

立法會 *Legislative Council*

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Meeting of the Panel on Planning, Lands and Works on 22 May 2007

Background brief on amendments to Outline Zoning Plans made by the Town Planning Board to impose development restrictions

Purpose

This paper provides a summary of the past discussions in the Legislative Council (LegCo) related to amendments to Outline Zoning Plans (OZPs) made by the Town Planning Board to impose development restrictions.

Discussion at the Bills Committee on Town Planning Bill

2. The Town Planning Bill (the 2000 Bill) was introduced into LegCo on 16 February 2000 with a view to replacing the then Town Planning Ordinance (Cap. 131) (TPO). The 2000 Bill contained a comprehensive package of changes to the planning procedure, consultation process and planning controls. A Bills Committee was formed to scrutinize the 2000 Bill and commenced its work in March 2000. Heung Yee Kuk (HYK), being one of the deputations received by the Bills Committee, raised concern about the lack of compensation for planning actions. The Bills Committee noted that the then TPO and the Town Planning Bill had no provision for compensation for diminution of development rights due to planning actions except in the case of resumption under the Land Resumption Ordinance.

3. At the Bills Committee's request, the Administration provided a paper on "Common law principles on compensation for planning actions" (**Appendix I**). The Administration stated in the paper that "*Where statute law merely regulates the use of private land, the common law principle is that compensation is not payable, unless there is a clear statutory provision.*". The Legal Service Division of the LegCo Secretariat provided a paper (**Appendix II**) responding to the Administration's paper. It was pointed out in the paper that "*The Administration's paper does not make any reference to the Basic Law*" and that no case law could be found in Hong Kong on the implications of the Basic Law

on the existing Ordinance up to the date (i.e. 26 April 2000) of the Bills Committee meeting.

4. The Bills Committee recognized the importance and complexity of the issue. The issue however could not be further pursued by the Bills Committee, because its work was curtailed in June 2000 due to the lack of time to complete the scrutiny of the Bill before the 1998-2000 legislative term ended.

Compensation issues not covered by the Town Planning (Amendment) Bill 2003

5. In introducing the Town Planning (Amendment) Bill 2003 in May 2003, the Administration advised that it had decided to adopt a phased approach to amend the TPO as follows:

- (a) Stage One - to introduce amendments to streamline and shorten the town planning process, enhance openness of the planning system, and strengthen enforcement control on unauthorized developments;
- (b) Stage Two - to propose amendments which will require further consideration within the Administration and/or consultation with the stakeholders such as the operation of the Town Planning Board, designation of Special Design Area, Environmentally Sensitive Area and Designated Development; and
- (c) Stage Three - to review the highly controversial proposals such as interim development control and planning control on building development.

6. The Town Planning (Amendment) Bill 2003 is the Stage One amendments to the TPO. The Bill was passed by the LegCo on 7 July 2004. The Town Planning (Amendment) Ordinance 2004 came into operation on 10 June 2005.

7. Over the past few years when LegCo Members met with HYK, HYK members repeatedly raised the subject of compensation for diminution of development rights due to planning actions. HYK considered that there should be adequate consideration of private rights in the plan-making process. HYK members requested that the issue of compensation for diminution of development rights should be addressed at the next round of review of the TPO.

8. A paper provided by the Administration in response to the concerns raised by HYK is in **Appendix III**. In the paper, the Administration reiterated its position in the paper in Appendix I and added that under the TPO, the affected land owners are allowed to raise objections to zoning restrictions on statutory

plans. Moreover, the Town Planning (Amendment) Ordinance 2004 expressly provided for application for amendment of plans, which would provide an opportunity for the land owner to submit their case to the Town Planning Board for consideration to address possible planning blight.

Recent development

9. A relevant oral question was raised by Hon Abraham SHEK at the Council meeting on 25 April 2007. The Administration's reply is in **Appendix IV**. In their follow-up questions, Members raised the following issues --

- (a) whether the development restrictions in OZP prevail over the terms of relevant land leases;
- (b) whether the present planning legislation was consistent with Article 105 of the Basic Law;
- (c) the observations that the Administration had imposed development restrictions on selected sites and at different timing for different areas had given rise to concerns about favouritism towards particular developers; and
- (d) the uncertainty about the possibility of the imposition of development restrictions, even for sites covered by approved OZPs, would create disincentives to redevelopment by the private sector.

10. The Panel on Planning, Lands and Works will discuss the subject with the Administration at its meeting on 22 May 2007.

Common Law Principles on Compensation for Planning Actions

Background

At the Bills Committee meeting held on 28.3.2000, Heung Yee Kuk raised concern about the lack of compensation for planning actions. The relationship between statute law and contractual provisions of leases was briefly discussed. The Administration agreed to prepare a paper on the common law principles on compensation.

2. The lack of compensation provisions in the existing Town Planning Ordinance has long been a contentious issue, particularly after the enactment of the Town Planning (Amendment) Ordinance 1991 which extended statutory planning control to the rural New Territories. A Special Committee on Compensation and Betterment (SCCB) was set up in July 1991 to consider the complex issues of compensation and betterment. The SCCB examined the situations in other countries in detail and a report was published in March 1992. This paper has made reference to the SCCB report.

Common Law

3. Although resumption and compensation provisions in Hong Kong are based on statute, the common law is also applicable. The historical reports of judgments of the superior courts in Hong Kong and other common law jurisdictions comprise the common law.

4. Where a statute provides for the compulsory acquisition of private land, it may provide for payment of compensation. The provisions relating to compensation under clauses 6(3) and 6(4) of the Town Planning Bill are examples. These two clauses of the Bill follow closely the wording in sections 4(2) and 4(3) of the existing Town Planning Ordinance. Where the statute on the right to compensation is unclear, the common law provides certain principles to assist in the interpretation and application of statutory rights and powers. The common law presumes that compensation is payable for the taking of private land, unless there is a clear contrary intention.

5. Where statute law merely regulates the use of private land, the common law principle is that compensation is not payable, unless there is a clear statutory provision. Regulatory powers may restrict or prohibit development but do not deprive the private owner of his title to the land. The doctrine that the public interest should prevail over private interest without compensation except in extreme cases has long been a feature of law in Civil Law countries.

6. Nearly all privately owned land in Hong Kong is held from the Government under leases. The contractual rights of both the Government as lessor and private owners as lessees are subject to statute law. Whenever there is a conflict between statute law and the contractual provisions of leases, the statute law prevails. This is in line with the general principle that statutory provisions prevail over contractual provisions, as established by the

courts locally and in other common law jurisdictions such as England and Australia. Some examples include *Discreet Ltd. v. Town Planning Board* [HCAL 112 of 1997] and *Molton Builders Ltd. v. City of Westminster L.B.C.* [1975] 30 P & CR 182. These cases have established that the grantees' rights to use their land according to the leases are always subject to the control under the planning law in existence at the time. The position has also been applied in practice locally in respect of a large number of statutory provisions, including those in the Buildings Ordinance and pollution legislation, which affect and may reduce lessees' rights. The courts have also held that planning or other statutory powers affecting lessees' rights do not amount to any derogation from grant. This is because those restrictions are not imposed by the Government in its contractual capacity as lessor but are a consequence of the exercise of its legislative power, as held in the judgment of *Lam Kwok-leung v. AG* [1979] HKLR 145.

7. Both the existing Town Planning Ordinance and the Town Planning Bill have no provision for compensation for diminution of development rights due to planning actions except in the case of resumption under the Lands Resumption Ordinance. The present system has been operating in Hong Kong for many years and it is a system generally adopted in other common law jurisdictions. The SCCB has considered this controversial issue very thoroughly in 1991 and recommended that the best approach would be to build on the existing system of providing no compensation for partial loss of development rights due to planning actions but improve the planning process such that adequate consideration of private rights as against the public interest could be ensured. To this end, various proposals to enhance the openness and fairness of the plan-making process have been included in the Town Planning Bill.

Administration's View

8. The infringement of contractual rights of ownership of land by planning actions is justified on the grounds of promoting public interest. It is a means to ensure that overall planning initiatives for the interest of the community would not be frustrated unduly by individual rights. Otherwise, the whole purpose of planning legislation would be defeated. The absence of statutory provisions for compensation for planning actions does not in any way deviate from the common law principles.

Planning Department
April 2000

[BillsCom-Compensation.rtf]

立法會

Legislative Council

LC Paper No. LS130/99-00

Paper for the Bills Committee on the Town Planning Bill

Response to the paper prepared by the Administration "Common Law principles on Compensation for Planning Actions"

At the Bills Committee meeting on 26 April 2000, Members requested the Assistant Legal Adviser to prepare a paper setting out her comments made during that meeting on the paper prepared by the Planning Department in April 2000 (LC Paper No. CB(1) 1392/99-00(02) refers).

The Administration's paper

2. Clauses 6(3) and 6(4) of the Town Planning Bill ("the Bill") propose that 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. Although the provisions follow closely the wording in sections 4(2) and 4(3) of the Town Planning Ordinance (Cap. 131)("the existing Ordinance"), the scope of application in the Bill is wider than that in the existing Ordinance. A textual comparison of these provisions is at **Annex A**.

3. The Administration holds the view that the infringement of contractual rights of ownership of land by planning actions is justified on the grounds of promoting public interest. The absence of statutory provisions for compensation for planning actions does not in any way deviate from the common law principles.

4. The common law principles referred to by the Administration are :

- (a) compensation is payable for the taking of private land, unless there is a clear contrary intention;
- (b) compensation is not payable if the statute law regulates the use of private land, unless there is a clear statutory provision.

Distinction between expropriation and regulation

5. The distinction between expropriation of property and regulatory limitations on the use of property becomes crucial since they form the basis for the two common law principles. It is generally accepted that the distinction cannot be made on a mechanical or conceptual basis¹.

6. In jurisdictions where it is accepted that some regulatory limitations can be classified as effective expropriations and compensated, the distinction is usually seen as a matter of degree, so that regulatory limitations will be treated as effective expropriations if they go too far. In other jurisdictions, regulatory limitations that go too far will not be so treated, but will be regarded as excessive and therefore invalid.

Basic Law

7. The Administration's paper does not make any reference to the Basic Law. It only refers to the report of the Special Committee on Compensation and Betterment published in March 1992 ("the Report"). Paragraph 1.7 of the Report states that "under the doctrine of parliamentary sovereignty and in the absence of a written constitution, courts may not declare statutes invalid on the grounds of being unconstitutional or unreasonable". After 1997, the discussion would not be complete unless implications of the Basic Law have been considered.

8. Article 8 of the Basic Law provides, inter alia, that the common law shall be maintained, except for any that contravene the Basic Law, and subject to any amendment by the legislature of the HKSAR. Articles 6 and 105 of the Basic Law protect the right of private ownership of property. An extract is at **Annex B**.

9. In the case of *Discreet Limited v Secretary for Justice for and on behalf of the Town Planning Board* [HCAL 112 of 1997], the Judge commented that the question whether section 4(3) of the existing Ordinance can stand in the face of a new Constitutional order is an interesting one. However, the Judge believed that he was not in a position to consider that question in those proceedings which dealt with an application for judicial review.

10. We cannot find any case law in Hong Kong on the implications of the Basic Law on the existing Ordinance up to the date of the Bills Committee meeting. It may be useful to compare constitutional property clauses in other countries.

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

Comparison with other constitutional property clauses

11. The typical example of a jurisdiction which recognizes the grey area between the two categories of regulation and expropriation is the United States of America. The Fifth Amendment of the United States Constitution provides that private property shall not be "taken for public use without just compensation". On this basis, the United States courts have developed the doctrine of inverse condemnation.

12. The doctrine may be invoked where although land is not compulsorily taken, its value has been destroyed or diminished by regulation. When all other remedies have been exhausted, an application may be made for the grant of constitutionally based compensation. Alternatively, an application may be made for the court to strike down the regulatory conditions. The remedy arises where regulations so limit an owner's rights that an essential element of his property rights is lost².

13. The constitutional provisions have been held to be self-executing , so they are not dependent on the enactment of specific legislation³. Members have been advised that the US constitution protects private property rights in wider terms than the Basic Law.

14. The doctrine of inverse condemnation has not been recognized in other jurisdictions such as Northern Ireland, Germany, France and Italy. In the constitutions of Germany and Italy, similar constitutional rights are balanced by provisions proclaiming the social obligation of private property owners. The House of Lords considered the written constitution of Northern Ireland in 1960 and held that regulatory planning conditions could not amount to taking.

Statutory compensation

15. Extracts of the Town and Country Planning Act as amended by the Planning and Compensation Act 1991 are at **Annex C**. In the United Kingdom, payment of compensation has been provided in relation to :

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)

- (a) revocation or modification of planning permission;
- (b) refusal or conditional grant of planning permission formerly granted by development order;
- (c) planning orders;
- (d) restrictions on mineral working;
- (e) advertisements;
- (f) blight notices;
- (g) purchase notices;
- (h) statutory undertakers;
- (i) stop notices; and
- (j) tree preservation orders.

16. It is a matter for Members to decide whether clause 6(3) or (4) of the Bill is acceptable, or how it should be amended. Should Members decide to move Committee Stage amendments to provide for compensation, the proposed amendment may probably have "charging effect" and would be subject to the restriction under Rule 57(6) of the Rules of Procedure.

Conclusion

17. Compensation for planning actions is a complex subject matter with mixed considerations of legal and constitutional principles and planning policies. I would be happy to provide further assistance to Members if necessary.

Encl

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3 May 2000

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 Kirkles Metropolitan DC* [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 Borough 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 Borough 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 (Sunderland) 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-notices, 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 of 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 . . . notice. 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 Carnwath 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. ie Chapter 1 (ss 197–214) 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.

LegCo Panel on Planning, Lands and Works
Issues raised by Councillors of Heung Yee Kuk on 10 June 2003

Purpose

At a meeting between Members of the LegCo and Heung Yee Kuk (HYK) on 10 June 2003, HYK Councillors raised the issue of compensation relating to planning restrictions and requested the Administration to provide a response. This paper sets out the Administration's response on the issue.

The Administration's response

2. The existing Town Planning Ordinance has no provision for compensation for diminution of development rights due to planning actions except in the case of resumption under the Lands Resumption Ordinance. The present system has been operating in Hong Kong for many years and is in line with the common law principle. It is also a system generally adopted in other common law jurisdictions, such as Canada, Australia and New Zealand.

3. The issue of compensation relating to planning action had been considered in detail by the Special Committee on Compensation and Betterment (SCCB)¹ in 1992. The SCCB recommended that the best approach would be to build on the existing system of providing no compensation for partial loss of development rights due to planning actions but improve the planning process such that adequate consideration of private rights as well as the public interest could be ensured.

3. Under the existing Town Planning Ordinance, the affected land owners are allowed to raise objections to zoning restrictions on statutory plans. All objections raised would be thoroughly considered by the Town Planning Board under the provisions of the Ordinance. The Town Planning Board would take into account all public interests and strike a proper balance between public interests and private property right in the plan-making process.

¹ The SSCB was set up in July 1991 to consider and make recommendations on the complex issues of compensation and betterment. It was chaired by Mr. John Todd and comprised members from the legal, surveying, banking and accounting fields.

4. In the light of SCCB's recommendation, we have also included various proposals in the Town Planning (Amendment) Bill 2003 to enhance the openness and fairness of the plan-making process. In particular, we have expressly allowed for application for amendment of plans which will provide an opportunity for the land owner to submit their case to the Town Planning Board for consideration to address possible planning blight. Further, the applicant is entitled to be heard by the Board.

Housing, Planning and Lands Bureau
September 2003

Appendix IV

Press Releases

LCQ3: Outline Zoning Plans

Following is a question by the Hon Abraham Shek and a reply by the Secretary for Housing, Planning and Lands, Mr Michael Suen, in the Legislative Council today (April 25):

Question:

It has been learnt that from time to time since 2005, various forms of building height restrictions and plot ratio reduction have been introduced to approved Outline Zoning Plans. In this connection, will the Government inform this Council of:

(a) the policy objective of introducing the above building height restrictions and plot ratio reduction; and

(b) the districts and private sites to which such restrictions and reduction have been introduced since 2005, as well as the estimated loss of revenue and of the value of land because of such restrictions and reduction?

Reply:

Madam President,

Planning is an on-going process. The Outline Zoning Plans (OZPs) made pursuant to the Town Planning Ordinance (the Ordinance), which set out the development parameters and land use planning of individual areas, are reviewed and updated from time to time to meet changing social and economic needs. All OZPs, and the updated versions thereof, are approved by the Chief Executive in Council.

My reply to the two-part question is as follows:

(a) It is a well-established practice of the Town Planning Board (the Board) to stipulate development restrictions to provide open, clear and unambiguous development parameters for compliance by relevant parties. In general, restrictions on plot ratio are stipulated to demarcate areas of different development intensities. This is to make sure that the local infrastructure, environmental and traffic capacities can cater for the demand arising from the

development intensities. Building height restrictions are stipulated to protect important ridgelines, views to the harbour and other valuable attributes of our landscape; to preserve the special character of some neighbourhoods; and to achieve compatibility with the surrounding developments and natural setting.

(b) Since January 2005, amendments to 15 OZPs for imposing or updating plot ratio, gross floor area or building height restrictions have been gazetted under the Ordinance. Seven of these OZPs have been approved by the Chief Executive in Council. These 15 OZPs cover 10 districts namely Eastern District, Southern District, Wan Chai, Kowloon City, Kwun Tong, Sham Shui Po, Kwai Tsing, Tsuen Wan, Northern District and Yuen Long.

In general, developments already completed or approved will not be affected by the new development restrictions. However, when an existing building is to be redeveloped, the redevelopment would be subject to the new development restrictions, or the bulk and height of the existing building, whichever is the greater.

While it is generally true that lower development intensity would mean less revenue, lower development intensity could avoid excessive developments in densely populated and congested areas, thus allowing public benefits not quantifiable in monetary terms to be gained. Lower development intensity also improves our quality of living and it responds to the community calls for better building layouts and more open space.

Ends/Wednesday, April 25, 2007
Issued at HKT 12:54

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