

# PLANNING AND COMPULSORY PURCHASE ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Compulsory Purchase**

##### ***Section 99: Compulsory acquisition of land for development etc***

128. **Section 99** amends the basis upon which a local authority may acquire land compulsorily for the carrying out of development, redevelopment or improvement. The authority will be able to acquire land if they think the carrying out of development, re-development or improvement is likely to be of economic, social or environmental benefit to their area. A local authority is defined by section 226(8) of the Town and Country Planning Act 1990 as a council of a county, county borough, district or London borough. A joint planning board and a National Park authority may exercise the same power.

##### ***Section 100: Procedure for authorisation by authority other than a Minister***

129. **Section 100** amends the procedure for the making and confirmation of non-ministerial compulsory purchase orders set out in the Acquisition of Land Act 1981 to achieve the following :
- extend the categories of persons with interests in land who are entitled to be served with notice of the making of the order and who have a right to have any objections heard at a public local inquiry;
  - require the fixing of notices of the making of an order on or near the order land;
  - provide for objections to an order to be considered by means of written representations in accordance with a prescribed procedure (as an alternative to an inquiry or hearing) where all those with remaining objections consent, and to provide for awards of costs where the written representations procedure is followed;
  - allow confirmation of orders in stages; and
  - extend the existing requirement to give notice of confirmation of an order to include fixing a notice on or near the order land.
130. The intention behind all these changes is to make the statutory procedures fairer and quicker.

##### ***Section 101: Procedure for authorisation by a Minister***

131. **Section 101** amends the procedure for the preparation in draft and the making of a ministerial compulsory purchase order under Schedule 1 to the Acquisition of Land Act 1981 in a similar manner to the amendments in section 100 for the making and

confirmation of non-ministerial compulsory purchase orders, other than provision for an award of costs.

***Section 102: Confirmation by acquiring authority***

132. **Section 102** inserts a new section 14A into the Acquisition of Land Act 1981 to enable the confirming authority for a compulsory purchase order to transfer the decision whether or not to confirm to the acquiring authority. This power may only be exercised if there are no objections to the order and certain other specified conditions are met. This is intended to help to speed up the confirmation of unopposed compulsory purchase orders, and should be particularly helpful in situations where, as part of a wider land assembly exercise, an acquiring authority needs to exercise its compulsory purchase powers in order to acquire title to land in unknown ownership.

***Section 103: Assessment of compensation: valuation date***

133. **Section 103** amends the Land Compensation Act 1961 which sets out the basic rules for assessing compensation on the compulsory purchase of land. It inserts a new section 5A which sets out the date on which the value of the land is to be assessed for the purpose of determining the amount of compensation payable.

***Section 104: Compensation: advance payments to mortgagees***

134. **Section 104** inserts three new sections (52ZA, 52ZB and 52ZC) into the Land Compensation Act 1973 (the 1973 Act). These new sections make it possible for advance payments of the compensation due to a claimant following the compulsory purchase of his land to be paid direct to his mortgagee where appropriate.

***Section 105: Power to require information***

135. **Section 105** inserts two new sections into the Acquisition of Land Act 1981.
136. New section 5A gives an acquiring authority the power to require it to be provided with the names and addresses of those who own, occupy or are believed to have an interest in land if the authority has a statutory power to acquire compulsorily. The power may only be exercised for the purpose of enabling the authority to acquire the land. Such a power will enable an acquiring authority to ascertain ownership and occupation of land for the purpose of early negotiations for purchase by agreement and for service of notices on the appropriate persons set out in sections 98 and 99 in any subsequent exercise of compulsory purchase powers.
137. New section 5B makes failure to provide such information without reasonable excuse or knowingly to provide materially false information an offence. Conviction can result in a fine on level 5 on the standard scale (currently £5,000 maximum).

***Sections 106-109: Loss payments***

138. **Sections 106 to 109** introduce a new statutory scheme in the Land Compensation Act 1973, which will operate in addition to the home loss scheme set out in that Act. It replaces the existing farm loss payments scheme. The new provisions allow for “loss payments” to be made to those who have a certain interest in property, but who are not entitled to receive home loss payments under the home loss scheme set out in sections 29 to 33 of the 1973 Act.

***Section 106: Basic loss payment***

139. **Section 106** introduces a new section 33A to the Land Compensation Act 1973. This new section provides that a person who is an owner or tenant of property that is compulsorily acquired (and who has held that interest for no less than a year) is entitled to a payment called a “basic loss payment”. This payment will be made in addition to

the compensation paid for the value of his or her interest in the property and his or her disturbance costs. The amount of this payment is to be assessed at the rate of 7.5% of the value of the person's interest, subject to a maximum of £75,000. If the person is entitled to a home loss payment in respect of any part of the property which is a dwelling, the value of the interest in the dwelling part of the property must be deducted from the value of the interest in the whole when assessing the basic loss payment.

140. The basic loss payment will not be available in respect of compulsory acquisitions which are made before these provisions of the Act are brought into force.

### ***Section 107: Occupier's loss payment***

141. **Section 107** inserts a new section 33B and a new section 33C into the Land Compensation Act 1973. Section 33B relates to occupiers of agricultural land that is compulsorily acquired. Section 33C relates to occupiers of non-agricultural land that is compulsorily acquired. Both sections provide for the payment of what is called an "occupier's loss payment" (in addition to the basic loss payment) to any person who satisfies the conditions for the basic loss payment and who has also occupied the land being acquired for a period of no less than a year. The amount of the payment is assessed at a rate of 2.5% of the value of the occupier's interest, or on the basis of a formula based on the area of the land or the floor space of the building being acquired, whichever gives the greatest figure, in each case subject to a maximum of £25,000. Again, if part of the property is a dwelling in respect of which the person could claim a home loss payment, the value of the interest in the dwelling must be deducted from the value of the interest in the whole when assessing the occupier's loss payment.
142. The occupier's loss payment will not be available in respect of compulsory acquisitions which are made before these provisions of the Act are brought into force.

### ***Section 108: Loss payments: exclusions***

143. **Section 108** inserts a new section 33D into the Land Compensation Act 1973 which excludes entitlement to loss payments in certain situations. These are where an acquiring authority has exercised its compulsory purchase powers as a result of a failure to comply with the requirements of one of the notices specified in this section, or as a result of a person having had one of the specified orders served upon him. These notices and orders deal with the neglect of property. The purpose of this section is therefore to prevent those whose neglect has prompted a compulsory purchase order from benefiting from that neglect.

### ***Section 109: Loss payments: supplementary***

144. **Section 109** inserts sections 33E to 33K into the Land Compensation Act 1973. It sets out the supplementary provisions required to operate the loss payment scheme, covering: the arrangements for making a claim; who can make a claim if the person who is entitled to do so is insolvent or dies; situations of dual entitlement to both an occupier's loss payment in respect of agricultural land and a payment by virtue of the Agriculture (Miscellaneous Provisions) Act 1968 (which deals with additional payments consequent on compulsory acquisition of agricultural holding); date of payment by acquiring authorities, advances of payment and interest and acquisitions by agreement between an authority and a person entitled to a loss payment.
145. The Secretary of State may make regulations to amend any of the figures or percentages specified in the newly inserted sections of the 1973 Act. For any changes to percentages or to amounts not based on changes in the value of money or land, the regulations would be subject to the affirmative resolution procedure in Parliament.

***Section 110: Corresponding amendments of other enactments***

146. **Section 110** is applicable to an enactment in which provision is made for the compulsory acquisition of an interest in land, or the interference with or affectation of any right in relation to land, or for the payment of compensation as a result. The Secretary of State may by order amend such an enactment so that its provisions correspond to or apply those contained in Part 8 of the Act. Any such orders would be subject to the affirmative resolution procedure in Parliament.