" in s 336(1) post.

Sub-s (4): **Local land charges.** The effect of making a notice deposited under this section a local land charge is to make it such a charge for the purposes of the Local Land Charges Act 1975, Vol 37, title Real Property (Pt 1); see s 1(1)(c) of that Act. It is therefore registrable in the appropriate local land charges register and subject to the other provisions of that Act.

See also the Local Land Charges Rules 1977, SI 1977/985, rr 2(2), 3, as read with the Planning (Consequential Provisions) Act 1990, s 2(4) post.

Sub-s (5): **This Part.** ie Pt IV (ss 107–118, Sch 10).

Crown land. As to the application of this section to Crown land, see s 298 post.

Expenses; rights of entry. See the notes to s 107 ante.

Minerals; ecclesiastical property. See ss 315, 318 and Sch 16, Pt III post.

Definitions. For "compensation for depreciation" and "relevant planning decision", see s 109(6) ante; for "land", see s 336(1) post.

Local Land Charges Act 1975. See Vol 37, title Real Property (Pt 1); and for meaning of "the originating authority" in that Act, see s 5(4) thereof.

111 Recovery of compensation under s 107 on subsequent development

(1) No person shall carry out any . . . development to which this section applies on land in respect of which a notice ("a compensation notice") is registered under section 110 until any amount which is recoverable under this section in accordance with section 112 in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.

(2) Subject to subsections (3) [to (5)], this section applies to any . . . development—

- (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination of them; or
- (b) which consists in the winning and working of minerals; or
- (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.

(3) This section shall not apply to any development by virtue of subsection (2)(c) if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply to it.

(4) Where the compensation under section 107 specified in the notice registered under section 110 became payable in respect of an order modifying planning permission or, in a case falling within section 108, of a relevant planning decision (within the meaning of section 109) granting conditional planning permission, this section shall not apply to development in accordance with that permission as modified by the order or, as the case may be, in accordance with those conditions.

[(5) This section does not apply to any development—

- (a) of a class specified in paragraph 1 of Schedule 3 which is carried out in accordance with the condition set out in Schedule 10; or
- (b) of a class specified in paragraph 2 of Schedule 3.]

NOTES

The words omitted from sub-s (1), (2) were repealed, and the words in square brackets in sub-s (2), and the whole of sub-s (5), were substituted, by the Planning and Compensation Act 1991, ss 31(4), 44(6), Sch 6, paras 8, 15, Sch 19, Pt II.

Sub-s (1): Amount which is recoverable, etc. As to the amount recoverable under this section and provisions for payment or remission of it, see s 112 post.

Secretary of State. See the note to s 2 ante.

Sub-s (4): Order modifying planning permission. Is an order under s 97 ante; and see also s 107(5) ante.

Sub-s (5): This section does not apply, etc. Note also Sch 3, Pt III, para 13(2) post (disapplying para 13 of that Schedule for the purposes of this section).

Crown land. As to the application of this section to Crown land, see s 298 post.

Minerals; ecclesiastical property. See ss 315, 318 and Sch 16, Pt III post.

Settled land, etc. For provisions as to applying or raising money for payments under this section in the case of settled land and land of universities and colleges, see s 328 post.

Airports, etc; expenses; rights of entry. See the notes to s 107 ante.

Definitions. For "development", see s 55 ante; for "building", "land", "minerals", "planning permission" and "the winning and working of minerals", see s 336(1) post.

112 Amount recoverable under s 111 and provisions for payment or remission of it

(1) Subject to the following provisions of this section, the amount recoverable under section 111 in respect of the compensation specified in a notice registered under section 110—

- (a) if the land on which the development is to be carried out ("the development area") is identical with, or includes (with other land) the whole of, the land comprised in the notice, shall be the amount of compensation specified in the notice;
- (b) if the development area forms part of the land comprised in the notice, or includes part of that land together with other land not comprised in the notice, shall be so much of the amount of the compensation specified in the notice as is attributable to land comprised in the notice and falling within the development area.

(2) Where, in the case of any land in respect of which such a notice has been so registered, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or part of any amount otherwise recoverable under section 111.

(3) Where part only of any such amount has been remitted in respect of any land, the Secretary of State shall cause the notice registered under section 110 to be amended by substituting in it, for the statement of the amount of the compensation, in so far as it is attributable to that land, a statement of the amount which has been remitted under subsection (2).

(4) Where, in connection with the development of any land, an amount becomes recoverable under section 111 in respect of the compensation specified in such a notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2), no amount shall be recoverable under that section in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development of it.

(5) No amount shall be recoverable under section 111 in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 308.

(6) An amount recoverable under section 111 in respect of any compensation shall be payable to the Secretary of State either—

- (a) as a single capital payment, or
- (b) as a series of instalments of capital and interest combined, or
- (c) as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State may direct.

(7) Before giving a direction under subsection (6)(c) the Secretary of State shall take into account any representations made by the person by whom the development is to be carried out.

(8) Except where the amount payable under subsection (6) is payable as a single capital payment, it shall be secured by the person by whom the development is to be carried out in such manner (whether by mortgage, covenant or otherwise) as the Secretary of State may direct.

(9) If any person initiates any . . . development to which section 111 applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him—

- (a) specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and
- (b) requiring him to pay that amount to the Secretary of State within such period as may be specified in the notice.

(10) The period specified under subsection (9)(b) must not be less than three months after the service of the notice.

(11) Subject to subsection (12), any sum recovered by the Secretary of State under section 111 shall be paid to the local planning authority who paid the compensation to which that sum relates.

(12) Subject to subsection (13), in paying any such sum to the local planning authority, the Secretary of State shall deduct from it—

- (a) . . .
- (b) the amount of any grant paid by him under Part XIV in respect of that compensation.

(13) If the sum recovered by the Secretary of State under section 111—

- (a) is an instalment of the total sum recoverable, or
- (b) is recovered by reference to development of part of the land in respect of which the compensation was payable,

any deduction to be made under . . . subsection (12) shall be a deduction of such amount as the Secretary of State may determine to be the proper proportion of the amount referred to in that paragraph.

NOTES

The words omitted from sub-ss (9), (12), (13) were repealed by the Planning and Compensation Act 1991, ss 31(4), 84(6), Sch 6, paras 8, 16, Sch 19, Pt II.

Sub-s (2): *Secretary of State*. See the note to s 2 ante.

Sub-s (9): *Serve a notice*. For provisions as to service of notices, see s 329 post.

Sub-s (10): *Months*. See the note to s 94 ante.

Sub-s (11): *Local planning authority*. Cf the note to s 107 ante.

Sub-s (12): *Part XIV*, ie ss 303–314, Sch 16 post.

Crown land. As to the application of this section to Crown land, see s 298 post.

Minerals; ecclesiastical property. See ss 315, 318 and Sch 16, Pt III post.

Settled land, etc. For provisions as to applying or raising money for payments under this section in the case of settled land and land of universities and colleges, see s 328 post.

Airports, etc; expenses; rights of entry. See the notes to s 107 ante.

Definitions. For "development", see s 55 ante; as to "so much of the compensation . . . as is attributable to a part of the land, etc", see s 110(5) ante; for "land" and "mortgage", see s 336(1) post.

113 (*Repealed by the Planning and Compensation Act 1991, ss 31(4), 84(6), Sch 6, paras 8, 17, Sch 19, Pt II.*)

Compensation for other planning decisions

114 (*Repealed, in relation to an application for planning permission made on or after 16 November 1990, by the Planning and Compensation Act 1991, ss 31(2), (7), 84(6), Sch 19, Pt II.*)

✓ 115 Compensation in respect of orders under s 102 etc

(1) This section shall have effect where an order is made under section 102—

- (a) requiring a use of land to be discontinued,
- (b) imposing conditions on the continuance of it, or
- (c) requiring any buildings or works on land to be altered or removed.

(2) If, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—

- (a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it, or
- (b) by being disturbed in his enjoyment of the land or of such minerals,

that authority shall pay to that person compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.

(4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) Subject to section 116, this section applies where such an order as is mentioned in subsection (6) is made as it applies where an order is made under section 102.

(6) The orders referred to in subsection (5) are an order under paragraph 1 of Schedule 9—

- (a) requiring a use of land to be discontinued, or
- (b) imposing conditions on the continuance of it, or
- (c) requiring any buildings or works or plant or machinery on land to be altered or removed,

or an order under paragraph 3, 5 or 6 of that Schedule.

NOTES

General Note. Sub-ss (5), (6) above give effect to the recommendation of the Law Commission in para 10 of their Report on this consolidation (Law Com No 189; Cm 958) that the Town and Country Planning Act 1971, s 170 (from which the present section is derived) should be amended so as to take into account an order being made requiring plant or machinery (rather than buildings or works) to be altered or removed.

Sub-s (2): *Local planning authority*. Cf the note to s 107 ante.

Within the prescribed time and in the prescribed manner. Cf prescribed by regulations under this Act; see s 336(1) post, and for the general power to make regulations, see s 333(1)–(3) post. The Town and Country Planning General Regulations 1992, SI 1992/1492, as amended as noted to s 99 ante, have partly been made for the purposes of sub-s (2) above.

Has suffered damage, etc. It should be noted that indirect damage, such as damage suffered by a shareholder and director of a company affected, is not enough; cf *Roberts v Coventry Corp* [1947] 1 All ER 308, 111 JP 165.

Interest to which he is entitled in the land. Cf the corresponding note to s 107 ante. See also s 330 post as to the power to require information as to interests in land.

Compensation. See, further, s 116 post for modification of compensation provisions in respect of mineral working etc; and Sch 1, para 16 post for general provisions as to compensation.

Exception. For exclusion of this section in certain cases where a purchase notice is served in respect of the interest in question, see s 144(7) post.

Statutory undertakers. For provisions as to the measure of compensation to statutory undertakers in respect of orders under s 102 ante, or Sch 9 post, see s 280 post.

Off-street parking; ecclesiastical property; rights of entry. See the notes to s 107 ante.

Expenses; minerals. See ss 311, 314, 315 and Sch 16, Pt I post.

Definitions. For "buildings or works", "land", "minerals", "prescribed" and "use", see s 336(1) post.

✓ [116 Modification of compensation provisions in respect of mineral working etc

(1) Regulations made by virtue of this section with the consent of the Treasury may provide that where an order is made under—

- (a) section 97 modifying planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste; or
- (b) paragraph 1, 3, 5 or 6 of Schedule 9 with respect to such winning and working or depositing,

sections 107, 115, 117, 279 and 280 shall have effect subject, in such cases as may be prescribed, to such modifications as may be prescribed.

(2) Any such regulations may make provision—

- (a) as to circumstances in which compensation is not to be payable;
- (b) for the modification of the basis on which any amount to be paid by way of compensation is to be assessed;
- (c) for the assessment of any such amount on a basis different from that on which it would otherwise have been assessed,

and may also make different provision for different cases and incidental or supplementary provision.

(3) No such regulations shall be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.

(4) Before making any such regulations the Secretary of State shall consult such persons as appear to him to be representative—

- (a) of persons carrying out mining operations;
- (b) of owners of interests in land containing minerals; and
- (c) of mineral planning authorities.]

NOTES

This section was substituted by the Planning and Compensation Act 1991, s 21, Sch 1, paras 1, 9. Laid before . . . Parliament. For meaning, see the Laying of Documents before Parliament (Interpretation) Act 1948, s 1(1), Vol 41, title Statutes.

Secretary of State. See the note to s 2 ante.

Expenses; ecclesiastical property; rights of entry. See the notes to s 107 ante.

Mineral planning permissions. In connection with this section, see the provisions relating to the review of mineral planning permissions contained in the Environment Act 1995, s 96(1), Sch 13, para 15(6), Sch 14, para 13(6) post.

Definitions. For "mineral planning authority", see s 1(4), (4A), (4B) ante; for "development", see s 55 ante; for "mining operations", see s 55(4) ante; as to "an order under section 97", see s 107(5) ante; for "depositing of mineral waste", "land", "minerals", "owner", "planning permission", "prescribed" and "the winning and working of minerals", see s 336(1) post.

Regulations under this section. The Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111. For general provisions as to regulations, see s 333(1)–(3) post.

General and supplemental provisions

117 General provisions as to compensation for depreciation under Part IV

(1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Subject to regulations [by virtue of section 116], this section applies to any compensation which under the provisions of this Part is payable in respect of depreciation of the value of an interest in land.

(3) Where an interest in land is subject to a mortgage—

- (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
- (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

NOTES

The words in square brackets in sub-s (2) were substituted by the Planning and Compensation Act 1991, s 21, Sch 1, paras 1, 10.

Compensation to which this section applies. Note sub-s (2) above; and see also s 144 post; the Road Traffic Regulation Act 1984, Sch 4, para 22(4), Vol 38, title Road Traffic; the Control of Off-

Street Parking (England and Wales) Order 1978, SI 1978/1535, art 11, Schedule, para 22(4), and the Control of Off-Street Parking (England and Wales) (Metropolitan Districts) Order 1986, SI 1986/225, art 11, Schedule, para 22(4) (both made or having effect under s 44 of the 1984 Act, in the same title); and the Planning (Hazardous Substances) Act 1990, s 16(5) post.

Interest in land. As to the power to require information as to interests in land, see s 330 post.

This Part. ie Pt IV (ss 107–118, Sch 10).

Compensation. See, further, s 116 ante for modification of compensation provisions in respect of mineral working etc.

Ecclesiastical property; rights of entry. See the notes to s 107 ante.

Expenses; minerals. See ss 311, 314, 315 and Sch 16, Pt I post.

Definitions. For "compulsory acquisition", "land" and "mortgage", see s 336(1) post.

Land Compensation Act 1961, s 5. See Vol 9, title Compulsory Acquisition.

118 Determination of claims for compensation

(1) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.

(2) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

NOTES

This Part. ie Pt IV (ss 107–118, Sch 10).

Lands Tribunal. See the note to s 109 ante.

Applications. This section is applied by ss 144(5), 196C(4), 325(7) post, the Post Office Act 1969, s 57(4), Vol 34, title Post Office, the Telecommunications Act 1984, s 37(4), Vol 45, title Telecommunications and Broadcasting, the Planning (Hazardous Substances) Act 1990, s 16(5) post and the Leasehold Reform, Housing and Urban Development Act 1993, s 163(9) post.

Expenses; minerals. See ss 311, 314, 315 and Sch 16, Pt I post.

Ecclesiastical property; rights of entry. See the notes to s 107 ante.

Land Compensation Act 1961, ss 2, 4. See Vol 9, title Compulsory Acquisition.

119–136 ((Pt V) Repealed by the Planning and Compensation Act 1991, ss 31(1), 84(6), Sch 19, Pt II, in relation to any compensation under Pt V unless the claim was made under s 127 prior to 25 September 1991 (ie the date on which this repeal came into force); see also s 31(6) of the 1991 Act post.)

PART VI

RIGHTS OF OWNERS ETC TO REQUIRE PURCHASE OF INTERESTS

CHAPTER I

INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS

Service of purchase notices

137 Circumstances in which purchase notices may be served

(1) This section applies where—

- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or
- (b) by an order under section 97 planning permission in respect of any land is revoked, or is modified by the imposition of conditions; or
- (c) an order is made under section 102 or paragraph 1 of Schedule 9 in respect of any land.

(5) Where—

- (a) the Secretary of State has notified the owner by whom a purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice; and
- (b) that decision is quashed under Part XII,

the purchase notice shall be treated as cancelled, but the owner may serve a further purchase notice in its place.

(6) The reference in subsection (5) to a decision to confirm, or not to confirm, the purchase notice includes—

- (a) any decision not to confirm the notice in respect of any part of the land to which it relates, and
- (b) any decision to grant any permission, or give any direction, instead of confirming the notice, either wholly or in part.

(7) For the purposes of determining whether a further purchase notice under subsection (5) was served within the period prescribed for the service of purchase notices, the planning decision in consequence of which the notice was served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.

(8) A notice to treat which is deemed to have been served by virtue of subsection (1) or (2) may not be withdrawn under section 31 of the Land Compensation Act 1961.

NOTES

Sub-s (1): Secretary of State. See the note to s 2 ante.
Confirms a purchase notice. As to action by the Secretary of State in relation to a purchase notice, see ss 141, 142, ante.

Deemed . . . to have served a notice to treat, etc. See the note to s 139 ante (substituting a reference to sub-s (1) or (2) above for the reference to s 139(3) ante and a reference to sub-s (8) above for the reference to s 139(5) ante).

Sub-s (2): Deemed . . . to have served a notice to treat, etc. See the last foregoing note.
Sub-s (5): Part XII. *ie* ss 284–292 post. As to the quashing of decisions by the High Court, see s 288 post.

Serve a further purchase notice. As to the service of purchase notices, see s 137 ante; and note sub-s (7) above.

Sub-s (7): Period prescribed for the service of purchase notices. See s 137(2) ante and the relevant note thereto.

Housing action trusts. See the note to s 55 ante.
Tree preservation orders; advertisements; Crown land; National Parks; contributions; airports, etc. See the notes to s 137 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.
Urban development corporations. See the note to s 139 ante.

Definitions. For “purchase notice”, see s 137(2) ante; for “the relevant provisions”, see s 148(1) post; for “statutory undertakers”, see ss 148(1), 262(1), (3), (4), (6)(a), (7)(a) post; for “owner”, see ss 148(2), 336(1) post; for “land”, see s 336(1) post; for “local authority”, see s 336(1), (10) post (and note s 147A post); for “planning decision”, see s 336(1), (5) post.

Planning (Listed Buildings and Conservation Areas) Act 1990, ss 20, 39; Planning (Hazardous Substances) Act 1990, s 21. See this title post.

Land Compensation Act 1961, s 31. See Vol 9, title Compulsory Acquisition.

Compensation

✓ 144 Special provisions as to compensation where purchase notice served

(1) Where compensation is payable by virtue of section 107 in respect of expenditure incurred in carrying out any works on land, any compensation payable in respect of the acquisition of an interest in the land in pursuance of a purchase notice shall be reduced by an amount equal to the value of those works.

(2) Where—

- (a) the Secretary of State directs under section 141(3) of that, if an application for it is made, planning permission must be granted for the development of any land, and
- (b) on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that the permitted development value of the interest in that land in respect of which the purchase notice was served is less than its [Schedule 3 value],

that authority shall pay the person entitled to that interest compensation of an amount equal to the difference.

(3) If the planning permission mentioned in subsection (2)(a) would be granted subject to conditions for regulating the design or external appearance, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State may direct that in assessing any compensation payable under subsection (2) those conditions must be disregarded, either altogether or to such extent as may be specified in the direction.

(4) The Secretary of State may only give a direction under subsection (3) if it appears to him to be reasonable to do so having regard to the local circumstances.

(5) Sections 117 and 118 shall have effect in relation to compensation under subsection (2) as they have effect in relation to compensation to which those sections apply.

(6) In this section—

“permitted development value”, in relation to an interest in land in respect of which a direction is given under section 141(3), means the value of that interest calculated with regard to that direction, but on the assumption that no planning permission would be granted otherwise than in accordance with that direction, and

[“Schedule 3 value”, in relation to such an interest, means the value of that interest calculated on the assumption that planning permission would be granted—

- (a) subject to the condition in Schedule 10, for any development of a class specified in paragraph 1 of Schedule 3; and
- (b) for any development of a class specified in paragraph 2 of Schedule 3.]

(7) Where a purchase notice in respect of an interest in land is served in consequence of an order under section 102 or paragraph 1 of Schedule 9, then if—

- (a) that interest is acquired in accordance with this Chapter; or
 - (b) compensation is payable in respect of that interest under subsection (2),
- no compensation shall be payable in respect of that order under section 115.

NOTES

The words in square brackets in sub-ss (2)(b), (6) were substituted by the Planning and Compensation Act 1991, s 31(4), Sch 6, paras 8, 19.

Sub-s (2): Secretary of State. See the note to s 2 ante.

Local planning authority. As to these authorities, see s 1(1)–(3) ante. Outside Greater London the local planning authority for the purposes of sub-s (2) above is the district planning authority; see s 1(5)(c) ante and Sch 1, paras 16(4), 21(1) post.

Prescribed time; prescribed manner. *ie* prescribed by regulations; see s 336(1) post, and for general provisions as to regulations, see s 333(1)–(3) post. The Town and Country Planning General Regulations 1992, SI 1992/1492, as amended as noted to s 99 ante, have partly been made for the purposes of sub-s (2) above.

Sub-s (7): This Chapter. *ie* Chapter I (ss 137–148) of Pt VI.

Housing action trusts. See the note to s 55 ante.

Tree preservation orders; advertisements; Crown land; National Parks; contributions. See the notes to s 137 ante.

Expenses; minerals. See s 314, 315 and Sch 16, Pt I post.

Airports, etc. See the note to s 107 ante.

Definitions. For "development", see s 55 ante; for "purchase notice", see s 137(2) ante; for "building", "land", "planning permission" and "prescribed", see s 336(1) post.

Special provisions for requiring purchase of whole of partially affected agricultural unit

145 Counter-notice requiring purchase of remainder of agricultural unit

(1) This section applies where—

- (a) an acquiring authority is deemed under this Chapter to have served notice to treat in respect of any agricultural land on a person ("the claimant") who has a greater interest in the land than as tenant for a year or from year to year (whether or not he is in occupation of the land), and
- (b) the claimant has such an interest in other agricultural land ("the unaffected area") comprised in the same agricultural unit as that to which the notice relates.

(2) Where this section applies the claimant may serve on the acquiring authority a counter-notice—

- (a) claiming that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
- (b) requiring the acquiring authority to purchase his interest in the whole of the unaffected area.

(3) Subject to subsection (4), "other relevant land" in subsection (2) means—

- (a) land which is comprised in the same agricultural unit as the land to which the notice to treat relates and in which the claimant does not have such an interest as is mentioned in subsection (1); and
- (b) land which is comprised in any other agricultural unit occupied by the claimant on the date on which the notice to treat is deemed to have been served and in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.

(4) Where a notice to treat has been served or is deemed under this Chapter or under Part III of the Compulsory Purchase (Vesting Declarations) Act 1981 to have been served in respect of any of the unaffected area or in respect of other relevant land as defined in subsection (3), then, unless and until the notice to treat is withdrawn, this section and section 146 shall have effect as if that land did not form part of the unaffected land or, as the case may be, did not constitute other relevant land.

(5) Where a counter-notice is served under subsection (2) the claimant shall also serve a copy of it on any other person who has an interest in the unaffected area (but failure to comply with this subsection shall not invalidate the counter-notice).

(6) A counter-notice under subsection (2) and any copy of that notice required to be served under subsection (5) must be served within the period of two months beginning with the date on which the notice to treat is deemed to have been served.

(7) This section is without prejudice to the rights conferred by sections 93 and 94 of the Lands Clauses (Consolidation) Act 1845 or section 8(2) and (3) of the Compulsory Purchase Act 1965 (provisions as to divided land).

NOTES

Sub-s (1): Deemed . . . to have served notice to treat. See ss 139(3)(b), 143(1), (2) ante. This Chapter, ie Chapter I (ss 137-148) of Pt VI.

Sub-s (2): Serve . . . a counter-notice. As to the effect of a counter-notice under this section, see s 146 post; and as to the service of notices, see s 329 post or, in the case of service on a local authority, the Local Government Act 1972, s 231, Vol 25, title Local Government.

Housing action trusts. See the note to s 55 ante.

Supplemental provisions. See s 147 post.

Crown land; National Parks. See the notes to s 137 ante.

Definitions. For "agricultural land", "agricultural unit" and "acquiring authority", see s 147(2) post.

Compulsory Purchase (Vesting Declarations) Act 1981, Pt III; Lands Clauses Consolidation Act 1845, ss 93, 94; Compulsory Purchase Act 1965, s 8. See Vol 9, title Compulsory Acquisition.

146 Effect of counter-notice under s 145

(1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 145 agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal.

(2) On such a reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid accordingly.

(3) Where a counter-notice is accepted as valid under subsection (1) or declared to be valid under subsection (2), the acquiring authority shall be deemed—

- (a) to be authorised to acquire compulsorily the interest of the claimant in the land to which the requirement in the counter-notice relates under the same provision of this Chapter as they are authorised to acquire the other land in the agricultural unit in question; and
- (b) to have served a notice to treat in respect of it on the date on which notice to treat is deemed to have been served under that provision.

(4) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which it is determined.

(5) Where a counter-notice is withdrawn by virtue of subsection (4) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.

(6) Without prejudice to subsection (5), a notice to treat deemed to have been served by virtue of this section may not be withdrawn under section 31 of the Land Compensation Act 1961.

(7) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the Land Compensation Act 1973.

(8) Where by virtue of this section the acquiring authority become or will become entitled to a lease of any land but not to the interest of the lessor—

- (a) the authority shall offer to surrender the lease to the lessor on such terms as the authority consider reasonable;
- (b) the question of what is reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of the period of three months after the date of the offer mentioned in paragraph (a) the authority and the lessor have not agreed on that question and that

156 Withdrawal of blight notice

(1) Subject to subsection (3), the person by whom a blight notice has been served may withdraw the notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the notice has been determined by the Lands Tribunal or, if there has been such a determination, at any time before the end of the period of six weeks beginning with the date of the determination.

(2) Where a blight notice is withdrawn by virtue of subsection (1) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.

(3) A person shall not be entitled by virtue of subsection (1) to withdraw a notice after the appropriate authority have exercised a right of entering and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.

(4) No compensation shall be payable in respect of the withdrawal of a notice to treat which is deemed to have been withdrawn by virtue of subsection (2).

NOTES

Scope of Chapter II. See s 149 ante.

Lands Tribunal. See the note to s 109 ante.

Notice to treat deemed to have been served. See by virtue of s 154(2) or (5) ante.

Saving. Note the saving for sub-s (1) and (2) above in s 167 post.

Personal representatives, mortgagees and partnerships. See the note to s 150 ante and in connection with this section see, in particular, s 161(1) post.

Housing action trusts. See the note to s 55 ante.

Crown land. See the note to s 149 ante.

Ecclesiastical property. See s 318 and Sch 16, Pt VI post.

Definitions. For "blight notice", see s 149(5) ante; for "the appropriate authority", see s 169 ante; for "compulsory acquisition" and "land", see s 336(1) post.

*Compensation***✓ 157 Special provisions as to compensation for acquisitions in pursuance of blight notices**

(1) Where—

- (a) an interest in land is acquired in pursuance of a blight notice, and
- (b) the interest is one in respect of which a compulsory purchase order is in force under section 1 of the Acquisition of Land Act 1981, as applied by section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, containing a direction for minimum compensation under section 50 of that Act of 1990,

the compensation payable for the acquisition shall be assessed in accordance with that direction and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.

(2) Where—

- (a) an interest in land is acquired in pursuance of a blight notice, and
- (b) the interest is one in respect of which a compulsory purchase order is in force under section 290 of the Housing Act 1985 (acquisition of land for clearance);

the compensation payable for the acquisition shall be assessed in accordance with that Act and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.

(3) The compensation payable in respect of the acquisition by virtue of section 160 of an interest in land comprised in—

- (a) the unaffected area of an agricultural unit; or
- (b) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in section 151(4)(c), so much of the affected area of the unit as is not specified in the counter-notice,

shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the Land Compensation Act 1973.

(4) In subsection (3) the reference to "the appropriate authority" shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

NOTES

Scope of Chapter II. See s 149 ante.

Counter-notice. As to the service of counter-notice, see s 151 ante and s 159 post.

Personal representatives, mortgagees and partnerships. See the note to s 150 ante.

Housing action trusts. See the note to s 55 ante.

Crown land. See the note to s 149 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt II post.

Definitions. For "blight notice", see s 149(5) ante; for "the affected area" and "the unaffected area", see s 158(1)(b) post; for "the appropriate authority", see s 169 post (and note also sub-s (4) above); for "land", see s 336(1) post.

Acquisition of Land Act 1981, s 1; Land Compensation Act 1973, s 5. See Vol 9, title Compulsory Acquisition.

Planning (Listed Buildings and Conservation Areas) Act 1990, ss 47, 50. See this title post.

Housing Act 1985, s 290. See Vol 21, title Housing.

*Special provisions for requiring purchase of whole or partially affected agricultural unit***158 Inclusion in blight notices of requirement to purchase parts of agricultural units unaffected by blight**

(1) This section applies where—

- (a) a blight notice is served in respect of an interest in the whole or part of an agricultural unit, and
- (b) on the date of service that unit or part contains land ("the unaffected area") which is not blighted land as well as land ("the affected area") which is such land.

(2) Where this section applies the claimant may include in the blight notice—

- (a) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
- (b) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.

(3) Subject to section 159(4), "other relevant land" in subsection (2) means—

- (a) if the blight notice is served only in respect of part of land comprised in the agricultural unit, the remainder of it; and
- (b) land which is comprised in any other agricultural unit occupied by the claimant on the date of service and in respect of which he is then entitled to an owner's interest as defined in section 168(4).

NOTES

Sub-s (3) was substituted by the Planning and Compensation Act 1991, s 9(2), and the words in square brackets in sub-s (4), (5), (8) were substituted by s 32 of, and Sch 7, paras 8, 28 to, that Act.

General Note. See the note to s 183 ante.

As to the practice of simultaneous service of stop notices and copies of enforcement notices, see *R v Southwark LBC, ex p Murdoch* (1991) 155 JPR 163.

Sub-s (3): Local planning authority. As to local planning authorities, see s 1(1)–(3) ante. By s 5(2), (3) ante, for the purposes of this section the Broads Authority is the sole district planning authority for the Broads.

Sub-s (4): Enforcement notice . . . is withdrawn or quashed. As to the withdrawal of an enforcement notice, see s 173A ante and as to quashing, see s 176(2), (3)(b) ante.

Sub-s (5): Variation of the enforcement notice. See s 176(1) ante.

Application. See the note to s 173 ante.

Housing action trusts. See the note to s 55 ante.

Advertisements; Crown land; contributions; rights of entry; land of local planning authorities, etc. See the notes to s 171A ante.

Urban development corporations. See the notes to s 171C ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt II post.

Hazardous substances contravention notices. See the note to s 174 ante.

Definitions. For "enforcement notice", see s 172(1) ante; as to "the period for compliance with an enforcement notice", see s 173(9) ante; for "stop notice", see s 183(1) ante; for "relevant activity", see s 183(2) ante; for "land", see s 336(1) post.

185 Service of stop notices by Secretary of State

(1) If it appears to the Secretary of State to be expedient that a stop notice should be served in respect of any land, he may himself serve such a notice.

(2) A notice served by the Secretary of State under subsection (1) shall have the same effect as if it had been served by the local planning authority.

(3) The Secretary of State shall not serve such a notice without consulting the local planning authority.

NOTES

Secretary of State. See the note to s 2 ante.

Expedient. Cf the note to s 172 ante.

Serve . . . notices. As to the mode of service, s 329 post.

Local planning authority. Cf the note to s 183 ante. Outside Greater London, any reference in this section to the local planning authority is to be construed as a reference to the county planning authority or district planning authority as the Secretary of State thinks appropriate; see s 1(5)(c) ante and Sch 1, paras 20(2), 21 post. See also paras 16(1), 21 of that Schedule, and s 1(6) ante and Sch 1A, paras 3, 8(1) post, in relation to claims for payment of compensation in the case of a notice served by virtue of this section.

Housing action trusts. See the note to s 55 ante.

Advertisements; Crown land; contributions; rights of entry; land of local planning authorities, etc. See the notes to s 171A ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Definitions. For "stop notice", see s 183(1) ante; for "land", see s 336(1) post.

✓ 186 Compensation for loss due to stop notice

(1) Where a stop notice is served under section 183 compensation may be payable under this section in respect of a prohibition contained in the notice only if—

- the enforcement notice is quashed on grounds other than those mentioned in paragraph (a) of section 174(2);
- the enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that [any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity];

- the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates . . . ; or
- the stop notice is withdrawn.

(2) A person who, when the stop notice is first served, has an interest in or occupies the land to which the notice relates shall be entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b), [the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities].

(3) A claim for compensation under this section shall be made to the local planning authority within the prescribed time and in the prescribed manner.

(4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

[(5) No compensation is payable under this section—

- in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- in the case of a claimant who was required to provide information under section 171C or 330 or section 16 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the local planning authority when responding to the notice.]

(6) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.

(7) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

NOTES

The words in square brackets in sub-s (1)(b), (2) were substituted and the words omitted from sub-s (1)(c) were repealed by the Planning and Compensation Act 1991, ss 32, 84(6), Sch 7, paras 8, 29, Sch 19, Pt I, and sub-s (5) was substituted by s 9(3) of that Act.

General Note. See the note to s 183 ante.

Sub-s (1): Enforcement notice is quashed; is varied; is withdrawn. An enforcement notice may be quashed or varied under s 176(1), (2), (3)(b) ante and may be withdrawn under s 173A ante.

Local planning authority. Cf the note to s 183 ante, and, in connection with this section, see, in particular, s 1(5)(c), (6) ante and Sch 1, paras 16, 21, Sch 1A, paras 3, 8 post.

Stop notice is withdrawn. A stop notice may be withdrawn under s 183(7) ante.

Sub-s (3): Prescribed time; prescribed manner. Is prescribed by regulations; see s 336(1) post and for general provisions as to regulations; see s 333(1)–(3) post. The Town and Country Planning General Regulations 1992, SI 1992/1492, as amended as noted to s 99 ante, have partly been made for the purposes of sub-s (3) above.

Sub-s (6): This Part. Is Pt VII (ss 171A–196C).

Lands Tribunal. See the note to s 109 ante.

Application. See the note to s 173 ante.

Advertisements; Crown land; contributions; rights of entry; land of local planning authorities, etc. See the notes to s 171A ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pts I, II post.

Hazardous substances contravention notices. See the note to s 174 ante.

Ecclesiastical property. For provisions as to the payment of compensation under this section in respect of ecclesiastical property, see s 318(3), (6) post.

Definitions. For "development", see s 55 ante; for "enforcement notice", see s 172(1) ante; for "breach of planning control", see s 171A(1) ante; for "stop notice", see s 183(1) ante; for "relevant activity", see s 183(2) ante; for "land", "planning permission" and "prescribed", see s 336(1) post.

Local Government (Miscellaneous Provisions) Act 1976, s 16. See Vol 25, title Local Government.

Land Compensation Act 1961, ss 2, 4. See Vol 9, title Compulsory Acquisition.

187 Penalties for contravention of stop notice

{(1) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.

(1A) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.

(1B) References in this section to contravening a stop notice include causing or permitting its contravention.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £20,000; and
- (b) on conviction on indictment, to a fine.

(2A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(3) In proceedings for an offence under this section it shall be a defence for the accused to prove—

- (a) that the stop notice was not served on him, and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

NOTES

Sub-ss (1), (1A), (1B), (2), (2A) were substituted for sub-ss (1), (2) by the Planning and Compensation Act 1991, s 9(4).

Sub-s (1): Person. See the note to s 171C ante.

Guilty of an offence. As to offences by corporations, see s 331 post.

Shall be liable, etc; conviction on indictment; fine. See the notes to s 179 ante.

Summary conviction. See the note to s 65 ante.

Application. See the note to s 173 ante.

Housing action trusts. See the note to s 55 ante.

Advertisements; Crown land; contributions; rights of entry; land of local planning authorities, etc. See the notes to s 171A ante.

Hazardous substances contravention notices. See the note to s 174 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt II post.

Definitions. For "stop notice", see s 183(1) ante; for "site notice", see s 184(6) ante.

{Breach of condition

187A Enforcement of conditions

(1) This section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The local planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a "breach of condition notice") on—

- (a) any person who is carrying out or has carried out the development; or

(b) any person having control of the land, requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

- (a) such period of not less than twenty-eight days beginning with the date of service of the notice as may be specified in the notice; or
- (b) that period as extended by a further notice served by the local planning authority on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

- (a) any of the conditions specified in the notice is not complied with; and
- (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under subsection (9) to prove—

- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
- (b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this section—

- (a) "conditions" includes limitations; and
- (b) references to carrying out any development include causing or permitting another to do so.

NOTES

This section and the cross-heading immediately preceding it, were inserted by the Planning and Compensation Act 1991, s 2.

General Note. This section introduces a new procedure for summary enforcement of breaches of conditions of planning permission as recommended in Chapter 7, section 8 of the Report by Robert Carruth QC entitled "Enforcing Planning Control" (HMSO, February 1989). It provides that, where planning permission for carrying out development has been granted subject to conditions

(3) The provisions of this Chapter and of any regulations made under it with respect to the procedure to be followed in connection with the making and confirmation of any order to which subsection (1) applies and the service of copies of it as confirmed shall have effect, subject to any necessary modifications—

- (a) in relation to any proposal by the Secretary of State to make such an order,
- (b) in relation to the making of it by the Secretary of State, and
- (c) in relation to the service of copies of it as so made.

NOTES

Secretary of State. See the note to s 2 ante.

Local planning authority. Cf the note to s 197 ante, and see also the second paragraph of the note "Local planning authority" to s 198 ante.

Outside Greater London, the local planning authority whom the Secretary of State is required to consult under sub-s (1) above is the county planning authority or the district planning authority, as he thinks appropriate, and references in this section to the local planning authority are to be construed accordingly; see s 1(5) ante and Sch 1, paras 20(1), 21 post.

Tree preservation order. For meaning, see s 198(1), (2) ante; and cf the note to s 198 ante.

This Chapter. I.e. Chapter 1 (ss 197–214I) of Pt VIII (ss 197–225) of this Act.

Housing action trusts. See the note to s 55 ante.

Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Compensation for loss or damage caused by orders etc

203 Compensation in respect of tree preservation orders

A tree preservation order may make provision for the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—

- (a) of the refusal of any consent required under the order, or
- (b) of the grant of any such consent subject to conditions.

NOTES

Tree preservation order. For meaning, see s 198(1), (2) ante; and cf the note to s 198 ante.

Local planning authority. Cf the note to s 197 ante. In England outside Greater London and in Wales, claims for payment of compensation by virtue of this section are to be made to and paid by the local planning authority who made the order or, in the case of an order made by the Secretary of State, the authority named in the order; see s 1(5), (6) ante and Sch 1, paras 17, 21, Sch 1A, paras 3, 9 post.

Compensation. See further as to compensation in respect of decisions or orders given or made under this Part of this Act, ss 305, 306, 318(3) post. As to the determination of compensation claims under this section, see s 205 post.

Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

204 Compensation in respect of requirement as to replanting of trees

(1) This section applies where—

- (a) in pursuance of provision made by a tree preservation order, a direction is given by the local planning authority or the Secretary of State for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order, and

- (b) the Forestry Commissioners decide not to make any grant or loan under section 1 of the Forestry Act 1979 in respect of the replanting by reason that the direction frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry.

(2) Where this section applies, the local planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the direction.

(3) The Forestry Commissioners shall, at the request of the person under a duty to comply with such a direction as is mentioned in subsection (1)(a), give a certificate stating—

- (a) whether they have decided not to make such a grant or loan as is mentioned in subsection (1)(b), and
- (b) if so, the grounds for their decision.

(4) A claim for compensation under this section must be served on the local planning authority—

- (a) within 12 months from the date on which the direction was given, or
- (b) where an appeal has been made to the Secretary of State against the decision of the local planning authority, within 12 months from the date of the decision of the Secretary of State on the appeal,

but subject in either case to such extension of that period as the local planning authority may allow.

NOTES

Tree preservation order. Cf the note to s 198 ante.

Local planning authority. Cf the note to s 197 ante. In England outside Greater London and in Wales, claims for payment of compensation under this section by virtue of directions given in pursuance of a tree preservation order are to be made to and paid by the local planning authority who made the order or, in the case of an order made by the Secretary of State, the authority named in the order, and the reference in sub-s (2) above to the authority exercising functions under the tree preservation order is to be read accordingly; see s 1(5), (6) ante and Sch 1, paras 17, 21, Sch 1A, paras 3, 9 post.

Secretary of State. See the note to s 2 ante.

Forestry Commissioners. See the note to s 200 ante.

Compensation. Cf the note to s 203 ante. As to the determination of compensation claims under this section, see s 205 post.

Served. As to service of notices, see s 329 post.

Appeal has been made, etc. See ss 78, 198(3)(c), (4)(a) ante.

Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.

Definitions. For "tree preservation order", see s 198(1), (2) ante; for "functions", see s 336(1) post.

Forestry Act 1979, s 1. See Vol 18, title Forestry.

205 Determination of compensation claims

(1) Except in so far as may be otherwise provided by any tree preservation order or any regulations made under this Act, any question of disputed compensation under section 203 or 204 shall be referred to and determined by the Lands Tribunal.

(2) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

NOTES

Tree preservation order. For meaning, see s 198(1), (2) ante; and cf the note to s 198 ante.
Lands Tribunal. See the note to s 109 ante.
Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.
Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.
Land Compensation Act 1961, ss 2, 4. See Vol 9, title *Compulsory Acquisition*.

*Consequences of tree removal etc***206 Replacement of trees**

(1) If any tree in respect of which a tree preservation order is for the time being in force—

- (a) is removed, uprooted or destroyed in contravention of the order, or
- (b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 198(6)(a),

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by subsection (1) does not apply to an owner if on application by him the local planning authority dispense with it.

(3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—

- (a) on or near the land on which the trees removed, uprooted or destroyed stood, or
- (b) on such other land as may be agreed between the local planning authority and the owner of the land,

and in such places as may be designated by the local planning authority.

(4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.

(5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

NOTES

Tree preservation order. Cf the note to s 198 ante.
Destroyed. Cf the note "Wilful destruction" to s 198 ante.
It shall be the duty, etc. The duty imposed by sub-s (1) above may only be enforced as provided by s 207 post and not otherwise; see s 207(5) post. See, further, as to appeals against a notice under that section, s 208 post, and as to the execution and cost of works required by such a notice, s 209 post.
Local planning authority. Cf the note to s 197 ante; see also the second paragraph of the note to s 198 ante.
The functions of a local planning authority by virtue of s 4A ante, are exercisable as respects any area which is or is included in an area for which there is a district council, concurrently with the National Park Authority, by that council; see s 4A(4) ante.
Housing action trusts. See the note to s 55 ante.
Urban development corporations; Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.
Definitions. For "tree preservation order", see s 198(1), (2) ante; for "land" and "owner", see s 336(1) post.

207 Enforcement of duties as to replacement of trees

(1) If it appears to the local planning authority that—

- (a) the provisions of section 206, or
- (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,

are not complied with in the case of any tree or trees, that authority may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

(2) A notice under subsection (1) may only be served within four years from the date of the alleged failure to comply with those provisions or conditions.

[(3) A notice under subsection (1) shall specify a period at the end of which it is to take effect.

(4) The specified period shall be a period of not less than twenty-eight days beginning with the date of service of the notice.]

(5) The duty imposed by section 206(1) may only be enforced as provided by this section and not otherwise.

NOTES

Sub-ss (3), (4) were substituted by the Planning and Compensation Act 1991, s 23(1).
Local planning authority. Cf the note to s 197 ante; see also the second paragraph of the note to s 198 ante.
The functions of a local planning authority by virtue of this section, so far as they are functions of a National Park authority by virtue of s 4A ante, are exercisable as respects any area which is or is included in an area for which there is a district council, concurrently with the National Park Authority, by that council; see s 4A(4) ante.
Tree preservation order. Cf the note to s 198 ante.
May serve . . . notice. As to service of notice, see s 329 post. As to appeals to the Secretary of State against a notice under this section, see s 208 post, and as to further appeal to the High Court, see s 289 post. For provisions as to the execution and cost of works required by a notice under this section, see s 209 post. As to rights of entry for the purpose of determining whether a notice under this section should be served on the owner of the land, see ss 214(3)–214(1) post.
The duty imposed by s 213(1) post (trees in conservation areas) may be enforced as provided under this section, and not otherwise; see s 213(3) post.
Housing action trusts. See the note to s 55 ante.
Urban development corporations; Crown land; contributions by local authorities, etc; rights of entry. See the notes to s 197 ante.
Definitions. For "tree preservation order", see s 198(1), (2) ante; for "land" and "owner", see s 336(1) post.

208 Appeals against s 207 notices

(1) A person on whom a notice under section 207(1) is served may appeal to the Secretary of State against the notice on any of the following grounds—

- (a) that the provisions of section 206 or, as the case may be, the conditions mentioned in section 207(1)(b) are not applicable or have been complied with;
- [(aa) that in all the circumstances of the case the duty imposed by section 206(1) should be dispensed with in relation to any tree;]
- (b) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
- (c) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- (d) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

222 Planning permission not needed for advertisements complying with regulations

Where the display of advertisements in accordance with regulations made under section 220 involves development of land—

- (a) planning permission for that development shall be deemed to be granted by virtue of this section, and
- (b) no application shall be necessary for that development under Part III.

NOTES

Part III. *ie* ss 55–106B ante, Schs 3–9 post.

Further provisions. *Cf* the note to s 220 ante.

Housing action trusts. See the note to s 55 ante.

Crown land; contributions by local authorities, etc. See the notes to s 197 ante.

Rights of entry. See the note to s 220 ante.

Land of local planning authorities, etc. See the note to s 198 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt 1 post.

Definitions. For "development", see s 55 ante; for "advertisement", "land" and "planning permission", see s 336(1) post.

Repayment of expense of removing prohibited advertisements

223 Repayment of expense of removing prohibited advertisements

(1) Where, for the purpose of complying with any regulations made under section 220, works are carried out by any person—

- (a) for removing an advertisement which was being displayed on 1 August 1948; or
- (b) for discontinuing the use for the display of advertisements of a site used for that purpose on that date,

that person shall, on a claim made to the local planning authority within such time and in such manner as may be prescribed, be entitled to recover from that authority compensation in respect of any expenses reasonably incurred by him in carrying out those works.

(2) Except in so far as may be otherwise provided by any regulations made under this Act, any questions of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.

(3) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

NOTES

1 August 1948. *ie* the date on which the Town and Country Planning (Control of Advertisements) Regulations 1948, SI 1948/1613 (revoked), came into force.

Local planning authority. *Cf* the note to s 220 ante. As to the appropriate local planning authority for the purposes of claims for payment of compensation under this section see s 1(5) ante and Sch 1 paras 16, 21 post.

Within such time and in such manner as may be prescribed. *ie* prescribed by regulations; see s 336(1) post. See the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, as amended as noted to s 220 ante (made for the purposes of sub-s (1) above).

Compensation. *Cf* the note to s 203 ante.

Lands Tribunal. See the note to s 109 ante.

Crown land; contributions by local authorities, etc. See the notes to s 197 ante.

Rights of entry. See the note to s 220 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt 1 post.

Definitions. For "advertisement", "prescribed" and "use", see s 336(1) post.

Land Compensation Act 1961, ss 2, 4. See Vol 9, title Compulsory Acquisition.

Enforcement of control over advertisements

224 Enforcement of control as to advertisements

(1) Regulations under section 220 may make provision for enabling the local planning authority to require—

- (a) the removal of any advertisement which is displayed in contravention of the regulations, or
- (b) the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations.

(2) For that purpose the regulations may apply any of the provisions of Part VII with respect to enforcement notices or the provisions of section 186, subject to such adaptations and modifications as may be specified in the regulations.

(3) Without prejudice to any provisions included in such regulations by virtue of subsection (1) or (2), if any person displays an advertisement in contravention of the regulations he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed, not exceeding level 3 on the standard scale and, in the case of a continuing offence, [one-tenth of level 3 on the standard scale] for each day during which the offence continues after conviction.

(4) Without prejudice to the generality of subsection (3), a person shall be deemed to display an advertisement for the purposes of that subsection if—

- (a) he is the owner or occupier of the land on which the advertisement is displayed; or
- (b) the advertisement gives publicity to his goods, trade, business or other concerns.

(5) A person shall not be guilty of an offence under subsection (3) by reason only—

- (a) of his being the owner or occupier of the land on which an advertisement is displayed, or
- (b) of his goods, trade, business or other concerns being given publicity by the advertisement,

if he proves that it was displayed without his knowledge or consent.

NOTES

The words in square brackets in sub-s (3) were substituted by the Planning and Compensation Act 1991, s 32, Sch 7 paras 8, 38.

General Note. As to the construction of this section and the regulations under s 220 ante relating to it see *Porter v Honey* [1988] 2 All ER 449, [1988] 1 WLR 1420 (estate agents' boards). See also *McDonald v Howard Cook Advertising Ltd* [1971] 3 All ER 1249, [1972] 1 WLR 90.

Sub-s (1): Local planning authority. *Cf* the note to s 220 ante. By s 5(2), (3) ante, for the purposes of this section the Broads Authority is the sole district planning authority for the Broads. By s 1(5) ante and Sch 1 paras 14, 21 post, outside Greater London the functions of local planning authorities under this section are exercisable by district planning authorities.

Sub-s (2): Part VII. *ie* ss 171A–196C ante; see, in particular, s 172–182 ante.

Sub-s (3): If any person, etc. As to offences by corporations see s 331 post.

Summary conviction; standard scale. See the notes to s 65 ante.

Sub-s (5): Knowledge or consent. The words "knowledge or consent" in sub-s (5) above are to be construed disjunctively; see *Meriton LBC v Edmonds* (1994) 157 JP 1129, and *Wycombe DC v Michael Shanley Group Ltd* (1994) 67 P & CR 374.

Further provisions. *Cf* the note to s 220 ante.

Housing action trusts. See the note to s 55 ante.

Urban development corporations; Crown land; contributions by local authorities, etc. See the notes to s 197 ante.

decision, he is sufficiently informed as to the matters to which the objection relates; or

- (b) in a case where a further statement has been required, it is not submitted within the specified period,

the appropriate Minister may make a final decision without further investigation as to those matters.

(6) Subject to subsections (4) and (5), before making a final decision the appropriate Minister shall give the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister.

(7) If the objector takes that opportunity, the appropriate Minister shall give an opportunity of appearing and being heard on the same occasion to the statutory undertakers, local authority or Minister on whose representation the order is proposed to be made, and to any other persons to whom it appears to him to be expedient to give such an opportunity.

(8) Notwithstanding anything in the previous provisions of this section, if it appears to the appropriate Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held.

(9) Where the appropriate Minister determines to cause such an inquiry to be held, any of the requirements of subsections (3) to (7) to which effect has not been given at the time of that determination shall be dispensed with.

(10) In this section any reference to making a final decision in relation to an order is a reference to deciding whether to make the order or what modification (if any) ought to be made.

(11) In the application of this section to an order under section 275, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.

NOTES

Sub-s (1): Statement . . . of the grounds of the objection. What is required is "no more than a fair statement of all the matters" on which the objector relies; cf *Estate and Trust Agencies (1927) Ltd v Singapore Improvement Trust* [1937] AC 898 at 915, [1937] 3 All ER 324 at 331, PC.

Writing. See the note "Written" to s 12 ante.

Sub-s (3): Modification. It seems clear that the power to make modifications may be utilised to cure a legal defect; cf *Minister of Health v R, ex p Yaffe* [1931] AC 494, [1931] All ER Rep 343, HL, *Re Bowman, South Shields (Thomas Street) Clearance Order 1931* [1932] 2 KB 621, [1932] All ER Rep 257.

Before he makes a final decision. See also as to local inquiries, sub-s (8) above; as to costs where no local inquiry is held, see s 322 post; and as to procedure, see s 323 post.

Sub-s (8): Public local inquiry. The word "public" in this context seems to confer on every member of the public locus standi to bring before the inquiry any relevant matters, including matters affecting the interests of the public in general or the public living in the neighbourhood in particular; see *Local Government Board v Arlidge* [1915] AC 120 at 147, 148, [1914-15] All ER Rep 1 at 11 per Lord Moulton; but see also *ibid*, at 143 and 15 respectively, per Lord Parmoor (upon the Housing and Town Planning Act 1909, s 17 (repealed)). See further s 320 post.

Sub-s (11): Secretary of State. See the note to s 2 ante.

Applications. See the notes to s 271 and 273 ante; and see also the Civil Aviation Act 1982, s 51, Sch 10, paras 4, 8, Vol 4, title Aviation.

Expenses; minerals. See s 314, 315 and Sch 16, Pt I post.

Definitions. For "statutory undertakers", see s 262(1), (3)-(5), (6)(a), (7)(a) ante; for "the appropriate Minister" and "the Secretary of State and the appropriate Minister", see s 265 ante (and note sub-s (1) above); for "local authority" and "Minister", see s 336(1) post.

Compensation

✓ 279 Right to compensation in respect of certain decisions and orders

(1) Statutory undertakers shall, subject to the following provisions of this Part, be entitled to compensation from the local planning authority—

- (a) in respect of any decision made in accordance with section 266 by which planning permission to develop operational land of those undertakers is refused or is granted subject to conditions where—
 - (i) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development; and
 - (ii) it is not development which has received specific parliamentary approval (within the meaning of section 264(6));
- (b) in respect of any order under section 97, as modified by section 269, by which planning permission which was granted on the application of those undertakers for the development of any such land is revoked or modified.

(2) Where by virtue of section 271—

- (a) any right vested in or belonging to statutory undertakers is extinguished; or
- (b) any requirement is imposed on statutory undertakers,

those undertakers shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.

(3) Where by virtue of section 272—

- (a) any right vested in or belonging to an operator of a telecommunications code system is extinguished; or
- (b) any requirement is imposed on such an operator,

the operator shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.

(4) Where—

- (a) works are carried out for the removal or re-siting of statutory undertakers' apparatus; and
- (b) the undertakers have the right to carry out those works by virtue of section 273 or an order of Ministers under that section,

the undertakers shall be entitled to compensation from the acquiring or appropriating authority.

(5) Subsection (1) shall not apply in respect of a decision or order if—

- (a) it relates to land acquired by the statutory undertakers after 7th January 1947; and
- (b) the Secretary of State and the appropriate Minister include in the decision or order a direction that subsection (1) shall not apply to it.

(6) The Secretary of State and the appropriate Minister may only give a direction under subsection (5) if they are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of the decision or order in question.

(7) For the purposes of this section the conditions referred to in sections 91 and 92 shall be disregarded.

NOTES

Sub-s (1): Subject to the following provisions of this Part. ie s 280 post (measure of compensation); s 281 post (exclusion of s 280 at option of statutory undertakers); s 282 post (procedure for assessing compensation); and s 283 post (exclusion of sub-s (1), (5), (6) above in relation to display of advertisements on operational land).

Local planning authority. As to local planning authorities, see s 1(1)-(3) ante. By s 1(5), (6) ante and Sch 1, paras 18, 21, Sch 1A, paras 3, 10 post, in England outside Greater London and in Wales, the local planning authority by whom compensation is to be paid under sub-s (1)(a) above to statutory undertakers is the authority who referred the application for planning permission to the Secretary of State and the appropriate Minister, or from whose decision the appeal was made to them or who served the enforcement notice appealed against, as the case may be.

Develop operational land. See the note "Operational land" to s 266 ante.

Sub-s (2): **Compensation.** As to the payment of expenses incurred by any government department (including the Secretary of State) in the payment of compensation under sub-s (2) above, see s 311(2)(b) post.

Sub-s (3): **Operator; telecommunications code system.** See the corresponding note to s 236 ante.

Sub-s (5): 7th January 1947. ie the day on which the Bill for the Town and Country Planning Act 1947 was published.

Secretary of State. See the note to s 2 ante.

Airports, etc. See the note to s 107 ante.

Applications. See the notes to ss 271 and 273 ante.

Advertisements. See the note to s 266 ante.

Compensation in respect of mineral workings. For special provisions as to compensation in certain circumstances where an order under s 97 ante modifies planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste or an order is made under Sch 9, para 1, 3, 5 or 6 post with respect to such winning and working or depositing, see s 116 ante.

Rights of entry. See s 324(5), 325 post.

Expenses; minerals. See s 314, 315 and Sch 16, Pt 1, II post.

Definitions. For "develop" and "development", see s 55 ante and s 336(1) post; for "development order", see s 59 ante; for "statutory undertakers", see s 262(1), (3)-(5), (6)(a), (7)(a) ante; for "operational land", see s 263 ante; for "the appropriate Minister" and "the Secretary of State and the appropriate Minister", see s 265 ante; for "acquiring authority", "land" and "planning permission", see s 336(1) post.

✓ 280 Measure of compensation to statutory undertakers, etc

(1) Where statutory undertakers are entitled to compensation—

- (a) as mentioned in subsection (1), (2) or (4) of section 279;
- (b) under the provisions of section 115 in respect of an order made under section 102 or paragraph 1, 3, 5 or 6 of Schedule 9, as modified by section 270; or
- (c) in respect of a compulsory acquisition of land which has been acquired by those undertakers for the purposes of their undertaking, where the first-mentioned acquisition is effected under a compulsory purchase order confirmed or made without the appropriate Minister's certificate,

or the operator of a telecommunications code system is entitled to compensation as mentioned in section 279(3), the amount of the compensation shall (subject to section 281) be an amount calculated in accordance with this section.

(2) Subject to subsections (4) to (6), that amount shall be the aggregate of—

- (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system rendered necessary by the proceeding giving rise to compensation (a "business adjustment");
- (b) the appropriate amount for loss of profits; and
- (c) where the compensation is under section 279(2) or (3), and is in respect of the imposition of a requirement to remove apparatus, the amount of

any expenditure reasonably incurred by the statutory undertakers or, as the case may be, the operator in complying with the requirement, reduced by the value after removal of the apparatus removed.

(3) In subsection (2) "the appropriate amount for loss of profits" means—

(a) where a business adjustment is made, the aggregate of—

- (i) the estimated amount of any decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation; and
- (ii) such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment;

(b) where no business adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system which is directly attributable to the proceeding giving rise to compensation.

(4) Where a business adjustment is made, the aggregate amount mentioned in subsection (2) shall be reduced by such amount (if any) as appears to the Lands Tribunal to be appropriate to offset—

- (a) the estimated value of any property (whether moveable or immoveable) belonging to the statutory undertakers or the operator and used for the carrying on of their undertaking or, as the case may be, the running of the telecommunications code system, which in consequence of the adjustment ceases to be so used, in so far as the value of the property has not been taken into account under paragraph (c) of that subsection; and
- (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking or the running of the telecommunications code system in the period after the adjustment has been completed, in so far as that amount has not been taken into account in determining the amount mentioned in paragraph (b) of that subsection and is directly attributable to the adjustment.

(5) Where a business adjustment is made the aggregate amount mentioned in subsection (2) shall be further reduced by any amount which appears to the Lands Tribunal to be appropriate, having regard to any increase in the capital value of immoveable property belonging to the statutory undertakers or the operator which is directly attributable to the adjustment, allowance being made for any reduction made under subsection (4)(b).

(6) Where—

- (a) the compensation is under section 279(4); and
- (b) the acquiring or appropriating authority carry out the works,

then, in addition to any reduction falling to be made under subsection (4) or (5), the aggregate amount mentioned in subsection (2) shall be reduced by the actual cost to the authority of carrying out the works.

(7) References in this section to a decrease in net receipts shall be construed as references—

- (a) to the amount by which a balance of receipts over expenditure is decreased;

- (b) to the amount by which a balance of expenditure over receipts is increased; or
 - (c) where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, to the aggregate of the two balances;
- and references to an increase in net receipts shall be construed accordingly.

(8) In this section—

“proceeding giving rise to compensation” means—

- (a) except in relation to compensation under section 279(4), the particular action (that is to say, the decision, order, extinguishment of a right, imposition of a requirement or acquisition) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken;
- (b) in relation to compensation under section 279(4), the circumstances making it necessary for the apparatus in question to be removed or re-sited;

“the appropriate Minister’s certificate” means such a certificate as is mentioned in section 16 of or paragraph 3 of Schedule 3 to the Acquisition of Land Act 1981.

NOTES

Sub-s (1): Operator; telecommunications code system. See the corresponding note to s 236 ante.

Compensation shall . . . be an amount, etc. See also, in addition to ss 281 and 282 post (procedure for assessing compensation).

Sub-s (2): Carrying on of the undertaking. For the purposes of this Act anything done by any of the Boards established by the Transport Act 1962, s 1, Vol 36, title Railways, Inland Waterways and Pipelines, in the exercise of the powers mentioned in s 86(1) of that Act does not constitute the carrying on by the Board of their statutory undertaking; see s 86(1), (8) of the 1962 Act, in the same title, as read with the Planning (Consequential Provisions) Act 1990, s 2 post.

Sub-s (4): Lands Tribunal. See the note to s 109 ante. The Lands Tribunal has jurisdiction here by virtue of s 282(1) post.

Applications. See the notes to ss 271 and 273 ante.

By the Local Government, Planning and Land Act 1980, s 144, Sch 28, paras 14(6), 16(8) ante, this section and s 282 post are applied in relation to urban development corporations.

Sub-s (2)–(5), (7), (8) above are applied with modifications by the Civil Aviation Act 1982, s 51(2), (5), Vol 4, title Aviation, as amended by the Planning (Consequential Provisions) Act 1990, s 4, Sch 2, para 55(2) post.

By the Housing Act 1988, s 78(2)(a), Sch 10, Pt II, paras 12(6), 14(8), Vol 21, title Housing, this section and s 282 post are applied in relation to housing action trusts.

By the Leasehold Reform, Housing and Urban Development Act 1993, s 169(1), (3), Sch 20, Pt II, paras 12(6), 14(8) post, this section, and s 282 post are applied in relation to the Urban Regeneration Agency.

Compensation in respect of mineral workings. Cf the note to s 279 ante.

Rights of entry. See ss 324(5), 325 post.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I, 11 post.

Definitions. For “statutory undertakers”, see s 262(1), (3)–(5), (6)(a), (7)(a) ante; for “building”, “compulsory acquisition” and “land”, see s 336(1) post.

Acquisition of Land Act 1981, s 16, Sch 3, para 3. See Vol 9, title Compulsory Acquisition.

✓ 281 Exclusion of s 280 at option of statutory undertakers

(1) Where statutory undertakers are entitled to compensation in respect of such a compulsory acquisition as is mentioned in section 280(1)(c), the statutory undertakers may by notice in writing under this section elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 5 of the Land Compensation Act 1961) which would be applicable apart from section 280.

(2) If the statutory undertakers so elect the compensation shall be ascertained accordingly.

(3) An election under this section may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.

(4) Any notice under this section shall be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers.

NOTES

Notice. As to service of notice, see s 329 post.

Writing. See the note “Written” to s 12 ante.

Months. See the note to s 94 ante.

Applications. See the note to s 271 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Definitions. For “statutory undertakers”, see s 262(1), (3)–(5), (6)(a), (7)(a) ante; for “acquiring authority”, “compulsory acquisition”, “enactment” and “land”, see s 336(1) post.

Land Compensation Act 1961, s 5. See Vol 9, title Compulsory Acquisition.

✓ 282 Procedure for assessing compensation

(1) Where the amount of any such compensation as is mentioned in subsection (1) of section 280 falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the Lands Tribunal, if apart from this section it would not fall to be so assessed.

(2) For the purposes of any proceedings arising before the Lands Tribunal in respect of compensation falling to be ascertained as mentioned in subsection (1), the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply as they apply to proceedings on a question referred to the Tribunal under section 1 of that Act, but with the substitution in section 4 of that Act, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

NOTES

Lands Tribunal. See the note to s 109 ante.

Applications. See the notes to ss 271 and 280 ante.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Definitions. For “acquiring authority”, see s 336(1) post.

Land Compensation Act 1961, ss 1, 2, 4. See Vol 9, title Compulsory Acquisition.

Advertisements

283 Display of advertisements on operational land

Sections 266 to 270 and 279(1), (5) and (6) do not apply in relation to the display of advertisements on operational land of statutory undertakers.

NOTES

Statutory undertakers who are local planning authorities. As to the application of this section to such undertakers, see s 316A post.

Expenses; minerals. See ss 314, 315 and Sch 16, Pt I post.

Definitions. For “statutory undertakers”, see s 262(1), (3)–(5), (6)(a), (7)(a) ante; for “operational land”, see s 263 ante.

立法會規劃地政及工程事務委員會
鄉議局議員於 2003 年 6 月 10 日提出的事項

目的

2003 年 6 月 10 日，立法會議員及鄉議局議員舉行會議，當日鄉議局議員提出因規劃帶來的限制的補償問題，並要求政府當局就此作出回應。本文件列出當局的回應。

當局的回應

2. 除根據《土地收回條例》收地的個案外，現行的《城市規劃條例》並無訂定條文，就因規劃行動而導致發展權有所減損作出補償。這個制度已沿用多年，亦符合普通法的原則。在其他普通法適用地區(例如加拿大、澳洲和新西蘭)也普遍採用這個制度。

3. 與規劃行動有關的補償問題，在 1992 年已由補償及徵值特別委員會¹仔細考慮過。該委員會的建議是最好以固有制度為基礎，即發展權因規劃行動而導致部份損失，仍然不會獲得補償，但規劃過程會加以改善，以確保私人權利和公眾利益都能得到充分考慮。

4. 根據現行的《城市規劃條例》，受影響的土地業權人可反對法定圖則所列土地用途的限制。城市規劃委員會(下稱「城規會」)將根據上述條例的條文，詳細考慮一切反對意見，同時會顧及公眾利益，以便在製備圖則的過程中，於公眾利益和私人業權之間取得合理平衡。

5. 有鑑於補償及徵值特別委員會的建議，當局已把多項建議納入《2003 年城市規劃(修訂)條例草案》，以期使製備圖則的過程更為公開和公平。其中，我們已在草案中明文規定，容許公眾人士申請修訂圖則，讓土地業權人有機會把本身的情況呈交城規會考慮，以期解決可能因規劃行動而引致的問題。此外，申請人將可出席城規會有關會議並向城規會陳情。

房屋及規劃地政局
2003 年 9 月

¹ 補償及徵值特別委員會是於 1991 年 7 月成立，負責考慮補償和徵值方面的複雜問題，及就有關問題提出建議。該委員會由杜迪擔任主席，成員來自多個不同界別包括法律、測量、銀行及會計界。

附錄 IV

新聞公報

立法會三題：分區計劃大綱圖

* * * * *

以下為今日（四月二十五日）立法會會議上石禮謙議員的提問和房屋及規劃地政局局長孫明揚的答覆：

問題：

據悉，自 2005 年起，當局不時就已核准的分區計劃大綱圖實施各種形式的建築物高度限制及縮減地積比率。就此，政府可否告知本會：

（一） 實施上述建築物高度限制及縮減地積比率的政策目的是甚麼；及

（二） 自 2005 年以來，曾就哪些地區和私人土地實施上述限制及作出上述縮減，以及估計因此而損失的公帑及土地價值各有多少？

答覆：

主席女士：

城市規劃是持續進行的工作。分區計劃大綱圖按照《城市規劃條例》制訂，列明個別地區的發展規範及土地用途規劃。當局不時檢討和更新各分區計劃大綱圖，以切合不斷轉變的社會和經濟需要。所有分區計劃大綱圖及其修訂本，均由行政長官會同行政會議核准。

現就問題的兩個部分答覆如下：

（一） 根據城市規劃委員會（城規會）行之有效的做法，分區計劃大綱圖會訂明發展限制，提供公開、清楚及明確的發展規範，讓有關人士有所遵從。大體而言，訂立地積比率，是要劃定不同發展密度的地區，以確保

各區的基本設施、環境、交通能應付有關發展密度帶來的需求。訂立建築物高度限制的用意，則是為保護重要的山脊線、海港景觀，以及其他具珍貴地理特徵的景觀，並藉以保留某些地區的特色，以及使建築物與四周的發展和天然景色互相協調。

（二） 自二零零五年一月以來，當局根據《城市規劃條例》修訂了 15 份分區計劃大綱圖以加入或更新地積比率、總樓面面積或建築物高度限制，並在憲報刊登有關修訂。其中七份分區計劃大綱圖已獲行政長官會同行政會議核准。這 15 份分區計劃大綱圖涵蓋十個地區，分別是東區、南區、灣仔、九龍城、觀塘、深水埗、葵青、荃灣、北區及元朗。

一般來說，已建成或已批准的發展項目不會受新發展限制影響。但當現有建築物進行重建時，便需按照所訂的發展限制或現有建築物的體積和高度（以較大者為準），重新發展。

通常，發展密度較低，可得的收益便會較少，但卻可避免在人煙稠密和樓宇密集的地區過度發展，從而為公眾帶來不能以金錢衡量的利益。同時亦可改善生活質素，與及回應社會對於更理想的樓宇布局設計，以及較多休憩用地的訴求。

完

2007年4月25日（星期三）
香港時間12時55分