The Town and Country Planning Act 1959 / by T.J. Nardecchia and David Sullivan.

Contributors

Great Britain.
Nardecchia, T. J.
Sullivan, David.

Publication/Creation

London : published by the Royal Institute of Chartered Surveyors, 1959.

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THE TOWN AND COUNTRY PLANNING ACT 1959

By

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THE ROYAL INSTITUTION OF CHARTERED SURVEYORS
12, GREAT GEORGE STREET, PARLIAMENT SQUARE,
LONDON, S.W.1

December 1959

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23, FURNIVAL STREET, LONDON, E.C.4.

PREFACE

On the 16th July, 1959, the Royal Assent was given to the following Bills :—

Weeds, Dog Licences, Rights of Light, Street Offences and Town and Country Planning.

In this brave company the Town and Country Planning Act, 1959 landed, with a weighty thump, on the Statute Book. The slender form in which it was presented to the House of Commons on the 29th October, 1958, had swollen visibly during its many months wordy passage through both Houses of Parliament. The original Bill of 45 sections and 8 schedules filling 77 pages of print had been so re-written, amended, doctored, lawyered and resurveyed that the Act now comprises 59 sections and 10 schedules and fills 124 pages of print.

The object of this book is to try to explain the important changes in law made by the Act, which came into force on the 16th August, 1959, and to relate them to existing law on the subjects affected. We have endeavoured to bear in mind the needs of those concerned in the practical application and administration of the Town and Country Planning Acts and other related statutes, and to this end the book is divided into two main sections.

The first section comprises a narrative of ten chapters, of which the first five are devoted to the changes in the basis of assessing compensation for compulsory purchase and are preceded by a general introduction on this subject. The next four chapters deal with the four remaining parts of the Act, and the tenth is devoted to a discussion of some practical problems. We have tried to explain the whole of the Act in as simple a form as possible in these chapters, but we are very much aware that this object has often not been as fully attained as we would have wished, owing to the intractability of the subject matter. It is hoped, however, that the reader will grasp the scheme and effect of the Act from the narrative.

The second part of the book is devoted to reproducing the text of the Act, each section being followed by a short and simple headnote and then by a comprehensive set of legal notes on the interpretation of the words and phrases used, with details of appropriate cases and other references. This part of the book is designed for those who have to come to serious grips with the Act and who are concerned with the precise interpretation of particular sections. The Act as here printed extends also to Scotland, but this book is confined to the law of England and Wales.

We hope that the combination of these two parts, together with the regulations reproduced in the appendices, will give the practitioner a sufficiently comprehensive work of reference on this Act within the covers of one book.

	Page
PART V—MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS	329
FIRST SCHEDULE —SPECIAL PROVISIONS RELATING TO SECTION NINE	362
SECOND SCHEDULE —ACQUISITION OF HOUSES AS BEING UNFIT FOR HUMAN HABITATION	368
THIRD SCHEDULE —APPLICATION OF SECTION EIGHTEEN TO SPECIAL CASES	383
FOURTH SCHEDULE —AUTHORITIES TO WHOM PART II APPLIES	391
FIFTH SCHEDULE —SUPPLEMENTARY PROVISIONS AS TO PURCHASE OF OWNER-OCCUPIER'S INTEREST	395
SIXTH SCHEDULE —REDUCTION OR EXTINGUISHMENT OF UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE	404
SEVENTH SCHEDULE—ENACTMENTS AMENDED	414
EIGHTH SCHEDULE —ENACTMENTS REPEALED	422
NINTH SCHEDULE —SECTION NINETEEN OF THE TOWN AND COUNTRY PLANNING ACT, 1947, AS AMENDED	425
TENTH SCHEDULE —SECTION SEVENTEEN OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1947, AS AMENDED	429

APPENDICES :

I. THIRD SCHEDULE TO THE TOWN AND COUNTRY PLANNING ACT, 1947	433
II. TEXT OF STATUTORY INSTRUMENTS	435

INDEX 456

Pages

Lands Clauses Consolidation Act 1845 (8 & 9 Vict. c. 18) 2, 3, 4, 74, 75, 267
Section 18 223
49 ... ... 50, 223
58 ... ... 32, 77, 204, 205, 224, 226
63 ... ... 50, 223
68 ... ... 50, 101, 223, 274, 276
121 ... ... 75, 76, 223, 406, 412
Railways Clauses Consolidation Act 1845 (8 & 9 Vict. c. 20) 5
Public Health Act 1875 (38 & 39 Vict. c. 55)—
Section 279 ... ... 391, 393
280 ... ... 391, 393
Interpretation Act 1889 (52 & 53 Vict. c. 63) ... 398, 436, 443, 450, 451
Light Railways Act 1896 (59 & 60 Vict. c. 48)—
Section 13 ... ... 56, 362, 366
Open Spaces Act 1906 (6 Edw. 7, c. 25)—
Section 7 ... ... 100, 276
Development & Road Improvement Funds Act 1909 (9 Edw. 7, c. 47)—
Section 8 ... ... 152, 338
Schedule 56, 362, 366
Acquisition of Land (Assessment of Compensation) Act 1919 (9 & 10 Geo. 5, c. 57) 3, 4, 5-8, 184, 186, 188, 214, 224, 226, 352
Section 1 356
2 ... ... 45, 50, 141, 210, 215, 244
Rule 1 ... ... 46, 186
2 ... ... 46, 186
3 ... ... 47, 186
4 ... ... 48, 186
5 ... ... 49, 186, 219
6 ... ... 49, 186
5 ... ... 79, 80, 227, 228, 230, 331, 404
12 356
Land Settlement (Facilities) Act 1919 (9 & 10 Geo. 5, c. 59)—
Section 22 ... ... 90, 101, 258, 275, 276
28 ... ... 89, 254, 258
Allotments Act 1925 (15 & 16 Geo. 5, c. 61)—
Section 8 ... ... 90, 96, 259, 263
Land Charges Act 1925 (15 & 16 Geo. 5, c. 22)—
Section 15 233
Law of Property Act 1925 (15 & 16 Geo. 5, c. 20)— 38, 387
Section 205 ... ... 334, 390
Rating and Valuation Act 1925 (15 & 16 Geo. 5, c. 90)—
Section 9 ... ... 270, 274
Settled Land Act 1925 (15 & 16 Geo. 5, c. 18) 38, 387
Section 1 390
Supreme Court of Judicature (Consolidation) Act 1925 (15 & 16 Geo. 5, c. 49)—
Section 27 294
Town Planning Act 1925 (15 & 16 Geo. 5, c. 16) 7
Small Holdings and Allotments Act 1926 (16 & 17 Geo. 5, c. 52)—
Section 2 ... ... 90, 96, 254, 258, 263
6 ... ... 263, 269
Rating and Valuation (Apportionment) Act 1928 (18 & 19 Geo. 5, c. 44)—
Section 2 331
3 216
Land Drainage Act 1930 (20 & 21 Geo. 5, c. 44) 392
Section 1 395
45 395

Pages

Agricultural Land (Utilisation) Act 1931 (21 & 22 Geo. 5, c. 41)—
Section 12 ... ... 90, 96, 254, 258, 263
17 258
Schedule 2 258
Town and Country Planning Act 1932 (22 & 23 Geo. 5, c. 48) 7
Local Government Act 1933 (23 & 24 Geo. 5, c. 51) 394
Section 1 393
157 85
158 86
163 ... ... 85, 87, 91, 100, 255, 259, 276, 422
164 93
165 93
166 97
167 100
168 ... ... 296, 422
169 100
170 100
195 273
266 277
273 ... ... 101, 276
290 291
293 393
305 ... ... 252, 393
Schedule 1 393
Restriction of Ribbon Development Act 1935 (25 & 26 Geo. 5, c. 47)—
Section 13 ... ... 56, 150, 151, 316, 336, 367
14 316
Public Health Act 1936 (26 Geo. 5 & 1 Edw. 8, c. 49) 391, 395
Section 6 393
90 393
343 393
Schedule 3... 393
Trunk Roads Act 1936 (1 Edw. 8 & 1 Geo. 6, c. 5)—
Section 4 ... ... 316, 336
Compensation (Defence) Act 1939 (2 & 3 Geo. 6, c. 75) 7
Section 2 ... ... 146, 332, 333
London Government Act 1939 (2 & 3 Geo. 6, c. 40)—
Section 1 393
Schedule 1 393
Town and Country Planning (Interim Development) Act 1943 (6 & 7 Geo. 6, c. 29) 8
War Damage Act 1943 (6 & 7 Geo. 6, c. 21) ... 66, 67, 70, 373, 380
Section 7 219
14 ... ... 70, 71, 165, 218, 219,422
Education Act 1944 (7 & 8 Geo. 6, c. 31)—
Schedule 1 ... ... 391, 393
Town and Country Planning Act 1944 (7 & 8 Geo. 6, c. 47) 7, 339
Section 1 ... ... 130, 143, 144, 329, 330
2 345
3 345
4 345
9 345
10 345
19 ... ... 87, 91, 95, 96, 262, 268, 269
Schedule 4 ... ... 74, 221
5 ... ... 68, 69, 373, 379, 380, 422
Requisitioned Land and War Works Act 1945 (8 & 9 Geo. 6,c.43) 146, 147, 164

Pages

Water Act 1945 (8 & 9 Geo. 6, c. 42) 392
Section 59 395
Schedule 3 395
Statutory Orders (Special Procedure) Act 1945 (9 & 10 Geo. 6, c. 18)—
Section 1 357
8 357
Acquisition of Land (Authorisation Procedure) Act 1946 (9 & 10 Geo. 6, c. 49) 7, 83, 119, 257, 335, 394
Section 6 366
Schedule 1 ... ... 209, 221, 335
3 50
4 366
New Towns Act 1946 (9 & 10 Geo. 6, c. 68) ... 54, 55, 68, 211, 344, 369
Section 1 ... ... 68, 216, 369
4 ... ... 234, 239, 356, 381
6 ... ... 89, 234, 238, 239, 369, 381
15 368
Police Act 1946 (9 & 10 Geo. 6, c. 46) 392
Sections 3, 4, 5 394
Statutory Instruments Act 1946 (9 & 10 Geo. 6, c. 36)—
Section 5 ... ... 161, 351
6 ... ... 284, 290
Trunk Roads Act 1946 (9 & 10 Geo. 6, c. 30) 131, 315, 316
Section 5 336
7 316
Agriculture Act 1947 (10 & 11 Geo. 6, c. 48)—
Section 58 ... ... 163, 414, 419
Fire Services Act 1947 (10 & 11 Geo. 6, c. 41) 392
Sections 4, 5, 6 and 8 394
Public Offices (Site) Act 1947 (10 & 11 Geo. 6, c. 45) 315, 357
Town and Country Planning Act 1947 (10 & 11 Geo. 6, c. 51)—
3, 8–10, 75, 104, 117, 166, 361
Section 3 331
4 ... ... 391, 393
5 ... ... 21, 196, 315, 345
6 ... ... 144, 196, 329, 330
7 196
9 ... ... 145, 329–31
11 ... ... 196, 201
12 ... ... 119, 120, 121
13 435
14 291
15 ... ... 107, 116, 120, 282, 288, 292, 302, 303, 304, 306, 309
16 ... ... 116, 189, 241, 244, 282, 288, 290, 292, 294, 306, 309
17 ... ... 119, 120, 121, 292, 294
18 ... ... 163, 191, 415, 420
19 ... ... 69, 74, 89, 116, 121–7, 163, 185, 187, 210, 267, 280, 282, 288, 296–301, 339, 345, 359, 360, 381, 415, 420, 425–8
20 ... ... 20, 21, 164, 192, 416, 420
21 ... ... 115, 122, 281, 287, 291, 346
22 ... ... 82, 163, 231, 232, 233, 280, 289, 300
23 ... ... 120, 127, 164, 287, 309–11, 416, 420
24 ... ... 164, 309–11, 416, 420
26 ... ... 20, 115, 122, 192, 281, 287, 291
27 ... ... 20, 21, 163, 164, 192, 280, 289, 300, 381, 416, 420
28 ... ... 115, 116, 118, 282, 283, 284, 288, 289, 290, 291
29 ... ... 116, 118, 282, 283, 284, 288, 289, 290, 291
31 ... ... 116, 118, 281, 282, 288, 291
32 246

Pages

34 304
35 ... ... 246, 302, 304, 306, 309
38 95
40 ... ... 86, 95
42 ... ... 89, 101, 254, 258, 275
44 422
45 ... ... 74, 220, 221
51 ... ... 17, 61, 74, 165, 184, 185, 217, 422
53 ... ... 70, 71, 72, 165, 218, 219, 422
54 ... ... 164, 416, 421, 422
55 ... ... 165, 422
56 ... ... 73, 165, 218, 219, 422
57 356
82 ... ... 165, 220, 221, 422
84 ... ... 165, 220, 221, 422
85 ... ... 165, 220, 221, 423
87 ... ... 153, 347, 348
90 221
91 ... ... 78, 228
104 ... ... 159, 160, 350, 351
105 ... ... 160, 161, 206, 291, 350, 351
110 423
112 ... ... 354, 358, 412
114 304
119 ... ... 162, 187, 327
189 383
Schedule 3 ... ... 20, 123, 188–90, 192, 240, 367, 412, 433–5
5 ... ... 283, 290
7 78
10 ... ... 329, 330
11 ... ... 87, 379, 423
Agricultural Holdings Act 1948 (11 & 12 Geo. 6, c. 63) 108, 307
Section 1 309
Civil Defence Act 1948 (11 & 12 Geo. 6, c. 5) 357
Companies Act 1948 (11 & 12 Geo. 6, c. 38) 239
Local Government Act 1948 (11 & 12 Geo. 6, c. 26) 372
Requisitioned Land and War Works Act 1948 (11 & 12 Geo. 6, c. 17)—
Section 10 ... ... 146, 147, 333
River Boards Act 1948 (11 & 12 Geo. 6, c. 32) 392
Sections 1 and 13 394
Water Act 1948 (11 & 12 Geo. 6, c. 22)—
Section 1 395
Coast Protection Act 1949 (12, 13 & 14 Geo. 6, c. 74)—
Section 2 ... ... 391, 393
Lands Tribunal Act 1949 (12, 13 & 14 Geo. 6, c. 42) 4, 33
Section 1 ... ... 201, 205
3 205
4 201
National Parks and Access to the Countryside Act 1949 (12, 13 & 14 Geo. 6, c. 97)—
Section 103 ... ... 86, 356
104 88
Special Roads Act 1949 (12, 13 & 14 Geo. 6, c. 32) ... 131, 315, 316
Section 9 ... ... 316, 336
10 ... ... 316, 336
14 ... ... 316, 336
Mineral Workings Act 1951 (14 & 15 Geo. 6, c. 60)—
Section 16 253
17 ... ... 87, 251, 253
18 ... ... 87, 251, 253
Schedule 1 253

Pages

Town and Country Planning (Amendment) Act 1951 (14 & 15 Geo. 6, c. 19) 128, 311, 433
Town Development Act 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 53) ... 211, 216
Section 4 335
6 ... ... 68, 69, 143, 148–50, 334–5, 347, 369, 380, 423
Visiting Forces Act 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 67) 218
Local Government (Miscellaneous Provisions) Act 1953 (1 & 2 Eliz. 2, c. 26)—
Section 1 ... ... 97, 270, 273
2 ... ... 98, 271, 273
Town and Country Planning Act 1953 (1 & 2 Eliz. 2, c. 16)... ... 10, 356
Landlord and Tenant Act 1954 (2 & 3 Eliz. 2, c. 56)—
Section 39 ... ... 76, 223
57 75
69 357
Town and Country Planning Act 1954 (2 & 3 Eliz. 2, c. 72)—
10–12, 117, 144, 157, 166, 167, 349, 361
Section 2 411
17 ... ... 411, 412
18 411
20 ... ... 168, 192
22 233
23 ... ... 116, 233, 282, 289, 291
27 233
28 ... ... 231, 233, 345, 346
29 ... ... 82, 164, 418, 421
30 ... ... 185, 424
31 ... ... 185, 228, 424
32 ... ... 185, 424
33 ... ... 185, 424
34 ... ... 185, 424
35 ... ... 78, 79, 185, 228, 424
36 ... ... 185, 412, 424
37 ... ... 185, 424
38 233
39 ... ... 231, 233, 346
41 346
45 ... ... 116, 233, 282, 289, 291
46 ... ... 231, 233, 346
48 ... ... 412, 424
52 ... ... 143, 156, 339, 340, 343, 344, 346, 424
53 ... ... 146, 147, 164, 332, 333, 359, 360, 418, 421, 424
59 ... ... 116, 163, 280, 289, 300, 381
61 ... ... 348, 424
64 ... ... 341, 347
69 ... ... 354, 356, 357
70 ... ... 122, 124, 289, 300, 345, 381
Schedule 5 ... ... 159, 424
6 424
7 ... ... 367, 412, 413
Requisitioned Houses and Housing (Amendment) Act 1955 (3 & 4 Eliz. 2, c. 24) 145, 333
Slum Clearance (Compensation) Act 1956 (4 & 5 Eliz. 2, c. 57) 424
Parish Councils Act 1957 (5 & 6 Eliz. 2, c. 42)—
Section 4 ... ... 100, 276
Housing Act 1957 (5 & 6 Eliz. 2, c. 56) 13, 51, 76, 368–83
Section 4 ... ... 62, 370, 382
5 62

Page

Higham *v.* Havant & Waterloo U.D.C. [1951] 2 K.B. 527 ; 1 All E.R. 173 ; (1950) 1 P.C.R. 281 186
Horn *v.* Sunderland Corporation [1941] 2 K.B. 26 ; [1941] 1 All E.R. 480 ; 110 L.J.K.B. 353 ; 165 L.T. 298 ; 57 T.L.R. 404 186
Inland Revenue Commissioners *v.* Buchanan (and Clay) [1914] 3 K.B. 466 ; 83 L.J.K.B. 1425 ; 111 L.T. 484 ; 30 T.L.R. 573 ... 46, 186
Jacobs *v.* Exeter Corporation (1957) J.P.L. 204 226
Jervis *v.* Newcastle Waterworks Co. (1897) 13 T.L.R. 14, 312 186
King's Leasehold Estates, *Re* (1873) L.R. 16 Eq. 521 ; 29 L.T. 288 ; 21 W.R. 881 413
Lambe *v.* Secretary of State for War [1955] 2 Q.B. 612 ; [1955] 2 All E.R. ; 5 P.C.R. 227 186
Lester & Jones *v.* Secretary of State for War (1951) 2 P.C.R. 74 ... 48, 186
London Corporation *v.* Cusack-Smith [1955] A.C. 337 ; [1955] 3 All E.R. 302 300
London County Council *v.* Montague Burton [1934] 1 K.B. 360 ; 103 L.J.K.B. 86 ; 150 L.T. 178 228
London County Council *v.* Tobin [1959] 1 W.L.R. 354 186
London Diocesan Fund *v.* Stepney Corporation (1953) 4 P.C.R. 9 ... 186
London Investment Co. *v.* Middlesex County Council (1952) 2 P.C.R. 331 186
London School Board *v.* South Eastern Railway (1887) 3 T.L.R. 710 ... 49
Lucas & Chesterfield Gas & Water Board, *Re* [1909] 1 K.B. 16 ; 17 L.J.K.B. 1009 ; 99 L.T. 767 ; 24 T.L.R. 858 ... ... 47, 215
Metropolitan Board of Works *v.* McCarthy (1874) L.R. 7 H.L. 243 ; 43 L.J.C.P. 385 ; 31 L.T. 182 ... ... 50, 276
Metropolitan Railways *v.* Burrow, Cripps on Compensation, page 1181 186
Metropolitan Water Board *v.* Berton [1921] 1 Ch. 299 ; 90 L.J.Ch. 57 ; 36 T.L.R. 834 356
Meux's Will Trusts, *Re* [1958] 1 Ch. 154 ; [1957] 2 All E.R. 630 ; 8 P.C.R. 297 391
Palmer *v.* Minister of Housing & Local Government (1952) 3 P.C.R. 165 ... ... 253, 335
Palser *v.* Grinling [1948] A.C. 291 ; [1948] 1 All E.R. 1 ; 64 T.L.R. 2 136, 317
Pointe Gourde Quarrying Co. *v.* Sub-Intendent of Crown Lands [1947] A.C. 565 ; 63 T.L.R. 486 186
Pyx Granite Co. *v.* Minister of Housing & Local Government [1959] 3 W.L.R. 346 ; [1959] 3 All E.R. 1 ... ... 115, 120, 189, 294
R. *v.* Great Northern Rail Co. (1876) 2 Q.B.D. 151 ; 46 L.J.Q.B. 4 ... 413
R. *v.* Kennedy [1893] 1 Q.B. 533 ; 68 L.T. 454 223
R. *v.* London Quarter Session [1951] 2 K.B. 508 ; [1951] 1 All E.R. 1032 ; 1 T.L.R. 932 287
R. *v.* Manchester Legal Aid Committee [1952] 2 Q.B. 413 ; [1952] 1 All E.R. 480 ; 1 T.L.R. 476... 287
R. *v.* Minister of Housing & Local Government, *ex parte* Rank Organisation [1958] 1 W.L.R. 1093 ; [1958] 3 All E.R. 222 ... 123, 124, 300
R. *v.* Minister of Fuel and Power, *ex parte* Warwickshire County Council [1957] 2 All E.R. 731 ; [1957] 1 W.L.R. 861 ; 8 P.C.R. 305... ... 221
R. *v.* Port of London Authority [1919] 1 K.B. 176 ; 88 L.J.K.B. 553 ; 120 L.T. 177 ; 35 T.L.R. 103 290
Rhyl U.D.C. *v.* Rhyl Amusements Ltd. [1959] 1 All E.R. 257 ; [1959] 1 W.L.R. 465 ... ... 99, 277
Robinson *v.* Minister of Town and Country Planning [1947] K.B. 702 ; [1947] 1 All E.R. 851 ; 63 T.L.R. 374 338
Rought *v.* West Suffolk County Council [1957] A.C. 403 ; [1956] 3 All E.R. 216 ; 6 P.C.R. 362 186
Smith *v.* East Elloe R.D.C. [1956] A.C. 736 ; [1956] 1 All E.R. 855 ; 6 P.C.R. 102 290
Smith *v.* Pywell, *The Times*, 29th April, 1959 290

Page

South Shields C.P.O., *Re* [1939] 1 All E.R. 419 ; [1939] 1 K.B. 500 ; 108 L.J.K.B. 386 ; 160 L.T. 392 223
Southwark Revenue Officer *v.* Hoe & Co., Ltd. (1930) 143 L.T. 544 ; 46 T.L.R. 528 217
Spillers Ltd. *v.* Cardiff Assessment Committee [1931] 2 K.B. 21 ; 100 L.J.K.B. 233 ; 144 L.T. 503 ; 47 T.L.R. 231 216
Thorneloe and Clarkson *v.* Board of Trade [1950] 2 All E.R. 245 ; 66 T.L.R. (Part I) 1117 ; 1 P.C.R. 139 338
Uttoxeter U.D. *v.* Clarke [1952] 1 All E.R. 1318 ; 3 P.C.R. 70 287
Vyricherla Narayana Gajapatiraju *v.* R.D.O. Vizagapatam [1939] A.C. 302 ; [1939] 2 All E.R. 317 ; 108 L.J.P.C. 51 ; 55 T.L.R. 563 ... 186
Waihi Gold Mining Co. *v.* Dudson (1909) 29 N.Z.L.R. 499 ; 12 Gaz. L.R. 369 217
Watson *v.* Secretary of State for Air [1954] 1 W.L.R. 1477 ; [1954] 3 All E.R. 582 ; P.C.R. 271 186
Wellington Corporation *v.* Lower Hutt Corporation [1904] A.C. 773 ; 73 L.J.P.C. 80 ; 91 L.T. 539 ; 20 T.L.R. 712 217
Wood's Application, *Re* (1952) C.P.L. 724 351
Woollett *v.* Minister of Agriculture [1955] 1 Q.B. 103 ; [1954] 3 All E.R. 529 ; 5 P.C.R. 18... 290

INTRODUCTION TO PART I *OF THE ACT*

COMPENSATION FOR COMPULSORY PURCHASE

THE problem of the Land—its control, its use and its ownership—must inevitably become the battleground of conflicting social and economic policies.

The great changes in society of the last fifty years have left their imprint on the pattern of the law relating to the land, and these changes have given rise to a constant flow of new enactments, particularly in the post-war years. Those concerned in the administration of land have found that in the field of town and country planning, with its difficult associated problems of compensation and betterment, change after change has been made of recent years in an attempt to achieve a correct balance between the needs of the State and the rights of the individual in modern society.

If Acts of Parliament had coats of arms, the Town and Country Planning Act, 1959, could proudly display a bend sinister ; even without that distinguishing mark, however, the diversity of its provisions discloses a parentage of wide and complex character. But at least Part I of the Act forms one integrated whole, dealing with changes in the law relating to compensation for the compulsory purchase of land.

Part I of the Act introduces after 29th October, 1958, the standard of full current market value as the measure of compensation for all compulsory purchase. This is, however, a market value now assessed with due regard to those wide powers of planning control which exist to-day but did not exist in earlier periods.

One other feature of the new dispensation deserves notice at the outset. For the first time a general right is now given to every acquiring authority to set off against compensation payable any enhancement in value enjoyed by adjacent lands in the same ownership by reason only of the scheme of development for which the compulsory purchase is made, and to this limited extent the net is now spread to catch the elusive butterfly of " Betterment."

Twenty years have gone by since full current market value was last the measure of compensation; but even before 1939 there was no universal measure of compensation, since in the period from 1919 to 1939 two sets of rules for assessment existed, one set applying to acquisitions made by government departments, public and local authorities, and another set of rules applying to those acquisitions made by bodies now known as statutory undertakers. The former

rules were those laid down in the Acquisition of Land (Assessment of Compensation) Act, 1919 ; the latter were those principles by which compensation under the Lands Clauses Acts was assessed.

This division existed until 1939, and, indeed, subject to wartime modifications, persisted until 1947, when the 1947 Act extended the rules contained in the 1919 Act to acquisitions made by statutory undertakers. The last period, therefore, in which there existed a universal code of compensation comprising at least full market value was the period immediately prior to 1919.

It follows that to some extent the present new order is mirrored in the past. To see the 1959 Act in its true light, therefore, one has to look in the glass of history to see what changes it reflects. Readers who will admit to having practised professionally on the other side of that Looking Glass will, we hope, forgive this excursus into time past, but time past is, to some extent, now catching up with us.

Historical background

With the coming into operation of Part I of the Town and Country Planning Act, 1959, the law of compensation enters a new cycle, the sixth great cycle since that branch of the law first took cohesive shape in the Lands Clauses (Consolidation) Act, 1845.

The origins of the law of compulsory purchase are, indeed, of still greater antiquity and are to be found in the industrial revolution, which made necessary the improvement of transport and communication and led to the development of that vast network of canals constructed throughout the country in the latter part of the eighteenth century. These undertakings were promoted by means of Private Acts which enabled the undertakers to exercise powers of compulsory purchase.

It was not until the coming of railway undertakings, however, and the rapid spread of their systems throughout the country in the first half of the nineteenth century that it became imperative to lighten the burden of Parliament in dealing with these special enactments. The Lands Clauses (Consolidation) Act, 1845, was accordingly introduced to lay down a complete code of general rules, relating to such matters as procedure in compulsory purchase and the assessment of compensation, so as to obviate the necessity of inserting these provisions in each separate canal, railway or other Act which conferred powers of compulsory acquisition.

The history of compensation since the 1845 Act falls into five clear cycles :—

(*a*) first, the period from *1845–1919*, when the scheme of compensation laid down by the Lands Clauses Acts was

applied universally in an unmodified form. This era of uniformity ended with the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919 ;

(*b*) secondly, the period from *1919–1939* when as indicated above, dual sets of rules, under respectively the 1919 Act and the Lands Clauses Acts in their final form, were applied side by side ;

(*c*) thirdly, the period from *1939–1947*, the years of war and shifting values, during which the instability of the market led, in 1944, to the pegging of compensation, when assessed under the 1919 Act, to pre-war prices existing on 31st March, 1939 ;

(*d*) fourthly, the period from *6th August, 1947–31st December, 1954*, when the development potentialities of land were virtually eliminated from the assessment of compensation for compulsory purchase, following the acquisition of development rights by the State under the Town and Country Planning Act, 1947 ;

(*e*) fifthly, the period from *1st January, 1955-29th October, 1958*, when a restricted measure of development value of land reappeared as an element in compensation, but only to the extent to which claims for loss of development value assessed under the 1947 Act, by reference to 1947 values, had been established and had not already been paid out in payments under the 1954 Act.

The period 1845–1919

The Lands Clauses (Consolidation) Act, 1845, an ungainly giant among Acts, sprawled over the latter half of the last century, the great age of expansion and land acquisition, and survives into the latter half of this century. From it and its amending Acts, together known as the Lands Clauses Acts, we derive still :—

(*a*) The Notice to Treat, which states particulars of the land to be acquired and demands particulars of the owner's interest in the land and of his claim in respect thereof. This notice compelled the owner to sell, and the owner, in his turn, could originally compel the authority to purchase. The modifications introduced by the 1919 Act now enable an acquiring authority to withdraw any notice to treat within a period of six weeks from the date of receiving the owner's claim. Where no proper claim is submitted by the owner, the acquiring authority may withdraw the notice to treat within six weeks of assessment of

compensation by the Lands Tribunal, by virtue of the Lands Tribunal Act 1949 ;

(*b*) the right to compensation for the acquired land itself, measured formerly by reference to the value of that land *to the owner* but subsequently in accordance with the modifications introduced both by the 1919 Act and now by the 1959 Act ;

(*c*) the right to compensation for severance from or injurious affection to other land held with the acquired land, measured still by reference to the damage sustained *by the owner* and not to the value of land, and therefore still exempted from the subsequent modifications made both by the 1919 Act and now by the 1959 Act. For this element in compensation, we look still to the Lands Clauses Acts and the cases decided under them ;

(*d*) the right to compensation for disturbance, an element in compensation for the acquired land itself, measured—under the Lands Clauses Acts—by reference to the land's value *to the owner* and therefore including consequential damage to the owner which results from his being deprived of the land. It should be recalled that no express statutory reference is made to such an element in compensation, but the element survives, enshrined in the old measure of value to the owner and specifically exempted from the workings of the 1919 Act ;

(*e*) the right to compensation for injurious affection suffered by owners from whom no land has been taken. Here again we look still to the Lands Clauses Acts and the cases decided under them.

Although, as a result of the 1919 Act, the measure of compensation by reference to the value of the acquired land *to the owner*, which formed the central feature of the 1845 Act as it came to be interpreted, has not survived unaltered, it is worth recalling briefly the main principles on which that value fell to be assessed, since the 1919 Act itself grew out of and modified those principles. They were briefly as follows :—

(i) The value to be ascertained was the value of the land to the owner at the service of the notice to treat, not its value to the acquiring body :

(ii) The value of the land to the owner was in effect the market value of the land and any additional loss resulting to him from being deprived of it :

(iii) The land was to be valued with all its potentialities, including any special suitability which it had for any purpose:

(iv) Any probable increase in value due to the use to be made of the land by the acquiring authority or due to the whole undertaking or scheme in connection with which the land was acquired was to be disregarded :

(v) Account was to be taken of any restrictions to which the land was subject, but also of any possibility that such restrictions might be modified or removed :

(vi) An allowance of 10 per cent. was customarily added to the assessed sum, probably for the inconvenience of the acquisition.

It is useful to bear these principles in mind when considering the rules laid down in the 1919 Act and the subsequent modifications of those rules, all of which now govern the assessment of compensation. The relevance, for example, of principle No. (v) above to a modern world in which planning control exists is immediately recognisable.

The period 1919–1939

The Scott Committee, appointed in 1917 to consider existing defects in the law and practice relating to the acquisition of land, reported in 1918 that the Lands Clauses Acts (this included the Railways Clauses Consolidation Act, 1845) were out of date and ought to be replaced. This recommendation led to the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919, which, however, was not applied to statutory undertakings (which included railway undertakings), and, indeed, only partial effect was given to the recommendations of the Committee by the 1919 Act.

The Act of 1919, however, ushered in a period of twenty years during which government departments and local and public authorities paid market value for the land which they acquired in accordance with the modifications made by the rules contained in that Act, while statutory undertakers continued to pay compensation in accordance with the Lands Clauses Acts in an unmodified form, except, of course, where special Acts made exceptional provision for compensation.

The rules of assessment set out in section 2 of the 1919 Act are dealt with more fully in Chapter III. It is sufficient here to notice that their effect was and is to :—

(*a*) abolish the 10 per cent. allowance customarily given in cases under the Lands Clauses Acts ;

(*b*) adopt as the measure of value the amount which the land might be expected to realise if sold in the open market by a willing seller ;

(*c*) eliminate from compensation any value arising from the special suitability of the land where it could only be applied for the purpose for which the suitability exists under statutory powers, or where there is no market for that purpose, apart from the special needs of a particular purchaser or the requirements of a government department or a local or public authority ;

(*d*) eliminate value attributable to unlawful or improper user ;

(*e*) enable compensation for land devoted to purposes for which there is no market to be assessed on an equivalent reinstatement basis, where equivalent reinstatement is *bona fide* intended. (This gave statutory effect to a principle recognised by the Courts in cases arising under the Lands Clauses Acts) ;

(*f*) exempt compensation for disturbance, or any other matter not directly based on the value of land, from the operation of the rules ;

It is a question of some nicety as to exactly how far these rules did modify those principles which had previously been applied in cases arising under the Lands Clauses Acts. Though such a question may now be an arid one, it is important to realise that the 1919 Act was no new broom. Considerations debated in many of the old cases under the 1845 Act were relevant to the new dispensation of 1919, and may well re-emerge from obscurity in the years to come in cases arising under the 1959 Act.

In any event, apart from the modifications introduced by the new rules, the right to compensation was and is still founded on the Lands Clauses Acts, and all other principles on which that compensation is assessed remain unassailed. Thus after the 1919 Act, as before it, compensation continued to be assessed without reference to any increase in the value of the land caused by the scheme for which the land was acquired. As will be seen later, this old and basic principle of compensation now receives in the 1959 Act a belated form of statutory recognition, coupled with the obverse and fair rule that any depreciation attributable to the scheme is equally disregarded.

The Act of 1919 made no provision for "set off" or "betterment" to be taken into account on compulsory purchase. "Set off" comprises a restricted form of betterment and means reducing the compensation otherwise payable for the acquisition of land by the increase in value accruing to other lands held by the same owner which directly arises from the scheme of development for which the land was taken "Betterment" means the payment by persons whose property has been increased in value by a

particular improvement of all or part of that increase to the promoters of the undertaking creating the improvement.

Although there was no *general* provision made for the set-off of compensation and no *general* requirement to pay betterment, many private and public Acts were placed on the statute book, both before and after the Act of 1919, which contained special provisions of this nature. The Act of 1959, as already indicated, now introduces for the first time a *general* right on the part of acquiring authorities to recover betterment in the form of a restricted measure of set-off against compensation otherwise payable on compulsory acquisition.

The Town Planning Act, 1925, and the Town and Country Planning Act, 1932, marked an important advance in the field of planning during this period. Their financial provisions related, on the one hand, to compensation for injurious affection and other damage suffered as a result of the planning schemes envisaged, and, on the other hand, to the collection of betterment brought about by those schemes. These Acts did not, however, affect the measure of compensation for compulsory acquisition.

The period 1939–1947

From the outbreak of the war until 1944, the basis of compensation for compulsory purchase remained in theory untouched by the war, but in practice it became bedevilled by the instability of values caused by the war. In any event, the compulsory acquisition of land for normal purposes tended, not unnaturally, to become rare. Much land was, of course, requisitioned or occupied for wartime purposes, but for such forms of acquisition a separate code of compensation existed under the provisions of the Compensation (Defence) Act, 1939.

In 1944, however, such was the state of the market that compensation assessed under the 1919 Act, in respect of compulsory acquisitions for public purposes, was pegged to prices current on 31st March, 1939, as being the latest date on which a stable pre-war market had existed. Thereafter, the 1919 Act continued to apply to such cases subject, until 1947, to this important modification introduced by the Town and Country Planning Act, 1944. To offset the effect of this provision in appropriate cases, the 1944 Act further provided a supplement to compensation for owner-occupiers as a stop gap measure to reduce hardship.

In 1946 the rules in the 1919 Act were further modified by the addition of another rule introduced, in certain cases, by the Acquisition of Land (Authorisation Procedure) Act, 1946. The 1946 Act provided that in cases to which that Act applied at that

time, namely, compulsory acquisitions by local authorities and some acquisitions by the (now) Minister of Transport and Civil Aviation (to all of which the 1919 Act in any event applied), any increase in the value of acquired land due to unnecessary works or interests, which were done or created by the owner on the land with a view to obtaining additional compensation, should be disregarded. In cases therefore to which the 1946 Act then applied or has since been made to apply, this rule has to be added to the 1919 Act rules set out above, and it still remains in operation to-day.

Side by side with the 1919 Act rules as so modified during or just after the war years, the 1845 Act principles of assessment continued to apply unaltered to compensation for compulsory purchases made by bodies now known generally as statutory undertakers and by other bodies to whom the 1919 Act did not apply.

During the war, however, it had been realised that when peace came a vast scheme of reconstruction would have to be put in hand to rebuild the bombed towns and cities and to overtake the lost years of building, which would entail problems as much for compensation and betterment as for planning. The Utthwatt Committee was appointed by the Coalition Government to report on the problems of compensation and betterment, and in 1942 it published its report (Cmd. 6386) which was carefully studied in relation to the problems which lay ahead. In 1943 the whole country was placed under interim planning control by the Act of that year : the 1944 Act next tackled the immediate problems of reconstruction, and finally the 1947 Act emerged as an attempted solution of the related problems of planning, compensation and betterment, its large and shining new broom sweeping away in the process the 1939 basis of market value.

The period 6th August, 1947–31st December, 1954

With the 1947 Act the law of compensation underwent a revolution. Apart from the comprehensive planning control imposed by the Act, the Act transferred to the State the whole of development rights in land and buildings, with only trivial exceptions. The Act did not provide that compensation for the loss of development values sustained should be paid as of right to the individuals affected. A fund of £300,000,000 (to include Scotland) was, however, set up by the Act to be distributed between owners of interests in land who made claims in respect of their individual losses.

Distribution of the fund was to have taken place in accordance with a Treasury Scheme, and power was taken for such scheme to provide for the amount of payments to be made in respect of the

interests affected either by reference to their ascertained claims for loss of development value or by reference to such other circumstances as might be prescribed by the scheme. This scheme was, in fact, never drawn up, but, clearly, it envisaged that classes of priority for payment would have been prescribed, and it did not seem to be the intention to distribute the global fund solely by reference to the loss of development value sustained.

Since the State had thus purchased all rights of development in land, it followed that thereafter a compulsory acquisition of land became in effect an acquisition merely of existing use rights, and the compensation therefore was permitted to reflect only the existing use value of the land, without taking account of the possibility of further development. It became necessary to assume for the purpose of compensation, both in respect of acquisition and injurious affection, that no permission would be granted for any development of the land in question, apart from certain kinds of minor development which were complementary to and therefore included in the existing use of the land.

It should be noticed that this restriction limited merely the *subject matter* of valuation. It did not affect the *measure* of that valuation which continued to be market value as laid down by the 1919 Act. In now saying, therefore, that full market value has once again been restored by the 1959 Act, one must realise that it is the word " full " which imports the change. Market value has, strictly speaking, been the basic measure of the value of acquired land during this period : it is only the content of the " land," i.e. the thing to be valued, which has altered from time to time.

It was realised that the planning provisions in the 1947 Act, which required local planning authorities to draw up development plans and therein designate sites as subject to compulsory acquisition, would materially affect the value of the sites so designated by casting a shadow upon them in advance of their acquisition. Such depreciation was therefore eliminated in the assessment of compensation—a rule which is now extended by the 1959 Act to cover all cases of depreciation by planning proposals which involve compulsory acquisition, whether by designation, zoning or other particulars given in the development plan or otherwise.

Ambitious in its theory, the 1947 Act—so far as it related to betterment and compensation—creaked in its practice. The development charge provisions which enabled the State, having purchased (but not yet having paid for) development rights at 1947 values, to sell them back at current prices to developers to whom planning permission was granted, stultified development and slowed down even urgently needed new building. And where the charges

were collected, they were often passed on to the consumer in one form or another. At the same time, the economic difficulties and consequences of distributing the £300,000,000 compensation fund came gradually to be realised.

This situation led to the passing of the Town and Country Planning Act, 1953, which suspended the payment of the global compensation fund, and abolished development charges in respect of operations begun on or after the 18th November, 1952. The silken threads designed to bind the problems of compensation and betterment securely in place began to be unravelled.

The period 1st January, 1955–29th October, 1958

The Town and Country Planning Act, 1954, introduced a two price system for transactions in land after the 31st December, 1954. Whereas normal transactions between private owners took place at full market value after that date, the Act reserved a privileged position for public authorities as to compensation payable on the acquisition of land.

The Act provided that all claims for loss of development value made and agreed under the 1947 Act should first be paid to an appropriate extent to persons who had suffered certain particular events (such as compulsory purchase). The remaining balances of claim were then attached, and remain attached, to the land in respect of which they were made, and a supplement of one-seventh in lieu of the payment of interest was added. These balances were subject, and remain subject, to partial or complete extinguishment where permission had been or is granted for new development carried out on the land.

The remaining sums, known as unexpended balances of established development value, then became available as funds for payment of compensation to the current owner of the land to which they related on the happening of either of two classes of events, as follows :—

(*a*) where planning permission for development was refused or only granted subject to particularly onerous conditions, and

(*b*) where compulsory acquisition took place.

The right to such compensation in respect of the former of these events still survives ; but the provisions relating to such compensation for compulsory acquisition are now superseded by the 1959 Act. Where compensation for planning restrictions was paid, or hereafter is paid, the unexpended balance is correspondingly reduced or is extinguished.

On a compulsory acquisition of land to which the 1954 Act relates, compensation came to be assessed broadly as follows :—

(*a*) The open market value of the interest in land and buildings was first assessed for its existing use, i.e. on the assumption that planning permission would be refused for all development thereof with the exception of development included in the Third Schedule to the Act of 1947. This Schedule, generally speaking, includes within "existing use" the right to rebuild and make small extensions to any lawfully existing building deemed to exist at the material date, together with certain other minor rights. This Schedule, as amended by the Acts of 1951 and 1954, is reprinted in Appendix No. 1, on page 433.

(*b*) If an unexpended balance of established development value remained attached for the benefit of the land, the owner also recovered the share appropriate to his interest.

(*c*) Compensation for injurious affection to land held with that acquired was limited as far as its development value was concerned to the amount of any unexpended balance of established development value attaching to that land.

(*d*) In certain cases where a claim for loss of development value could have been made and established but no claim was ever made under the Act of 1947, a claim for additional compensation of like amount could be permitted at the discretion of the appropriate authority.

(*e*) Special provisions obtained in respect of mineral-bearing land.

The result of this system was that the price paid for compulsory acquisition soon differed from the open market value. The compulsory purchase price was a combination of current existing use value plus 1947 development value, whereas open market transactions were, of course, at current values. Owners, however, became unwilling to purchase land with development potential until steps had been taken to ensure :—

(*a*) that no compulsory purchase was in the offing, and

(*b*) that planning permission for the desired development was forthcoming.

The practice grew up in most cases of making negotiations for the sale and purchase of properties suitable for development subject to a condition that planning permission be obtained before a binding contract was entered into. This system is likely to prevail, as it should be noted particularly that although the entire basis of assessing compensation for compulsory purchase has been changed, the system of compensation for planning restrictions remains that laid down by the 1954 Act, and reference will be made later in this

book to the effect of the interaction of these two systems of compensation and to the problems that may be created.

The scope and general effect of Part I of the Town and Country Planning Act, 1959

The Town and Country Planning Act, 1959, repeals the limited basis of compensation for compulsory purchase laid down by the Acts of 1947 and 1954 and substitutes the full open market value of the land assessed by reference to the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by the 1959 Act with effect from the 30th October, 1958. The value of land and buildings depends to a very great extent upon the use to which they can, or could, be put : the Act of 1959, therefore, states the assumptions which can be made as to the grant or otherwise of planning permission for the use of land and buildings being acquired, so as to assist the respective parties to calculate the compensation payable.

The intention of Part I of the Act of 1959 is to enable a full market price to be paid for the land acquired, with due regard being paid to the type of development that would have been permitted on that land if it were not being taken by an authority with compulsory powers. Provision is also made for additional compensation to be paid where, within five years of an acquisition, a permission is granted for the land which was not taken into account in assessing the original compensation. This is an entirely new right to compensation.

Where the scheme of development for which the land is acquired improves the value of other land in the same ownership, which is adjacent or contiguous to that being acquired, provision is now made for such enhancement in value to be set off against the compensation payable, if the development giving rise to the increase in value would not have been likely to have been carried out without the exercise of the relevant compulsory powers. As already indicated, a statutory rule is also introduced to prevent account being taken of any increase or decrease in the value of the acquired land caused by the scheme for which the land is acquired. Moreover, the rule of valuation laid down in the 1947 Act that any decrease in value due to designation for compulsory acquisition is to be disregarded is now extended to exclude all decreases in value due to any proposals involving the likelihood of compulsory acquisition.

Alterations are also made in the basis of compensation for the acquisition of houses unfit for habitation within the meaning of the Housing Act, 1957. Provisions are included to bring the com-

pensation for the acquisition of war damaged property, and of other special categories of land such as local authority land, operational land of statutory undertakers, charitable land, and National Coal Board land, into line with ordinary compensation. New powers are also taken to pay allowances for disturbance to all persons displaced by compulsory acquisition. In addition, cases of long-standing notices to treat are dealt with.

The succeeding chapters deal with this Part of the Act in the following order :—

CHAPTER I—The Planning Basis for Market Value.

CHAPTER II—Additional Compensation for subsequent Planning Consents.

CHAPTER III—An explanation of the Rules for assessing Market Value contained in the Acquisition of Land (Assessment of Compensation) Act, 1919, and a description of the modifications to that Act by the set-off and other provisions in the Act of 1959.

CHAPTER IV—The acquisition of unfit dwellings under the provisions of the Housing Act, 1957.

CHAPTER V—Special provisions relating to war damaged land ; purchase notices, payments for disturbance, and long standing notices to treat, etc.

THE PLANNING BASIS FOR MARKET VALUE

Full market-value for compensation

Section 1 of the 1959 Act is the kernel of the new compensation code. Indeed some purists think that Part I should have both begun and ended with the section.

By it, the limited basis laid down by the Acts of 1947 and 1954 for the assessment of compensation for compulsory purchase is abolished prospectively. Thus any acquisition of land initiated by a notice to treat served, or deemed to be served, after the 29th October, 1958—the date when the Bill of the Act was presented—is now freed from the limitations imposed by those preceding Acts.

Those limitations, it will be remembered, restricted compensation to the existing use value of the interest acquired, plus any unexpended balance of established development value attributable to that interest. With the removal of those limiting factors by the repeal of section 51 (2) and (4) of the 1947 Act and of Part III of the 1954 Act, two principal changes are now brought about :—

(*a*) the Rules laid down by the Acquisition of Land (Assessment of Compensation) Act, 1919, are reinstated from a footstool to the seat of honour. It is *full* current market value which now falls to be measured by those Rules in assessing compensation for the acquired interest. To these Rules, however, are now added three new rules, set out in section 9 of the 1959 Act : see Chapter III.

(*b*) where planning permission has actually been granted, or is deemed to have been granted, for any development of the land acquired, regard may now be paid to the effect on market value of any such permission, even though the development has not been carried out or commenced.

Since compensation for compulsory acquisition is now restored to full market value, it follows that the price to be paid on sales by agreement in the shadow of compulsory powers will fall to be assessed on the same basis ; and all matters which can be taken into account on compulsory acquisition will apply to such a negotiated sale.

With full market value set once again in the saddle by section 1, the sections immediately following, namely sections 2-8 of the Act of 1959, lay down the planning basis on which the open market valuations are to be made for the future.

Market Value and Planning Assumptions

The establishment of a comprehensive system of planning control has naturally affected land and property values, particularly in the case of land or buildings with development potential. The use to which land may lawfully be put is one of the most important factors in determining its value for sale in the open market. In earlier days, when no effective planning control existed, the main question which exercised the mind of a prospective purchaser was the physical suitability of the land for any development in respect of which an economic demand could be foreseen, and the land was devoted to such of those forms of development as appeared to be most suitable and profitable.

It is now necessary to pay regard not only to the physical possibilities of the land and the economic demand for the development, but also to ascertain the type of development that will be permitted by the planning authority and the conditions which they may impose on the granting of consent to such development.

The practice has consequently grown up, in many cases, of making negotiations for the purchase of land or buildings with development potential subject to a condition that planning permission for the desired development be obtained before a binding contract is entered into. In the alternative, the vendor himself obtains planning permission before offering the land for sale.

This system is not, of course, applicable in the case of compulsory purchase, and it accordingly becomes necessary for this Act to set out certain planning assumptions to which regard can be paid, so as to provide a basis upon which claims for compensation in respect of the compulsory acquisition of land may be assessed or determined.

There are many cases where existing planning proposals are vague or may even be injurious to the open market value of the property, e.g. a building may be shown as forming part of the site of a proposed school in the development plan, with the result that its open market value will be depressed owing to the threat of future disturbance and compulsory purchase. Section 9 (6) of the Act of 1959 specifically provides that no account shall be taken of any depreciation in value attributable to proposals which involve the likelihood of compulsory purchase. This provision, by itself, is not enough to fix the basis upon which compensation is to be assessed because the claimant will still require to know with what planning permission the property could have been sold in the open market if it were not being acquired compulsorily.

Sections 2–8 of this Act seek to answer these questions by laying down a system of planning assumptions, any or all of which a

claimant may take into account in assessing the market value of his interest in land on compulsory acquisition. These statutory assumptions may conveniently be summarised broadly below to show the various planning matters to which regard can now be paid when assessing compensation :—

(1) *Actual planning permissions*

Regard may be paid to the existence of any planning permission in force or deemed to be in force affecting the whole or any part of the land.

(2) *Assumed planning permissions*

(*a*) Regard may be paid to any proposed development of the whole or any part of the land by the acquiring authority, where there is not already planning permission in force for that development at the date of service of the notice to treat.

(*b*) Regard may be paid to " existing use rights".

(*c*) Regard may be paid to the development plan in force at the date of the notice to treat.

(*d*) Application may be made in appropriate cases to the local planning authority to certify what alternative development might have been permitted on the land if the land were not proposed to be acquired, and such alternative development may be taken into account.

(3) *Subsequent planning permissions*

If, within five years from the date of completion of the acquisition, planning permission is granted or deemed to be granted to the acquiring authority or its successor in title for additional development on the land, the claimant may, in certain circumstances, apply for additional compensation in respect of the acquisition of his interest in the land. This is an entirely new right to compensation, and is dealt with in Chapter II.

It is proposed to consider all these matters in detail, but before so doing, the following general points should be noted :—

(*a*) Regard may generally be paid to the planning assumptions visualised, whether or not an actual planning permission exists in regard to the land or any part of it. In a case however where it is desired to base compensation on the development proposals of the acquiring authority, regard must be paid to any actual planning consent granted for such development, and only if there is no actual permission for such development, can regard be paid to the assumption that it would be permitted. The claimant may otherwise base his claim on whichever footing he prefers and upon whichever assumption he prefers.

(*b*) In the case of certain planning assumptions (but not all), regard must be had to such conditions as might reasonably have been expected to be imposed by the planning authority on the grant of such a planning permission in the circumstances visualised.

(*c*) The Act makes it clear that the assumptions as to planning permission which it lays down are not the only planning assumptions which may be made in assessing market value. If it is considered that the open market price would be arrived at on the basis of an assumption as to future planning permission which is not contained among the assumptions referred to in the Act, regard may properly be paid to it.

Thus, if it can be proved that land is changing hands at a particular level, perhaps due to the view of the market that the development plan for the area will be changed at the next review and is likely to allocate the land to a more valuable use, such evidence establishes the open market value and hence the compensation payable, despite the fact that the planning assumptions to be made under this Act pay regard only to the provisions of the current development plan in force. Where, however, a certificate of appropriate alternative development has been issued, in an appropriate case, in respect of the land, then, in assessing whether planning permission for any particular form of development could reasonably be expected, regard must be paid to any contrary opinion expressed in the certificate.

(*d*) The planning assumptions apply only to the assessment of compensation for the interest in land acquired. They do not apply to other land for the purpose of assessing compensation for injurious affection or severance.

(*e*) The whole intent and purpose of the changes made by this Act is to enable compensation for compulsory purchase to be assessed at the open market value of the interest in land being acquired, and the planning assumptions laid down in the Act merely provide a basis upon which such open market value may be assessed. Thus the physical suitability of the land for the proposed development and the economic demand for such development must accordingly be reflected in the valuation.

1. Actual Planning Permissions

The repeal of sections 51 (2) and 51 (4) of the Act of 1947 now enables regard to be paid to the effect on market value of any existing planning permission actually in force in respect of the whole or any part of the land.

In determining whether or not there is an actual planning permission in force affecting the whole or any part of the land, it is immaterial whether the permission is :—

(*a*) conditional or unconditional, or

(*b*) refers only to the land being acquired or to a larger area including the land being acquired, or

(*c*) granted on an ordinary application, or on an outline application or has been granted by virtue of a Development Order, or

(*d*) deemed to have been granted under any enactment or direction given thereunder.

All the above classes of planning permission constitute valid permissions to which regard can be paid in assessing compensation.

Such permissions may be taken into account whether or not they were obtained by the claimant, and whether or not the development covered by the permission has been commenced. It is considered that where a planning permission was obtained in the past, but has now lapsed, the effect on market value of such permission may be reflected in the compensation to the extent to which the open market price might be affected by the prospect of the renewal of such consent.

In some cases the acquiring authority may itself, by the time of the service of the notice to treat, have obtained planning permission for the development of the land to be acquired. In such cases, the claimant, if he chooses to base his claim on the use to be made of his land by the acquiring authority, must base his claim on the actual permission granted to the acquiring authority, despite the fact that such permission may cover other land as well as his own. In a case where it is desired to rely on such a permission, the open market value of the interest in land owned by a particular claimant would be the value of such interest in land as part of the site of such an overall scheme of development (*i.e.* the price that would be paid for the claimant's land in the open market between a willing seller and a purchaser who intended to carry out such a scheme). In cases, however, where the proposed development would not be likely to be carried out if the acquiring authority had not acquired and did not propose to acquire the land, the effect of section 9 (2) is to restrict the claimant for the purposes of compensation to the value of the part of the development to be carried out on his land alone; see Chapter III.

2. Assumed Planning Permissions

It should be noted that, except in one case, regard may be paid to these assumptions whether or not an actual planning permission

exists in regard to the whole or part of the land. The exception is the case where the acquiring authority has been granted permission for its proposed development and the claimant wishes to found his compensation claim upon that development only : in that event, regard must be paid only to such actual permission granted.

(a) Development proposals of the acquiring authority

Where the acquiring authority are proposing to develop the whole or any part of the land, the claimant is entitled to assume that planning permission for the same development would be available to him and compensation may be assessed on this footing. This assumption may only be made where no planning permission for the authority's development is in force at the date of service of the notice to treat. In order to ensure that the object of these provisions could not be defeated by the grant of personal planning permissions to acquiring authorities, it is provided that any actual permission which has been granted so as not to enure for the benefit of the land and all persons interested in it is to be ignored. Where such a personal planning permission has been granted, the claimant is, therefore, still entitled to assume that planning permission would be available to him for the proposed development. In determining whether or not the acquiring authority holds a planning permission in force at the date of service of the notice to treat it is again immaterial whether such permission is :—

(i) conditional or unconditional, or

(ii) refers only to the land being acquired or to a larger area which includes it, or

(iii) granted on an ordinary application, an outline application or by virtue of a Development Order, or

(iv) deemed to have been granted under any enactment or direction given thereunder.

Any such permission constitutes a valid permission in force.

Where no actual permission is in force and it is desired to invoke the planning assumption, such assumption must accord strictly with the proposals of the acquiring authority in so far as they are known or can reasonably be ascertained at the date of the notice to treat, and the assumed permission is, accordingly, subject to any limits which the authority may have imposed on its proposals.

The precise ascertainment of the proposals of an acquiring authority would seem to be a question of fact to be determined in the circumstances of each case. If the proposals are of a broad character only, *e.g.*, acquisition for housing purposes, then it would be open to the claimant to argue for compensation based on the

maximum development of his land for such purposes to which the open market would pay regard if the land were not being acquired. If, on the other hand, the proposals of the acquiring authority are in detail, then it appears that the assessment of compensation must be based on those detailed proposals. See also example No. 11 in Chapter X on page 170.

(*b*) Existing use rights

The second assumed planning permission to which regard may be paid in assessing compensation for the compulsory acquisition of land is planning permission for development of any class specified in the Third Schedule of the Act of 1947. This Schedule is reproduced in Appendix No. 1, on page 433.

AVOIDANCE OF DOUBLE COMPENSATION

In order to avoid the payment of double compensation, the Act of 1959 provides that if compensation has already become payable to a claimant under the provisions of section 20 of the Act of 1947 in respect of the *refusal* of planning permission of any class of development specified in Part II of the Third Schedule of the Act of 1947, no permission for that class of development can now be assumed. The claimant will, however, remain entitled to assume that permission would be granted for any other class of development specified in Part II of such Third Schedule.

Secondly, in a case where compensation has become payable to a claimant under section 20 of the Act of 1947 in respect of the *conditional* grant of permission, before the date of service of the notice to treat, in respect of any class of development specified in Part II of the Third Schedule of the Act of 1947, no permission for that class of development can now be assumed to be free from such conditions. The claimant, however, remains entitled to assume permission free from conditions in respect of any other class of development specified in Part II of such Third Schedule.

Thirdly, in a case where compensation has become payable under section 27 of the Act of 1947 by reason of an order made under section 26 of that Act, before the date of service of the notice to treat, requiring the removal of an (authorised) existing building or the discontinuance of an (authorised) existing use, no permission can now be assumed for the rebuilding of such building or the resumption of such use as the case may be, when formulating a claim for compensation on acquisition of the land.

The above modifications of the general assumptions as to Third Schedule rights under the Act of 1947 are to be made if two conditions are fulfilled, as follows :—

(i) The event giving rise to a claim for compensation under section 20 or section 27 of the Act of 1947 has occurred before the date of service of the notice to treat, and

(ii) Compensation has become " payable ", whether or not it has actually been paid.

In the above connection, it should be noted that compensation only becomes " payable " under section 20 or section 27 of the Act of 1947 if a claim was lodged within the time and in the manner prescribed by regulations made under that Act. Thus, if a person omitted to claim, or if the claim was rejected as being out of time, the above limitations on an assumption of permission for Third Schedule development can be disregarded. In short, these limitations are only to be brought into account where compensation under section 20 or section 27 of the Act of 1947 has actually been received or will actually be paid.

(*c*) Development envisaged by development plans in force

CONTENTS OF DEVELOPMENT PLANS

Section 5 of the Act of 1947 imposes a duty on all local planning authorities to prepare and submit a development plan to the Minister for approval, the purpose of the Plan being to indicate the manner in which they propose that land in their area should be used and the stages by which any development proposed should be carried out.

Development plans include the following proposals of the local planning authorities in regard to various parts of their areas :—

(i) A plan may *define* the sites of :—

(*a*) proposed roads

(*b*) public and other buildings and works

(*c*) airfields

(*d*) parks and pleasure grounds

(*e*) nature reserves and other open spaces

Where land is defined in the above manner in a plan, the effect is to reserve it for a definite and particular purpose.

(ii) A plan may *allocate* (more colloquially, " zone "), areas of land for use for the following purposes :—

(*a*) agricultural use

(*b*) residential use

(*c*) industrial use

(*d*) use for the purposes of any other class specified in the plan (*e.g.* Commerce or Business use).

Where land is allocated in the above manner a more general and broad manner of future use is implied. The allocation of the land

is predominantly for the specified use, but other uses appropriate to the district may well be permitted, *e.g.* shops are permitted in suitable positions in residential areas.

The Town and Country Planning (Development Plans) Regulations, 1948 (S.I. 1948 No. 1767), provides in paragraph 14 that if there is any contradiction between the maps and the written statement which together form the development plan, the written statement is to prevail. It is thus important to scrutinise both map and statement to ascertain the meaning to be ascribed to areas allocated to use-zoning. It will generally be found that in each area certain forms of development are expressly forbidden, others are expressly to be permitted, and others may be permitted depending on individual circumstances.

(iii) A plan may *define* an area of comprehensive development which it is considered should be laid out afresh and redeveloped as a whole.

Assumptions which may be made

Where a development plan has been approved by the Minister either in its original form, or subsequently modified or made by him, such plan is in force in the area and in these circumstances the claimant can have regard to it (in its form as it exists at the date of the notice to treat) in the following ways :—

(i) *Defined Sites*

Where the land to be acquired, or any part of it, consists or forms part of a site defined for a particular purpose, not being land subject to comprehensive development, planning permission may be assumed to be available for development for that purpose on the land or the appropriate part thereof.

It is to be assumed that permission would be granted subject to the imposition of such conditions (if any) as might reasonably be expected to be imposed for that development. Where the development plan indicates that permission for the development would only be granted at a future time, then the assumption is to be construed accordingly, with the result that the receipt of the assumed planning permission is to be deferred for the appropriate period.

(ii) *Land in single-use zones*

Where the land to be acquired does not form part of an area of comprehensive development but does form part of an area allocated in the development plan primarily for a specified use (*e.g.* a residential area), planning permission is assumed to

be available in respect of the land for any development " for the purposes of that use," provided it is development for which planning permission might reasonably have been expected to be granted if the land were not being acquired compulsorily. Where only part of the land falls within such an allocated area, these provisions apply only to such part.

Where the above assumption is made, it is necessary to take the following matters into account :—

(*a*) The assumed permission is to be subject to such conditions (if any) as the planning authority might reasonably be expected to impose on the grant of permission for that development.

It is thus necessary to take into account such matters as conditions relating to means of access, car parking, design and external materials, site coverage, density, plot ratio, day-lighting requirements, etc., which would have been likely to be imposed in practice.

(*b*) Where the development plan indicates that permission for such development would be granted *only* at a future date, then the assumption is to be construed accordingly, with the result that the receipt of the assumed planning permission is to be deferred for the appropriate period.

Development plans include programme maps which set out the opinion of the local planning authority as to the estimated periods of future development or redevelopment of land. In practice, it is often found that these estimates are of a very general nature and that development proceeds (with planning permission) in different places and at different times from those appearing in the programme map. Such maps do, however, form part of the development plan and they would seem to constitute one of the indications in the plan as to the grant of planning permission at a future time. It should be noted, however, that deferment of the assumed planning permission need not be taken into account unless the indications in the development plan show that permission would not be granted at the present time. Thus, where it can be shown that a planning authority has departed from its programme map when granting actual permissions, it may well be argued that no deferment period need be taken into account where land and buildings are ripe for development even though they may be programmed for a future period. In some cases it is clear, however, that development of one piece of land would only be permitted after other develop-

ment has taken place so as to ensure orderly development. In such cases it would be reasonable to take an appropriate period of deferment into account.

There has been some considerable speculation as to the precise meaning of the term " development for the purposes of that (primary) use ". On the one hand it is argued that permission may only be assumed for the specified primary use itself ; on the other hand, it is argued that the words employed are wide enough to cover development ancillary to the primary use which is of a type that would normally be permitted. The written statements of development plans do not specify in a uniform manner the meaning to be attached to the allocation of land to a primary use. Generally speaking, however, each written statement indicates that the effect of such allocation is to reserve land primarily for the use indicated, but also to permit land to be used for purposes ancillary to the main use.

It will be noted that section 4 (2) requires the assumed permission to be in respect of development which is both :—

(*a*) development for the purposes of that use of the relevant land, and

(*b*) development for which permission might reasonably be expected to be granted if the land were not being acquired.

The arguments in favour of including development ancillary to the primary use within the meaning of these phrases may be summarised as follows :—

(1) Development plans make it clear that other forms of development apart from primary use development are appropriate to particular use zones (*e.g.* a public house in an industrial zone, or in a commercial zone). It can thus be argued that such ancillary development serves the primary form of development and thus forms part of the total purposes of that use.

(2) There are many forms of specialised development which are never allocated a particular zone in the development plan (*e.g.* cinemas, nursing homes, clubs, concert halls, etc.). Unless such ancillary development is regarded as forming part of the primary use, planning permission for such development can never be the subject of a statutory assumption, under this heading.

(3) Many forms of development actually permitted in single use zones comprise mixed uses (*e.g.* shops and flats). Here again, permission can only be definitely assumed for such mixed uses if ancillary development (*e.g.* shops) is

regarded as part of the purposes of the primary (*e.g.* residential) use.

(4) The words " development for which permission might reasonably be expected " imply a choice between different forms of development within the area. Clearly this requirement does not refer to matters which form the subject of planning conditions as these are dealt with in a later subsection, which also deals with the timing of the development. If a choice exists, it must therefore relate to different forms of development and this is not possible in an office zone or an industrial zone without bringing in ancillary forms of development.

The arguments against the above view and supporting the view that the assumption must relate to development for the primary use only (*e.g.* only houses, bungalows, flats and maisonnettes in a residential zone), may also be summarised below, as follows :—

(*a*) There is a complete absence of any reference to such ancillary uses in the section.

(*b*) The permission to be assumed is " development for . . . that use of the relevant land " and the words must relate to the primary use alone.

(*c*) It follows that no assumption that planning permission is definitely granted can be made for mixed uses (*e.g.* shops and flats), or specialised forms of development for which no primary use zones exist (*e.g.* cinemas or public houses). The claimant is, however, entitled to pay regard to the *likelihood* of obtaining planning permission for any form of development appropriate to the site and can found his claim accordingly on the view of the market as to such likely permission or permissions. This is made clear by section 2 (3) of the Act. In this connection, the description of use zones in the written statement of the development plan may serve to support the view of the market as to such assumption, under this heading.

(*d*) The words " development for which permission might reasonably be expected " may imply choice or may not. In a residential zone these words may relate to a choice between houses and blocks of flats. On the other hand, it must not be forgotten that development must comply with all appropriate legal requirements, such as building bye-laws. It might well be considered that the site of a back to back house purchased as an individual unit was too small to enable it to be developed at all. These words thus mean that some

development might be permitted and other development might not.

The practical effect of the two points of view may perhaps be best illustrated by an example. Assume an area allocated primarily to residential use, and that a parcel of land situated in that area in a suitable position for shop development is acquired compulsorily. If it is held that the effect of these words is to assume permission available for residential development only (as comprising the main or primary use), compensation would be assessed at such price as would be paid in the open market which would reflect the certainty that residential development would be permitted but only the hope that shop development might also be permitted. If the other view is correct, namely that these words assume permission for ancillary development likely to be permitted in a primary use zone as well as primary use development itself, compensation would be assessed to reflect the certainty that shop development would be permitted.

It is considered that the correct view is that permission may only be assumed for the primary use itself and that permission cannot be statutorily assumed for ancillary uses. It is thought, however, that in some circumstances, the wording employed in this section will give rise to difficulties which the Courts alone can resolve.

(iii) *Land in multiple-use zones*

Where the land to be acquired does not form part of an area of comprehensive development but does form part of an area allocated in the development plan primarily for a range of two or more uses specified as applicable to the whole of that area, planning permission is assumed to be available for the land in respect of any development for the purposes of *any* use falling within the range of uses specified, provided it is development for which planning permission might reasonably have been expected to be granted if the land were not being acquired compulsorily. Where only part of the land falls within such an area, these provisions apply only to such part.

Where this assumption falls to be made, it is again necessary to take into account :—

(*a*) any condition which might reasonably be expected to be imposed by the planning authority on the grant of permission for that development.

(*b*) any period of deferment likely to elapse before such a permission would be granted in cases where the develop-

ment plan indicates that permission for such development would *only* be granted at a future date.

An example of such allocation is the " Central Zone " in the County of London Plan. This zone includes offices, shops, showrooms, blocks of flats, places of public assembly, theatres, etc. In such cases, the claimant will have to decide what type of development within the range permitted would be appropriate for his land and whether it is reasonably likely that permission would be granted for that development. Recent planning permissions actually granted in the neighbourhood (and recent refusals of permission) may be of great assistance in this respect. The same considerations apply as regards the phrase " for the purposes of any use " as in single-use zones, but with less practical importance.

(iv) *Land in comprehensive development areas*

Where the land to be acquired, or any part of it, is defined as part of an area of comprehensive development, permission can be assumed to be available in respect of the whole of the acquired land (or the defined part of it, as the case may be) for any development for the purposes of *any* of the range of future uses to which it is intended to devote the land contained in the area of redevelopment as a whole. The development to be assumed must be of a type for which planning permission might reasonably have been expected to be granted if the land were not being acquired compulsorily, on the suppositions :—

(*a*) that the area had *not* been defined as one of comprehensive development, and

(*b*) that any development of the area already carried out in accordance with the scheme of comprehensive development had *not* been carried out.

The result of these provisions is that the whole scheme of comprehensive development is to be ignored (except as to the range of uses to be permitted in it, as indicated above), and that it is the physical features of the area (*e.g.* the lay-out of streets and buildings) as they exist at the date of the notice to treat, or as they existed prior to development already carried out in the course of the scheme, which have to be taken into account. The physical features, therefore, as they will exist when the scheme is completed or as they exist in the course of its being carried out are to be disregarded.

It follows from the above provisions that if the plan of comprehensive development shows the land of a particular owner as required for a future open space, this disability can be ignored.

In a similar way, an owner whose land is shown as the site of some particularly valuable use cannot rely on this advantage unless he can show that it was reasonably likely that permission would have been granted for such development on the assumption that the comprehensive development scheme had never been drawn up.

It is again necessary to take into account :—

(*a*) such conditions as might reasonably be expected to be imposed on the grant of such an assumed planning permission, and

(*b*) deferment of receipt of the planning permission in those cases where the development plan indicates that such permission would be granted *only* at a future time.

(d) Certificates of appropriate alternative development

The provisions of a current development plan may not, in any particular case, establish the type of development that would be allowed on the land to be acquired, or, alternatively, there may be no current development plan in force as approved by the Minister. In these cases, provision is made by sections 5, 6, 7 and 8 of the Act to enable owners, whose land is to be acquired, to obtain information from the local planning authority as to the kind of development which would be permitted on the land if it were not being taken under compulsory powers. This right is also given to the acquiring authority so that both parties may obtain a " certificate of appropriate alternative development ".

The provisions of these sections apply to the whole or any part of the land to be acquired in the following cases:—

(i) land where no current development plan is in operation ;

(ii) land falling within the area of a current development plan but not forming part of :—

(*a*) an area defined as one of comprehensive development, or

(*b*) an area allocated primarily for use of a residential, commercial or industrial character, or a combination of any of those uses with other uses.

It will be observed that land defined or allocated in a current development plan for uses in respect of which there is no normal market comes within the scope of this section (*e.g.* land reserved for schools, open spaces, hospitals, etc.). The section also applies to areas of land which are not allocated for any purpose at all in the current development plan (colloquially known as " white " land), to " Green Belt " areas and also to areas not covered by a current

development plan at the time it becomes known that the land is proposed to be acquired under compulsory powers.

A " current development plan " means a plan in force at the relevant time, being a plan approved by the Minister, either with or without amendment, or a plan made by the Minister. The right to apply for a certificate arises as soon as one of the following events occur :—

(*a*) Where any notice required to be published or served in connection with the acquisition is duly given.

In practice this will mean, in the majority of cases, the date of advertisement or notification by an acquiring authority of submission of a compulsory purchase order to the Minister for confirmation ; or

(*b*) A notice to treat is deemed to be served as a result of the service of a " purchase notice " under any Act (including Part IV of this Act), or

(*c*) An offer in writing is made on behalf of an authority to negotiate for the purchase of the owner's interest in the land.

These events may be colloquially described as the first steps in acquisition, and once any of them have been taken the right to apply for a certificate arises both on the part of the owner and the acquiring authority.

Restriction on right to apply

In general, either the claimant or the acquiring authority may apply for a certificate of appropriate alternative development at any time, but where notice to treat has been served (or an agreement for sale has been made), and the question of compensation has actually been referred to the Lands Tribunal for determination, no application for a certificate can thereafter be made by either of the parties, except by written consent of the other party, or with the leave of the Lands Tribunal.

Applications for Certificates

Application for a certificate may be submitted to the local planning authority by either the owner of the interest in land being acquired, or by the acquiring authority. In either case, the application is to be submitted as prescribed by the Town and Country Planning General Development Order, 1959 (S.I. 1959, No. 1286), Article 3, printed in Appendix No. II on page 436. The application must specify the class or classes of development which the applicant considers would be appropriate to the land in question, if it were not proposed to be acquired, and must also specify the date on which a copy of the application has been or will be served on the other party.

The Development Order requires the applicant to apply in writing and to include a map or plan sufficient to identify the land in question.

Granting of Certificates

The local planning authority is not to issue its certificate until a period of twenty-one days has elapsed since the applicant served a copy of the application on the other party. During this period, the other party may submit such written representations as he thinks fit.

The certificate must, however, be issued by the local planning authority within two months of the receipt of the application by them. The certificate must express the opinion of the local planning authority to the effect that either :—

(i) planning permission for one or more specified classes of development might reasonably have been expected to be granted if the land were not being acquired compulsorily. The classes of development specified need not be those in respect of which application was made.

Where the local planning authority are of the opinion that the classes of development specified in the certificate would only have been permitted subject to conditions or at a future time, they are required to specify those conditions or the future time or both these factors, as the case may be.

In order to simplify the task of local planning authorities in dealing with conditions applicable to specified classes of development contained in certificates, power is given to enable such authorities to specify general requirements as to such conditions. A copy of such general requirements is to be sent with each certificate or exhibited for public view at council offices. Any modification of such general conditions considered appropriate to an individual case must, however, be set out in the certificate ;

or (ii) planning permission could not reasonably have been expected to be granted for any development of the land in question, if it were not being acquired, other than the development (if any) proposed to be carried out by the acquiring authority.

Where the local planning authority issue a certificate otherwise than for the class or classes of development specified in the application or contrary to any written representations made to them by a party *directly concerned*, they are required to include in the certificate a statement of their reasons for so doing and of the right of appeal to the Minister.

The parties *directly concerned* in relation to an interest in land comprise :—

(*a*) the owner of that interest, and
(*b*) the acquiring authority.

It will thus be noted that if any representations are made to the local planning authority by other parties (such as the owners of other interests in the same land) but are rejected, the local planning authority are not required to give a statement of reasons for so doing, nor indeed is there any right of appeal available to such other persons. Under the provisions of the Development Order they may, however, obtain a copy of the certificate issued.

The certificate issued by the local planning authority is only to relate to land to which section 5 applies, so that, for example, in the case of land in one ownership which falls partly in an area allocated by a current development plan to a single use zone (*e.g.* residential) and partly within, say, a school site, the certificate will relate only to the land falling within the school site.

The local planning authority are required to serve a copy on the other party *directly concerned* when issuing the certificate to the applicant.

In determining whether planning permission for any particular class of development might reasonably have been expected to be granted, the local planning authority need not be bound by the provisions of the development plan as they affect the land forming the subject of the application. The object of this provision would appear to be to enable local planning authorities

(*a*) to deal reasonably with a matter which is fundamentally one to determine the basis of fair compensation for land acquired, and

(*b*) to avoid so far as possible, the establishment of binding precedents in respect of planning applications referring to land not being acquired. For example land in a developed area may be allocated in the plan as future open space, part only of which is now being acquired. If the future open space is surrounded by housing land it would obviously be appropriate for the local planning authority to certify that an appropriate form of alternative development would be housing. If, however, an actual application were made to develop any other part of the land zoned as future open space and not now being acquired, the planning authority would not normally depart from the provisions of the development plan and would refuse such an application. The granting of a certificate for housing development in respect of such adjoining acquired land would not, in

these circumstances, be likely to prejudice the position of the planning authority.

Appeals against Certificates

A right of appeal to the Minister arises in relation to any certificate where either of the parties directly concerned is dissatisfied with it. Where the local planning authority do not issue a certificate within the prescribed time limit of two months, it is to be assumed for the purpose of any appeal that a certificate has been issued to the effect that no permission could reasonably have been expected for any development, except the development (if any) proposed to be carried out by the acquiring authority. Both parties may, however, agree in writing with the local planning authority to extend the time limit of two months in any particular case.

The appeal must be made in writing to the Minister within one month of the date of issue of the certificate, or of the expiry of the time limit of two months or such extended time as may have been agreed. A copy of the notice of appeal is to be sent to the local planning authority and to the other party directly concerned. The appellant must furnish the Minister with a copy of the application made to the local planning authority and a copy of the certificate issued (if any), together with a statement of the grounds of appeal, within one month of giving notice of appeal or within such extended time as the Minister may allow ; if he does not, the appeal is to be treated as withdrawn.

Where an appeal is made, the Minister is to determine the matter as if the application for a certificate had been made direct to him in the first place, and if either party desires it he must afford to them, and also to the local planning authority, an opportunity of appearing before and being heard by his Inspector. The Minister, when determining the appeal may either :—

(*a*) confirm the certificate, or

(*b*) vary the certificate, or

(*c*) cancel the certificate and issue a different one in its place.

Absent persons

Section 58 of the Lands Clauses Consolidation Act, 1845, provided that " any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found " shall receive such compensation as shall be determined " by the valuation of such able practical surveyor as two justices shall nominate ".

This " able practical surveyor " now means a member of the

Lands Tribunal, selected in the way prescribed by the Lands Tribunal Act, 1949, for selecting such a member for the trying of a case by the Lands Tribunal.

Section 7 of the 1959 Act accordingly empowers the surveyor selected for this purpose to apply to the local planning authority in appropriate cases for a certificate of appropriate alternative development. The same procedure is adopted, and copies of the certificate are issued to both the claimant and the acquiring authority, either of whom can appeal to the Minister if dissatisfied.

General notes on Certificates

Section 2 (3) of this Act provides that in determining whether planning permission can reasonably be expected for development in respect of any land, regard must be had to any contrary opinion expressed in any certificate issued in relation to that land. Where there are a number of different interests in land being acquired, it is consequently of great importance to all the owners to be aware of any certificates issued which relate to the land.

The Development Order provides that any person having an interest in land which is the subject of a certificate granted under section 5, or is the subject of an application for such a certificate, may apply in writing to the local planning authority for the following information :—

(i) The name and address of the applicant for a certificate and the date of the application, and

(ii) a copy of the certificate, if any.

There does not, however, appear to be any right of appeal arising against a particular certificate except on the part of the owner of the acquired interest or the acquiring authority. It would appear to be in the mutual interests of freeholders and leaseholders to consult together before applications for certificates are submitted.

Injurious Affection and Severance

The planning assumptions to be made relate solely to the assessment of compensation in respect of the land acquired. These assumptions are not to be made in relation to any other land in respect of claims arising for injurious affection or severance. In such cases, the amount of the claim for injurious affection or severance must be based on the reduction in market value of the land affected and if no actual planning permission exists, the compensation will reflect the view of the market as to the likelihood of obtaining planning permission in appropriate cases, and the value which it places on this prospect.

CHAPTER II

ADDITIONAL COMPENSATION FOR SUBSEQUENT PLANNING CONSENTS

An entirely fresh right to compensation for the compulsory acquisition of an interest in land, or for the sale of land by agreement to an authority possessing compulsory powers, is given by sections 18, 19, 20 and 21 of the Act. Broadly speaking, these sections provide that if an acquiring authority, or its successors in title, obtain the grant or deemed grant of planning permission for " additional development " within five years of the completion of an acquisition of land initiated after the 29th October, 1958, and such permission would have increased the compensation originally assessed if it had been in force at the time of the acquisition, the owner has the right to claim additional compensation.

" Additional development "

Section 18 defines the words " additional development " as any development of the land in question apart from :—

(*a*) development for the purposes of the functions for which the land was acquired by a local authority. (Thus, if the land were acquired for housing purposes, no claim for additional compensation would arise if the authority received permission for blocks of flats instead of houses. The functions for which an authority acquires land are usually stated in the compulsory purchase order).

(*b*) development for the purposes of the project for which the land was acquired by an authority other than a local authority,

(*c*) development for which planning permission was actually in force at the date of service of the notice to treat (or where a sale by agreement took place, the date of the contract of sale),

(*d*) development which was assumed to be available for the land in accordance with the statutory assumptions contained in this Act and upon which the compensation, or the price, was assessed.

The planning decision

The right to submit a claim for compensation in respect of " additional development " arises when a planning decision is made, or is deemed to be made, within the relevant period of five years

from the date of the completion of the compulsory acquisition or sale in the shadow of compulsory powers. The right arises whether the new planning permission is :—

(*a*) granted unconditionally or subject to conditions ;

(*b*) granted in respect of the relevant land only or in respect of an area including that land ;

(*c*) granted on an outline application or on an ordinary application ;

(*d*) deemed to be granted in accordance with any direction given or provision made by or under an enactment ;

(*e*) granted by virtue of a Development Order. In this event the date of the new planning decision shall be taken to be the date on which either :—

(i) the event occurred in consequence of which (in accordance with the provisions of the order) the development is deemed to be sanctioned by a government department, or

(ii) in cases not falling within (i) above, the date when the development is initiated.

All the above cases constitute valid planning decisions for this purpose.

In making a claim for additional compensation arising from a planning permission subsequent to acquisition, regard must be paid to any conditions to which the permission is subject, and the valuation made accordingly.

The amount of additional compensation

It is provided that the measure of additional compensation which may be recovered by the owner of an interest in land in these circumstances is to be the difference between the two following amounts :—

(*a*) The compensation that would have been payable if assessed with the benefit of planning permission for the additional development, by reference to values current at the date of the original notice to treat, (or the date of the contract in a case of sale by agreement), and

(*b*) the compensation paid or previously payable.

Where the assessment of compensation under either case (*a*) or case (*b*) above involves or has involved amounts in respect of disturbance, severance or injurious affection, the provisions of the Third Schedule apply and these are referred to later.

In determining the amounts of compensation paid or payable, only the capital sum of compensation is to be taken into account, and any interest paid or payable is to be ignored. In the case of

a mortgaged interest in land, the necessary sums are to be assessed as if the interest had not been subject to a mortgage.

The obligation to pay this additional compensation remains the acquiring authority's, even where they dispose of the land and their successor carries out the development. The authority can protect itself by taking an indemnity or a restrictive covenant.

Cases included and cases excluded

With the exceptions set out below, the right to claim such additional compensation arises in all cases of compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958, and also in all cases of sale by agreement in circumstances corresponding to such an acquisition. " Circumstances corresponding to a compulsory acquisition " are defined by section 57 (8) of the Act to mean a sale to a public authority possessing compulsory purchase powers, being a sale in pursuance of a contract made after 29th October, 1958.

The right to claim the additional compensation is specifically excluded in the following cases :—

(i) where at the time of the notice to treat or contract of sale the land formed all or part of an area defined in a current development plan as one of comprehensive development, or

(ii) where at that time the land formed all or part of an area designated as the site of a New Town, or

(iii) where at that time the land formed all or part of an area defined in a development plan as an area of town development.

An Illustration

To illustrate the working of claims arising under section 18 of this Act, assume that a notice to treat is served in 1959 on land which is situated in a Green Belt, and which is used as farm land at such date. Let us assume, further, that the acquisition takes place by the local authority for the purpose of providing housing accommodation and also that compensation for the acquisition is assessed and paid at the housing value of the land, the land being vested in the acquiring authority on the 1st December, 1959.

If the acquiring authority change their mind as to the type of development they propose to carry out on the land and secure a planning permission to develop the whole or part of the land with factories before the 1st December, 1964, the owner may lodge a further claim for compensation, being the difference in value between industrial land and housing land by reference to values current at the date of the service of the notice to treat. It should be noted that if the local authority had acted in reverse order and

had originally paid compensation on the basis of industrial value, they cannot subsequently recover any of the compensation paid if they later decide to devote the land to a less valuable use, such as housing.

It will be apparent from the foregoing illustration that claimants will need to keep an accurate note of any assumed planning basis upon which claims for the acquisition of interests in land are settled, and it will be advisable to agree such basis in writing with the district valuer or other agent acting for the acquiring authority.

It will be appreciated that the claimant will always have an actual basis for valuation in respect of the additional development as a planning decision for such development will have been made or development will have commenced.

Recipients of Additional compensation

The person entitled to compensation under section 18 is the person to whom compensation became payable in respect of the compulsory acquisition or sale by agreement of his interest in land. In the event of his death or bankruptcy, the right to compensation passes to his personal representatives or trustee in bankruptcy. In the case of a company which goes into liquidation, the right to the compensation can be vested in the liquidator. The possible right to a future claim for additional compensation arising under section 18 can be sold, and the purchaser will be entitled to recover any additional compensation which may fall due. The sale and purchase of these rights in normal cases will obviously be a most speculative matter, but a moment's reflection will be sufficient to indicate the answer to be given to any acquiring authority which sought to purchase the right of claim within five years of the acquisition.

Mortgaged land

The Third Schedule provides that where at the time of acquisition (or sale by agreement in the shadow of compulsory powers) the interest acquired was subject to a mortgage, the right to any future additional compensation shall vest in the mortgagor (*i.e.* the person who held the interest subject to the mortgage) and not in the mortgagee. Where an acquiring authority purchase the interest of a mortgagee, there is no future right for him to claim additional compensation. Where the mortgagor has disposed of his right to claim then, of course, the recipient of future compensation would be the person who acquired the title to it.

Settled land

The Third Schedule also provides that where the interest in land acquired was subject to a settlement within the meaning of the

Settled Land Act, 1925, or was subject to a trust for sale within the meaning of the Law of Property Act, 1925, and the compensation was accordingly payable to the trustees of the settlement or trust, all rights to future claims for additional compensation are to be vested in the trustees for the time being of the settlement or trust, who may apply any such compensation received as if it were the proceeds of sale. It is to be noticed that the right to additional compensation cannot pass from trustees to any other persons, see note on page 389.

Notification of future grant of permission

In order to enable owners of interests in land which have been acquired to be informed of any grant of future planning permission for additional development, section 19 sets up a system of notification.

Any person entitled to receive additional compensation if the relevant circumstances arise may give his address to the acquiring authority for service of future notification. The acquiring authority then have a duty to notify that person, in the form prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959 (see page 445 below), of the grant of planning permission for additional development or deemed grant of such permission in cases where this is appropriate. Any claim for additional compensation must then be made within six months from the date of such notice. Where no address is lodged for service of future notifications, the right of claim remains but will lapse after the expiry of six months from the date of the grant of planning permission or the date of decision on any appeal. If the authority which originally acquired the land dispose of any of it to another person or body, they are required to notify the local planning authority who thereafter have the duty to notify them of any new planning decision, within seven days of making it or of being notified of such a decision, so as to enable the acquiring authority to discharge its obligation to give notification to the owner.

Subsequent development by the Crown

Claims for Additional Compensation

Where development is carried out by or on behalf of the Crown or there is a Crown or Duchy interest in the land and development is initiated in right of that interest, planning permission is not needed under the Act of 1947. The words " Crown or Duchy interest " mean land belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall or belonging to a Government Department, or held in trust for Her Majesty for the purposes of a government department.

Section 21 of the Act accordingly provides that if Crown development is *initiated* within five years from the date of completion of the acquisition of any land, being additional development within the meaning of section 18, a right to additional compensation arises in the same manner as if a planning permission for such additional development had been granted at the time when it was initiated. In such cases, it becomes the duty of the government department, or other body concerned, to give notification of such additional development to any person from whom an interest in land has been acquired (or his successor) and who has given an address for service of notices under section 19 of this Act. Cases arise, however, where it is not in the interests of national security that the nature of the development should be disclosed, and, in these circumstances, the Minister or Board in charge of the department may certify accordingly, in which event the dispossessed owner will only be entitled to such particulars of the additional development as the Minister or Board specify in the certificate. The owner will, however, be notified that additional development is being carried out and will, presumably, be given sufficient data upon which to found his claim for additional compensation.

The procedure to be followed and the method of assessing the claim is similar in all material respects to that employed in dealing with claims under section 18 and the Third Schedule.

Procedure and assessment of claims

The provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, apply to the assessment of compensation in respect of claims for additional compensation under these sections as they apply to the compulsory purchase of land. The same procedure and rights of appeal as in compulsory purchase cases will, consequently, be available.

The Third Schedule

Injurious Affection, Severance and Disturbance

When compensation for the compulsory acquisition (or price for a sale by agreement) of land is assessed, the amount arrived at may include a sum attributable to disturbance, or to injurious affection to other land held with that acquired or to severance of the land acquired from other land held with it. Where a claim arises for additional compensation resulting from a planning decision for subsequent additional development, it is necessary to consider the effect of such new planning decision on the circum-

stances which existed as at the date of the notice to treat, and to take into account any amount of compensation which would have been assessed in respect of disturbance, injurious affection and severance.

The amount of any claim for additional compensation in respect of subsequent additional development is the difference between :—

(*a*) the compensation that would have been payable if assessed with the benefit of planning consent for the additional development by reference to values current at the date of the notice to treat, and

(*b*) the compensation received or previously payable.

The Third Schedule provides that in ascertaining both or either of the two amounts specified above any sum for disturbance, injurious affection or severance is to be included.

Change of circumstances. (Injurious Affection and Severance only)

In cases where the compensation for compulsory acquisition (or sale by agreement) included a sum for injurious affection, or for severance, relating to other land held with that acquired and the owner continues to hold the land injuriously affected or severed, no difficulty arises in the application of the foregoing provisions. In cases where the owner has disposed of the whole or any part of the land injuriously affected or severed, between the date of service of the notice to treat and the date of planning decision for subsequent additional development which gives rise to the claim, it is necessary to make adjustments so that the two amounts to be calculated can be arrived at on a common footing. It is provided that, in these circumstances, the amount of any additional compensation payable under section 18 of the Act is to be arrived at by calculating both :—

(*a*) the compensation that would have been payable for the land with the benefit of planning consent for the additional development, and

(*b*) the compensation received or previously payable,

by reference to the extent of any interest in land which was held together with the interest in land acquired, both at the date of the subsequent planning decision and also at the date of the notice to treat.

It will be observed that in a case where there was injurious affection or severance to lands held with that acquired and where such injuriously affected or severed lands are disposed of prior to the date of the subsequent planning decision which gives rise to a claim for additional compensation, then both calculations to be made

must exclude any sums paid on acquisition for injurious affection or severance.

Increase in value of contiguous or adjacent land

Compensation payable for the acquisition of an interest in land may be reduced by reason of the general "set off" provisions contained in section 9 of the Act (see Chapter III) because an increase takes place in the value of an interest in contiguous or adjacent land in the same ownership at the date of the notice to treat, arising from development proposed to be carried out by the acquiring authority which would not have been likely to be carried out unless the land were so acquired. Other Acts, as well, make similar provisions in special cases for the set off of such enhancement in value of adjacent land.

Where a claim arises for additional compensation resulting from a subsequent planning decision permitting additional development, it is necessary to consider the effect of such new planning permission on the circumstances which existed as at the date of the notice to treat and to take into account any amount of "set off" which would have been assessed in the light of the new permission.

The Third Schedule accordingly provides that in calculating the amounts required to be ascertained for the purpose of arriving at the amount of additional compensation payable under section 18 of the Act, namely, both :—

(*a*) the amount of compensation that would have been payable for the land with the benefit of planning consent for the additional development, and

(*b*) the compensation received or previously payable,

any reduction in compensation resulting from the "set off" provisions in this or any other Act is to be taken into account.

Change of circumstances

Where the interest in the adjacent or contiguous land is still held by the owner at the date of the subsequent planning decision which gives rise to the claim for additional compensation, no difficulty arises in the application of the foregoing provisions. Where, however, the owner is no longer entitled to the interest in the whole or part of the adjacent or contiguous land, the following adjustments are to be made so that the two amounts to be calculated can be arrived at on a common footing.

In cases where the owner is not entitled to the interest in adjacent or contiguous land at the date of the subsequent planning decision, the two amounts are to be calculated by reference to the circum-

stances existing at that time (*i.e.* on the footing that no adjacent or contiguous land is held). Thus no " set off " is to be taken into account in either calculation.

In cases where the owner is only entitled at the date of the subsequent planning decision to the interest in part of the original adjacent or contiguous land the two amounts are to be calculated by reference to the circumstances existing at that time (*i.e.* on the footing that the interest was held only in such adjacent or contiguous land as was held at the date of the subsequent planning decision).

General provisions of the Third Schedule

In arriving at a claim for additional compensation arising from a subsequent planning decision, it might occur that the two amounts to be calculated involve entirely different questions as to " set off " on the one hand and as to disturbance, injurious affection or severance on the other hand. It is accordingly provided by paragraph 9 of this Schedule that where the compensation paid or payable on the acquisition of an interest in land *has been* either :—

> (*a*) increased on original assessment by reason of disturbance, or by severance or injurious affection to certain land held with that acquired, but *would have been* reduced by reason of the " set off " provisions in this or any other Act if the benefit of planning consent for the additional development had had to be taken into account, or
>
> (*b*) reduced on original assessment by reason of the " set off " provisions in this or any other Act in respect of an increase in value in other contiguous or adjacent land held with that acquired, but *would have been* increased by reason of injurious affection, severance or disturbance if the benefit of planning consent for the additional development had had to be taken into account,

the preceding provisions of the Schedule apply to the calculations to be made on the claim for additional compensation. This is, perhaps, best explained by two examples.

EXAMPLE NO. 1

A owns two adjoining fields zoned for housing purposes and worth £500 each in the open market. One field is acquired for new road construction and for housing development, and the scheme of development would enhance the value of the remaining field by £100 and would not be likely to have been carried out if the authority had not acquired the former field. Compensation is accordingly assessed as follows :—

Open market value of field acquired	£500
Less Set off to remaining field	£100
Compensation payable	£400

Assume that within five years the local authority obtain planning permission to use the field acquired as a refuse dump which would have caused injurious affection to A's remaining field of £350, as at the date of the acquisition. (N.B. It does not matter whether the market value of the remaining field has increased or decreased, nor whether the injurious affection would have been greater or less, if measured as at the time of the subsequent planning decision.)

Claim for Additional compensation

(1) *Compensation assessed by reference to the planning consent for additional development*

Open market value of field acquired (as at the date of acquisition)	£500
Add Injurious affection to remaining field (as at the date of acquisition)	£350
Total	£850
(2) *Compensation previously payable*	£400
Difference being additional compensation payable	£450

EXAMPLE NO. 2

The circumstances are the same as in Example No. 1, but assume that between the two relevant dates A has sold half the remaining field to C. The calculation now proceeds as follows :—

(1) *Compensation assessed by reference to the planning consent for additional development*

Open market value of field acquired (as at the date of acquisition)	£500
Add Injurious affection to the half of the remaining field still held by A (assessed as at the date of acquisition)	£175
Total	£675

(2) *Compensation previously payable*

Open market value of field acquired	£500	
Less Set off in respect of the half of the remaining field still held by A ...	£50	
		£450
Difference, being additional compensation payable		£225

N.B. If C, the purchaser of half the field from A, has taken an assignment of the right to claim compensation for additional development on A's acquired land, which affects the land bought by C, he will be entitled to claim compensation as follows :—

(1) *Compensation assessed by reference to the planning consent for additional development*

Injurious affection suffered to the half field (being the appropriate part of the principal amount of compensation which would have been assessed for A's acquired field under the subsequent planning decision)	£175

(2) *Compensation previously payable*

Set off sustained to the half field (being the appropriate part of the principal amount of compensation paid in respect of A's field on acquisition)... ... ... minus	£50
Difference, being additional compensation payable	£225

CHAPTER III

THE OPEN MARKET AND RULES FOR THE ASSESSMENT OF COMPENSATION

The basic principles as to the assessment of compensation for the compulsory acquisition of land are contained in the Lands Clauses Acts, as interpreted and explained by the judgments of the Courts. The modifications of these principles by the rules contained in the Acquisition of Land (Assessment of Compensation) Act, 1919, apply only to the assessment of compensation for land taken and do not affect the assessment of compensation in respect of damage by :—

(*a*) severance or injurious affection to land, and

(*b*) disturbance and like matters not directly based on the value of land.

It is sometimes argued that the rules contained in the 1919 Act should apply to the assessment of compensation for severance or for injurious affection, because these elements of compensation reflect the value of land.

These elements, however, derive from provisions in the Lands Clauses Acts which entitle the owner of the affected land to claim for damage sustained by him. Thus the element to be valued is the damage sustained by the owner and not the damage to the value of the land. Therefore, the Rules in section 2 of the 1919 Act do not apply to the assessment of these elements in the compensation, and it is thought that the 1959 Act does not alter this position despite the words used in section 1 (1) of the Act.

Compensation for land acquired

Section 1 of the Act of 1959 provides that compensation in respect of *every* compulsory acquisition of land in pursuance of a notice to treat served or deemed to be served after 29th October, 1958, is to be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by the following provisions in the Act of 1959. As indicated before, the 1919 Act applied only to a limited class of authorities, and although this class was extended by later Acts, it has remained for the 1959 Act to lay down a universal rule for compulsory acquisition by all acquiring authorities. The Acquisition of Land (Assessment of Compensation) Act, 1919, has, since its enactment, been the major statute containing rules for the assessment of compensation in respect of the acquisition of land, such rules being contained in section 2, which are set out below together with some explanatory

comments. For some of the more important cases relating to these rules, reference should be made to the notes on page 186.

SECTION 2 :

Rule 1.—" *No allowance shall be made on account of the acquisition being compulsory.*"

The sort of allowance thus prohibited is the 10 per cent. allowance made in practice under the Lands Clauses Acts and referred to above in the General Introduction on page 5.

Rule 2.—" *The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise ; provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant :* "

Rule 2 imports the principle of the " willing seller " and the " open market". There is no case decided under the 1919 Act which determines conclusively the meaning of the words employed in this rule, but the expressions used in this rule were the subject of careful definition in the two cases of *Inland Revenue Commissioners* v. *Clay* and *I.R.C.* v. *Buchanan in* 1914, being cases arising under the Finance (1909-10) Act, 1910, relating to Land Value Duties. The judgments given discussed in detail the meaning of the words " the amount which . . . the land if sold at the time in the open market by a willing seller . . . might be expected to realise ".

The expression " *in the open market* " was held to mean that the land is to be offered in such a way as to enable all persons interested to make an offer, and it was to be assumed that all proper steps would have been taken to advertise the property for sale. The expression " *a willing seller* " is not to be taken to mean a person who would sell for any price he could obtain, for example, without reserve at an auction, but is construed to mean a person selling as a free agent as opposed to one forced to sell under compulsory powers. Although the kind of buyer envisaged is not mentioned in the Rule, the conjunction of " a willing seller " and " the open market " implies a buyer who reflects the market demand : the acquiring authority can properly be regarded as such a purchaser. The expression " *might be expected to realise* " refers to the expectations of properly qualified persons who have informed themselves about the property, its capabilities, the demand for it and the likely buyers.

In informing themselves about the property and its capabilities, valuers have to take into account its every characteristic. In reaching a valuation, it has been said in analogous circumstances, it is " the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the value either up or down ".

Apart from reflecting the value of planning permissions (whether existing, or statutorily assumed, or " hoped for " by the market), the market value will take account of any refund which might fall to be made of compensation previously paid under Parts II, IV or V of the 1954 Act in respect of planning restrictions or under the Planning Payments War Damage Scheme of the 1947 Act. In addition the market value will reflect such right as the owner might have to recover compensation under Part II of the 1954 Act from any " unexpended balance " attaching to the land in respect of the refusal of a planning permission or the grant of a permission subject to onerous conditions. See also example No. 10 in Chapter X on page 169.

The proviso to Rule 2 relates only to returns and assessments of capital value for taxation purposes. In practice this means only valuations for Death Duties and for Stamp Duty on voluntary dispositions *inter vivos*. Capital valuations made for purposes such as war damage, Part VI claims under the Town and Country Planning Act, 1947, etc., do not fall within this proviso—but nonetheless may be useful matters of evidence.

Rule 3.—" *The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser, or the requirements of any Government Department or any local or public authority ; provided that any bona fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration* : "

Rule 3 relates to the exclusion of the special suitability or adaptability of the *land*. Special adaptability was held to mean the existence of advantages present or future whereby the land has a special value in a particular limited market (*In re Lucas and Chesterfield Gas and Water Board in* 1909). Under this rule such special value is to be disregarded in two cases, viz., where the purpose giving rise to the special value is either

(1) one to which the land could be applied only in pursuance of statutory powers ; or

(2) a purpose for which there is no market apart from the needs of a particular purchaser or the requirements of any government department or local or public authority.

Cases falling within the first category are restricted broadly to cases where the scale or nature of the works or use for that purpose is such that that purpose can only be effected feasibly under statutory powers. With regard to the second exclusion the operative words are " a purpose for which there is no market ". Thus the Lands Tribunal have held in the case of *Lester and Jones* v. *Secretary of State for War* in 1951 that the rule did not apply so as to exclude the special value to a Territorial Association of garages adjacent to a Drill Hall, because a market exists for the purpose of the use of garages.

The special suitability which falls to be disregarded under the rule must be a suitability arising from the nature of the *land* itself and not, for example, from the special needs of a purchaser for the *products* (*e.g.*, mineral products) of that land. In addition, the rule does not operate to exclude the value of a suitability for the special needs of a purchaser where those needs arise only from the purchaser's own situation in regard to the land and not from the character of the land itself ; thus the land will not be invested with a " special suitability " for this purpose simply because a sitting tenant on the land would be prepared to pay more for the freehold in order not to be turned out.

Rule 4.—" *Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account :* "

Rule 4 deals with the manner of use of the premises and excludes any increase in value due to a use which is contrary to law or is detrimental to the health of the inmates or to public health, etc. This rule was originally enacted to deal with the problem of the overcrowding of residential property but it should be noted that the word " inmates " is employed as opposed to the word " residents ". It is reasonable to conclude that the rule can be applied to factory, workshop, and other such premises as well as residential property.

The rule serves also to exclude value due to a use which is in contravention of planning control, where effective enforcement pro-

ceedings are being taken or will probably be taken against the continuation of that use.

Rule 5.—" *Where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the arbitrator is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement :* "

Rule 5 gives statutory authority to a principle of valuation which had been applied by arbitrators in assessments under the Lands Clauses Acts and which had received the sanction of the Courts in 1887 (*London School Board* v. *South Eastern Railway Co.*).

It relates principally to land uses which are not of a commercial nature, such as a church, a school or a public park ; but there can be cases in which land is used for business purposes and yet come within the scope of the rule. The two requirements are that it be shown that (*a*) there is no general demand or market for the purpose to which the land is devoted, and (*b*) reinstatement is bona fide intended.

In deciding the use to which the land is devoted, the test is not necessarily that of its actual use, but its intended use. Thus where land is temporarily being used for one purpose at the time of acquisition, it may nevertheless be regarded as being devoted to another use for the purposes of this Rule.

Even where the two requirements are proved, the tribunal has a discretion whether to adopt this measure of compensation, but this is a discretion which has to be exercised judicially.

Rule 6.—" *The provisions of Rule* 2 *shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of Land* ".

Rule 6.—Since Rule 2 introduces the measure of the open market for valuing land only, it follows that Rule 6 is strictly unnecessary. It serves only to re-emphasize that existing rights to compensation not directly based on the value of land are untouched by the open market rule.

Such compensation covers matters such as loss of business profits, loss of goodwill, removal costs, and other items generally included under the general heading of " disturbance". But where compensation is obtained for the acquired land based on its value for development, disturbance is not usually a subject for further compensation, and it should not be thought that compensation, of a kind referred to by Rule 6, is recoverable in every case as of right.

Severance and Injurious Affection

The rights to compensation for severance and injurious affection spring from sections 49, 63 and 68 of the Lands Clauses Consolidation Act, 1845. Section 49 is authority for assessing compensation for damage sustained by reason of the severing of the lands taken from the other lands held by the owner. Section 63 provides for compensation for injurious affection to remaining lands of the owner held with the land taken. The case of *Cowper Essex* v. *Acton Local Board* in 1889 laid down that the phrase " held with " means where several pieces of land held by the same person are, though not necessarily adjoining, so near together and so situated that the possession and control of each gives an enhanced value to all of them. Such lands held together entitle the owner to compensation if one piece is compulsorily taken and converted to uses which depreciate the value of the remaining pieces of land. In such cases the owner may claim not only for direct loss of value to his remaining land but also for all forms of consequential damage. These will include, for example, damage by loss of amenities not already reflected in the value of land, and damage likely to be caused by the subsequent user of the land taken, either by way of the construction of works on that land or by the subsequent user of those works on that land.

Section 68 refers to cases of compensation for injurious affection to land where no land belonging to the same owner has been compulsorily acquired. This section limits the compensation payable to that arising from " the execution of works " on the land acquired and does not enable compensation to be recovered for the subsequent user of those works or any other user of the land acquired. The leading case on this matter, namely *Metropolitan Board of Works* v. *McCarthy* in 1874, makes it clear that only damage to land may be recovered and not injury to trade or business, and that compensation is only recoverable where there is physical interference with some right attached to the land which gives it additional market value. But compensation is only recoverable under this head where the damage done would have been actionable (*e.g.*, as caused by a nuisance) if it had been done without statutory authority ; moreover if the damage is caused by works carried out in excess of the statutory powers, the proper remedy is not compensation under this head, but an action for damages.

Other Rules

In addition to the rules laid down by section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, it is provided by paragraph 8 of Schedule 3 to the Acquisition of Land (Authorisation

Procedure) Act, 1946, that the tribunal is not to take into account interests in land created or works carried out (either on the land acquired or other land) before the date of service of a notice to treat if they consider such steps taken were not reasonably necessary and that they were taken for the purpose of obtaining compensation or of obtaining increased compensation. This further rule was added as a result of a recommendation to that effect by the report of the Utthwatt Committee (Cmd. 6386).

Apart from the above general rule, there are also other special rules, such as, for example, the " site-value " provisions of the Housing Act, 1957 and the other rules set out in the Third and Seventh Schedules of that Act in relation to land acquired under Part III and V respectively of that Act : these rules are modified in some degree by the Second Schedule of the Act of 1959, and are dealt with in Chapter IV below.

This brief survey of the present rules for the assessment of compensation on an open market basis for the compulsory purchase of land must serve as an introduction to the provisions of section 9 and the First Schedule to the Act of 1959 which now modify these rules of assessment in respect of all acquisitions taking place in pursuance of a notice to treat served or deemed to be served after 29th October, 1958.

MODIFICATION OF THE RULES FOR ASSESSMENT OF COMPENSATION

Section 9 of the Act of 1959 lays down certain provisions which can conveniently be summarised as three additional rules for the assessment of compensation in all cases where notice to treat is served after the 29th October, 1958. These additional rules may be stated broadly as follows :—

New Rule No. 1.—That any general increase or decrease in value caused by the scheme of development for the purpose of which the land is being acquired shall be ignored if it is development which would only be likely to have been undertaken under that scheme. (section 9 (2)).

New Rule No. 2.—That any enhancement in value of contiguous or adjacent land retained by the owner which is caused by the scheme of development for the purposes of which some of his land is being acquired shall be set off against the compensation payable, if it is development which would only be likely to have been undertaken under that scheme. (section 9 (3)).

New Rule No. 3.—That no account shall be taken of any depreciation in the value of land being acquired caused by

any threat of compulsory purchase. (section 9 (6)).

It is now proposed to discuss such new rules in detail.

New Rule No. 1

(A) AS APPLIED TO ALL CASES. (section 9 (2)).

This rule applies to every case of compulsory purchase to which the Act applies. It arises from the provisions of section 9 (1) and (2) which in effect direct the valuer to disregard any increase or decrease in the value of an acquired interest in land caused by the scheme of development for the purpose of which the land is being acquired, if it is development which would not have been likely to be carried out except as a result of the exercise of compulsory powers.

In such cases it is necessary to disregard both the actual or the proposed development of any of the land included within the limits of the particular compulsory purchase order or special Act, with the exception of the proposed development to be carried out on the land being valued itself. Hence in a case where a compulsory purchase order applies to only one parcel of land this rule has no application. In the ordinary case where the compulsory purchase order applies to a number of parcels of land in different ownerships, the compensation paid for any one of those parcels must not reflect the effect on market value of the development of the remaining land for any of the purposes for which the compulsory purchase order was made. Where, however, the development done or proposed is of a type that would have been likely to have been undertaken in any event and is not dependent on the compulsory acquisition of the land, then the rule has no application and regard can be paid to the likelihood of such development and its effect on the market value of the land being valued. Thus if land zoned for residential development is acquired for housing purposes, regard may be paid to the likelihood of adjoining residential development being carried out in any event.

This rule applies not only to any development of such land for the purposes of the scheme which may actually have been carried out by the acquiring authority at the date of the notice to treat but also to the prospect that such development will or may be carried out at a future date.

Example No. 1

Two adjacent fields in different ownerships and situated on the outskirts of a town are zoned for residential development in the current plan but are together acquired by the local authority for the purposes of a sewage farm. Each owner will be able to claim market value for housing development (by virtue of section 4 of the Act) and is entitled to ignore the depreciation in

value caused by the proposed sewage farm development on the other field.

Example No. 2

A cleared slum area defined for the purposes of future open space is acquired for that purpose by the local authority. A certificate that appropriate alternative development would be for housing purposes is granted. Each owner may then claim the market value of his particular land for housing purposes, but any increase in the value of particular plots of land owing to the proposed creation of a park on adjoining land is to be disregarded.

This new rule stems from very old established principles of compensation law that enhancement in value due to the scheme for which the land is being acquired should not be taken into account. In the case of *Eagle* v. *Charing Cross Railway Co.* in 1867 compensation was sought for the obstruction of light to the windows of a warehouse. It was agreed that the light had been affected but it was contended that the value of the property had not been diminished owing to a general increase in values caused in the neighbourhood by the Railway Company. It was held that such general enhancement in values was to be disregarded and the owner was entitled to recover compensation for the injury sustained to his premises. This former rule may still apply where the new rule cannot apply.

It should be noted, however, that the new rule applies both to enhancement and also to diminution in value caused by the scheme.

One result, both of this rule and the next one will be that acquiring authorities will now consider carefully how wide to draw their compulsory purchase orders, so as to secure the advantage of these provisions.

It will be seen that in the subsequent cases below it is not merely the development proposed on the land covered by the compulsory purchase order or special Act, but also the wider " schemes " there defined which have to be disregarded.

(B) As applied to land acquired in areas of comprehensive development

Where the land being acquired forms part of an area defined as one of comprehensive development in the current development plan approved by the Minister and in force at the date of the notice to treat, all actual or prospective development or redevelopment of the area in accordance with the plan is to be ignored, with the exception of that to take place on the land being acquired. Where, however, development takes place, or is likely to take place, which would have occurred even if the area had not been defined as one

of comprehensive development, the effect on value of such actual or prospective development may be taken into account.

Example No. 3

Assume a badly bombed area where the war damaged buildings have not yet been reinstated. The local authority obtains powers of compulsory purchase for comprehensive redevelopment over the area with a view to sweeping away the old road pattern and laying it out afresh. The owners are entitled to the market value of their land for a use within the range of uses proposed in the comprehensive development area but on the basis of the existing physical condition as to road layout, neighbouring ownerships, etc. Thus a site approached by a narrow cul-de-sac only 10 feet wide at the moment must be valued subject to this limitation despite the fact that the comprehensive redevelopment scheme would provide a wide road to its frontage. The valuation should also reflect the likely future of the area on the assumption that no area of comprehensive development had been defined, and no powers of compulsory purchase would arise thereunder.

(c) As applied in new town areas

Where the land being acquired forms part of an area designated as the site of a new town by means of an order under the New Towns Act, 1946, in force at the date of the notice to treat, all actual or prospective development of land in the area as a new town is to be ignored with the exception of that to take place on the land being acquired. Here again, if it can be shown that development in the area would have been likely to take place even if the area had not been designated as a new town area, regard can be paid to the effect on value of such development.

Example No. 4

A farm situated ten miles from the nearest town is taken as part of a new town, on which it is intended to build housing development. Whilst the claim for the land taken may be submitted on the basis of open market value for building purposes in respect of residential development, the land must be valued on the footing that all surrounding land remains in the same physical condition as now exists, and no regard can be paid to such matters as sewers, gas, electricity or water supplies which have been laid or are proposed expressly for the purpose of serving the new town, or to adjoining development carried out for new town purposes.

Part II of the First Schedule to the Act contains special pro-

visions as to new towns and looks forward to the date when a development corporation established for the purpose of a new town ceases to act and hands over its affairs in the manner envisaged by the New Towns Act, 1946, and now provided for by the New Towns Act, 1959. This date is called the transfer date and where notice to treat is served on or after such date, this provision of paragraph 3 of the Table set out in section 9 will no longer apply, with the result that compensation for any land acquired compulsorily in pursuance of such a notice to treat will fall to be assessed at full market value, which may reflect continuing development of the town.

Despite the above provisions it is laid down that, in assessing compensation for land affected by a New Town Order at the date of the notice to treat served before the transfer date, *all* prospective development of the new town is to be disregarded (with the exception of that to take place on the land being acquired), whether or not all or some of that prospective development will take place *after* the transfer date.

In order to determine whether land is in an area designated as the site of a new town regard must be paid to the situation as at 29th October, 1958. Any orders made *on or before* that date are to be regarded in the form in which they exist on that date, including any variations made to the original order which are operative at that time. In the case of areas designated as the site of a new town by orders becoming operative *after* 29th October, 1958, regard must be paid to them in their original form and any later variation is to be disregarded.

(D) AS APPLIED TO AREAS OF TOWN DEVELOPMENT

Where the land being acquired forms part of an area defined in the current development plan as an area of town development, all actual or prospective development of land in that area in the course of town development within the meaning of the Town Development Act, 1952, is to be ignored, with the exception of the development to be carried out on the land being acquired. Regard may, however, be paid to any actual or prospective development of the area which would have been likely to take place even if the area had not been defined in the current development plan as a town development area. For the definition of an area of town development, see pages 216 and 335 of the legal notes.

New Rule No. 2. (section 9 (3) and 9 (4)).

Where the owner of an interest in land which is acquired under compulsory powers is also entitled to an interest in other land

nearby, the scheme of development undertaken on the land acquired may increase the value of the land remaining to the owner. Section 9 (3) of the Act accordingly provides that any enhancement in the value of a claimant's interest in other land contiguous or adjacent to the land acquired and deriving from the scheme of development as a whole is to be deducted from the compensation otherwise payable for the interest acquired, insofar as it is development which would not have been likely to have been carried out except as a result of the exercise of compulsory powers or the making of that scheme, as the case may be. The schemes of development referred to above comprise :—

(*a*) development for the purposes for which any of the land authorised to be acquired by a compulsory purchase order or special enactment is being acquired.

(*b*) development for the purposes of an area of comprehensive development as shown in the current development plan.

(*c*) development for the purposes of a New Town (subject to the provisions of Part II of the First Schedule as previously explained).

(*d*) town development of any area defined in the current development plan for such purpose.

The First Schedule to the Act of 1959 provides that where land is being taken and any of the following enactments apply (which already make provision to set off against compensation payable for land acquired any increase in the value of contiguous or adjacent land), this rule is not to apply. Compensation will accordingly be assessed in the following cases without regard to section 9 (3) and (4) of the Act of 1959 but paying regard to the provisions of the special Acts concerned. These provisions are as follows :—

(*a*) section 13 of the Light Railways Act, 1896.

(*b*) paragraph 2 (c) of the Schedule to the Development and Road Improvement Funds Act, 1909.

(*c*) paragraph (*a*) of the proviso to section 13 (1) of the Restriction of Ribbon Development Act, 1935 (until the 1st January, 1960), and thereafter section 222 (6) of the Highways Act, 1959 (which replaces the former provision).

(*d*) Housing Act, 1957, Third Schedule, Part III, paragraph 4.

(*e*) any local enactment which provides that in assessing compensation for the compulsory acquisition of land, account shall be taken of any increase in value of an interest in contiguous or adjacent land which is attributable to any of the works authorised by that enactment. It is provided that where any such local enactment restricts the amount of " set off " to an

increase in existing use value of the contiguous or adjacent land, such restriction is to be ignored.

The combined effect of section 9 (3) and (4) of the Act of 1959 and the First Schedule is to ensure that in all cases of compulsory acquisition falling within the scope of the 1959 Act any increase in the value of contiguous or adjacent land in the same ownership as that being acquired is to be " set off " against the compensation payable for the interest in land being acquired, where such increase is due to the actual or proposed scheme of development and is only likely to be brought about by such scheme. No " set off " should, therefore, be taken into account where the development to be undertaken by the acquiring authority is of a type likely to have been carried out in the normal processes of development.

It would appear that the amount of such increase to be taken into account is the amount by which the contiguous or adjacent land is increased in value as at the date of the notice to treat. In other words, it is the present increase in value which is to be taken into account and not the total future increase in value which may occur when the scheme of development is complete. It should be noted that in assessing the amount of such " set off " regard is to be paid to the total scheme of development, including that part of the development to be carried out on the land acquired from the claimant. It should be pointed out that enhancement in respect of development value must reflect the risk of not securing planning permission. Some care should therefore be exercised in deciding whether to submit an application for such permission.

The words " contiguous or adjacent " mean land in the immediate vicinity of the land acquired and includes both land having common boundary with that acquired and land separated therefrom. It is difficult, however, to draw a firm line between land affected by this provision and that unaffected. For example, if an owner has two fields, one on each side of a public road, one of which is acquired, it can clearly be said that the remaining field is adjacent to that acquired. If, on the other hand, the two fields were separated by a distance of a hundred yards, they might be held not to be adjacent, even if some appreciation in value took place as a result of one field being developed.

The effect of this new rule is as arbitrary as the rules of law relating to injurious affection. A scheme of development may enhance or diminish the value of surrounding land, but if it is in different ownership, no betterment can be collected and no claim for injurious affection can be made, except for damage caused by the execution of the works under the limited provisions of section 68

of the Lands Clauses Consolidation Act, 1845, as previously explained.

SUBSEQUENT ACQUISITIONS IN RELATION TO THE ABOVE RULES

By themselves, the above two new rules would in certain situations produce anomalous results. Paragraph 4 of Part I of the First Schedule is designed to prevent these anomalies.

(i) When an acquisition takes place, the compensation payable may be either *increased* by reason of injurious affection caused by the acquisition to the value of adjacent land in the same ownership, or *decreased* by reason of the " set-off " of enhancement of adjacent land in the same ownership caused by a " scheme " within the rule in section 9 (4). Both of these adjustments take place by reference to the value of adjacent land. But if that adjacent land is itself acquired at a subsequent time, the rule in section 9 (2) which requires any increases or decreases in the value of acquired land caused by the " scheme " to be disregarded, might have the effect that the compensation payable on that subsequent acquisition would reflect the same increases or decreases in value as were already reflected in the compensation paid on the previous acquisition.

Thus in one case the owner would ultimately have received double compensation : in the other case he would have lost the same amount twice. To correct this, it is in effect provided that, on a subsequent acquisition in such circumstances, any increase or decrease in value due to the " scheme " is (contrary to the rule in section 9 (2)) to be taken into account, but only *to the extent that* that increase or decrease has already been subtracted from or added to the previous compensation.

Example No. 5

Assume a parcel of land worth £1,000 for housing purposes, for which it is zoned. A compulsory purchase order authorises the acquisition of the whole of the land for a sewage farm, but only half of the land is acquired at first. The acquisition depreciates the remaining half left to the owner by 50 per cent. Compensation on the acquisition could be assessed as follows :—

Value of land, taken at housing value	...	...	£500
Injurious affection to remaining land	...	...	£250
Total compensation	...	...	£750

If the remaining land is subsequently acquired, the owner may claim housing value but is required to take into account the decrease in value caused by the carrying out of the sewage farm development, or the prospect of that development, to the extent that he has

already received compensation for the injurious affection, namely £250.

Example No. 6

Assume a comprehensive development area where an owner possesses two adjacent sites of equal value lettered A and B. Site A is acquired for the purpose of making a new road which will enhance the value of Site B by £1,000 when the road is completed in two years' time. The open market value of Site A is agreed at £2,000 but compensation will be paid as follows :—

Value of Site A taken		£2,000
Less "Set Off" to Site B		
Increase in value	£1,000	
P.V. of £1 in two years at 5%	.9	
		£900
Compensation paid for Site A		£1,100

Assume that in two years' time when the road is completed Site B is then acquired. Its value in the open market is then £4,000 made up as follows :—

(1) Value in the circumstances existing at the time Site A was acquired	£2,000
(2) Enhancement in value due to the road now constructed on Site A	£1,000
(3) General appreciation in values owing to the development of the comprehensive development area as a whole. Such development would not be likely to have taken place otherwise than as part of an area of comprehensive development ...	£1,000
	£4,000

Compensation for the acquisition of Site B would then be assessed as follows :—

Value of Site B on the assumption that no land in the comprehensive development area had been or would be developed in accordance with the scheme of comprehensive development (see section 4 (5) (*b*) and section 9 (2).)	£2,000
Add amount previously deducted from compensation paid for Site A by way of "set off"	£900
Total compensation payable ...	£2,900

The interest in the land subsequently acquired must, naturally, be the same interest as was injuriously affected by the previous acquisition or gave rise to the " set-off," as the case may be. But it is not necessary that the subsequent acquisition should relate to the *whole* of the land in which that interest previously existed : if part only of that land is subsequently acquired, the amounts must be proportionately assessed.

Moreover it does not matter whether the person who owns the interest subsequently acquired was the original owner of it at the time of the previous acquisition, or is merely a successor-in-title to the person who was the original owner of it : in the latter event, as a successor in title he will have paid a decreased or an increased price for it by reason of the scheme, and his compensation should therefore be decreased or increased accordingly.

(ii) One other anomaly, which would result from the " set-off " rule, in relation to a subsequent acquisition, is also corrected by the First Schedule.

If the subsequent acquisition is an acquisition not of the interest which gave rise to the set-off on the original acquisition, but of yet *another* interest in land in the same ownership, the owner might find that by a second operation of the set-off rule he would lose a further amount by reason of enhancement (due to the scheme) of the same interest as was taken into account for set-off purposes on the original acquisition. So, this time, the operation of the set-off rule is suspended, and the enhancement is not set-off on the subsequent acquisition *to the extent of the amount that* was set-off on the previous occasion. See further examples No. 18 in Chapter X on page 178.

Again, it does not matter for this purpose whether the person who owns the respective interests at the time of the subsequent acquisition was, at the time of the previous acquisition the owner of the interest which gave rise to the set-off, or is merely the successor-in-title of the person who was the original owner of it. In either event he is entitled to the benefit of the provision.

(iii) The above provisions of the First Schedule apply also where the previous acquisition was a purchase in the shadow of compulsory powers, if the price included a sum for injurious affection or was reduced by set-off of enhancement.

New Rule No. 3

Section 9 (6) of the Act of 1959 provides that no account is to be taken of any depreciation in value of land in course of acquisition which has been caused by the threat of compulsory purchase, in

whatever form such threat has arisen. Such threats may arise in numerous ways, including, for example :—

(1) designation of land as subject to compulsory purchase in the current development plan.

(2) allocation of land in the current development plan for some use which can only be brought about in practice by the use of compulsory powers (*e.g.*, school site, site of pubic open space, etc.)

Section 9 (6) of the Act of 1959 provides a safeguard in the assessment of compensation against any depreciation in the value of an interest in land caused by any threat of compulsory purchase no matter in what form it arises. It thus replaces the rule contained in section 51 (3) of the 1957 Act (now repealed by the Eighth Schedule of the 1959 Act), which required depreciation caused by designation in a development plan to be disregarded, and extends it to all cases of depreciation caused by any kind of planning proposals or other indications of any kind which suggest that the land is likely to be acquired.

CHAPTER IV

ACQUISITION OF HOUSES UNFIT FOR HUMAN HABITATION

(SECTION 10 AND THE SECOND SCHEDULE)

The Housing Act, 1957, consolidates and re-enacts the law relating to housing matters in England and Wales. Parts II and III of the Housing Act, 1957, contain the powers of local authorities to deal with houses deemed to be unfit for human habitation. Under section 4 of that Act, a house is deemed to be unfit if it is so far defective in its condition in respect of one or more of the following matters that it is not reasonably suitable for occupation in that condition. The matters are :—

(*a*) repair
(*b*) stability
(*c*) freedom from damp
(*d*) natural lighting
(*e*) ventilation
(*f*) water supply
(*g*) drainage and sanitary conveniences
(*h*) facilities for storage, preparation and cooking of food and for the disposal of waste water.

In addition to the above, section 5 of the Housing Act, 1957, provides that in nearly every case, any back to back house erected after 3rd December, 1909, is deemed to be unfit.

Where a local authority have established that a dwelling is unfit, powers of acquisition arise broadly in the following ways :—

Under Part II of the Housing Act, 1957

(1) Notice may be served under section 9 of the Housing Act, 1957, requiring the owner to repair the unfit house. If the owner appeals against the notice and can show to the satisfaction of the county court that such work cannot be done at reasonable cost, the local authority may purchase the house by agreement or may acquire it compulsorily.

(2) In any case where the local authority would be entitled to make a demolition order or a closing order under Part II of the Housing Act, 1957, they can, instead, purchase the house, if they consider that the house can provide accommodation which is adequate for the time being.

Under Part III of the Housing Act, 1957

(3) An area in the district of a local authority may be declared a clearance area on the grounds that :

(*a*) the houses therein contained are unfit for human habitation or are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to health, and

(*b*) the most satisfactory method of dealing with conditions in the area is to require demolition of all the buildings.

When an area is thus declared a clearance area, the local authority may, instead of making clearance orders, purchase the land by agreement or compulsorily for the purpose of carrying out or securing the demolition of buildings on the land.

(4) An area in the district of a local authority for an urban area containing at least fifty working class houses of which not less than one third are overcrowded or are unfit for human habitation or are congested may be declared a redevelopment area. The local authority may, in due course, secure powers to purchase the entire area under compulsory powers.

Compensation under the Housing Act, 1957, *for Unfit Houses*

Section 12 (4) and section 29 of the Housing Act, 1957, deal with the acquisition of unfit houses under Part II of that Act, and provide that the compensation paid " shall be the value, at the time when the valuation is made, of the site as a cleared site available for development in accordance with the requirements of the building bye-laws for the time being in force in the district ". Additional compensation is payable in cases falling within section 30 (well-maintained houses) and section 31 (owner-occupiers) of the same Act.

Section 59 of the Housing Act, 1957, deals with the acquisition of land and buildings under Part III of that Act, and provides that in the case of unfit houses in clearance areas and redevelopment areas, the compensation shall be " the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building bye-laws for the time being in force in the district ". Additional compensation is payable in cases falling within section 60 (well-maintained houses) and section 61 (owner-occupiers) of the same Act. Other houses included in such areas are purchased broadly under the normal rules relating to the assessment of compensation.

Effect of the Town and Country Planning Act, 1959

It will readily be appreciated that the provisions of Part I of the Town and Country Planning Act, 1959, if applied without modification to the case of the unfit house might result in greater compensation becoming payable for such properties than in the case of fit houses. Where the sites of old houses are planned for a different and more valuable use (*e.g.*, industrial use), the value of the sites as cleared sites ready for redevelopment might be substantially greater than the value of the sites with the houses standing on them and occupied by the various tenants.

Accordingly, by virtue of section 10 and the Second and Seventh Schedules of the Act of 1959, the following modifications are made in the rules for the assessment of compensation for the acquisition of unfit houses in pursuance of a notice to treat served after 29th October, 1958. The word " house " for these purposes has the meaning assigned to it by section 189 of the Housing Act, 1957, (see page 383).

Changes in rules for assessing compensation for Unfit houses

(**1**) The compensation payable on a cleared site value basis shall not exceed the open market value of the house assessed in accordance with the normal rules for compulsory purchase of land. For this purpose it is provided that the effect of any clearance area or redevelopment area in which the house may be situated is to be ignored. Thus, only the prospect of clearance or redevelopment by private enterprise can be taken into account.

It should be noted, moreover, that the market value of a standing unfit house can be less than the market value of its site cleared for building—due to the expense of repairs, securing possession and the demolition of the structure. Hence this provision may reduce compensation previously payable in some cases.

(**2**) Where the whole or any part of the unfit house is owner-occupied at the date of the making of the compulsory purchase order and such owner-occupier retains his interest in the land at the date of the notice to treat, the amount of the compensation payable for that interest is not to be less than the Gross Value of the house for rating purposes. Where part only of the house is owner-occupied, the Gross Value is to be apportioned by the valuation officer for the district and the apportioned value becomes the minimum compensation payable.

In determining whether or not the compensation calculated for

the owner-occupied interest in land acquired is less than the gross value, such compensation shall include

(i) any well-maintained allowance payable to such person under section 30 or section 60 of the Housing Act, 1957, and

(ii) any payment falling to be made to that person under Part II of the Second Schedule of the Housing Act, 1957 (which provides for additional compensation to be paid to owner-occupiers who acquired their interest in the house on or after the 1st September, 1939, and before 13th December, 1955).

It is provided, however, that in determining whether the amount of compensation calculated for the acquisition of an owner occupier's interest in an unfit house is less than Gross Value no regard is to be paid to any amounts payable for disturbance, injurious affection or severance.

(3) In cases where additional compensation is claimed for a well-maintained house, it is provided that the maximum additional compensation shall not be greater than the amount by which the full value of the property exceeds the open market site value. This affects the provision in paragraph 2 of the Second Schedule to the Housing Act, 1957, which provided that additional compensation was not to exceed the difference between the " full value " and the site value on a compulsory purchase basis. " Full value " is defined as the amount payable on compulsory acquisition on the assumption that the house is not unfit for human habitation. It will be remembered that the basis of compensation for compulsory acquisitions falling under the Town and Country Planning Acts, 1947/54, was the market value for existing use purposes plus any appropriate share of the unexpended balance of established development value (if any). The new current basis refers, of course, to open market value both as to the " full " value and as to the site value.

Example No. 7

To illustrate the effect of this amendment, assume an unfit house occupied by a rent restricted tenant, which would sell for £200 in the open market on the assumption that there was no intention on the part of the local authority to declare the house " unfit ". The site, if regarded purely on its existing use purposes as one available for residential redevelopment in accordance with the Third Schedule to the Town and Country Planning Act, 1947, would be worth £50. Assume, however, that the property is included in an industrial zone in the current development plan, for which purpose the site *cleared of buildings* (and the tenant !) would be worth £300 in the open market.

Maximum figure of well-maintained allowance under previous legislation

Full value of house	£200
Deduct Site value (existing use basis)	£50
Maximum compensation payable	£150

Maximum figure of well-maintained allowance under the 1959 *Act*

Full value of house	£200
Deduct open market site value	£300
Excess	Nil

Note. (i) No well-maintained allowance is payable.

(ii) Total compensation receivable under the 1959 Act is £200, namely, the open market value of the standing property, which is the " ceiling ".

(4) Paragraph 2 of Part III of the Third Schedule to the Housing Act, 1957, and sub-paragraph 3 of paragraph 2 of the Seventh Schedule to the Housing Act, 1957, are repealed in respect of cases where notice to treat is served after 29th October, 1958. Both these provisions applied to acquisitions under the Housing Act, 1957, of premises where compensation is *not* assessed on the basis of site value. These provisions (applying to acquisitions under Part III and Part V of the Housing Act, 1957, respectively) required in each case that if the premises were in a state of defective sanitation or were not in reasonably good repair, the compensation was to be the estimated value of the premises in sanitary condition or reasonably good repair, less the estimated expense of putting them into such condition or repair.

It was found that these provisions operated harshly in practice and that they could have the effect of reducing compensation to less than site value. The repeal of these provisions means that open market value for such premises will be paid but, naturally, in assessing open market value, regard must be paid to the condition of the premises.

(5) Special provisions are introduced to deal with acquisitions under the Housing Act, 1957, of unfit houses which have sustained war damage, the whole of which has not yet been made good at the date of service of the notice to treat, but where the appropriate payment under the War Damage Act, 1943, is that of a cost of works payment at that date. In these cases, compensation is first

assessed on the normal footing now applicable to unfit houses, *i.e.*, site value, but not exceeding the open market value of the standing property in the condition in which it exists at the date of the notice to treat. To that sum is now to be added the value, as at the date of the notice to treat, of the prospective right to receive a payment under the War Damage Act, 1943, being such payment as would be likely to be made if the property were not acquired, *i.e.*, either a cost of works payment or a converted value payment as is considered appropriate in the circumstances of the case by the test of the open market. Special note should be taken of the words used, namely, " the prospective right to receive payment ". This means that the payment to be made by the War Damage Commission is not itself the amount to be added as extra compensation. The extra compensation is to be the value in the open market of such right. Where a purchaser would increase his offer for a property in order to secure the right of claim, then such increased amount is the additional sum recoverable. In practice, purchasers tend to regard statements made by vendors as to outstanding war damage claims with reserve, unless they are supported by specifications of works agreed with the War Damage Commission or unless the war damage sustained is very substantial and easily capable of being recognised as such. It is thought that it would be reasonable for acquiring authorities, in appropriate cases, to agree to have the assessment of compensation deferred until agreement had been reached with the War Damage Commission as to the extent of war damage remaining unrepaired.

Changes in procedure relating to the acquisition of Unfit houses in special cases

Where a local authority exercise their powers under Part IV of the Town and Country Planning Act, 1947, to acquire a house which, in their opinion, is unfit for human habitation and not capable of being rendered fit at reasonable expense, the procedure used to be governed by paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944 (as amended by the Act of 1947 and incorporated by section 44 (4) of that Act).

It will be recalled that the powers of compulsory acquisition which may be exercised under Part IV of the Act of 1947 relate broadly to :—

(1) land designated as subject to compulsory acquisition in a development plan.

(2) land required for public purposes during the period before a development plan becomes operative, which the Minister considers is urgently needed.

In these cases, the Fifth Schedule of the Act of 1944 enabled a local authority to submit an order of unfitness to the Minister (now the Minister of Housing and Local Government) for confirmation. If such order was confirmed, compensation for compulsory purchase taking place either :—

(*a*) before such confirmation, or

(*b*) within two years after such confirmation

was assessed as if the house was being purchased under the Housing Act, 1936 (now the Housing Act, 1957), *i.e.*, at site value. The owner might not be aware that the acquiring authority were proposing to allege that his house was unfit for human habitation until the compulsory purchase order had been confirmed.

Paragraph 2 of the Second Schedule to the Act of 1959 corrects the anomaly in this situation and other similar situations by making the following provisions in the cases of :—

(*a*) compulsory purchase orders affecting houses alleged to be unfit ;

(*b*) purchase notices affecting houses alleged to be unfit.

These new provisions apply not only where the unfitness order is made and confirmed after the commencement of this Act (*i.e.*, on or after the 16th August, 1959), but also where the order is made before that date and confirmed on or after it.

(*a*) *Compulsory purchase orders affecting houses alleged to be unfit.*

Where any acquisition takes place under :—

(1) Part IV of the Act of 1947 ; or

(2) section 6 of the Town Development Act 1952 ; or

(3) an Order made under section 1 of the New Towns Act 1946 designating land as the site of a new town ; or

(4) under the New Towns Act 1946, or under any enactment applied by that Act, whereunder land is acquired by a development corporation or a local highway authority or by the Minister of Transport and Civil Aviation,

in respect of a house considered by the appropriate local authority (*i.e.*, the local authority for the purposes of Part III of the Housing Act, 1957), to be unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation, the owner will be entitled to receive compensation for the full value of the house, and not merely the site value, unless the allegation of unfitness has been made before the Minister confirms the compulsory purchase order and the unfitness order is itself confirmed by the Minister either *before or concurrently with* the compulsory purchase order. The owner should now know whether or not an

allegation of unfitness is being made at the time when he is required to decide whether or not to object to the compulsory purchase order. When an unfitness order is confirmed before or concurrently with the compulsory purchase order, the owner will get only site value and (where appropriate) a " well-maintained " supplement or an " owner-occupier " supplement, as under the provisions of Part III of the Housing Act, 1957.

(*b*) *purchase notices affecting houses alleged to be unfit.*

Where a purchase notice is served under either :—

(1) section 19 of the Act of 1947 (or under the provisions of that section applied by or under any other enactment) ; or

(2) section 6 (4) of the Town Development Act, 1952 ; or

(3) Part IV of the Act of 1959,

in respect of a house considered by the appropriate local authority to be unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation, the owner will be entitled to receive compensation for the full value of the house, and not merely the site value, unless the order alleging unfitness has been *made before* the date on which the purchase notice takes effect (when the notice to treat is deemed to be served). In the latter case the acquiring authority will be entitled to purchase at site value (plus either of the supplements as before), if the Minister confirms the order alleging unfitness either before or after the date of the deemed service of the notice to treat.

Procedure for making and confirming Unfitness Orders in the above cases of compulsory acquisition.

The Fifth Schedule to the Act of 1944 (as amended by the Act of 1947) which relates to the procedure for the making and confirmation of unfitness orders in respect of land proposed to be acquired compulsorily, is repealed by the Eighth Schedule to the Act of 1959 and replaced by the provisions of paragraph 2 of the Second Schedule to that Act. Apart from the main changes set out above, the new procedure follows the same lines as the old, in that provision is made :—

(*a*) for the local authority to serve every owner and every mortgagee of the land or any part thereof with notice stating the effect of the proposed order and specifying the time and manner of making objection.

(*b*) where objection is made and not withdrawn, the Minister is bound to consider it and he is also bound to hold an Inquiry if any objector or the local authority so desires.

CHAPTER V

MISCELLANEOUS MATTERS

COMPENSATION FOR SPECIAL CASES; PURCHASE NOTICES, DISTURBANCE CLAIMS AND LONG STANDING NOTICES TO TREAT

Sections 11 and 12 of the Act apply to the compulsory purchase of special classes of land as follows :—

Section 11 :	War damaged land
Section 12 :	(*a*) Land held by local authorities for statutory purposes
	(*b*) Operational land of statutory undertakers
	(*c*) Land held on charitable trusts
	(*d*) Land held by the National Coal Board.

Other special cases are also dealt with in this chapter as follows :—

Section 1 :	Purchase notices
Section 13 :	Disturbance allowances
Sections 14, 15 and 16 :	Long-standing notices to treat
Section 17 :	Outstanding rights to compensation for planning restrictions at date of compulsory purchase.

Section 11 : War damaged land

A complete change is made in the method of assessing compensation on the acquisition of land which has sustained war damage, where the whole of the damage has not been made good at the date of the notice to treat and the appropriate payment under the War Damage Act, 1943, is that of a cost of works payment.

In the past, section 53 of the Act of 1947 has provided that the acquiring authority is to pay compensation on the footing that the whole of the war damage had been made good at the date of the notice to treat. The owner accordingly received compensation for the existing use value of his notionally reinstated building. The acquiring authority, for their part, became entitled to receive a value payment from the War Damage Commission by virtue of section 14 of the War Damage Act, 1943. This frequently meant, in practice, that the acquiring authority paid out more compensation in respect of the war damage than they received from the War Damage

Commission. This system is now abolished in respect of all compulsory acquisitions in pursuance of notices to treat served or deemed to be served after 29th October, 1958, as both section 53 of the Act of 1947 and section 14 of the War Damage Act, 1943, now have no effect in these cases. Sales of land by agreement in circumstances corresponding to compulsory acquisitions are similarly affected.

Compensation payable on the compulsory acquisition of war damaged land now falls under the general rules applicable to normal cases of compulsory purchase and will, accordingly, be assessed on the footing of the open market value of the property in its damaged condition, but with the right of claim against the War Damage Commission transferred to the purchaser. The statutory planning assumptions are, of course, equally available in these cases as they are in ordinary cases.

If, for example, a property has been severely damaged and comprises a site encumbered with ruins but with the benefit of a cost of works classification, compensation will now be assessed at the price that would be paid in the open market as between a private purchaser and the vendor. If the view of the market is that the property is worthwhile reinstating in its original form or substantially in that form, the purchaser will, naturally, take into account the right to recover the proper cost of the works of restoration against the Commission. If, on the other hand, the view of the market is that reinstatement of the hereditament in its original form would produce an obsolete building or one which does not fully exploit the development potential of the site in to-day's conditions, a prospective purchaser will take into account the fact that his claim against the Commission may be converted to a value payment. Converted value payments are, of course, assessed by reference to prices current as at 31st March, 1939, although a supplement of either 45 per cent. or 60 per cent. is added to the amount of such payment according to the circumstances, together with interest at the rate of $2\frac{1}{2}$ per cent. per annum (less tax) from the date of the last occurrence of war damage up to the date of payment.

It would appear that in some cases claimants will now receive less compensation than hitherto, whereas in other cases more compensation may be recovered. In cases where the damaged hereditament is sold in the open market for the purpose of making good the original building, it is often found that the price paid is not equal to the full value of the restored property, for the following reasons :—

(1) The purchaser will have to bear all the risk and trouble

of carrying out the building operations and of agreeing his claim with the War Damage Commission.

(2) The time needed before restoration can be carried out will be taken into account as the purchaser will lose interest on the capital invested during the currency of the building operations, and, where the property does not produce income in the meantime, he will also lose such interest in any waiting period before reinstatement takes places. (This may apply particularly to areas of severe devastation). The delay in restoring the building may also introduce a speculative element as to the future level of rents and capital values of such buildings when completed.

(3) The war damaged building may be situated in an area affected by a direction made under Article 4 of the General Development Order, 1950 (S.I. No. 728) requiring planning permission to be obtained before reinstatement of the damage. Whilst the risk of compulsory purchase can be ignored in assessing compensation, the delays of planning authorities are a factor affecting the market and will be taken into account. There is, moreover, the risk that the requirements of the planning authority may force the purchaser to change his plans and to adopt a different form of development, which might cause the War Damage Commission to refuse a cost of works payment on the grounds that the original hereditament is not being made good. In this event a converted value payment would become payable. In the alternative, a purchase notice might have to be served.

On the other hand, a purchaser of such a property may be able to increase the value of the reinstated building by introducing judicious modern improvements and extensions, which do not alter the essential character of the original building but which can be incorporated during the course of reinstatement at small cost to the purchaser. In such cases, the open market value may exceed the compensation previously payable under section 53 of the Act of 1947.

In cases where the damaged hereditament would be sold in the open market for the purpose of abandoning the reinstatement of the original building and of putting an entirely new form of development on the site, it is probable that the compensation now payable will exceed that previously recoverable under section 53 of the Act of 1947. The vendor would clearly not accept a price less than the value which he could obtain by reinstating the property himself. Moreover, one of the planning assumptions which he is entitled to make even on compulsory purchase is that he is entitled to rebuild

under Third Schedule rights. Any purchaser in the open market who would *voluntarily* abandon the cost of works claim must be of opinion that the value of the site for the purposes of his intended development will compensate for the difference in value between the right to make a cost of works claim and the right to receive a converted value payment. This is often found to be the case when small properties are incorporated into an important scheme of new development in central urban areas. See also examples Nos. 14 and 15 in Chapter X on pages 173-6.

Compensation for war damaged land falling under Rule 5 of section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919

Where land is devoted to a purpose for which there is no general market, compensation on compulsory acquisition may be assessed on the basis of the reasonable cost of equivalent reinstatement where such reinstatement is bona fide intended. This provision applies to property such as churches, hospitals and the like. Where such properties have suffered war damage by reason of which it might be said that they are not actually being devoted to any purpose at the date of service of the notice to treat, doubt might be expressed as to the proper basis of compensation. Section 56 of the Act of 1947, however, suitably amended, is preserved so as to provide that compensation shall continue to be assessed on the basis of equivalent reinstatement in cases where the land would be devoted to such purposes but for the occurrence of the war damage and where the appropriate payment for the damage would be that of a cost of works payment.

Section 12 : Abolition of " prevailing use " basis in special cases

The Act of 1947 made special provision as to compensation payable on the compulsory acquisition of the following classes of land :—

(*a*) land held by local authorities for statutory purposes.

(*b*) operational land of statutory undertakers.

(*c*) land held by charitable trusts or for ecclesiastical or other charitable purposes where the land is devoted to the purposes of the charity (or would be so devoted but for war damage or requisitioning).

(*d*) land held by the National Coal Board for the purposes of their undertaking.

In all the above cases, compensation for land acquired from such bodies was assessed by reference to the use which prevailed generally in the case of contiguous or adjacent land. These provisions are now repealed and the normal rules of assessment by

reference to the open market price will apply. The statutory planning assumptions are, of course, equally available in these special cases as they are in normal cases.

Where land is acquired from statutory undertakers who themselves have acquired the land for the purposes of their undertaking, compensation will be assessed in accordance with the Fourth Schedule to the Town and Country Planning Act, 1944, as provided by section 45 (5) of the Act of 1947, (see legal notes on page 221.)

Section 1 : Purchase Notices

Section 1 of the Act repeals, *inter alia*, section 51 (5) and (6) of the Act of 1947, which make provisions regarding purchase notices served under section 19 of the Act of 1947. For further procedural changes in relation to purchase notices, see Chapter VII on page 121.

Section 51 (5) of the Act of 1947 provided that where a purchase notice was served in consequence of the refusal of permission for development which would have involved the demolition of an existing building, no regard was to be paid, in assessing compensation for the acquisition of the interest, to the value of the standing building, except insofar as the value of its materials exceeded the cost of demolition. This provision is now repealed so that the owner will receive market value of the land and buildings in respect of any purchase notice taking effect after 29th October, 1958.

Section 51 (6) of the Act of 1947 provided that where a purchase notice was served and the Minister directed under section 19 (2) (*b*) of that Act that consent for development be granted on part of the land to which the notice relates, so as to make that part capable of reasonably beneficial use, the effect of such directed grant of permission was to be ignored in assessing the compensation payable for the remaining part. The repeal of this provision means that the assessment of compensation is to reflect any effect on value of the grant of permission by the Minister in these circumstances.

Section 13 : Disturbance allowances ; and disturbance claims generally

Where an acquiring authority serves notice to treat to acquire compulsorily the interest in land held by an occupier of land, it becomes liable to pay compensation for disturbance to the occupier as well as compensation for the value of his interest in the land. Compensation for disturbance arises from the provisions of the Lands Clauses Consolidation Act, 1845, as interpreted in case law, and it is necessary to appreciate that there is no provision for the separate payment of compensation in respect of disturbance but that the amount of loss suffered by an occupier in respect of these

matters is merged into the total figure of compensation payable to him in consequence of the loss of his interest in land.

It is, thus, clearly necessary that any claim made for disturbance should be consistent with the basis of claim in respect of the land and buildings. Prior to the passing of the Town and Country Planning Act, 1947, claims for compensation for land and buildings would take account of the possibilities of development, and where this would necessarily have involved giving vacant possession of the land or discontinuing the present use made of the land, it followed that no disturbance claim could be made by the owner. After the passing of the 1947 Act, the owner would recover existing use value, plus any disturbance claim arising in respect of his existing use and, in addition after the 1st January, 1955, he would recover any unexpended balance of established development value attaching to his interest. The Act of 1959 reverts to the position which existed prior to the 1947 Act, and where the owner claims compensation for his interest in land based on development or other proposals which would, if actually carried out, discontinue his present use of the land, he cannot now expect compensation for the disturbance of his present use of the land.

The Lands Clauses Consolidation Act, 1845, does not oblige an acquiring authority to serve notice to treat upon any person whose interest is no greater than that of a tenant for a year or from year to year.

Section 121, however, of the Lands Clauses Consolidation Act 1845 provides that where a person having no greater interest in land than that of a yearly tenant is required to give up possession before the expiration of his interest therein, he is entitled to recover compensation for the value of his unexpired term of interest, and for tenant right and for other loss or damage which he may sustain. If part only of his lands are taken, there is a right to compensation for damage due to severance and for injurious affection to the remainder of the land.

But where an acquiring authority purchases a landlord's interest and then determines a short tenancy by proper notice or allows it to expire, the tenant might previously have no statutory right to recover compensation for loss of tenancy. For example in a case where the short tenancy is a business tenancy and the acquiring authority serves a 6 months notice under the Landlord and Tenant Act, 1954, after obtaining an appropriate "public interest" certificate under section 57 of that Act, the tenant is precluded from applying for a new tenancy and from obtaining compensation under that Act. Equally he would have no right to compensation under

section 121 of the 1845 Act, because his tenancy had not been interrupted but was brought properly to an end.

It will be appreciated that tenants in these circumstances may well suffer hardship, and this is perhaps particularly true of the rent-controlled tenant and the small shopkeeper.

Section 13 of the Act now gives acquiring authorities a discretionary power to pay allowances for disturbance, as follows :—

(*a*) to any person displaced from a house or other building on land acquired or purchased by agreement. The amount to be paid is such reasonable allowance as the authority think fit towards removal expenses, and

(*b*) to any person carrying on a trade or business in a house or other building on land acquired or purchased by agreement. The amount to be paid is such reasonable allowance as the authority think fit towards the loss sustained by reason of disturbance to trade or business resulting from having to quit. In estimating loss under this heading the authority must pay regard to the period during which the dispossessed person might reasonably have expected to occupy the premises and also to the availability of other premises suitable for the conduct of the trade or business.

It will be observed that no right to recover compensation is given but the matter is left to the discretion of the acquiring authority to make an allowance towards the expenses mentioned in the section. With regard to trades or businesses carried on under short tenancies, it would appear that the provisions of Part II of the Landlord and Tenant Act, 1954, may fall to be taken into account in considering the availability of the premises for their continued occupation. The exclusion of the provisions of the 1954 Act in compulsory purchase cases by virtue of section 39 of that Act applies only to cases of short tenancies where compensation is assessed in accordance with section 121 of the Lands Clauses Consolidation Act, 1945—and, consequently will not apply to allowances payable under this provision of the 1959 Act. There seems to be no reason, however, why such a tenant should not think it reasonable that he should be paid not less than the terminal compensation of two years rateable value provided by that Act (where the circumstances of his tenancy justify this). The amount payable is, however, an *ex gratia* payment.

Similar powers to assist dispossessed tenants are contained in other enactments such as the Housing Act, 1957, but this new provision makes their application general in all cases of compulsory acquisition or purchase by agreement in the shadow of compulsory powers.

Sections 14, 15 and 16 : Long-standing notices to treat

Once a notice to treat has been served, either party has the right to force the acquisition of the property to take place and a means of securing the determination of the compensation payable ; or in certain circumstances the notice to treat may be withdrawn. There is, however, no obligation upon the parties to take action. There are certain cases throughout the country where notices to treat were served years ago and where the acquiring authority, like the Tar Baby, has " said nuthin," and the owner, like Brer Fox, has " laid low." Whilst the parties may have wished to clear up the matter, the owner has not dared to do so as the basis of compensation and level of values applicable are determined by the date of the notice to treat, and, on the other hand, the acquiring authority has felt it would be a palpable injustice to proceed when the only compensation which they are allowed to pay is evidently an inadequate sum and the exercise of their legal rights would consequently create hardship.

Sections 14 and 15 set up machinery to enable these matters to be disposed of, either on a revised footing or on the original basis at the option of the claimant. These sections apply to any notice to treat served before the 6th August, 1947, where all the following conditions apply as at the 16th August, 1959 :—

(1) the land has not been vested in the authority ;

(2) the authority has not entered on and taken possession of the whole or part of the land ;

(3) that compensation has not been paid to and accepted by the claimant (or his duly authorised agent or successor) ;

(4) that compensation has not been determined by the Lands Tribunal (since 1949) or the official arbitrator, or determined under section 58 of the Lands Clauses Consolidation Act, 1845 (which relates to the assessment of compensation in the case of an absent owner):

(5) that the notice to treat has not been withdrawn.

The acquiring authority may not, in these circumstances, proceed with the original notice to treat, or take any steps under it unless they serve a " notice of intention to proceed " upon the current owner of the interest in land to which it related within a period of six months from the 16th August, 1959. If no notice of intention to proceed has been received by the owner before the 16th February, 1960, any long-standing notice to treat as defined by section 14 ceases to have effect in respect of his interest. The form of such notice is prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959, printed in Appendix II on page 443.

Where the authority has served notice of intention to proceed, the owner of the interest may, within six months of the date thereof, elect to have compensation assessed as if the original notice to treat had been served on 1st January, 1958. If the owner does not make this election within the time limit, the authority is entitled to proceed on the basis of the original notice to treat (*i.e.*, the pre-1947 basis). If such election is made, compensation will then fall to be assessed under the provisions of the Acts of 1947 and 1954. It will be remembered that the Act of 1947 provided that compensation was to be assessed on the basis of the " existing use " of the interest, *i.e.*, on the assumption that planning permission would be refused for any form of development of the land except development contained in the Third Schedule of that Act.

The Act of 1954 provided that, in addition to " existing use " value, an owner was entitled to recover the appropriate share of any unexpended balance of established development value attaching to the land. This gives rise to an interesting point. The effect of section 91 of the Act of 1947 was that where a notice to treat had been served before the 6th August, 1947, the owner of the interest was not permitted to make any valid claim for loss of development value, as it was, of course, anticipated that compensation would be paid for the full development value of the interest by reference to the basis of compensation applicable at the date of service of the notice to treat (*i.e.*, 1939 values in most cases, subject to the modifications of the Seventh Schedule of the 1947 Act).

In the case of building land worth, say, £500 per acre by reference to 1939 values, £1,000 per acre for building in 1947 and £3,000 per acre for building purposes as at January, 1958, but only £50 per acre for existing use value at that date, the point becomes of some importance. In these cases the owner will have to consider whether he will be better off to elect for the new basis of compensation or not. His decision would seem to depend upon whether he will be entitled to submit a claim under section 35 of the Act of 1954 for additional compensation over and above existing use value, so as to obtain extra compensation equal to the amount of any claim for loss of development value that would have been established under Part VI of the Act of 1947, had he been in a position to submit such a claim.

It will be remembered that section 35 can only apply if the relevant land does not constitute or form part of the claim area of an established claim, and in cases where there is another interest in such land in respect of which a claim *was* made under Part VI of the Act of 1947 (even if the claim was determined at a nil figure), it would seem unwise of the owner to elect for the new basis of com-

pensation (although he would, of course, be entitled to the appropriate share of any established claim). The operation of section 35 of the 1954 Act is, in any event, subject to an over-riding discretion on the part of the " appropriate authority " as to the amount of such additional compensation which they may think " just and reasonable " in all the circumstances. It is not thought, however, that the Courts would uphold the exercise of such discretion in an arbitrary fashion by the " appropriate authority."

It is clear, however, that where land possessing high development value is affected by these provisions there may be some risk that the amount of compensation payable by virtue of an election made under the Act of 1959 may be less, or will not exceed, the compensation that would be assessed by reference to the basis of valuation current at the date of the original notice to treat.

In determining whether or not to elect to proceed on the basis that notice to treat is deemed to be served on 1st January, 1958, the owner must also take into account the condition of the property at that date. In cases where buildings are affected by long standing notices to treat, the maintenance of such property may have been neglected and that which was in good condition at the date of the original notice to treat may be dilapidated and even derelict on 1st January, 1958. If this should prove to be the case, the acquiring authority is entitled to pay regard to these physical facts in 1958 if an election for that date is made, and it accordingly behoves the claimant to give the matter very careful consideration before exercising the right of choice. See also example No. 16 in Chapter X on page 176.

Where the claimant decides to elect for compensation to be assessed as if the notice to treat had been served on 1st January, 1958, he is required to submit a formal claim containing the information required by section 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, namely :—

(1) the exact nature of the interest in respect of which compensation is claimed ;

(2) details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.

Exclusion of claimants

Where the current owner of an interest affected by a long-standing notice to treat has purchased such interest for value after the date of its original service, such owner is precluded from the right of election. Any person who derives title from a purchaser after

the date of the original notice to treat is also excluded (*e.g.*, a son who inherits from a purchaser). The principle adopted here is that the purchaser must have been aware of the notice to treat at the time he bought the interest in land, and, no doubt, bought it at a suitably adjusted figure, so that no hardship is involved if the land is acquired on the basis of compensation applicable at the date of original service of the notice to treat.

Time limit for settlement of compensation

Where the authority have served a notice of intention to proceed, they are required either to agree the compensation with the owner within one year from the service of such notice, or, alternatively, to refer the question of compensation to the Lands Tribunal for determination before the expiry of that period. If neither of these events has occurred, the notice to treat ceases to have effect in relation to the interest of such owner at the expiry of that period.

Withdrawal of notices to treat

Section 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, enables an acquiring authority to withdraw its notice to treat within six weeks of the service of a notice giving adequate particulars of the compensation claimed. This right is open to the authority where the owner elects to claim compensation as if the notice to treat had been served on 1st January, 1958. If the authority should withdraw in these circumstances, its liability to the owner in respect of the loss suffered or expenses incurred by the service of the notice to treat and its withdrawal is limited to the aggregate of :—

(*a*) any loss suffered or expenses incurred *after* the date of service of the notice of intention to proceed, and

(*b*) expenses reasonably incurred, *before* the date of service of the notice of intention to proceed, in preparing and supporting a claim for compensation.

The effect of these provisions is to enable the claimant to recover all the loss suffered and expenses incurred by the service and withdrawal of the notice to treat as if it had been served on the date of notice of intention to proceed. In addition the owner may recover such reasonable expenses incurred by him in formulating and putting forward any claim for compensation made in response to the notice to treat itself when originally served. No loss sustained by the owner between the date of the notice to treat and the date of the notice of intention to proceed (*e.g.*, loss of rent arising from vacant premises) is recoverable.

Entry upon the land between 29th October, 1958 and 16th August, 1959

Where notice to treat was served before 6th August, 1947 and

it would otherwise qualify as a long standing-notice to treat under section 14 of the 1959 Act apart from the fact that the acquiring authority has taken possession of the land after 29th October, 1958 but before 16th August, 1959 (being the date of commencement of the Act), special provisions apply. The purpose of these special provisions is to prevent acquiring authorities who became aware of the provisions of this Act, when it was published as a Bill, from ousting the owner's new rights as to compensation by entering on the land after the terms of the Bill were published. In these cases, therefore, a duty is placed upon such authorities to serve a notice in the prescribed form (see Appendix No. II on page 444) on the owner of the acquired interest not later than the 15th February, 1960 (being the end of a period of six months after the commencement of the Act). The prescribed notice informs the owner of his rights and obligations and is treated for the purposes of section 15 as if it were a notice of intention to proceed, hence entitling the owner to elect for the basis of compensation which he would prefer to adopt. If the acquiring authority should fail in its duty to serve the prescribed notice by the 16th February, 1960, the owner is entitled to assume that notice of intention to proceed was given on that date and to claim accordingly.

In these special cases no restriction is imposed on the owners right to recover compensation if the acquiring authority withdraw the notice to treat within six weeks of receiving particulars of the claim made. In this event the owner will be entitled to recover all loss suffered or expenses incurred since the date of service of the original notice to treat.

Section 17 : Outstanding rights to compensation for planning restrictions at the date of compulsory purchase

Where notice to treat has been served after the 29th October, 1958, for the purchase of an interest in land, it may happen that circumstances have arisen in respect of that land which would entitle the owner of an interest therein to submit a claim for compensation in respect of the depreciation in the value of his interest. These circumstances arise where :—

(*a*) planning permission to develop land has been refused, or

(*b*) planning permission to develop land has been granted subject to onerous conditions, or

(*c*) an existing planning permission has been modified, or

(*d*) a previously existing planning permission has been revoked.

In all the above circumstances the owner of the interest being acquired may be entitled to claim compensation for the planning

restriction by virtue of Part II or Part V of the Town and Country Planning Act, 1954, or under section 22 (1) of the Act of 1947.

It will be remembered that where such a claim for compensation is made and determined, the amount paid is registered as a charge on the land by virtue of section 28 of the 1954 Act. When this happens such an amount charged has to be repaid before any future development of the land is commenced unless the Minister remits the whole or part of the registered charge under the provisions of section 29 of the 1954 Act. If such land is bought in the open market for development purposes, the price paid is naturally reduced because of the liability to repay the charge, and similarly the amount of compensation payable for the compulsory acquisition of such land under the provisions of this Act will be reduced in appropriate cases. A defect would exist in this machinery, however, if a notice to treat were served after the date of a planning decision which gives rise to a claim for compensation, but no notice as to the compensation payable for the planning restrictions had been registered by the date of the notice to treat (either because the claim has not yet been made, or settled or for any other reason).

Section 17 of the 1959 Act provides that where a notice stating that compensation has become payable for depreciation of the value of an interest in land is registered on or after the date of service of a notice to treat for the compulsory acquisition of that interest, compensation for the compulsory acquisition shall be assessed as if the registration had taken place before the date of service of the notice to treat. This applies whether or not a claim for compensation in respect of the planning decision had been made at the date of the notice to treat.

The effect of this provision is to ensure that double compensation is not paid to an owner, who must take care, however, to ensure that any relevant claim for compensation in respect of the planning decision is made and the compensation recovered. It will be appreciated that a recent refusal of planning permission or a grant of permission subject to severe conditions may have an important bearing on the statutory assumptions as to planning consent, where these are subject to the proviso that the planning permission to be assumed must be such as might reasonably have been expected to be granted. This, in turn, might reflect on the compensation assessed for the compulsory acquisition. It is, accordingly, incumbent on the owner to safeguard his position by submitting any claim to which he might be entitled under Part II or Part V of the 1954 Act or under section 22 (1) of the Act of 1947, even if notice to treat has been served upon him before the claim has been dispatched.

CHAPTER VI

PART II OF THE ACT

(A.) SUMMARY

1. The main object of Part II of the 1959 Act—which has no connection with Part I—is to reduce Ministerial control over certain kinds of land transactions carried out by local authorities and other public bodies. The principal sections of Part II (sections 22-27 and 30) are devoted to this end : the two remaining sections (28 and 29) are dealt with below under No. 2 of this Summary.

None of the provisions of Part II apply in any way to compulsory acquisitions, so that the general Ministerial control provided by the relevant statutes and in particular under the Acquisition of Land (Authorisation Procedure) Act 1946 in respect of compulsory acquisitions remains quite undisturbed.

Three kinds of land transactions are affected by the provisions of Part II. These are :—

(*a*) acquisitions of land by agreement,

(*b*) appropriations of land from one statutory purpose to another, and,

(*c*) disposals of land.

These forms of transactions can sometimes be carried out by public bodies, under the relevant empowering statutes, without any kind of Ministerial control ; but in most cases the power to carry out such transactions is made subject to the consent or authorisation of a Minister. Briefly, Part II now removes the necessity of obtaining such consent or authorisation in cases where certain listed public authorities (which are set out in the Fourth Schedule of the Act and listed below) carry out any of the above kinds of transaction on or after the 16th August, 1959. In each case there are specified exceptions of great importance.

Part II also makes some consequential changes. Thus it also frees from Ministerial control the application of capital money arising from a disposal of land by any of the authorities listed in the Fourth Schedule, where such money falls to be applied on or after the 16th August, 1959, and is either less, in amount, than certain defined limits or is applied for certain specified purposes.

Both where land has been appropriated from one statutory purpose to another, and where capital money arising from a disposal of land has been applied for its permitted purposes, adjustments have to be made in the accounts of the relevant public authority to reflect

the change. Part II of the Act now also provides that such necessary adjustments in the accounts of any of the authorities listed in the Fourth Schedule are freed from Ministerial control, except in certain specified circumstances.

As mentioned above, it is only certain specified public authorities which benefit from the provisions of Part II. All other bodies which have power to acquire land by agreement, to appropriate it from one purpose to another or to dispose of it still remain subject to any control imposed on them by statute.

The authorities affected by Part II are set out in the Fourth Schedule and are :—

(*a*) The Council of any county, county borough or county district, or of any metropolitan borough.

(*b*) The Common Council of the City of London.

(*c*) The Council of the Scilly Isles.

(*d*) Joint Education Boards.

(*e*) Joint Planning Boards.

(*f*) Joint Boards set up for any purposes under the Public Health Act, 1936, or under sections 279 or 280 of the Public Health Act, 1875, or for drainage purposes by means of sewers or for sewage disposal purposes under any other Act.

(*g*) Coast Protection Boards.

(*h*) Combined Police Authorities.

(*i*) Fire Authorities under a combination scheme.

(*j*) River Boards.

(*k*) Drainage Authorities.

(*l*) Statutory Water Undertakers.

(*m*) Joint Boards set up under local Acts for the provision of crematoria.

For the relevant statutes under which the above authorities are established, see the Fourth Schedule and the notes thereto, on pages 391–5. All these authorities are referred to below as " the listed authorities."

It should be noted that none of the changes brought about by the provisions of Part II apply where it is " corporate land " which is acquired by agreement, or appropriated, or disposed of. " Corporate land " is land owned by or held in trust for a municipal corporation, otherwise than for an express statutory purpose, or land to be acquired or held in trust as above. Broadly speaking, this means land acquired by municipal corporations before statutory functions were laid upon them, or, for example, land given to them.

The dispensation from the requirements of Ministerial consent, which is provided by Part II, applies, generally speaking, to all forms of such statutory requirements, except in the case of enactments

which (*a*) confer a power (to acquire, appropriate or dispose of land) on persons described generally therein but (*b*) do not specifically refer to local authorities or any of the other listed authorities. In these latter cases, there is no dispensation from any requirement of Ministerial consent imposed on such a power, even if any of the listed authorities happen to fall within the general description of persons given in the enactment. But this exception does not extend to enactments which confer such a power on "local authorities" generally, or on any class of local authorities which includes any listed authority, or on any class of listed authorities together with any other class of non-listed local authorities. In such cases the listed authorities are freed from any requirement of Ministerial consent, but non-listed authorities remain bound.

2. As indicated in the opening paragraph, there are two sections in Part II which deal with related matters but strictly stand apart from the rest.

Section 29 provides that any acquisition, appropriation or disposal of land carried out on or after the 16th August, 1959 by any of the listed authorities shall not be rendered invalid by a failure to obtain a required Ministerial consent for the transaction in question. This operates only in favour of persons claiming under the authority concerned. The section further frees any person who deals with such authorities in respect of any of these land transactions, from the need to see or inquire whether any required consent has been given.

Section 28 now gives to parish councils for the first time a general power to appropriate land, for any purpose approved both by the Minister of Housing and Local Government and by the parish meeting. A similar power is given to parish meetings in those rural parishes which have no separate parish council. This power to appropriate is broadly similar to that given to local authorities other than parish councils by section 163 of the Local Government Act 1933.

(B.) ACQUISITION OF LAND BY AGREEMENT (SECTION 22)

Wide powers of acquiring land by agreement without any form of Ministerial control are already possessed by public authorities. Thus, for example, under section 157 of the Local Government Act 1933, local authorities (other than parish councils) may acquire by agreement land both inside and outside their own areas without obtaining the consent or sanction of any Minister, where the land is immediately required for the purpose for which it is acquired.

But in a number of cases the relevant enactments provide that land may be acquired by agreement only with the approval or consent of a Minister or Government department. Notable examples are :—

(*a*) section 158 of the Local Government Act 1933 which enables local authorities (other than parish councils) to acquire land by agreement in advance of immediate requirements with the consent of the appropriate Minister (now generally the Minister of Housing and Local Government) ;

(*b*) section 40 of the Town and Country Planning Act, 1947, which enables such local authorities to acquire by agreement land required either to secure the development of an area defined as an area of comprehensive development or to secure the use of that land in accordance with the development plan, provided the consent of the Minister of Housing and Local Government is obtained ;

(*c*) section 103 (5) of the National Parks and Access to the Countryside Act 1949 which provides that local authorities when acquiring land by agreement for the purposes of that Act require the consent of the Minister of Housing and Local Government.

Section 22 of the 1959 Act now provides that in all such cases where land is acquired in pursuance of a contract made on or after the 16th August, 1959 by any of the " listed authorities," any consent of a Minister or Government department which was previously required is dispensed with, if :—

(*a*) the land is *immediately required* for the purpose for which it is acquired ; or

(*b*) the land is bought *in advance of immediate requirements*, provided that it is within the area of the acquiring authority.

Some of the enactments which require a Minister's consent also empower that Minister when giving his consent to impose conditions. An example of this is section 158 of the Local Government Act 1933 referred to above. When this is so, then in any case in which the consent of the appropriate Ministers is now dispensed with, his right to impose such conditions is also removed.

In all such cases the Ministerial consent is dispensed with, however the requirement in the relevant statute was phrased. Thus it does not matter for this purpose whether it uses the word " consent," " approval," " sanction " or " authorisation " ; nor whether the requirement of a Ministerial consent is contained in the same enactment which empowers the relevant authority to acquire land by agreement, or in a different one. Any provision in an enactment requiring a Minister to be " satisfied " as to certain

matters before such an acquisition can take place is similarly dispensed with. And any such requirement is also dispensed with, whether it required a Ministerial consent for all such acquisitions or only for acquisitions in specified circumstances.

There is one consequential change in cases where worked ironstone land is acquired by local authorities for reclamation, under section 17 of the Mineral Workings Act 1951. Section 17 gave a right to acquire such land subject to the consent of the Minister of Housing and Local Government, and section 18 gives a local authority which has acquired land under section 17 a right to claim a grant, from the Minister, in respect of the cost of acquiring the land. This right to claim a grant under section 18 is now removed in cases where an acquisition takes place without the Minister's consent in accordance with the new dispensation. But the amendment is so worded that it does not prevent the Minister's consent being sought for such acquisitions, although it is no longer required, and if such consent could be obtained, it would seem that the authority would qualify for a grant.

(C.) APPROPRIATION OF LAND, AND ADJUSTMENT OF ACCOUNTS

Appropriation (section 23)

It will be recalled that public bodies which have wide statutory functions to perform are generally empowered to appropriate land, acquired or held for one statutory purpose, to another of their statutory functions. But in almost every case this power is given subject to Ministerial control. Such control takes the form of a giving of consent or approval by a Minister or Government department, with, in some cases, a power for the Minister concerned to impose conditions.

Notable examples of the power to appropriate are :—

(*a*) Section 163 of the Local Government Act 1933, which empowers local authorities (other than parish councils) to appropriate such land for any purpose approved by the relevant Minister (now generally the Minister of Housing and Local Government) being a purpose for which such authorities are authorised to acquire land ;

(*b*) Section 19 of the Town and Country Planning Act 1944 (now contained in the Eleventh Schedule of the 1947 Act) which enables local authorities to appropriate land acquired or held for planning purposes, subject to the consent of the Minister of Housing and Local Government and to any conditions which he imposes ;

(*c*) Section 104 (3) and (5) of the National Parks and Access to the Countryside Act 1949, which gives to local authorities a special power to appropriate land which is acquired or held for their functions under that Act, subject to the consent of the Minister of Housing and Local Government and to any conditions which he may impose.

Except in two important groups of cases, all such powers of appropriation, when exercised by any of the " listed authorities " on or after the 16th August, 1959, are freed from such Ministerial control by virtue of section 23 of the 1959 Act. This means that any Ministerial consent, or approval of the purpose to which the land is appropriated, is dispensed with, and that any Ministerial power to impose conditions on the giving of his consent or approval is also removed.

Exceptions

The exceptions to the general dispensation fall under two headings.

First, there are cases where a form of Ministerial consent is preserved, but not necessarily the precise consent required previously. These cases arise where any of the listed authorities propose to appropriate :—

(*a*) *land which they acquired either compulsorily, or by agreement at a time when they were actually authorised to acquire compulsorily.*

Where such land is no longer needed for the purpose for which it was acquired or purchased, then on the *first* appropriation of it to another purpose on or after the 16th August, 1959, the consent of the Minister concerned with the function for the purposes of which the land was acquired is now needed. But this is so only where Ministerial consent was previously required for the appropriation, such previous consent being now replaced by the above consent.

On subsequent appropriations after the first, no control is preserved.

In some cases this will mean that the same Minister as before will have to give his consent to such first appropriations. But this method of dispensing with existing consents and reimposing the above consent is adopted to ensure uniformity. It will be noticed that no form of control is imposed on appropriations which were not previously controlled. The purpose, of course, in keeping controls where previous controls existed is to ensure that land so acquired is not directed to other purposes without good cause.

The above rule, however, does not apply to appropriations of land which was acquired or purchased by the relevant authority as a result of a " purchase notice " under this Act (see Part IV) or any other Act (*e.g.*, section 19 of the 1947 Act or section 6 (4) of the New Towns Act, 1946). In such cases all Ministerial control is dispensed with under the general rule above, even on a first appropriation of the land.

Any consent of a Minister required under Part II of this Act can be given by him generally for all the listed authorities, or for any class of them, or in particular cases, with or without the imposition of conditions.

(*b*) *land forming all or part of an " open space ", other than a common or fuel or field garden allotment.* In such cases if any form of Ministerial consent was necessary before the 16th August, 1959, the consent of the Minister of Housing and Local Government is now required for appropriations on or after that date. The Minister has the same power of giving general or particular consents, with or without imposing conditions on the giving of his consent. For the precise meaning of the terms " open space," " common " and " fuel or field garden allotments," see page 257.

Secondly, there are five cases in which an existing form of control is preserved exactly in its previous form. These cases arise when appropriations are made under the following enactments :—

(*a*) *Section* 42 *of the* 1947 *Act*, which empowers local authorities to appropriate, for planning purposes, land held by them and forming a common, fuel or field garden allotment or an open space, under an order which is always subject to special parliamentary procedure unless the Minister of Agriculture, Fisheries and Food or the Minister of Housing and Local Government certifies that equivalent land is being given in exchange for the appropriated land, or that the appropriate land is required for road widening and that such exchange is unnecessary.

(*b*) *Section* 28 *of the Land Settlement* (*Facilities*) *Act*, 1919, which imposes both Ministerial and Parliamentary control on the appropriation of land forming common land for the purpose of allotments.

(*c*) *The provisions of any local Act* where the land appropriated constitutes part of a common, or formerly constituted part of a common, and is held or managed by a local authority under that Act. In such cases the consent of the Minister of Agriculture, Fisheries and Food is generally required for an appropriation.

(*d*) *Section* 2 (7) *of the Small Holdings and Allotments Act* 1926 *as applied by section* 12 *of the Agricultural Land* (*Utilisation*) *Act* 1931 which requires the consent of the Minister of Agriculture, Fisheries and Food for the appropriation of " cottage holdings," where that Minister has made a contribution towards any loss incurred in providing such cottage holdings.

(*e*) *Any statutory provisions* which require the consent of the Minister of Agriculture, Fisheries and Food to an appropriation of land used as allotments. It should be noticed in this connection that, under section 22 (1) (*b*) of the Land Settlement (Facilities) Act, 1919, the consent of both the Minister of Agriculture, Fisheries and Food and the Minister of Housing and Local Government is required for such appropriations by the councils of boroughs, urban districts and parishes in cases dealt with by that section : in such cases (and in any similar cases under other statutes) the consent of the former Minister still remains a requirement, but in relation to a borough council or an urban district council the other consent is now dispensed with under the general rule. Under section 8 of the Allotments Act, 1925, the consent of the former Minister is required for the appropriation of land which was purchased or held for allotments, but formerly that Minister had to consult with the Minister of Housing and Local Government before giving his consent. While that consent is now preserved by this exception, it is specially provided that the latter Minister need no longer be consulted for this purpose.

It will be seen from the above that the existing consents which are preserved in these exceptional cases are clearly retained to protect land in which, however indirectly, there is some special public interest at stake. The same is also true of the two previous cases in which existing requirements of consent are removed but a similar new form of control imposed.

With these exceptions, therefore, in any case where the power to appropriate is exercised by any of the listed authorities on or after the 16th August, 1959, all Ministerial consents previously required are now dispensed with. And this is so, however the requirement in the relevant statute was phrased. Thus it does not matter whether it uses the word " consent," " approval," " sanction," or " authorisation " ; nor whether the requirement was contained in the same enactment which empowers the relevant authority to appropriate the land, or in a different one. Moreover any provision in an enactment requiring a Minister to be " satisfied " as to certain matters before such an appropriation takes place is

similarly dispensed with ; and any requirement of consent is dispensed with, whether it required a Ministerial consent for all such appropriations or only for appropriations in specified circumstances.

Not only are such requirements of Ministerial consent removed, but the power, which sometimes accompanies such a requirement, for the Minister concerned to impose conditions on the granting of his consent is also abolished. Thus the power to impose conditions which is given by section 19 of the Town and Country Planning Act 1944 (see above) is removed together with the requirement of the consent of the Minister.

One other special change is also effected by section 23 of the 1959 Act. Under section 163 of the Local Government Act 1933, referred to above, local authorities are prohibited from carrying on certain so-called " bad neighbour " activities (such as the sinking of wells or the construction of cemeteries, sewage farms or hospitals for infectious diseases) on land appropriated under that section, unless the appropriate Minister (generally now the Minister of Housing and Local Government) authorises them to do so. The requirement of this authorisation is now removed, when such works are carried out on the appropriated land on or after the 16th August, 1959. But section 163 of the 1933 Act still provides that such works must not create a nuisance : the remedy in such cases where a nuisance is caused is still the common law action for an injunction and damages, and the section prevents any defence being raised that authorisation for such a nuisance has been given.

Adjustment of accounts (section 24)

Under most enactments giving statutory powers of appropriation, it is provided that when an appropriation takes place, such adjustment is to be made in the accounts of the appropriating authority as the relevant Minister may direct.

Thus section 163 (3) of the Local Government Act 1933 provides that, after appropriation under that section by a local authority (other than a parish council), such adjustment shall be made in the accounts of that authority as the relevant Minister (who is now generally the Minister of Housing and Local Government) shall direct.

Except in one category of cases, the power of Ministers under the relevant enactments to give directions as to the necessary adjustments in accounts, after appropriations by any of the " listed authorities," is now abolished on or after the 16th August, 1959. After that date the adjustment to be made is such " as may be requisite in the circumstances," and it is for the authority concerned to make that adjustment without Ministerial direction.

It should be noticed that this dispensation applies to any such

adjustment to be made after the commencement of this Act, whether or not the appropriation which gives rise to the adjustment is one for which the Ministerial consent is dispensed with by virtue of section 23 of the Act.

The exceptional cases where the requirement of a Ministerial direction is retained are those cases where *either* the purpose for which the land was held immediately before it was appropriated, *or* the new purpose to which it is appropriated, is a function for which the appropriating authority receives a " grant " as defined below. Where this is so and a Ministerial direction was previously required, the Minister of Housing and Local Government must now (on or after the 16th August, 1959) direct what adjustment should be made in the authority's accounts. He is given the power to make such directions generally for all the listed authorities, or for any class of them, or to give specific directions in any particular case ; in any event he may impose conditions on the giving of such directions.

The " grant " referred to above is a grant or contribution from a government department, payable out of monies provided by Parliament. It will however be remembered that the Local Government Act 1958 introduced a system of general grants payable by the Minister of Housing and Local Government to county councils and county borough councils in place of many of the specific grants previously paid ; and that in the same year the Housing (Financial Provisions) Act 1958, (a consolidating Act,) brought together the provisions relating to Exchequer subsidies in respect of housing provided by local authorities. But such general grants or subsidies under these two Acts are not " grants " for this purpose ; it is only when a grant *other than* a general grant or subsidy under the 1958 Acts is payable in respect of *either* the purpose for which the land was held prior to its appropriation *or* the purpose to which it is appropriated, that Ministerial control over the consequent adjustment of accounts is retained.

The effect, therefore, in such specifically " grant-aided " cases is that a previously existing control exercised by any Minister has now become a control exercised by the Minister of Housing and Local Government. But in any cases where no previous control existed, there is no new control imposed.

(D.) DISPOSAL OF LAND, APPLICATION OF MONIES, AND ADJUSTMENT OF ACCOUNTS

1. Disposal of land (section 26)

Authorities which are empowered to hold land for statutory purposes possess wide powers of disposing of that land—by letting,

selling or exchanging it—but generally those powers too are made subject to Ministerial control—again in the form of Ministerial consent, with or without a power on the part of the relevant Minister to impose conditions on the granting of his consent.

For example, sections 164 and 165 of the Local Government Act 1933 provide that local authorities (other than parish councils) may sell or exchange land held by them, or let it for a term of more than seven years, subject to the consent of the appropriate Minister (who is generally the Minister of Housing and Local Government). But where they wish to let such land for a term of seven years or less, they may do so without obtaining such consent.

With certain given exceptions the requirement of Ministerial consent which is contained in any such enactment empowering any of the " listed authorities " to dispose of their land is now dispensed with, where any of those authorities exercise that power on or after 16th August, 1959. And the relevant Minister's power (if it was given to him) to impose conditions on the granting of his consent is also removed.

The power to dispose of land, which is thus freed from Ministerial control, is any power to sell, exchange or let the land, or to create any easement or other right over the land, or to dispose of it in any other way except by appropriating it, or giving it away, or of mortgaging it.

It does not matter for this purpose how the relevant requirement was phrased ; nor that it was contained in a different enactment from that empowering the authority to dispose of its land. Equally any provision in such enactments requiring a Minister to be " satisfied " as to certain matters before a disposal of land can take place is treated in the same way and thus dispensed with. Moreover dispensation takes place whether the relevant Minister's consent was required for all such disposals of land or merely for disposals in given circumstances—as is the case under section 164 of the Local Government Act 1933, referred to above.

Exceptions

The exceptions to the general dispensation fall under two headings, in the same way as under section 23, see above.

First, there are cases where a form of Ministerial consent is preserved, but not necessarily the precise form of consent required previously. These cases arise where any of the listed authorities propose to dispose of :—

(*a*) *land which they acquired compulsorily, or by agreement at a time when they were actually authorised to acquire compulsorily.* Where such land was so acquired or purchased for

one purpose and has not been appropriated subsequently to another purpose, then if any form of Ministerial consent was previously required for its disposal, the consent of the Minister concerned with the function for which the land was acquired is now necessary for its disposal on or after the 16th August, 1959. That Minister can now give such consent generally to all the listed authorities, or to any class of them or specifically in particular cases ; in any event he may impose conditions on the giving of his consent.

This exceptional rule, however, which preserves Ministerial control in such cases does not extend to cases where the land was acquired or purchased as a result of a " purchase notice " under this Act (see Part IV) or any other Act (*e.g.*, section 19 of the 1947 Act or section 6 (4) of the New Towns Act, 1946). In such cases all Ministerial consents to which the general dispensation applies are removed, even though the land has not been appropriated for other purposes since its acquisition or purchase.

(*b*) *land forming all or part of an open space, other than common land or fuel or field garden allotments.* In such cases if any form of Ministerial consent was necessary before the 16th August, 1959, the consent of the Minister of Housing and Local Government is now required for disposals on or after that date. The Minister has the same power of giving general or particular consents, with or without imposing conditions on the giving of his consent.

(*c*) *land at a less-than-best price, consideration or rent.* Where any land is sold, exchanged or let at a price, consideration or rent which is less than the best price, consideration or rent which could be reasonably obtained, having regard to any restrictions or conditions (including any conditions as to payment or giving security for payment) to which it is subject when it is disposed of, then if any form of Ministerial consent was necessary before the 16th August, 1959 and is dispensed with under the general rule above, the consent of the Minister of Housing and Local Government is now required for such disposals on or after that date. Again the Minister has the same powers of giving general or particular consents, with or without imposing conditions. No consent is now necessary for any disposal of land on or after the 16th August, 1959 where the best price, consideration or rent is obtained, provided of course that none of the other of these exceptions apply.

It should be noted that the terms " best price," " best rent," etc., would probably include any special value which the relevant

land might have to a particular private purchaser (*e.g.*, the special value to a department store of a site immediately adjoining the store), if a price which reflects that special value could be obtained by reasonable endeavour. If the attempt to achieve such a price would involve unreasonable risks or difficulties, the general market value would constitute the best price.

Secondly, there are eight cases in which an existing special control is preserved exactly in its existing form. These cases arise where any of the listed authorities (in most cases they will be local authorities) propose to dispose of land of any of the following kinds :—

(*a*) *land in, or surrounded by, or adjoining a clearance area,* which the authority concerned has purchased under Part III of the Housing Act, 1957. Subsection (2) of section 47 of that Act as amended by the Seventh Schedule of this Act requires the consent of the Minister of Housing and Local Government for any sale, exchange or letting of such land at a figure less than the best price, consideration or rent. This consent is preserved in such cases, and the substituted consent now required (under (*c*) immediately above) in other cases where a figure less than the best price, consideration or rent is obtained does not apply.

(*b*) *a house provided by a local authority as a housing authority under Part V of the Housing Act,* 1957. The local authority has the power, under section 104 of the Housing Act, 1957, of selling or letting such a house, but the consent of the Minister of Housing and Local Government was previously necessary in all cases. This consent is still required for disposal of such houses on or after the 16th August, 1959, if the authority has at any time received either any Exchequer subsidy or other payment for providing the house, under any of the enactments set out in section 58 (2) of the Housing (Financial Provisions) Act, 1958, or any other enactments superseded by those set out in that section. But where no such subsidy has been paid, the consent is dispensed with under the general rule.

(*c*) *land in or adjacent to an area of comprehensive development which was acquired or held for planning purposes under Part IV of the* 1947 *Act.* Section 19 of the Town and Country Planning Act, 1944, enables local authorities, which have acquired or hold land under sections 38 or 40 of the 1947 Act as part of or adjacent to an area of comprehensive development, to dispose of such land, but only with the consent of the Minister of Housing and Local Government. When a local authority

exercises this power on or after the 16th August, 1959, it will still require this consent and this is no doubt designed to ensure that, on the disposal of land so acquired, the previous occupants of the land before its acquisition are, so far as possible, re-accommodated on it on terms settled with due regard to the price at which the land was acquired from them, as section 19 (6) of the 1944 Act requires.

(*d*) *land which constitutes, or formerly constituted part of a common and is held or managed by the local authority under a local Act.* In such cases the consent of the Minister of Agriculture, Fisheries and Food is generally required, and this control is retained where the relevant local authority intend to dispose of that land.

(*e*) *land at a price, consideration or rent which is less than the current market value*, under any local enactment which requires the consent of a Minister for such a disposal. In such cases the consent of the specified Minister is preserved, and the requirement as to consent now substituted in other cases where a figure less than the best price, consideration or rent is obtained does not apply. (See above, under (*c*) on page 94.)

(*f*) *a cottage holding, provided under section* 12 *of the Agricultural Land* (*Utilisation*) *Act* 1931, where the Minister of Agriculture, Fisheries and Food, under section 2 of the Small Holdings and Allotments Act 1926, has made a contribution towards any loss incurred in so providing it. Where that Minister has made such a contribution, he retains the control over any disposal of the cottage holding, given to him by section 2 (7) of the latter Act.

(*g*) *a small holding*, where the Minister of Agriculture, Fisheries and Food has contributed towards any loss incurred in providing the holding and the authority proposes to relax or dispense with any of the statutory conditions under which the holding has to be held. In such cases the consent of that Minister is required for the relaxation or dispensation of such conditions, either on or after the sale of such a holding.

(*h*) *land used as allotments*, where under any statutory provisions the consent of the Minister of Agriculture, Fisheries and Food is required for the disposal of the land. Such control is still retained. For example, under section 8 of the Allotments Act 1925 it is provided that a local authority cannot dispose of land, which it had purchased or appropriated for use as allotments, for any other purpose without the consent of that Minister given after consultation with the Minister of Housing

and Local Government. This consent is retained ; but it is now specially provided that the latter Minister need no longer be consulted for this purpose.

2. Application of capital monies (section 27)

When public authorities dispose of land held by them under statutory powers, the application by them of the capital monies which arise from the disposal of the land has generally been made subject to Ministerial control.

For example, local authorities (other than parish councils) which have exercised their statutory powers of disposal under the Local Government Act 1933 can, under section 166 of that Act, apply any resulting capital monies only in a manner approved by the appropriate Minister (who is now generally the Minister of Housing and Local Government).

In cases where land is disposed of by any of the listed authorities and any resulting capital monies fall to be applied on or after the 16th August, 1959, section 27 of the 1959 Act now provides that any Ministerial consent formerly required for such application shall be dispensed with, if :—

(1) the capital monies to be applied do not exceed :

(*a*) £1,000, where the relevant authority is the Council of a county, county borough or metropolitan borough, or the Common Council of the City of London, or

(*b*) the lesser of (i) £1,000 and (ii) the product of the rate of 1d. in the pound, where the relevant authority is the Council of a county district or the Council of the Scilly Isles, or

(*c*) £500, where the relevant authority is any other of the authorities listed in the Fourth Schedule ; or

(2) the capital monies are to be applied :

(*a*) in repayment of a debt which was wholly or partly incurred in acquiring the land now disposed of, or

(*b*) in repayment of any debt repayable over a period, where there are still 15 years or more to go before that period ends, or

(*c*) for a purpose for which the authority concerned has obtained the consent of a Minister to borrow money repayable over 15 years or more, or has been authorised by a local Act to do so, or

(*d*) out of a capital fund established under section 1 of the Local Government (Miscellaneous Provisions) Act 1953, or equivalent local Acts. The 1953 act empowers local authorities to establish a capital fund, and when monies derived from the disposal of land are paid into and then applied out of such a capital fund, it is provided that they shall be repaid by instal-

ments out of the account into which they are advanced. An equivalent local Act is any Act having a similar provision for repayment.

But it should be noted that, in cases which fall under this heading, the dispensation from consent does not operate to remove the special right which the Minister of Housing and Local Government has to determine the amount which may be applied out of any such fund (either under section 2 (3) of the 1953 Act or any similar right under a local Act) in any one transaction.

In all the above cases the Ministerial consent is dispensed with, however the requirement in the relevant statute was phrased. Thus it does not matter whether it uses the word " consent " " sanction," " approval " or " authorisation," nor whether the requirement is made in the same enactment which empowers the relevant authority to apply the capital monies, or in a different one. Moreover any provision requiring a Minister to be " satisfied " as to certain matters before such an application is made is dispensed with, and equally the requirement is removed, whether it made a Ministerial consent necessary for all such applications of capital money, or merely for such applications in certain circumstances.

3. Adjustment of accounts (section 27)

Enactments dealing with the application of capital monies resulting from a disposal of land generally require appropriate adjustments to be made in the accounts of the authority concerned in accordance with the directions of a Minister.

After any application of capital monies resulting from the disposal of land by any of the listed authorities, then any adjustment which has to be made in the accounts of that authority on or after the 16th August, 1959, must be such adjustment " as may be requisite in the circumstances," and is to be made without Ministerial direction.

It should be noticed that such dispensation applies to any adjustment which falls to be made after the commencement of the Act, whether or not the application of capital monies which gives rise to the adjustment is one for which a Ministerial consent is dispensed with by virtue of the provisions described under the previous heading.

There is one class of cases which forms an exception to this general rule. These exceptional cases are where the purposes for which the land disposed of was used, or the purpose for which the capital monies are applied, is a purpose for which the authority concerned receives a grant as defined below. Where this is so, the

Minister of Housing and Local Government must direct what adjustment should be made in the authority's accounts. The Minister is given the power to give such directions generally for all the listed authorities, or for any class of them, or to give specific directions in any particular case ; in any event he may impose conditions on the giving of such directions.

The " grant " referred to above is a grant or contribution from a government department, payable out of monies by Parliament. As already recalled on page 92, the Local Government Act 1958 introduced a system of general grants payable by the Minister of Housing and Local Government to county councils and county borough councils in place of many of the specific grants previously payable ; and that in the same year the Housing (Financial Provisions) Act 1958, a consolidating Act, brought together the provisions relating to Exchequer subsidies payable in respect of housing provided by local authorities. But such general grants or subsidies under these two Acts are not " grants " for this purpose ; it is only when a grant *other than* a general grant or subsidy under the 1958 Acts is payable in respect of *either* the purpose for which the land was held prior to its disposal *or* the purpose for which the capital monies are applied, that Ministerial control over the adjustment of accounts is retained.

The effect therefore in such specifically " grant-aided " cases is that any previously existing control exercised by any Minister has now become—as regards adjustments made on or after the 16th August, 1959 a control exercised by the Minister of Housing and Local Government.

(E.) TRANSACTIONS MADE WITHOUT REQUIRED CONSENTS (SECTION 29)

In a recent case (*Rhyl U.D.C.* v. *Rhyl Amusements Ltd.*, see page 277 below) it was held that a lease granted by a local authority without a consent required by the statute under which the lease was granted was *ultra vires* and void. This decision was in favour of the local authority concerned, which had itself sought a declaration to that effect.

Section 29 now provides that an acquisition, an appropriation or a disposal of land made on or after the 16th August, 1959 by any of the authorities listed in the Fourth Schedule shall not be rendered invalid by reason of a failure to obtain any consent of a Minister required by statute. But this provision operates only in favour of a person claiming under the authority, *e.g.*, a purchaser or lessee from the authority, or his successors in title.

Equally a person dealing with a listed authority or with another person claiming under such an authority in relation to the acquisition or disposal of land or in relation to land appropriated by that authority need not now trouble to inquire whether any consent of a Minister required by statute has been or was obtained. This means that the obtaining of such a consent is treated virtually as a matter of " internal " administration, so far as the person dealing with the authority is concerned.

It will be noticed that the protection given by this section only applies where it is one of the authorities listed in the Fourth Schedule which carries out the transaction concerned. So far as transactions carried out by other authorities are concerned, no protection is afforded.

(F.) POWER OF APPROPRIATION GIVEN TO PARISH COUNCILS (SECTION 28)

Hitherto parish councils have possessed only limited powers of appropriation. It will be recalled that parish councils have the power to acquire land by agreement under section 167 of the Local Government Act 1933 and to let land under section 169, and to sell or exchange land under section 170 of that Act. But there was no general power of appropriation given to parish councils, similar to that given to other local authorities by section 163 of the 1933 Act. Parish councils have had to rely on limited powers, such as that given by section 4 of the Parish Councils Act 1957 for the provision of parking places for bicycles and motorcycles, or by section 7 of the Open Spaces Act 1906 for the provision of an open space.

Largely as a result of representations by the National Association of Parish Councils, a general power is now given by section 28 of this Act to parish councils to appropriate land, which is held by them, for any other purpose approved both by the Minister of Housing and Local Government and by the parish meeting.

A similar power is given (with some exceptions set out below) to parish meetings themselves in those rural parishes which have no separate parish council. Hitherto parish meetings have had to rely on being able to obtain an order from the county council investing them with such powers of appropriation as parish councils have hitherto possessed. The new provision means therefore that generally speaking, parish meetings now enjoy the same general power to appropriate land as parish councils do, without reference to the county council.

This general power of appropriation is additional to such limited powers of appropriation as parish councils already possess,

and will not apply in those cases in which such other powers are already held or in which authorisation to appropriate may be obtained. In those latter cases, therefore, the exact extent of the power or authority to appropriate and the question whether any consent or approval is required will depend alone on the particular statute concerned. See, for example, section 22 of the Land Settlement (Facilities) Act 1919, mentioned below in relation to parish meetings.

When land is now appropriated under this general power by a parish council or meeting, such appropriation will not affect or prejudice any covenant or restriction under which the council or meeting holds the land ; nor may the council or meeting create or permit any nuisance on land appropriated by them under this general power. If a parish council or meeting, under this general power, appropriates land which had been compulsorily acquired under an Act or Order incorporating the Lands Clauses Acts, and then executes any works on that land, an owner of any other land which is injuriously affected by those works can claim compensation under section 68 of the Lands Clauses Consolidation Act 1845 as if the works had been authorised by the Act or Order under which the land was originally acquired. For the principles on which compensation is awarded under that section for " pure injurious affection," see Chapter III on page 50.

As indicated above, there are some cases in which the power thus given to parish meetings does not apply. These are :—

(*a*) cases in which the parish meetings are or could be authorised (by an order from the county council under section 273 of the Local Government Act 1933) to exercise the power which a parish council has under section 22 of the Land Settlement (Facilities) Act 1919 to appropriate land, which was acquired for allotments, for other purposes, or land, which was acquired for other purposes, for allotments. Such a power is subject to the consent of both the Minister of Agriculture, Fisheries and Food and of the Minister of Housing and Local Government.

(*b*) cases in which the parish meeting may be authorised under section 42 of the 1947 Act to appropriate for a purpose specified in a development plan any land held by it for other purposes, being land forming all or part of a common, open space or fuel or field garden allotment. For the form of control in such cases, see page 89 above.

In these exceptional cases the existing machinery must be used, to preserve the necessary forms of control in relation to land thus used for purposes valuable to the community.

When parish councils or meetings make appropriations under the general power now given them, and as a result adjustments fall to be made in the accounts of those councils or meetings, those adjustments shall be such as may be " requisite in the circumstances," unless the land was held for a grant-aided function, in which case the Minister of Housing and Local Government is to direct what these adjustments are to be. For this purpose, a " grant-aided " function means a function for which the council or meeting receives a grant or contribution from a government department, other than a grant under the Local Government Act 1958 or an Exchequer subsidy under the Housing (Financial Provisions) Act, 1958, as previously explained on page 92.

CHAPTER VII

PART III : PLANNING PROCEDURE

This Part of the Act, extending from section 31 to section 38, contains substantial amendments of the law relating to procedure in regard to planning applications, planning appeals, and the right of appeal to the Courts. Basically this Part can be considered under four main headings, as follows :—

(*a*) Alterations in the procedure for applying for planning permission (sections 36 and 37).

(*b*) Alterations in procedure for statutory Inquiries (sections 33 and 34).

(*c*) Fresh provisions enabling aggrieved persons and local or planning authorities to challenge the validity of certain Orders and Ministerial decisions in the High Court (sections 31 and 32).

(*d*) Alterations in the procedure for dealing with purchase notices (section 35).

Apart from the above four changes which have a common origin, there is one further section (section 38) which introduces an urgently needed amendment in relation to Enforcement Notices.

It is proposed to deal with these sections in the order given above, which corresponds to the normal sequence of events in the making of planning applications and appeals. However, before coming to a consideration of actual changes made by this Part of the Act, which are of a far reaching nature, it may be helpful to consider shortly the principles upon which the first four changes have been made, flowing as they do from the Report of the Committee on Administrative Tribunals and Inquiries (The Franks Committee), published in July, 1957 (Cmd. No. 218).

The Franks Committee

This Committee was established in 1955 to consider and make representations on the constitution and workings of Tribunals, other than the ordinary Courts of Law, and the working of administrative procedures, such as Inquiries or Hearings held by or on behalf of a Minister, either on an appeal or as the result of objections or representations, and, in particular, the procedure for the compulsory purchase of land.

The Government appointed this Committee, under the Chairmanship of the Rt. Hon. Sir Oliver Franks, G.C.M.G., to review such executive procedures, the practical operation of which was giving rise to considerable public disquiet. The terms of reference of this Committee were extensive, but one of their most important

functions was to consider these procedures in relation to the executive control of land.

The Town and Country Planning Act, 1947, imposed a comprehensive system of control on the development and use of land, leaving only minor works and changes of use free from the requirement of planning permission. In many ways the application of this system of detailed control has proved irksome, although something has been done to mitigate petty restrictions by means of development orders, and, in particular, the General Development Order, 1950 (S.I. 1950, No. 728) and also by means of the Use Classes Order, 1950 (S.I. 1950, No. 1131).

Despite such orders, however, the Act of 1947 and its Regulations still comprise a most minute and detailed form of control over the individual use of property, and the operation of the entire system rests firmly in the hands of the Minister, whose approval is necessary for all Development Plans, and to whom all planning appeals are made.

In the past, the decisions of the Minister arising out of the operation of the Act have largely been excluded from the purview of the Courts of Law, and one of the changes made by Part III of the 1959 Act is to bring into being certain additional rights of appeal to the High Court on points of law and procedure.

The Planning Acts, moreover, have served to emphasise once again the inevitable conflict between the individual and the State. Widespread public disquiet arose out of the system of planning decisions and appeals under the 1947 Act, such disquiet being focussed upon the method of procedure and the secrecy in which decisions on planning applications and appeals were made.

The public mind became alarmed at the thought that decisions vital to the economic and social well-being of individuals were being taken in a secret and impersonal manner. The general feeling of unrest found a point of focus in the celebrated case of Crichel Down in which the Government found it necessary to hold an *ad hoc* Inquiry. It was shortly after this that the Government decided to appoint the Franks Committee. The Committee considered a great volume of evidence and put forward in its Report some 95 main recommendations : most of these were unanimous, although there was a short note of reservation by Lord Silkin in two of the main proposals.

The Government have already given effect to certain of the recommendations of the Franks Committee in passing the Tribunals and Inquiries Act, 1958. The main object of that Act was to establish an independent Advisory Council to keep under review the constitution and working of certain tribunals. Certain other

recommendations have been put into operation by Ministerial direction, contained in Circular No. 9/58 dated the 27th February, 1958, issued by the Minister of Housing and Local Government, and of these administrative changes possibly the most important are as follows :—

(1) An acquiring authority proposing to purchase land compulsorily is requested to send to an objector a statement of its reasons for the acquisition before the hearing of the objection so that the objector is aware of the case which he has to meet. Planning authorities are also requested to give full details of the grounds for planning refusals or conditions.

(2) A copy of the report of an Inspector appointed by the Minister to hear objections is now available to any interested party after the Minister has issued his decision, so that the objector can see that his case has been fairly presented by the person who heard the objection to the person who actually makes the decision. The objector can also observe those cases where the Minister overrules the recommendations of his Inspector.

(3) It has always been the practice of the Minister to issue his decisions in the form of a letter giving short reasons for the decision, but these letters are now more full and deal in particular with any points on which the Minister has decided not to accept the recommendations of his Inspector.

Part III of the Town and Country Planning Act, 1959, contains provisions which give effect to other recommendations of the Franks Committee. All the steps which have now been taken as a result of those recommendations—namely, the passing of the Tribunals and Inquiries Act, 1958, the administrative changes referred to above, and the alterations contained in Part III of this Act—have been made with the object of correcting deficiencies in the 1947 Act, by improving procedure and giving a statutory right of access to the Courts on certain points of law. The Minister, however, retains exclusive authority on all matters of planning operation, and no appeal will lie beyond him on planning policy.

(A) APPLICATIONS FOR PLANNING PERMISSION

(SECTIONS 36 AND 37)

1. Planning Applications for special prescribed classes of development

Section 36 of the Act makes changes in the procedure laid down for making applications for planning permission in certain classes

of case which are prescribed by a new Development Order made by the Minister.

The classes prescribed for the time being are those cases in which permission is sought for :—

(*a*) construction of buildings for use as a public convenience;

(*b*) construction of buildings or other operations, or use of land, for the disposal of refuse or waste material ;

(*c*) construction of buildings or other operations (other than the laying of sewers, the construction of septic tanks serving single dwelling-houses, and works ancillary thereto) or use of land, for the purpose of sewage disposal ;

(*d*) construction of buildings or use of land for the purposes of a slaughter house or knacker's yard ;

(*e*) construction of buildings and use of buildings for any of the following purposes, namely, as a theatre, a cinema, a music hall, a dance hall, a skating rink, a swimming bath, a Turkish or other vapour or foam bath, a gymnasium, or a building for indoor games.

The prescribing Order is the Town and Country Planning General Development Order 1959 (S.I. 1959, No. 1296). See page 435.

In these special cases, an application made on or after the 16th August, 1959 for planning permission is to be of no effect unless it is accompanied by a copy of a notice, inserted by the applicant in a local newspaper circulating in the area where the proposed development is to be carried out, which gives notice to the public of the application. The Development Order now made under the section requires an applicant to certify to the local planning authority that such advertisement has actually been published and to give the date of such publication. The form to be taken by the advertisement is also prescribed by the Development Order, see page 437.

In addition to the above requirements, the advertised notice must name a place in the locality of the development where a copy of the application and accompanying plans and documents may be inspected at all reasonable times during at least 21 days after the publication.

In the special classes of case prescribed by the Development Order, the local planning authority must defer making a decision on a planning application until a period of 21 days has elapsed from the date of publication of the advertisement. Any person who wishes to do so may communicate with the local planning authority during that period of 21 days, and may put forward representations for or against the granting of planning permission with or without

conditions. The local planning authority are then bound to take such representations into account before arriving at their determination.

The procedure is also to apply to planning applications, coming within the prescribed classes, which are referred to the Minister for his personal decision either under section 15 of the 1947 Act, or when a local authority is applying for permission in relation to land for which it is also the local planning authority, in just the same way as the procedure applies to applications dealt with by a local planning authority.

The intention of this section is to enable wide publicity to be given in the locality to development of a class which might affect the public at large, so that local opinion can be informed of the proposed development and thus having an opportunity to make its views known to the local planning authority before a decision is taken.

2. All Planning Applications

Much wider changes in the procedure of applying for planning permission to carry out any development of land are, however, made by section 37 of the Act. It should be emphasised that, whether or not the development proposed falls within one of the classes prescribed under section 36 of the Act, the following procedure must now be adopted in respect of every planning application.

(*a*) *Certificates and the giving of notice.*

After the coming into operation of the Act (*i.e.*, on or after the 16th August, 1959) every application for permission to carry out development must be accompanied by a certificate from the applicant stating :—

either,

(i) that he is the owner in fee simple, or a tenant, of all the land to which the application relates ; or

(ii) that he has given notice (in the form prescribed by the Town and Country Planning General Development Order 1959, see page 440) to all persons who were " owners " of any land covered by the application at the beginning of a period of 21 days expiring on the date of the application. In these cases, the certificate is to set out the name and address of each person on whom notice has been served and the date of service thereof. " Owners " for the purpose of this section has a special meaning, namely the freeholder or a tenant for a term of years certain, of which not less than 10 years remain unexpired ; or

(iii) that he cannot issue a certificate of either of the above

kinds, but has given notice in the prescribed form to such " owners " of any of the land as he knows of (naming them and giving addresses), and that he does not know the names and addresses of the other " owners " of the land. In this case the applicant must also state that he has advertised a notice of the application in a local newspaper within the period of 21 days expiring on the date of the application ; or

(iv) that he cannot certify that he is an owner in fee simple or tenant of all of the land, and that he does not know the name of any of the " owners " of the land. In this case too he must certify that he has advertised as under the previous heading.

It will be remembered that the tenant of an agricultural holding has statutory protection for his tenancy under the Agricultural Holdings Act, 1948, but the grant of planning permission to develop the land which he holds deprives him of his statutory protection against a notice to quit. Section 37, therefore, provides in effect that where any part of the land to which the application relates is, or forms part of, an agricultural holding held by a tenant (whatever the length of his tenancy), individual notice of any planning application must in every case be given to that tenant in the prescribed form. In this case it is not enough to rely upon the publication of a local advertisement, and notice must be given to such a tenant even though he may not qualify as an " owner " in the sense described above. For the precise meaning of agricultural holding within the 1948 Act, see page 309.

Moreover each of the above forms of certificate must state either that no part of the land which is the subject of the application comprises or forms part of an agricultural holding, or that individual notice has been served on the tenant of every agricultural holding in the land, with details of names, addresses and dates of such service.

In other cases the applicant must give individual notice to the " owners " of whom he knows, but where there are any of whom he does not or may not know, he can rely on an advertisement of the application published in a local newspaper.

It will be noted that one effect of the section is that the freeholder of the whole land in question is under no obligation to give notice to any tenant of the land except to the tenant of an agricultural holding ; and *vice versa*, that a tenant of the whole land is under no obligation to give notice to the freeholder or to any other tenant except to the tenant of an agricultural holding. The stated reason for this is that obligations between landlords and tenants should be left to be dealt with by contract. While this is a factor which can and should be dealt with in future contracts, existing contracts however in many cases may not adequately provide for such notice.

These provisions will cause many difficulties in operation. The only cases where the prescribed notices need not be served or advertised are in the cases where the planning application does not relate to the whole or part of an agricultural holding and is made by a freeholder, or tenant, of all of the land.

It is probable that in many cases applicants will, in addition to serving notices individually on known " owners," resort to local advertisement rather than run the risk of omitting to serve the " owner " of an interest who should have received an individual notice. Consider, for example, the position of a developer negotiating to purchase a freehold interest in order to demolish an old block of buildings in a few years' time so as to redevelop the site, who now wishes to seek the view of the local planning authority as to future development by means of a planning application. There may be an existing head lessee with a hundred or more sub-tenants in the block, some having leases and some without, and, in such a case, the developer may feel that he is obliged to advertise, in addition to serving individual notices, in case there is any sub-tenant who is an " owner " unknown to him.

At least the proprietors of local newspapers would appear to have some reason to rejoice at these provisions of the Act.

Once the applicant has served the individual notices or inserted his local advertisement, or adopted a combination of both these forms of notification, his application will go forward to the local planning authority, accompanied by a certificate in the prescribed form.

(*b*) *The decision, and appeals*

Unless the applicant certifies that he is the freeholder or tenant of the whole land in question and that there is no agricultural holding in the land, the local planning authority must wait until a period of at least 21 days has elapsed from the latest date of service of any notice or the date of publication of any advertisement, so as to be in a position to receive representations from those entitled to make them. Before coming to a decision on the application, the planning authority are required to take into account all such representations made by any person who can show that he is either an " owner " of any land to which the application relates or the tenant of an agricultural holding, any part of which is comprised in the land to which the application relates.

This section also requires the local planning authority to give notice of their decision to every " owner " or tenant of an agricultural holding who has submitted a valid representation.

If the applicant should wish to appeal against the decision of the local planning authority, whether on the grounds that they have

refused his application, or because they impose conditions on the grant of consent which are unacceptable, the applicant must again serve notices or publish advertisements in connection with his appeal. It should be noted particularly that the notifications need not necessarily be made to the same people who were concerned in the original application, because the Act appears to require that such notices are to be served on persons who were " owners " of any part of the land at the beginning of a period of 21 days expiring on the date of the appeal. This may well cause prospective appellants some difficulty, as there is only one month in which to appeal from any decision of a local planning authority, or such extended period as the Minister, in his discretion, may allow.

In view of the necessity for an applicant to consider carefully the decision of a local planning authority before making up his mind as to whether or not to make an appeal, the additional burden of arranging for further notices and/or advertisements may well reduce the effective time at his disposal to consider the issues. It is to be hoped that the Minister will continue his present practice of using his discretion to extend the time limit for appeals, and will look with particular sympathy on applications for extended time for appeals, so as to enable appellants to serve notices or publish local advertisements.

Where the Minister calls in any application for decision by himself under section 15 of the Act of 1947 or any application by a local authority in respect of land for which it is also the local planning authority, the same requirements as to the issue of certificates and as to the service of notices or publication of advertisements apply.

(*c*) *False certificates*

Provision is made for a fine not exceeding £50 to be imposed on summary conviction :

(*a*) on any person issuing a certificate with a planning application which contains any statement which to his knowledge is false or misleading in a material particular, or

(*b*) on any person recklessly issuing a certificate which contains any statement which is false or misleading in a material particular.

This fine would appear to be recoverable from the person who " issues " the certificate, whether it be the applicant personally or his agent. Chartered surveyors and others should carefully consider, therefore, whether they should sign and send such certificates on behalf of clients in those cases where the service of individual notices to " owners " or the publication of the local advertisement

has not been placed in their own hands, or has not been proved to their own satisfaction.

(*d*) *General effect*

The intention of section 37 is to meet the recommendation of the Franks Committee that " owners " and others directly interested in the land should be informed of third party applications and allowed to state their views. The provisions of this section, however, seem to go somewhat beyond the principle which the Franks Committee had in mind. It is clear from paragraph 384 of the Report of the Committee that they were concerned about the power of a person, who had no existing legal interest in the land, to make a planning application for permission to develop it without the owners or occupiers having any knowledge of the application and having no opportunity to state their views. Section 37, however, may require persons possessing a direct legal interest in the land to give notification at the time when they are making a planning application. In any event there are some classes of case where these provisions may cause harm to projects for good and useful development.

One of the most delicate and difficult matters in connection with a development scheme is to obtain possession of the land. In the initial stages of a project it is found in practice by private persons who are not possessed of compulsory powers, that it is vital to keep their projects confidential.

In some cases where development is intended, there may be one or more lessees in occupation with long leases, and it would be necessary for the developer to purchase their interests so as to obtain possession to carry out the prospective development. If notification of the purchaser's scheme is given to such tenants at an early stage, they will be in a position to demand prices for their interests in the property which may be out of all relation to any reasonable valuation.

In addition, where a prospective purchaser is considering future redevelopment of existing property and is doubtful of the outcome of his planning application, he has no wish to notify the existing tenants of the possibility of future development because they may well be unsettled by the application and make plans to seek premises elsewhere, in the (possibly mistaken) belief that the development will take place immediately. The prospective purchaser in such a case may well lose good tenants.

It would seem fair to comment that this section will make planning applications more complicated. As a result such applications will require very great care to be devoted to their preparation. It is perhaps not always appreciated that the form in which a planning

application is submitted may substantially affect the interests of the client, either as to the form of consent to be obtained or as to his future possible rights to compensation for planning restrictions. The actual carrying out of development may well be delayed and made more expensive by the new procedure.

3. Procedure of applying for planning permission

The combined effect of the Town and Country Planning Acts, 1947 to 1959, as to the procedure of applying for planning permission, may be summarised by setting out below the sequence of the steps now to be taken :—

(1) Prepare the application in accordance with the Town and Country Planning General Development Order 1950 (S.I. 1950, No. 728). (This provides, broadly speaking, that the application is to be made on a form issued by the local planning authority, who may require such plans and drawings and additional copies as they think fit).

(2) Ascertain whether any of the land comprises all or part of an agricultural holding, and if so, ensure that individual notice of the application in the prescribed form is given to the tenant of such a holding (whether or not he qualifies as an " owner ").

(3) If acting for the freeholder or a tenant of all the land to which the application relates, then give no further notices under section 37, but give any notices required under the terms of any lease or tenancy agreement by which the client is bound.

(4) If acting for a person who is neither the freeholder nor a tenant of all the relevant land, then ascertain (where possible) the " owners " within the meaning of section 37 and ensure that individual notice of the application for planning permission is given in the prescribed form to each and every " owner " of any of the land, or, where any of such owners are or may be unknown, ensure that an advertisement is published in the local newspaper circulating in the locality where the development is proposed to be carried out.

(5) Consider, in every case, whether the development is one of the prescribed classes of development under section 36 of the Act, and, if so, take steps to see that public advertisement is made thereof in a local newspaper in accordance with the prescribed form under that section.

(6) Ensure that the application is submitted to the local planning authority (where a local advertisement has been published under paragraph (4) above, the application must be submitted not later than 20 days after the publication) ; and

in any event send with the application the information required under section 36 and/or a certificate under section 37 in one of the prescribed forms.

(7) On receipt of the decision from the local planning authority, consider the question of lodging an appeal if the decision is unfavourable, and, if an appeal is to be lodged, prepare it in accordance with the Town and Country Planning General Development Order 1950 (S.I. 1950 No. 728), and repeat the procedure set out above, giving notice where necessary to persons who are tenants of agricultural holdings or " owners," and/or publishing an advertisement. The appeal must be lodged within one month (or such extended time as the Minister may allow) of the date of the decision and not later than 20 days after the publication of an advertisement under section 37.

(B.) THE CONDUCT OF PLANNING INQUIRIES (SECTIONS 33 AND 34)

Section 33 of the 1959 Act is concerned also with one of the recommendations of the Franks Committee. It gives the Lord Chancellor additional power to lay down a code of procedure for the conduct of statutory Inquiries held by or on behalf of a Minister. This power is given by means of the addition of an extra section (No. 7A) to the Tribunals and Inquiries Act, 1958. It will be noted that this confers a general power applicable to all Inquiries held by all Ministers, and is not restricted to statutory Inquiries held in relation to planning or compulsory purchase issues.

The Tribunals and Inquiries Act, 1958, as amended by this Act, enables the Lord Chancellor to make rules governing procedure both before and after such Inquiries, as well as for the actual conduct of the Inquiries themselves, such rules to have effect subject to the provisions of the enactment under which each Inquiry is held and to any rules or regulations made under that enactment. The rules are to be made by way of Statutory Instrument. The Lord Chancellor is to consult the Council set up under the Act of 1958 as to the form such rules should take, and he is empowered to lay down different sets of rules in relation to different classes of Inquiries.

It is further provided by section 34 of this Act that the prohibition of representation by counsel or by expert witnesses at Inquiries held by a County Council on behalf of a Parish Council prior to the compulsory purchase of land shall be repealed. This prohibition was contained in the Local Government Act, 1933, section 168 (5), and the repeal of this provision applies to any Inquiry begun after

the commencement of the 1959 Act (*i.e.*, on or after 16th August, 1959), no matter when the Order giving rise to the Inquiry was published.

All statutory Inquiries will consequently fall to be regulated under the prescribed rules of procedure, and the intention is clearly that at every Inquiry having a bearing on the compulsory purchase of land, an objector will be entitled to employ counsel and to call expert evidence on his behalf, at his own expense.

(C.) ACCESS TO THE COURTS OF LAW (SECTIONS 31 AND 32)

Under Town and Country Planning legislation up to the time of the 1959 Act, there was, generally speaking, no right of appeal of any kind to the High Court against planning decisions or orders.

In one or two isolated cases, a right of access to the Courts was given by the 1947 Act—such as the right to challenge the validity of the making of a Development Plan within six weeks of the Minister's approval, or the right of appeal to the Magistrates' Court against an Enforcement Notice.

But apart from such cases the ultimate arbiter on all planning issues has been the Minister, and his decisions on issues referred to him has been final. The main effective remedies by which the subject could challenge the Minister's actions have been the orders of *Mandamus*, *Prohibition* and *Certiorari*.

But, in practice, the effect of such orders has been limited in planning cases. *Mandamus*—an order to a tribunal (such as the Minister) to perform a public duty—applies only where the tribunal has refused or neglected to perform its duty—an uncommon situation on Ministerial level. *Prohibition*—an order restraining a tribunal from acting—applies only when the tribunal threatens to assume a jurisdiction which it has not got ; and it is difficult to anticipate an excess of jurisdiction in the functions of a Minister. *Certiorari*—an order to quash a decision given in excess of jurisdiction—has a wider range, in that it will be granted, not only where powers are exceeded, but also where fraud, bias, or the denial of a fundamental right can be shown, or where an error of law appears on the face of the decision. But this too is limited by the difficulty of proof, and by the fact that *Certiorari*, like *Prohibition*, will only be granted against a tribunal when it is acting in a judicial or quasi-judicial capacity, and not when it is acting in an administrative capacity.

Apart from the above remedies, a subject has in some circumstances been able to seek a declaration from the Courts to achieve

much the same result. For some observations as to the general power of the Courts to make declarations and the ouster of such jurisdiction, reference should be made to *Pyx Granite Co.* v. *Minister of Housing and Local Government* [1959] 3 W.L.R. 346.

Sections 31 and 32 of the 1959 Act now give access to the Courts by way of a statutory right of application, on limited grounds, against certain planning orders and decisions, and, in these cases, the sections bring about a result similar to that existing in the case of compulsory purchase orders.

1. Scope of Application to the High Court under section 31

Section 31 of the Act enables any person aggrieved by any order as confirmed by the Minister, or by any action taken by the Minister, of the kinds set out below, to apply to the High Court to quash or suspend that order or action, within six weeks of the confirmation of the order or the taking of that action. The grounds on which the right of application can be exercised are dealt with in the next section.

The same right of challenge is given to " the authority directly concerned " with the order or action, in most cases the local planning authority. It will be observed that it is the orders set out below *as confirmed by the Minister* which may be challenged : since the Minister may modify orders submitted to him, the authority directly concerned is given the right to challenge the order as so confirmed if it so desires, but the authority does not necessarily have to be " aggrieved " by the order as so confirmed. For the meaning given to the word " aggrieved " by the Courts, see page 287.

The orders which can be challenged in this way are orders made on or after the 16th August, 1959, as follows :—

(1) Orders made under section 21 of the 1947 Act, revoking or modifying a grant of planning permission previously made, or under that section as applied under other sections of the 1947 Act (*e.g.*, under section 35 and the Development by Local Planning Authorities Regulations, 1948, in relation to the revocation or modification of consent for development by such authorities.)

(2) Orders made under section 26 of the 1947 Act, requiring any lawful use of land to be discontinued, or imposing conditions upon the continuation of such use, or requiring buildings or works to be altered or removed. (This, it should be noted, is not the Enforcement Notice procedure under section 23, which is limited solely to unauthorised uses or works.)

(3) Tree Preservation Orders under section 28 of the 1947 Act, made in the interests of amenity for the protection of

trees and woodlands, by prohibiting the cutting down or lopping of trees without consent, or securing the replanting of woodlands permitted to be felled.

(4) Building Preservation Orders under section 29 of the 1947 Act, made for the protection of buildings of special architectural or historic interest by restricting the demolition, alteration, or extension of such buildings.

(5) Orders made under section 31 (4) of the 1947 Act, defining areas of special control for the display of advertisemments.

The actions taken by the Minister which can be challenged in the same way as the above orders are decisions or directions given on or after the 16th August, 1959, as follows :—

(1) Any decision made by the Minister on an application for planning permission which the Minister has directed a local planning authority to refer to him for decision under section 15 of the Act of 1947.

(2) Any decision made by the Minister on appeal made to him under section 16 of the 1947 Act, being an appeal against the refusal of planning permission by a local planning authority, or an appeal against conditions imposed on a grant of planning permission made by a local planning authority.

(3) Decisions made by the Minister under section 19 of the Act of 1947, when Purchase Notices are transmitted to him under that section or under that section as applied by other sections of that Act or by section 59 of the 1954 Act. See page 125 for the nature of the decisions which he can make in such cases.

(4) Decisions made by the Minister on applications for consent, or on appeals in respect of such applications, made to him under the terms of any of the following classes of Order :—

(*a*) A Tree Preservation Order under section 28 of the Act of 1947, or

(*b*) A Building Preservation Order made under section 29 of the Act of 1947, or

(*c*) An Order made in accordance with Regulations under section 31 of the 1947 Act, defining an area of special control of advertisements.

(5) Directions given by the Minister under section 23 of the Act of 1954, in the exercise of his power to review planning decisions made by a local planning authority in those cases where a person claims compensation under Part II of the Act of 1954 in respect of a refusal or conditional grant of planning permission made on or after the 1st January, 1955.

(6) Directions given by the Minister under section 45 (3) and

(4) of the Act of 1954 in the exercise of his power to review any relevant planning decision or order, in those cases where a person claims compensation under Part V of the Act of 1954 in respect of a planning decision made before the 1st January, 1955, or an order made before that date, revoking or modifying previous planning permission.

(7) Decisions made by the Minister under section 6 of the 1959 Act on appeals made to him against a certificate issued by a local planning authority under section 5 of this Act, being a certificate which states the opinion of the local planning authority as to the appropriate alternative development for land which is to be acquired compulsorily and which is not, broadly speaking, zoned for a normal market use in the current development plan.

2. Grounds of Application and procedure under section 31

If any person is aggrieved by the making of any Order to which section 31 of this Act applies (*i.e.*, an Order made on or after the 16th August, 1959, under section 21, section 26, section 28, section 29 or section 31 (4) of the Act of 1947) he may, within six weeks from the date of confirmation of the Order, apply to the High Court on the following grounds :—

(*a*) That the Order made is not within the powers of the Act of 1947, and is, therefore, invalid ; or

(*b*) That such Order has not been made in compliance with the " relevant requirements."

If any person is aggrieved by the taking of any Ministerial action to which section 31 applies (*i.e.*, action taken on or after the 16th August, 1959, of the kinds referred to in paragraphs (1)-(7) on pages 116–7 above) he may, within six weeks from the date on which the action is taken, apply to the High Court on the following grounds :—

(*a*) That the action taken is not within the powers of the Act of 1947, Act of 1954 or Act of 1959 and is, therefore, invalid ; or

(*b*) That the action has not been taken in compliance with the " relevant requirements."

The words " relevant requirements " are defined by section 31 (11) of this Act and mean the procedures laid down by the Acts of 1947, 1954 or 1959, together with the Tribunals and Inquiries Act, 1958, and all Orders, Rules and Regulations made under any of these Acts which apply to the order or decision in question.

If the person aggrieved can show, for example, that he has not been given an opportunity to state his case to the Minister, or that the conduct of the Inquiry has not been in accord with the Rules to be published by the Lord Chancellor under section 33 of this Act, application may be made to the High Court.

Where the person aggrieved is able to satisfy the High Court that the Order or Ministerial action in question is not within the powers of the Acts of 1947, 1954 or 1959, the High Court may quash the Order or action complained of. Where the applicant satisfies the High Court that the relevant requirements have not been observed properly in relation to an Order or Ministerial action, and also that his interests have been substantially prejudiced as a result of non-compliance with the relevant requirements, the High Court may again quash that Order or action.

In addition to the powers given to quash the Order or action complained of, the High Court may also issue an interim Order to suspend the operation of any Order or Ministerial action, pending the final determination of the proceedings, except in the case of Orders made by the Minister for the preservation of trees and woodlands under section 28 of the Act of 1947, or Building Preservation Orders made under section 29 of the Act of 1947.

The intention in giving power to make an interim Order is to ensure that injustice is not done to the individual by the enforcement of an Order or Ministerial action whilst the matter is under appeal, but, of course, it is necessary to exclude this power in the case of applications to cut down trees protected by a Tree Preservation Order, or to demolish buildings of special architectural or historic interest which are affected by a Building Preservation Order, so as to prevent irreparable action being taken before the proceedings are finally determined.

The High Court must either quash the entire Order or Ministerial action or uphold it altogether, except in the case of Tree Preservation Orders under section 28 of the Act of 1947, or orders defining an area as one of special control of advertisements under section 31 of the Act of 1947. In these two special cases, the High Court may by interim order suspend the operation of the Order in whole or in part, and on final determination may quash the Order either in whole or in part, or uphold the whole of the Order.

It will be observed that the statutory right of application to the High Court is concerned only with questions of jurisdiction or questions of procedural irregularity. The substance of any Order or Ministerial decision as a matter of planning policy cannot be questioned in a Court of law, and the High Court will not in this

respect be concerned with any issue whether a planning order or decision made by the Minister is a correct one.

Section 31 (7) provides that apart from the specific right conferred by that section to challenge the orders and decisions described above, the validity of those orders and decisions shall not be questioned in any other legal proceedings. This provision, like a similar provision in the Acquisition of Land (Authorisation Procedure) Act, 1946 in relation to the challenging of compulsory purchase orders, ousts the jurisdiction of the Courts completely apart from the special statutory rights given by the section. This means that the grounds for challenging such an order or decision by applying for an order for *Certiorari* are no longer available to the subject and, indeed, it has been held that, under such a clause, the Courts have no jurisdiction to interfere even when it is claimed that the order is a nullity because of fraud. If the person aggrieved cannot frame his application within the statutory grounds, he has no redress in the Courts against the order itself, though in some cases (*e.g.*, where fraud is present) he may have a personal right of action for damages against individuals.

Section 31 (8) does, however, preserve the right of the subject to take such action as he can in the Courts, where the Minister refuses or fails to give any decision or direction such as is described in paragraphs (1)-(7) on pages 116-7. The most effective remedy in such cases is *Mandamus*. It should be noted that if in such a case the Minister, as it were, shut his ears to the application made to him and gave a decision, in effect, on an application not made to him, he could still be compelled by *Mandamus* to give a decision on the real application, although ostensibly he had performed his duty by giving a decision apparently regular on the face of it.

3. What is Development ? A new right of appeal.

Section 32 of the Act makes important changes by providing a statutory right of appeal to the High Court on questions of law arising on applications made under section 17 of the Act of 1947. It will be recalled that that section enables a person who is in doubt whether operations which he proposes to carry out or any changes in the use of the land which he proposes to make constitute or involve development of the land, within the meaning of section 12 of the Act of 1947, to apply to the local planning authority to determine that question. If the local planning authority decided that such operations or change in use constituted development, the applicant previously had a right of appeal to the Minister only. In the past, the Minister's determination of the appeal under

section 16 of the 1947 Act has been final, despite the fact that the Minister was deciding a question of law.

An alternative to this procedure under the 1947 Act was for the applicant to proceed with his proposed works or change of use on the assumption that they did not constitute development within the meaning of section 12 of the Act of 1947, in which event he would run the risk of the local planning authority serving an Enforcement Notice upon him under section 23 of the Act of 1947. Where an Enforcement Notice is served, the owner has first the right of appeal to a Magistrates Court, and, if he is aggrieved by the decision of that Court, a further right of appeal to Quarter Sessions. In adopting this procedure, however, the owner ran the risk that the Enforcement Notice might be upheld, with the result that he might well be required to remove expensive works which he had erected on the land ; and, as a result, the owner was not usually willing to adopt this course of action.

Recently it has been held by the House of Lords in *Pyx Granite Co.* v. *Minister of Housing and Local Government* that a declaration may be sought from the Courts which in effect amounts to a determination whether operations or changes of use constitute development. But now that method of proceeding is rendered unnecessary.

Section 32 of the 1959 Act now provides new machinery for these questions of law to be decided by the Courts. Where an owner is in doubt whether the action which he proposes to carry out on land constitutes development or not and applies to the local planning authority for a determination under section 17 of the 1947 Act he still has the previous right of appeal to the Minister ; but, if dissatisfied by the Minister's decision as well, he has now the further right of appeal on any question of law to the High Court. The same right of appeal is given in cases where the Minister directs, under section 15 of the 1947 Act, that an application under section 17 be referred to him for determination. Rules of Court may be made in relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section, and such rules can provide that the Minister be treated as an interested party to any proceedings and be entitled to appear and to be heard.

These new rights of appeal are given not only to the applicant but also to the local planning authority. The section creates the right of access to the High Court by means of an extension in the scope of section 9 of the Tribunals and Inquiries Act, 1958, and incorporates the provisions of that Act as to prescribing by Rules of Court the powers of the High Court or the Court of Appeal in respect of :—

(*a*) the giving of any decision which might have been given by the Minister ;

(*b*) the remitting of the matter to the Minister with the opinion or direction of the Court for rehearing and determination ;

(*c*) the giving of directions to the Minister.

Such Rules will be published in due course.

It should be noticed that, in cases in which an application under section 17 of the 1947 Act is made as part of an application for planning permission, the right of appeal now given by this section applies only to the application under section 17.

The effect therefore of this section will be that, where disputes arise on the meaning of section 12 of the Act of 1947 as to what constitutes development, the High Court and the Court of Appeal will now be able to decide on the interpretation of that section.

One of the more difficult matters which will probably come before the Courts is the question as to what constitutes the making of any material change in the use of any building or land. It is thought, for example, that the Courts may well consider that the proposed use of a shop for the purpose of selling fried fish and chips is not a material change from the use of the same shop for another retail trade, such as the sale of greengrocery, despite the Use Classes Order (S.I. 1950, No. 1131).

The whole question as to what constitutes a material change in the use of the land has generally in practice been determined in the past by the Use Classes Order which was made under the provisions of section 12 (2) (*f*) of the Act of 1947, but that Order, in the context in which it was made, merely determines what does *not* constitute development and does not, strictly speaking, decide that the change of use between the classes prescribed by the Order itself constitutes development.

(D.) PURCHASE NOTICES (SECTION 35)

It will be remembered that section 19 of the Act of 1947 contains important provisions designed to safeguard the position of an owner of property who finds that a planning refusal or conditions imposed by the local planning authority on a grant of permission in effect renders his property sterile.

In such cases, a Purchase Notice requiring the local authority (being a council of a county borough or county district) to acquire the land to which the decision relates can be served, where the owner claims that the following circumstances exist :—

(*a*) that the land has become incapable of reasonably beneficial use in its existing state, and

(*b*) in those cases where permission has been given subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by development in accordance with such permission but subject to those conditions, and

(*c*) in any case, the land cannot be rendered capable of reasonably beneficial use by carrying out other development for which permission is, or would be, available. It should be noted that the amendment of section 19 of the 1947 Act by section 70 of the 1954 Act prevented development other than Third Schedule development being taken into account in determining what would be a reasonably beneficial use for this purpose.

The procedure is also available when the sterility is caused by a revocation or modification order under section 21 of the 1947 Act, or by a discontinuance order under section 26, or by a refusal or conditional grant of consent under a Building Preservation Order. On the service of a Purchase Notice, the procedure under the Act of 1947, as amended by the Act of 1954 (section 70), was formerly as follows :—

(1) The local authority was required to transmit a copy of the notice to the Minister, who could then take one of the following courses of action :—

(*a*) If he was satisfied that the conditions claimed by the owner were fulfilled, he might confirm the notice as it stood, in which event the local authority became authorised to acquire the interest of the owner compulsorily and was deemed to have served a notice to treat on such a date as the Minister directed.

(*b*) Alternatively he might decide to confirm the notice but to modify it, either in whole or in part, by substituting another local authority as the purchasing authority instead of the authority on whom the notice was served, if it seemed expedient to do so, having regard to the probable ultimate use of the land. In this event, the substituted authority was deemed to have served a notice to treat on such date as the Minister directed.

(*c*) Alternatively again he might decide not to confirm the notice, but instead to grant the planning permission refused by the local planning authority, or to revoke or alter the conditions imposed by the local planning authority. In this event the land would cease to be sterilised.

(*d*) As a further alternative he might decide not to confirm

the purchase notice but to direct that a fresh permission altogether would be granted in the event of an application being made, being permission for development within the classes set out in the Third Schedule of the 1947 Act only (for this latter restriction, see *R.* v. *Minister of Housing and Local Government* (*ex. p. Rank Organisation*) [1958] 1 W.L.R. 1093).

(*e*) If on the other hand the Minister was not satisfied that the conditions necessary for the purchase notice were fulfilled, he could only refuse to confirm the notice and could take no action in lieu of confirming it.

(2) Before taking any of the above steps other than (*e*), the Minister was required to give notice of his proposed action to the interested parties, and to afford those persons an opportunity of appearing before and being heard by a person appointed by the Minister.

(3) If, having afforded the parties such a hearing, the Minister decided not to take his proposed action but another course instead, he had to repeat the process of serving notice of his new proposed action and affording a new hearing to the interested parties.

(4) If, however, the Minister took no action within a period of six months after the date of service of the purchase notice, it was deemed to be confirmed, and the authority on whom it was served was deemed to have served a notice to treat at the end of that period.

It has been found in practice, however, that in certain cases where purchase notices are served, that the local authority concerned or another local authority are quite willing to purchase the land from the owner. The first alteration, therefore, made by section 35 of the 1959 Act is to enable local authorities to accept purchase notices without having to transmit the notice to the Minister for confirmation, so as to remove a good deal of wholly unnecessary administrative work.

The second alteration (made by section 35 and the Seventh Schedule of the 1959 Act) is to enable statutory undertakers to be substituted for the council served with the notice. The effect of this is twofold. If the council which is served with the notice can find any statutory undertakers ready to comply with the notice, the transmission of the notice to the Minister can be dispensed with and, in effect, the purchase can be undertaken directly by those statutory undertakers. Secondly, in a case where the purchase notice is transmitted to the Minister, the Minister can now substitute any appropriate statutory undertakers (or any other local authority,

as hitherto : see paragraph (*b*) on page 122 above) in place of the council served with the notice and can confirm the notice in that modified form.

A third alteration now made in the above procedure is one which in effect enables the owner of land to require the Minister to afford him a hearing, when the Minister refuses to confirm the purchase notice on the grounds that any of the necessary conditions for the notice (see page 122) are not fulfilled. Hitherto, as can be seen from the statement of the previous procedure, the owner had no statutory right to be heard in such cases, although in practice a hearing was frequently afforded to him.

Fourthly, the restriction on the Minister's power of directing alternative permissions under section 19 (2) proviso (*b*) of the 1947 Act (brought about by the amendment of section 19 by section 70 of the 1954 Act, as construed in the *Rank Organisation* case noted above) is now removed. As a result the Minister may (as before that amendment) lawfully direct, in lieu of confirming a notice, that (if applied for) permission should be granted for specified alternative development of any kind, and he is no longer restricted to Third Schedule development for this purpose. It is still provided, however, that in determining what would be a reasonably beneficial use of land, for the purpose of deciding whether the conditions set out in section 19 (1) (see above on page 122) are fulfilled, the Minister may not look at any prospective use of that land which would involve carrying out any development other than Third Schedule development. This is what the original amendment contained in section 70 of the 1954 Act was no doubt intended to be restricted to.

Fifthly, the Minister—after giving notice of his proposed decision and affording any required hearing to any parties—may now take action other than his previously proposed action, without repeating the process of giving notice and affording a further hearing.

Other changes made in relation to such purchase notices (*a*) alter the terminal date from which the six months period runs for the giving of the Minister's decision on a purchase notice (as described later) and (*b*) provide that when a Minister's decision under section 19 of the 1947 Act is quashed by the High Court under section 31 of this Act, the purchase notice on which the Minister's decision was given is cancelled, and that the owner of the land in question can serve a fresh purchase notice within six months of the quashing of the Minister's decision.

The new procedure

The result of these amendments is that the procedure when a purchase notice is served under section 19 of the 1947 Act after the commencement of this Act (*i.e.*, on or after the 16th August, 1959) is now as follows :—

(1) Within three months after the date of service of the purchase notice, the Council on whom it is served are to serve a counter-notice on the owner to the effect :

either,

(*a*) that they are willing to comply with the purchase notice ; or

(*b*) that another specified local authority or statutory undertakers are willing to comply with the purchase notice in place of that Council ; or

(*c*) that for reasons specified in the counter-notice neither they nor any other local authority or statutory undertakers are willing to comply with the purchase notice, and, accordingly, a copy of the purchase notice has been sent to the Minister on the date specified in the counter-notice, together with a statement of reasons for their refusal to purchase. By request of the Minister such statement of reasons should comply with paragraphs 7 and 8 of M.H.L.G. Circular No. 9/58 ; see page 105 above.

(2) Where the counter-notice indicates willingness to purchase in accordance with the purchase notice, then such counter-notice in effect operates as a notice to treat on behalf of the Council, or the other local authority or statutory undertakers who have agreed to comply with the purchase notice, with effect from the date of the service of the counter-notice.

(3) Where the notice indicates unwillingness to comply with the purchase notice and a copy is transmitted to the Minister, the Minister is to consider his various alternative courses of action as set out previously on pages 122–23, as now amended, being briefly :—

(*a*) to confirm the notice as it stands ;

(*b*) to confirm the notice but to modify it by substituting another local authority *or statutory undertakers* to comply with the notice ;

(*c*) not to confirm the notice but to grant the refused permission ;

(*d*) not to confirm the notice, but to direct an alternative permission *of any kind* ;

(*e*) not to confirm the notice nor to take any action in lieu, where the land is not sterilised.

(4) Before taking *any* of the above steps (*i.e.*, including (*e*), which previously was excluded) the Minister is to serve notice of his proposed action on the interested parties, including now any statutory undertakers whom he proposes to substitute under (*b*).

(5) The Minister must then afford any of the interested parties an opportunity to appear before his representative and to be heard, if they so desire. After the hearing, the Minister may review the matter, and may decide either to carry out his proposed action, or take any of the other courses of action, as he thinks fit, *without recourse to any further hearing*.

(6) If the Minister however takes no action within six months *from the date given below*, the purchase notice is treated as confirmed and the authority on whom it was served are deemed to have served a notice to treat at the end of that period. The date from which the six months now runs is the earlier of the following dates :—

(*a*) the end of the three-month period after the purchase notice is served (*i.e.*, the period during which a counter-notice must be served) ;

(*b*) the date when the notice is transmitted to the Minister.

If the Minister reaches a decision within the appropriate time, he will convey his decision to the interested parties, who will have the right of appeal under section 31 of this Act to the High Court to quash the Minister's decision within six weeks of the date of the decision, if they consider there are the specified grounds of appeal arising on questions of jurisdiction or procedural irregularity.

In the event of the Minister's decision being quashed, the purchase notice originally served is treated as cancelled, but the owner has the right to serve a further purchase notice in its place.

The provision whereby the purchase notice is, in effect, cancelled is necessary in order to prevent the notice possibly being treated as confirmed on the grounds that, by reason of the quashing of the Minister's decision, it is as if the Minister had failed to give a decision. In such cases, it may well have happened that the period of six months referred to above in paragraph (6) had already expired before the date of the quashing, and the new provision of the 1959 Act accordingly prevents the former notice being automatically treated as confirmed, and leaves the position open so that any fresh purchase notice can be treated on its merits.

It will however be recalled that, by virtue of the Town and Country Planning (General) Regulations 1948 (S.I. 1948, No. 1380), Article 4, purchase notices have to be served within six months of the planning decision which renders the land sterile. This period,

too (which, it has been intimated, will be increased to 12 months), may well have expired by the time that any quashing of the Minister's decision takes place, and therefore in order to enable the owner to serve a further purchase notice, it is provided, in effect, that in such cases the six months' period of grace is to run from the date of the quashing of the decision. The owner can therefore serve a fresh purchase notice within six months from the order of the High Court quashing the Minister's decision.

(E.) ENFORCEMENT NOTICES (SECTION 38)

Enforcement Notices under section 23 of the 1947 Act have proved to be one of the most contentious issues between local planning authorities and landowners arising from that Act.

It will be recalled that section 23 enables local planning authorities to serve Enforcement Notices in respect of any development carried out on land without planning permission or in respect of the non-compliance with any conditions imposed on the grant of a planning permission. In practice this has meant that there were three grounds on which an Enforcement Notice might in theory be based :

(*a*) that a material change of use had taken place without permission ;

(*b*) that operations had been carried out without permission ;

(*c*) that conditions imposed on a grant of permission had not been complied with.

The recent caravan case, however, of *Cater* v. *Essex County Council* [1959] 2 W.L.R. 739 revealed for the first time that it was in fact virtually impossible to draft an Enforcement Notice on the first ground. The reason lies in the Town and Country Planning General Development Order 1950 (S.I. No. 728). The First Schedule of that Order contains a list of different kinds of development for which permission was granted by Article 3 of the Order : among them is " the use of land . . . for any purpose on not more than 28 days in total in any calendar year." It follows from this that any new use of land, even if it were otherwise not permitted, is a permitted use for at least its first 28 days by virtue of the Development Order. The result therefore is that it is impossible to say of any use of land that it has been instituted without the grant of permission, except in a rare kind of case where the 28 days " grace " has been exhausted on an earlier occasion within a year.

This startling result, quickly dubbed " the Caravanner's Charter," has however been short-lived. Section 38 of the 1959 Act now provides that where a permission is granted " subject to limitations,"

those limitations can be enforced by the Enforcement Notice procedure in the same way as any conditions imposed on a grant of permission. By " limitations," there is meant the type of limiting description which one finds, for example, in most of the categories of permitted development set out in the First Schedule of the General Development Order, 1950, including the 28-day limitation mentioned above.

The effect therefore is to introduce a fourth ground on which Enforcement Notices may be based, namely that limitations imposed upon a grant of permission have not been complied with.

It is clear that in many cases the distinction between a " limitation " and a " condition " will depend, not on any difference of substance, but on the technical form of the permission in question. Thus the development specified in Class II of Part I of the First Schedule to the General Development Order is " The erection or construction of gates, fences, walls . . . not exceeding 4 feet in height. . . " That development, permitted in that form by Article 3 of the Order, is development subject to the height " limitation " : but in any permission granted by a local planning authority it would probably be permitted subject to a height " condition." To avoid this issue becoming the field of further legal ingenuity, it is now provided that it does not matter whether an Enforcement Notice alleges non-compliance with limitations or conditions or both : it is to be equally effective for either.

It will be recalled that by virtue of section 2 of the Town and Country Planning (Amendment) Act, 1951, no Enforcement Notice under section 23 of the Act of 1947 alleging a non-compliance with a condition imposed upon the grant of a permission can effectively be served more than four years after the alleged failure to comply with that condition. Since limitations are now equated with conditions, local planning authorities must serve Enforcement Notices, which allege non-compliance with a limitation, within four years after the date of the alleged failure to comply with it, just as in the case of a non-compliance with conditions.

CHAPTER VIII

PART IV OF THE ACT

OWNER-OCCUPIERS AFFECTED BY PLANNING PROPOSALS

While it has been recognised freely on all sides that planning proposals involving the future compulsory acquisition of land invariably cast a shadow upon the value of the land in question, hitherto there has been no redress for the owner and no way in which he could dispose of the land, at any time before the threatened compulsory purchase, except at a figure substantially depreciated by reason of the proposals.

Part IV of the 1959 Act now enables restricted classes of owners to compel the authority, from whom the prospect of compulsory acquisition arises, to purchase their land, when they have made reasonable attempts to sell it and have found that they could not do so except at a substantially depreciated price.

Very broadly, the types of owner who may qualify to serve " purchase notices " under Part IV, in the above circumstances, are :—

(*a*) Owner-occupiers of dwelling-houses ;

(*b*) Owner-occupiers of any other kind of property rated as a single unit with an annual value not exceeding a prescribed limit (at present £250) ;

(*c*) Owner-occupiers of farms.

The full qualifications for such " owner-occupiers " given below should be carefully studied, and in particular it will be seen that occupying tenants having a term of at least three years certain still to run are also included in the phrase " owner-occupier " and can therefore serve purchase notices in respect of their interests in appropriate cases.

One important limitation of this right is that it is restricted to land some part of which is subject to the prospect of compulsory purchase. There is no provision made in respect of land which is blighted in other ways, *e.g.*, by injurious affection due to the prospect of neighbouring land being compulsorily acquired. The result is that the owner-occupier of land directly affected by the planning proposals has the remedy given by Part IV, whereas his neighbour whose land may be equally affected, albeit indirectly, has no remedy.

Before the details of the new right are considered, a summary of the right can be attempted as follows :—

Where land is blighted by the prospect of compulsory acquisition by reason of :

(*a*) designation, allocation, definition or road proposals in a development plan, or

(*b*) a special Act authorising its acquisition, or

(*c*) orders or schemes made in relation to trunk roads or special roads, or

(*d*) plans approved by a highway authority for road construction, improvement or alteration, or

(*e*) declaratory orders made under section 1 of the 1944 Act,

then the following persons :

(i) an owner-occupier of any hereditament wholly or partly contained in that land, which includes a private dwelling-house occupied by him ;

(ii) an owner-occupier of any hereditament wholly or partly contained in that land and having an annual value not exceeding the (present) limit of £250,

(iii) an owner-occupier of an " agricultural unit " wholly or partly contained in that land,

being either freeholders or tenants having a term of at least three years certain still to run, may by notice in the prescribed form require their hereditament, or the affected part of their agricultural unit as the case may be, to be acquired forthwith by the authority which would ultimately acquire them in accordance with the current proposals, provided that

(*a*) such owner-occupiers have made reasonable efforts to sell their interests since the prospect of compulsory acquisition arose, but

(*b*) have been unable to sell save at a price substantially lower than they would have obtained if the blight had not affected the land.

As will be seen below, such persons must have been in occupation of their respective properties for a specified period before they qualify as " owner occupiers."

Unless an owner-occupier's " purchase-notice " is challenged by counter-notice, the authority concerned becomes authorised to acquire his interest and is deemed to have served a notice to treat at the end of two months from the service of the purchase notice. But the authority can challenge the notice on specified grounds, and the owner-occupier may then refer such objections to the Lands Tribunal.

If the Lands Tribunal upholds the purchase notice, the Tribunal must give directions as to the date on which a notice to treat is to be deemed to have been served by the authority, and the acquisition then proceeds.

When land is thus acquired under Part IV, no compensation for disturbance is payable ; nor for severance except, broadly speaking, where the land so acquired is severed from agricultural land. These restrictions should be carefully considered, see page 141.

The authority concerned cannot withdraw from such an acquisition, but the owner-occupier can withdraw at any time up to six weeks after the compensation is assessed, provided that the acquiring authority has not duly entered upon and taken possession of the land in pursuance of the notice to treat deemed to have been served as a result of the purchase notice.

The above is a short statement of the right given by Part IV of this Act and its procedural workings.

The Nature of the Planning Proposals

There are seven categories of planning proposals causing blight, which give rise to the right to serve a purchase notice under Part IV. Three of these categories are contained in development plans, as follows :—

(*a*) the designation of land as land subject to compulsory acquisition ;

(*b*) the allocation of land for the purposes of any of the functions of a Government department, local authority, statutory undertakers, or the National Coal Board ; or alternatively the definition of land as a site of proposed development for the purposes of any of such functions ;

(*c*) any other proposals selecting land for the construction, improvement or alteration of highways.

The remaining four categories of blight are contained in :—

(*d*) any special Act (whether local or public) which specifically authorises the acquisition of land, or includes it within the permitted limits of deviation for the undertaking ;

(*e*) any Trunk Road Order made under the Trunk Roads Act 1946 (or under Part II of the Highways Act 1959, a consolidating Act which supersedes the previous Act as from the 1st January 1960), or a Special Road Scheme or Order made under the Special Roads Act 1949 (or Part II of the Highways Act 1959), affecting land in or adjacent to the site of a trunk road or special road which may be required for the construction, improvement or alteration of such roads ;

(*f*) any plans, approved by resolution of a local highway authority, defining land for the construction, improvement or alteration of highways ;

(*g*) any declaratory order made under section 1 of the 1944 Act, declaring land to be subject to compulsory acquisition

as being land required for the purpose of being laid out afresh in an area of extensive war damage or for providing for the relocation of population or industry or for replacement of open space in the course of redeveloping such an area. In some cases such orders are still " alive " and are giving rise to blight.

It should be noted that the first six of these categories are specified in section 39, but that the last of them (declaratory orders under the 1944 Act) does not appear specifically in Part IV at all but is dealt with by section 44 in Part V. The latter section, however, applies the Part IV provisions to such declaratory orders ; but reference should be made to the narrative on that section (page 144) for the ways in which such orders may now be annulled.

Persons entitled to serve notices

There are six kinds of persons who qualify to serve notices requiring the purchase of their interests in land, when blighted by any of the above planning proposals. These persons fall into three groups, or " couples."

(1) The first " couple " are :—

(*a*) the *freeholder* of all or part of any hereditament, falling (in whole or in part) within a blighted area ;

(*b*) a *tenant* of all or part of such a hereditament, with a term of at least three years certain still to run ;

who in his capacity as freeholder, or tenant as the case may be, has occupied the whole or part of that hereditament as a private dwelling house either

(*a*) for at least the last six months immediately before serving his notice under Part IV, or

(*b*) for at least six months, before leaving the premises unoccupied for not more than six months prior to serving his notice. This enables him to leave the premises if necessary before serving his notice, without becoming disqualified ; but the premises after he so leaves them must remain unoccupied and for a period of not more than six months.

(2) The second " couple " are :—

(*a*) the *freeholder* of all or part of any hereditament having an annual value not exceeding the prescribed limit (at present £250) and falling (in whole or in part) within a blighted area ;

(*b*) a *tenant* of all or part of such a hereditament, with a term of at least three years certain still to run ;

who in his capacity as freeholder, or tenant as the case may be, has occupied all or part of that hereditament for one or other of the periods of occupation required above.

To pause there, it can be seen that—up to the limit of £250 annual value—it does not matter for what purpose the freeholder, or tenant as the case may be, has occupied the premises. This means in effect that, up to that limit, Part IV rights are available equally to business owner-occupiers and to resident owner-occupiers. After the limit, however, only resident owner-occupiers are entitled to serve notices under Part IV. It should be observed that the £250 limit is a limit prescribed by the Town and Country Planning (Limit of Annual Value) Order 1959 (see page 450) and can be altered by subsequent order.

The second " couple," and the third " couple " defined below, need not be private individuals ; they can be companies or any other kind of bodies corporate or unincorporate. In principle the first " couple " also will include other legal " persons," but in practice they must be able to occupy the premises concerned *as a private dwelling house :* this will therefore exclude " persons " other than private individuals. For all these purposes, a partnership firm counts as a separate entity of its own, and occupation for the purposes of a partnership does not count as occupation by the individual partners.

A hereditament, for these purposes, means the aggregate of land forming the subject of a single entry in the current rating valuation list ; but it does not include land forming the subject of a single entry solely because shooting, fishing, and other sporting rights are exercisable over it or because a right to exhibit advertisements on it is let out or reserved. If the land in question happens to be on the boundary of two or more rating areas and, for that reason only, forms the subject of single entries in more than one valuation list, it is to be treated as if it formed one entry in one list. The " annual value " means the rateable value shown in the valuation list, or the net annual value in those cases where the rateable value differs from the net annual value—all measured as at the date of the service of the purchase notice.

It should also be noticed that it is not necessary that the whole of the hereditament be included in the blighted area ; nor that the freeholder, or the tenant, as the case may be, should occupy the *whole* of the hereditament. Moreover the Act does not provide that the part (if it is only a part) of the hereditament which is occupied by the owner-occupier must be that part (if it is only a part) of the hereditament which is affected by the blight. It follows therefore that the owner of a hereditament can force a purchase of his interest in the whole hereditament, where he is occupying only a part of the hereditament which is not the part *directly* affected by the blight.

On the other hand, a person who is an owner-occupier of the

whole of a hereditament can never force the purchase of his interest in only part of the hereditament : and if he is owner-occupier of part of a hereditament, he cannot force the purchase of less than that part. In either case he must " unload " the whole of the hereditament or none of it.

(3) The third " couple " are :—

(*a*) the *freeholder* of the whole or part of an agricultural unit (*i.e.*, any land occupied as a unit for agricultural purposes, including any dwelling house or other building occupied by him for the purpose of farming the land) ;

(*b*) a *tenant* of the whole or part of an agricultural unit, with a term of at least three years certain still to run ;

who has been either the freeholder or tenant while occupying the *whole* of that agricultural unit either

(i) for at least the last 6 months immediately before serving his notice under Part IV or

(ii) for at least 6 months ending not more than 6 months before the service of the notice. This means in effect that he must have been in occupation for 6 months continuously in the year before serving the notice.

The main differences between this last " couple " and the previous ones are that these last two are owner-occupiers of an " agricultural unit " instead of a hereditament ; and that they have to have occupied the whole of that unit for the required period, instead of either the whole or a part. Thus although the occupation of a freeholder or a tenant in this case has to be entire, his interest need only be an interest in part.

So far as the land to be acquired is concerned, there is this further major difference between these latter cases and the former ones : the owner-occupiers of hereditaments can compel the acquisition of their whole hereditaments, but the owner-occupiers of agricultural units can compel the acquisition of only those parts of their units which fall within an area of blight.

Although all the persons indicated above are *owner-occupiers*, it is proposed, for the rest of this narrative, to refer to the person entitled to serve a notice under Part IV as the " owner," for simplicity's sake, but it must not be forgotten that he must always conform to the occupation requirements.

Substantial depreciation in value

Apart from qualifying in the above respects, the owner must be able to show (*a*) that he has made reasonable efforts to sell his interest in the hereditament (or the agricultural unit, as the case may be) and (*b*) that he could not have sold it except at a price

substantially lower than that for which it might reasonably have been expected to sell, if it (or the material part of it) had not been blighted by the prospect of future compulsory acquisition.

His attempts to sell must have taken place since the time when the planning proposals came into effect. In the case of proposals contained in a development plan, or in amendments of a plan, this will mean the date when the plan, or the amendments, came into operation : in the case of proposals in a special enactment or in a trunk road order or a special road scheme or order, it will mean the date when the enactment, order or scheme came into operation : in the case of proposals in the plans of a local highway authority, it will mean the date when the authority passed a resolution approving the plans.

The owner need only show that the open market price which he could have got for the land as affected by the blight was " substantially lower " than its proper price in the open market if it had not been blighted land. In assessing the latter figure it is thought that the relevant proposals which give rise to the prospect of compulsory acquisition must be ignored not only in so far as they relate to the relevant owner's land but also *in so far as they relate to surrounding or adjoining land.* Thus where the owner's land falls within an area indicated as likely to be acquired for a sewage farm, the price which that land would have fetched in the open market unaffected by the prospect of compulsory acquisition must be assessed on the basis that the sewage farm proposals did not apply to the surrounding or adjoining land either.

Although it is thought that the right view is as stated above, the Act does not specifically so provide. Ultimately the question will turn simply on the effect of the words " no part . . . were comprised in land . . . " in section 39 (2) (*d*), and may have to be resolved by the Courts. The argument, however, that those words require the relevant proposals to be ignored only in so far as they relate to the relevant land (and not in so far as they relate to surrounding or adjoining land as well) must not be ruled out. It will be seen what a startling result this would have in the above sewage farm illustration. Equally the result could be startling, in the other direction, if the relevant proposals were proposals for an open space, since in that event the relevant land might fall to be valued for this purpose with the added advantage of a prospective park on its doorstep.

Apart, however, from the above issue as to the extent to which the relevant proposals must be disregarded, it will be realised that in assessing the price which the relevant land might reasonably have been expected to realise unaffected by the blight, the margin of error

in valuing the particular type of land in question will play an important part. In practice it may be a matter of some nicety whatever a low offer for the property reflects the margin of error in valuation or the effect of the relevant planning proposal.

Both "*reasonable endeavours to sell*" and "*substantially lower*" are questions of fact, which it may be ultimately for the Land Tribunal to decide.

In most cases it would probably be difficult to argue that reasonable endeavours had been made to sell, if the property had not been publicly advertised for sale. But certainly no special expenditure would be required beyond what an ordinary seller would incur in trying to dispose of his land. The question as to what is reasonable must be related to the nature of the property concerned and the steps which an ordinary owner would take in order to sell property of that kind in the market.

As regards the question "what is 'substantially' lower?" it should be realised that this is basically a matter of *comparison* and that the mere amount of the difference between the prices will not in itself provide any answer to that question. Thus a difference of £1,000 between the two prices in relation to an expensive property may not be substantial, whereas a difference of £100 may very well constitute a substantial difference between prices for a cheap property. As regards the percentage which constitutes a substantial difference, it is thought that some assistance is to be gained from the Rent Act cases dealing with the question whether the value of "attendance" forms a substantial part of the rent, and in particular from *Palser* v. *Grinling* [1948] A.C. 291, where the House of Lords made it clear that "substantial" (in that context at any rate) had its more positive meaning of "considerable," "large," etc., rather than its more negative meaning of "not insubstantial." One might hazard a guess that less than a difference of 10 per cent. (measured on the higher price figure) would not be a substantial one, whereas 20 per cent. or more would almost certainly be substantial. But it is not to be expected that results would be consistent.

Service on the appropriate authority

When an owner-occupier qualifies to serve a notice in the above respects, he must serve his notice in the form prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (see page 448) on the "appropriate authority." This means the government department, local authority or other body by whom the land in question is liable to be acquired, or is indicated as being proposed to be acquired, in accordance with the planning proposals applicable to the case.

In some cases, however, it may be difficult, after looking at the

relevant planning proposals, to say exactly which the appropriate authority is. Provision is therefore made for such questions to be referred if necessary to the Minister of Transport and Civil Aviation or the Minister of Housing and Local Government. If the relevant planning proposals are road proposals, and it is not clear whether the former Minister or a local highway authority, or which of a number of local highway authorities, are liable to acquire the land in accordance with the proposals, the question can be referred to the former Minister to decide which is the " appropriate authority," and his decision is final.

Equally if it is not clear from one of the other kinds of planning proposals which of a number of local authorities is liable to acquire the land in due course, the question can be referred to the latter Minister and his decision is final.

The service of the notice is the vital step in setting the machinery of Part IV in motion. Even if the owner dies after serving a notice, the machinery will not stop and his personal representatives can continue with the process, in his place, if they so desire. The purchase notice can of course be withdrawn up to six weeks after compensation is assessed by the Lands Tribunal, unless the appropriate authority has duly entered on the land.

Grounds of objection

When the appropriate authority has been served with a notice under Part IV, the authority may serve a counter-notice within two months in the form prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (see page 449) objecting to the notice on one or more of the following grounds :—

(i) that no part of the hereditament or agricultural unit required to be purchased is comprised in land directly affected in any of the specified ways ;

(ii) that on the date of the service of the purchase notice the person serving the notice had no interest in the hereditament or agricultural unit ;

(iii) that he is not a freeholder or a tenant with a term of at least three years certain, or that he has not satisfied the requirements as to occupation ;

(iv) that he has not made reasonable efforts to sell his interest ;

(v) that he could have sold his interest at a price not sub-substantially lower than it would have fetched if no part of the land were comprised in land affected by any of the specified planning proposals ;

(vi) that, in the case of a hereditament, the authority does not propose to acquire any part of the hereditament under such

powers of compulsory acquisition as it has or could have in relation to the particular proposals in question—unless compelled to do so under this Part of the Act ;

(vii) that, in the case of an agricultural unit, the authority does not propose to acquire any part of the area of that unit which is directly affected by the planning proposals in question unless compelled to do so under this Part of the Act,

(viii) that, again in the case of an agricultural unit, the authority does propose to acquire a part of the area of that unit which is directly affected by the planning proposals, but does not propose to acquire any other part of that directly affected area—unless compelled to do so under this Part of the Act.

It can be seen that these grounds fall into two groups. The first five grounds follow from the details given above of the conditions under which a purchase notice may be served. The last three grounds, however, amount to a disclaimer by the authority of any intention to acquire any part, or a particular part, of the land.

These last three grounds are made available to authorities to meet cases in which there has been a change of policy, or in which a diagrammatic proposal has been more precisely defined in subsequent plans or orders so as to show that the relevant land is in fact outside the blighted area.

Since the authority, by adopting any of the last three grounds, can avoid having to purchase the land in question, it is only fair that any power which it already has to acquire the land compulsorily should be brought to an end, so that if the owner cannot have his land purchased, at least the land should be freed from the immediate blight which gave rise to his notice. Therefore when an authority relies on a disclaimer of any intention to acquire any part of a hereditament or any affected part of an agricultural unit (*i.e.*, grounds (vi) and (vii) above), and that ground of objection is upheld by the Lands Tribunal or the owner accepts the disclaimer and does not refer the matter to the Lands Tribunal, then any power to acquire the land (*a*) under a compulsory purchase order already made or (*b*) under a special Act authorising the acquisition or (*c*) by virtue of the land's existing designation in the development plan, is in effect annulled.

It is therefore open to an owner to elect whether to dispute the disclaimer before the Lands Tribunal, or to keep his land, freed from the immediate blight and with the benefit of the authority's disclaimer.

Equally when the authority states in its counter-notice that it proposes to acquire part of the affected area of an agricultural unit but disclaims an intention to acquire the rest of the affected area

(*i.e.*, the " hybrid " ground (viii) above), the owner can in effect elect whether to accept that proposal and keep the remainder of his land freed from immediate blight, or to challenge the authority's grounds before the Lands Tribunal in the hope of forcing the sale of the whole of the relevant land. If he chooses to accept the proposal, or alternatively if he refers the matter to the Lands Tribunal and the Tribunal upholds the authority's disclaimer as to part of the land, then in either case the part not acquired becomes freed from the effect of any compulsory purchase order already made or a special Act or an existing designation in the development plan.

References to the Lands Tribunal

If the authority does serve a counter-notice, the owner may refer the objections of the authority, as set out in the counter-notice, to the Lands Tribunal within two months from the date of the counter-notice. It is then open to the authority if it so chooses to withdraw its objections, and if it does so, the purchase notice takes effect as if no counter-notice had been served.

On a hearing before the Lands Tribunal the onus is on the owner to prove that any of the first five grounds which are relied on by the authority are not well founded : to do this, in effect, he must prove that he and his hereditament or agricultural unit qualify under the conditions given above. But where any of the last three grounds (*i.e.*, the disclaimer grounds) are relied on by the authority, the onus is on the authority to show that it does not propose to acquire the land, or the relevant part of the land.

If the Lands Tribunal upholds any ground relied on by the authority among the first seven grounds (*i.e.*, the grounds relating to the *whole* of the land in question), the acquisition does not proceed. If the Tribunal upholds the eighth ground (*i.e.*, the hybrid ground, dealing with the affected area of an agricultural unit in two parts), the acquisition does not proceed in relation to that part of the affected area of the agricultural unit which the authority does not in any event propose to acquire. But in the latter case the Tribunal must declare that the purchase notice is effective in relation to that part of the affected area of the agricultural unit, which the authority do propose to acquire in any event.

The Notice to Treat

If the Lands Tribunal does not uphold any of the authority's grounds of objection, or if it makes a declaration as indicated in the previous paragraph in relation to the " hybrid " ground, then the authority is authorised to acquire the owner's interest in the hereditament, or the affected area of the agricultural unit as the

case may be (or in the " hybrid " cas, ethe interest in that part of the affected area which the authority proposed to acquire in any event) and is deemed to have served a notice to treat at a date to be directed by the Tribunal.

As pointed out above in dealing with the authority's grounds of objection, it is open to an owner to accept a " hybrid " ground relied on by the authority, without reference to the Lands Tribunal. This is to say, he may elect to agree to the authority's proposal to acquire part of the affected area of his agricultural unit, and to accept the authority's disclaimer as regards the remainder of that area. If he does so elect, he may serve a notice to that effect, without making any reference to the Lands Tribunal and in that event the authority is authorised to acquire the owner's interest in that part of the land and is deemed to have served a notice to treat at the date when the owner serves his notice accepting the proposal to acquire that part.

If, however, the authority has not raised any objections at all to the purchase notice, the authority is authorised to acquire and is deemed to have served a notice to treat at the end of two months from the service of the purchase notice.

In any of the above events, the acquisition proceeds as an ordinary compulsory acquisition, subject to the points indicated below—and the restricted claims permitted for compensation will have to be agreed or if necessary determined by the Lands Tribunal.

The authority cannot withdraw a notice to treat deemed to have been served under Part IV of this Act, but—provided that the authority has not exercised any right of entering upon the land and taken possession of it in pursuance of the notice to treat which is deemed to have been served—the owner can withdraw his purchase notice at any time before the compensation has been assessed by the Lands Tribunal or within a period of six weeks thereafter. If he does so withdraw his notice, the notice to treat deemed to have been served is deemed to have been withdrawn, but no compensation is payable by the authority in respect of such a withdrawal of the notice to treat, either as to loss sustained or in connection with professional fees or costs. On the other hand if the authority has exercised any right of entry and taken possession of the land after the notice to treat is deemed to have been served, the owner is precluded from withdrawing his purchase notice.

The acquisition itself will take place under the enactment appropriate to the acquisition of land subject to the particular planning proposals involved. There are provisions for determining which is the enactment appropriate in a case where the land is allocated or defined in a development plan or is proposed to be

acquired for highway purposes, and for these reference should be made to the text of paragraph 2 of the Fifth Schedule on page 396 and the legal notes thereto. If in any case it appears that the authority could acquire the land under either of two (or more) enactments, the appropriate one is the one under which it is more likely that the acquisition would have taken place in any event. If there is doubt as to which enactment is the appropriate one, the matter can be referred to the following Ministers for their decision, which is final :

(*a*) where the authority is a government department, the Minister or Board in charge ;

(*b*) where the appropriate authority is a local highway authority, the Minister of Transport and Civil Aviation ;

(*c*) where the appropriate authority are statutory undertakers, the Minister concerned with its functions ;

(*d*) in any other case, the Minister of Housing and Local Government.

Compensation

When an acquisition takes place as a result of a notice served under Part IV, it will of course be an acquisition to which Part I of the Act applies, and compensation therefore will be assessed under the rules contained in the Acquisition of Land (Assessment of Compensation) Act 1919 and the new rules contained in section 9.

It will be recalled that the effect of section 9 (2) and (6) is as follows. When land is either due, or likely, to be compulsorily acquired, its value will almost certainly be depreciated by that fact alone. In addition, the value may be also depreciated, or enhanced, by the development to be carried out, or already carried out, in the same scheme on adjacent land. Section 9 (6) eliminates, in all cases, the former element of depreciation, for the purpose of assessing the land's market value for compensation. Section 9 (2) eliminates the latter element of depreciation or enhancement in the 4 Cases set out in the table in that subsection : see further Chapter III on pages 51-5.

Whereas section 9 (6) will always operate in Part IV acquisitions to eliminate depreciation to the acquired land caused solely by the prospect of compulsory acquisition, it should be noticed that section 9 (2) only operates to eliminate depreciation or enhancement in value caused by development to be carried out on adjacent land *authorised to be acquired*, so far as Case 1 is concerned. In Part IV acquisitions there will often not yet be any other land *authorised to be acquired* as defined by section 9 (8). Hence the effect (on the value of the acquired land) of development to be carried out on

adjoining land when it is later acquired must be taken into account. It is true that where the acquired land falls within an area of comprehensive development, or the site of a new town, or an area of town development, Cases 2, 3 or 4 of section 9 (2) may serve to eliminate the effect of that development. But in normal cases the depreciating or enhancing effect of the development proposed for adjacent land by the relevant planning proposals must generally be taken into account in assessing the market value of the land acquired under Part IV.

But since the owner has had to sell privately and now is in effect " unloading " his land under Part IV, the Fifth Schedule provides that no compensation for disturbance will be payable. Where a hereditament is being acquired, no compensation for severance from other land held with it will be payable, except where it is severed from agricultural land. On the other hand, compensation for severance may be paid in the case of an agricultural unit : in this case, since only the " affected area " of the agricultural unit will be purchased, there may be severance causing damage, and compensation is therefore permitted to be paid for any severance.

This severe restriction on the right to claim compensation must be carefully considered before deciding whether or not to serve a purchase notice, particularly by tenants of small business premises whose chief concern is the diminution in the value of their goodwill as a result of the planning proposals causing the blight. In many cases, the right to claim compensation for disturbance is of greater consequence than the value of the interest in the land, with the result that it may not be a practical solution for such persons to take advantage of the purchase notice procedure given by Part IV of this Act.

The loss of the right to claim severance must again be carefully considered before embarking on the purchase notice procedure, particularly in the case of freeholders who may own a block of property suitable for redevelopment. It would appear, however, that an owner may claim for injurious affection to be sustained to other land held with that acquired where such damage is likely to flow from the development to be carried out on the acquired land by the acquiring authority. In assessing such injurious affection, however, it will be necessary to pay regard to the likely date when such proposals are to be carried out, in appropriate cases.

CHAPTER IX

PART V : MISCELLANEOUS PROVISIONS

Summary

Part V of the Act consists of a number of miscellaneous provisions varying in importance.

A. *The principal changes brought about by these provisions are as follows :—*

(*a*) *Section* 44 enables owners to serve purchase notices under Part IV of this Act in respect of land subject to a declaratory order made under section 1 of the 1944 Act, and permits such orders to be amended or annulled in appropriate cases. A declaratory order under the 1944 Act is an order declaring land to be subject to compulsory acquisition ;

(*b*) *Section* 45 changes the " ceiling " for compensation for damage done to requisitioned land during the period of requisition, so as to permit such compensation to reflect the full difference between the market value of a freehold interest in the land in its state when derequisitioned and the market value of a freehold interest in the land in its state when it became requisitioned ;

(*c*) *Section* 46 enables the Minister of Housing and Local Government to exercise his power of authorising the acquisition of land for the purposes of town development (under section 6 of the Town Development Act, 1952) in advance of requirements in cases where he is satisfied that the land is likely to be required for those purposes within ten years ;

(*d*) *Section* 48 enables the Minister of Transport and Civil Aviation to exercise in advance of immediate requirements his powers of acquiring land by agreement for highway purposes.

(*e*) *Section* 49 empowers the Minister of Transport and Civil Aviation to make advances to highway authorities in respect of acquisitions made with a view to the construction of new highways or the improvement of existing highways. The section further enables that Minister to make advances to highway authorities towards the cost of maintaining such land before it is used for such purposes of highway-construction or improvement ;

(*f*) *Section* 52 applies the Act to the Crown.

B. *The remaining provisions of Part V relate to :—*

(i) the amendment of section 52 of the 1954 Act, which provided for the recovery of sums from acquiring authorities by the Central Land Board and the Minister (*section* 51) ;

(ii) the reduction or extinction of "unexpended balances" belonging to land affected by compulsory purchases in pursuance of notices to treat served or contracts made after the 29th October, 1958, for the purposes of the 1954 Act (*section* 54 *and the Sixth Schedule*) ;

(iii) the holding of inquiries, the serving of notices and the making of regulations for the purposes of the Act (*section* 55);

(iv) the interpretation of words and phrases in the Act (*section* 57) ;

(v) amendments and repeals (*section* 58 *and the Seventh and Eighth Schedules*) ;

(vi) the provision of monies for the purposes of the Act (*section* 56) ;

(vii) the vesting of the freehold of ecclesiastical property for the purposes of the Act (*section* 53) ;

(viii) the citation, extent and commencement of the Act (*section* 59).

Land Subject to Declaratory Orders under the 1944 Act (section 44)

As indicated above on page 131, one of the categories of blight which gives rise to a right to serve a purchase notice under section 39 is a declaratory order made under section 1 of the 1944 Act declaring land to be subject to compulsory acquisition.

It will be recalled that such orders could be made in relation to land in an area of extensive war damage, or land required for providing for re-location of population or industry or for replacement of open space in the course of redeveloping part of such an area. The right in such cases to serve a purchase notice under section 39 is in fact given by section 44, but reference should be made to the narrative above on Part IV for the precise conditions and circumstances in which such a purchase notice may be served.

Hitherto such declaratory orders, where they are still in force could not be amended or brought to an end, so that they have persisted as a threat to the land even where there is now no intention of implementing them. This position is now changed by section 44.

First, the Minister's power to amend development plans under section 6 (3) of the 1947 Act, in cases where proposals are made to him for alterations or additions to a development plan, is extended so that he can deal with such declaratory orders as if the land subject to the orders were designated for compulsory acquisition by the development plan. This means in effect that he will be able, if he thinks fit, to free the land from the threat of compulsory acquisition, in just the same way as he can under section 6 (3)

de-designate land which is designated in the development plan.

Secondly, on or after the 16th August, 1960 (*i.e.*, one year after the commencement of this Act) an owner of land may serve a notice on the local planning authority requiring the acquisition of his land if, after 12 years from the coming into operation of a declaratory order affecting his land, that land has not been acquired. This is the procedure under section 9 (1) of the 1947 Act in relation to land designated in development plans as subject to compulsory acquisition.

If within 6 months of the service of such a notice, no notice to treat has been served or offer to purchase on like terms has been made, the land ceases to be treated as land, in effect, designated for compulsory acquisition. The same procedure applies to agricultural land affected by such declaratory orders, as to other land, but with the substitution of 8 years for 12 years as the period before such a notice can be served.

During the one year's period between the commencement of this Act and the time when a notice can be served requiring the acquisition of land, it will be possible for local planning authorities to secure the " de-designation " of the land voluntarily by making proposals under section 6 (3) of the 1947 Act.

It can be thus seen that when land is blighted by a declaratory order under the 1944 Act, it will be possible for an owner to serve a purchase notice under Part IV of this Act if he comes within the provisions of that Part. Equally it will now be open to local planning authorities to secure the removal of the " blight " at the hands of the Minister under section 6 (3) of the 1947 Act. If however the owner is unable or does not choose to serve a purchase notice under Part IV and the blight is not removed under section 6 (3), then the owner can on or after the 16th August, 1960, secure either the purchase of his land or the removal of the blight under section 9 (1) of the 1947 Act.

Damage to Requisitioned Land (section 45)

If the programme laid down by the Requisitioned Houses and Housing (Amendment) Act 1955 is adhered to, the long chapter of the requisitioning of houses will close on 31st March, 1960. By that date all houses still requisitioned are due to be derequisitioned by local authorities, which now retain possession of such houses in place of the Minister of Housing and Local Government. This running-down programme inevitably brings even further to the fore the question of compensation for damage suffered by such houses.

Such houses form the bulk of properties which are still requisitioned. But as regards requisitioned land other than houses, the

Land Powers (Defence) Act 1958, section 1, repealed Defence Regulation 51 as from the 31st December, 1958, and brought the "war period" for the purposes of the Requisitioned Land and War Works Act 1945 to an end on the same date. This means therefore that on the 31st December, 1960 (*i.e.*, two years after the end of the war period, as provided by the 1945 Act), most residual forms of requisitioning will come to an end ten months after the requisitioning of houses is due to be brought to a close.

When damage has been done to requisitioned land during the period of requisitioning, the compensation payable at the end of the requisitioning is that provided for by the Compensation (Defence) Act 1939, section 2 (1) (*b*). The measure of such terminal compensation is the cost of making good the damage (except in so far as the damage has been made good during requisition by a person acting on behalf of Her Majesty), no account being taken of fair wear and tear and of damage caused by war operations. It is worth noting in this respect that, although fair wear and tear is excluded *as of right*, in practice this exclusion is in most cases not rigorously applied by virtue of a concession by the Treasury.

But successive Acts, it will be remembered, have imposed different "ceilings" which the compensation, measured in the above way, has not been permitted to exceed.

Thus the Compensation (Defence) Act 1939 itself imposed one limit to such compensation, namely the value of the land when it became requisitioned, without regard being paid to any appreciation in value due to the emergency.

Following the Town and Country Planning Act 1947, this limit was replaced by a new ceiling imposed by the Requisitioned Land and War Works Act 1948, which limited the compensation, in effect, to the damage so caused to the existing use value of the land. This new ceiling applied to compensation for such damage when the compensation accrued due after the 19th February 1948, *i.e.*, when the land was derequisitioned after that date.

Then, in its turn, this ceiling was itself raised by the Town and Country Planning Act 1954, section 53, which introduced a fresh limit : the excess of the compulsory purchase price (calculated in accordance with Part V of the 1947 Act and Part III of the 1954 Act) of the land in its pre-requisitioned state, over the market value of a freehold interest in the land in its de-requisitioned state. This new limit applied when compensation accrued due on or after 1st January, 1955.

The 1954 Act therefore enabled owners to recover compensation so caused to the development value of the land but only in so far as

that development value was reflected in an established claim under Part VI of the 1947 Act.

Section 45 now, by amending section 53 of the 1954 Act, introduces a fresh limit which brings the compensation into line with the new measure of compensation for compulsory acquisitions. This new " ceiling " is the amount by which the market value of a freehold interest in the land in its *pre*-requisition state exceeds the market value of a freehold interest in it in its *de*-requisition state. The land in each case must be valued as being free from incumbrances (*i.e.*, mortgages, charges, liens, etc.) but subject to existing easements and other restrictions. In each case the value has to be assessed as at the time when the compensation accrues due, *i.e.*, when the de-requisitioning takes place.

In other respects section 53 of the 1954 Act is unaltered by section 45 of this Act. It follows therefore, by virtue of subsection (4) of section 53 of the 1954 Act, that in calculating the value of a freehold interest in the land in its derequisition state, no regard is to be paid to (*a*) war damage and (*b*) certain government war works which were carried out on the land at the expense of, or under agreement with, the owners of the land, or in respect of the value of which a payment under Part II of the Requisitioned Land and War Works Act 1945 was made to a Minister. In such cases the " ceiling " is not to be reduced by reason of the fact that the land on being derequisitioned has the added value of those works upon it, since such works have in effect been paid for by the owners.

But the new ceiling is subject to an increase (provided by the Requisitioned Land and War Works Act 1948) where damage other than war damage was done during requisitioning to such works as are referred to in the last paragraph. In such cases the amount of the increase in the ceiling would be such an increase as would take account of that damage " to such extent as may be just having regard to the expense, agreement or payment " mentioned above. This means that where in effect the owners have paid for those works, the damage to the works must be reflected in an increase in the ceiling for compensation, but only to the extent that each case deserves having regard to the cost of those works to the owners.

It should be noticed in passing that the repeal of subsection (5) of section 53 of the 1954 Act, contained in the Eighth Schedule of the 1959 Act makes no effective change, since subsection (5) merely defined the term " compulsory purchase price " which was used in assessing the former ceiling for the purposes of that Act.

The new ceiling applies only to compensation accruing due

after the 29th October, 1958, *i.e.*, when de-requisitioning takes place after that date.

Acquisition of Land for Town-Development (section 46)

Background

The Town Development Act 1952, it will be recalled, was designed to encourage the growth of " town development " in country districts, to relieve congestion and over-population in populous areas.

To that end, section 6 of that Act gave additional powers of acquiring land. Section 6 (1) empowers the Minister of Housing and Local Government to authorise the acquisition of land *not* already designated as subject to compulsory acquisition in the development plan which is in operation in relation to the area, provided that he is satisfied (*a*) that the land is required for a purpose connected with " town development," and (*b*) that the public interest makes it necessary for the land to be acquired under the section, notwithstanding the fact that it is not so designated in the development plan.

Section 6 (2) of the 1952 Act empowers the Minister to authorise the acquisition of land in any area which is not yet covered at all by any current development plan, if he is satisfied that the acquisition is expedient for a purpose connected with " town development."

The meaning given to " town development " in this connection is development carried out in county districts (*i.e.*, non-county boroughs, urban districts and rural districts, see Local Government Act 1933, section 305), or partly in one county district and partly in another, which is undertaken primarily for the purpose of, and has the effect of, providing residential accommodation (with certain attendant uses) which will relieve congestion or over population elsewhere.

The authorities who may be thus authorised to acquire land for town development are the councils of " receiving districts," *i.e.*, any county district in which the town development is wholly or partly carried out. But if the Minister thinks it expedient that any other local authority should be authorised to acquire the land under the above powers in place of a council of a receiving district, he may so authorise that other local authority, after consulting both the council of the receiving district and the relevant County Council.

It can be seen that section 6 (1) of the 1952 Act is limited to cases where (i) there is a development plan in operation in relation to the area, and (ii) the development plan does not designate the

land in question as subject to compulsory acquisition, and (iii) the Minister is satisfied as above. Section 6 (2), on the other hand, applies to cases where there is no development plan in operation in respect of the area in question.

It will of course be recalled that a development plan comes into operation, in its original form or in an amended form, when it is approved, made or amended by the Minister under Part I of the 1947 Act, and the local planning authority concerned have published a notice under section 11 (1) of the 1947 Act and in accordance with the Town and Country Planning (Development Plans) Regulations 1948 (S.I. 1948, No. 1767), stating that it has been so approved, made or amended.

Acquiring in advance of requirements

Since the Lands Clauses Acts contain no general power to acquire compulsorily in advance of immediate requirements, it follows that acquisitions sought to be made in advance of such requirements cannot be authorised unless the special Act giving the relevant compulsory powers bestows the right to acquire land in advance of immediate requirements.

The most familiar example of a special right to buy in advance of requirements is that contained in section 97 of the Housing Act 1957, which (following a similar provision in the Housing Act 1936), enables local authorities to acquire land for the purposes of housing accommodation 10 years in advance of requirements.

But there is no such power in the Town Development Act, 1952. By itself therefore the power to acquire land for town development under section 6 of that Act does not provide for the acquisition of land in advance of requirements. The general effect has therefore been that the relevant local authorities have acquired land only when and as required and have thus paid for the appreciation in value caused by their own expenditure as the town development progresses.

Effect of section 46

Section 46 now provides that the powers existing under section 6 of the 1952 Act can be exercised even when the land is not immediately required. But where the Minister is asked to authorise such an acquisition in advance of requirements, he can only do so if he is satisfied that the land is likely to be required for purposes connected with town development within 10 years of the confirmation of the compulsory purchase order.

Pending the time when the land can be used for the required purpose, the land will be held by the council of the receiving district

(or any other local authority authorised to acquire the land in place of the council) for the purpose of any of its functions.

The section will encourage among such local authorities the gentle art of anticipating appreciation of land and buying ahead in order to avoid paying for values created by the spread of town-development.

Acquisition of Land for Highway Purposes (section 48)

The recent Highways Act, 1959, which was passed on the 30th April, 1959, and comes into force on the 1st January, 1960, has restored order to our highway law. Part X of that Act consolidates (with some amendments) all powers of acquisition of land for highway purposes. Until the 1st January, 1960, however, those powers can only be sought in the corresponding enactments which the Highways Act, 1959, consolidates and repeals, a search which sometimes can only be compared with a search by a blind man for a black hat in a dark room.

Under Part X of that Act, the Minister of Transport and Civil Aviation, as highway authority for trunk roads and certain other highways, has many varied powers of acquiring land, both compulsorily and by agreement, for highway purposes.

It is now provided by section 48 of this Act that any power which that Minister has under Part X of the Highways Act, 1959, to acquire land by agreement for any purpose set out in that Part can be exercised in advance of immediate requirements : and this means as well that, until the 1st January, 1960, his existing powers under the corresponding enactments can be similarly exercised in advance of immediate requirements. Hitherto he has had no such power to buy in advance, nor is any contained in the Highways Act, 1959. It should however be noted that this applies only to the power to acquire by agreement and not to any power to acquire compulsorily.

The purposes for which powers of acquisition by agreement are given to the Minister by Part X of the Highways Act, 1959, are, for example :—for the construction of trunk roads ; for preventing the erection of buildings detrimental to the view from a highway or preserving the amenities of the locality in which it is, or is to be, situated ; for improving or developing frontages, etc. For any of these purposes the Minister may buy ahead of requirements.

The enactments which until the 1st January, 1960, are the source of the Minister's powers to acquire by agreement are principally the Restriction of Ribbon Development Act, 1935,

section 13, as modified by provisions in the Trunk Roads Acts, 1936 and 1946. Under such enactments the Minister has the power to acquire by agreement land which is within 220 yards of the middle of a road for the purpose of constructing or improving a road or for preventing the erection of buildings detrimental to the view from the road, and has also the power to acquire by agreement land in the neighbourhood of a road for the purpose of preserving the amenities of the locality of the road.

It has been stated that this extension of such powers will be used to alleviate cases of hardship which do not fall within the scope of Part IV of this Act. That Part, it will be recalled, enables certain owner-occupiers to serve notices requiring the purchase of their land where it is rendered unsaleable, except at substantially depressed prices, by specified planning proposals. Such proposals include certain proposals which relate, or may relate, to roads, and where the Minister is the authority who would ultimately acquire the land in accordance with those proposals, he may now buy in advance under this section, in those cases where he could not be compelled to acquire under Part IV because, for example, the owner could not fulfil the occupation requirements of that Part or because the land was outside the financial limits. But it should be noted that the extension of these powers is not limited in any way to such cases, however the power may in fact be exercised administratively.

Acquisitions of Land for Highway Construction or Improvement (section 49)

Background

One of the purposes of the Development and Road Improvement Funds Act 1909 was to promote road construction and improvement, and to that end Part II of the Act empowered the Minister of Transport (now Transport and Civil Aviation) to assist highway authorities with funds for the construction or improvement of roads.

The assistance thus given to highway authorities takes the form of advances made by that Minister in respect of either the construction of new roads, or the maintenance and improvement of existing roads, which appear to the Minister to be required for facilitating road traffic.

As already indicated above in connection with section 48, the Highways Act 1959 was passed on the 30th April, 1959, consolidating all previous highway law, and comes into force on 1st January, 1960. Until the end of 1959, therefore, the former sources of highway law prevail : after that time the Highways Act 1959 becomes the source

of that law. The changes now introduced by section 49—as set out below—are made by reference to the Highways Act 1959 although strictly speaking until 1st January, 1960, it is the power as given by the 1909 Act which is extended in the way described below.

For the sake of reference it should be noted that the power to make advances under the 1909 Act is replaced in section 235 of the Highways Act 1959, and that it is the latter section only which is referred to in section 49 of this Act. Section 57 (10) of this Act, however, provides that references to provisions of the Highways Act 1959 include references to corresponding enactments repealed by that Act, so that until the 1st January, 1960, section 8 of the 1909 Act (which is still in force until then) is effectively being referred to.

Effect of section 49

Section 49 now introduces two changes into this scheme. First, it enables the Minister of Transport and Civil Aviation to make advances to a highway authority in respect of an acquisition of land, where he is satisfied that the acquisition was or will be made with a view to the construction of a new road (highway) or the improvement of an existing one.

It will be appreciated that the right given in Part IV of this Act to certain owner-occupiers to serve a purchase notice, when their land is rendered unsaleable except at a substantially depreciated price, by certain planning proposals, is strictly circumscribed by the provisions of that section.

It has been stated that section 49 is designed to encourage highway authorities to acquire land belonging to owners not entitled to serve purchase notices under Part IV, where hardship has resulted from road planning proposals or action. This would be a matter of administrative policy, and not a matter of legal right. But it should be noted that the amendment made by the section is not limited to such cases, and provides for the making of advances towards the cost of acquiring land, whether or not the acquisition is made to prevent hardship to an owner of land affected by a road proposal.

Secondly, the Minister's power to make such advances under section 8 of the 1909 Act (or section 235 of the Highways Act 1959, as from the 1st January 1960) is now also extended to cover the making of advances towards the cost of maintaining any land, which is acquired by a highway authority with a view to road construction or improvement, in the period *before* the road is actually constructed or improved. For this purpose the Minister

can advance such sums as he thinks fit towards the amount by which the income derived from the land in that period is exceeded by the cost of its upkeep and the charges on any loans incurred in the acquisition of the land and falling due during the period between the acquisition of the land and the carrying out of the works. Further, any loan charges incurred in the acquisition of the land but falling due *after* the carrying out of the works, are also made a separate item in respect of which an advance can now be made, and in this case no set-off of income derived from the land is necessary.

The power of the Minister to make advances for these purposes is a discretionary one, but it would appear that one effect of the section might be that, if the power were exercised generously, highway authorities would be encouraged to buy land well in advance for highway purposes. It will be noticed in this connection that no time limit is imposed on the period between acquisition and the carrying out of the works, provided that the land is acquired " with a view to " road construction or improvement. The section, however, does not of course bestow any power of compulsory acquisition but relates simply to the making of advances, and it remains to be seen how that power is now used administratively.

Application to the Crown (section 52)

Section 52 applies the Act to the Crown in the following ways.

Part 1 of the Act and its related Schedules are applied to compulsory acquisitions and purchases by government departments in just the same way as they apply to acquisitions (and, where appropriate, purchases) by other authorities, so that market value forms the basis of compensation for them. When compensation or a price is paid in accordance with Part 1 in respect of an acquisition or purchase by a government department, the Sixth Schedule operates to reduce or extinguish unexpended balances accordingly, as it does in the case of acquisitions by other acquiring authorities.

The provisions in sections 36 and 37, laying down a new procedure for planning applications, have effect also with regard to such applications in respect of " Crown Land." " Crown Land " means land an interest in which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall or to a government department, or is held in trust for Her Majesty for the purpose of a government department. Section 87 of the 1947 Act, it will be recalled, provided that Part III of that Act (which *inter alia* dealt with planning applications) should apply in effect to land which was Crown land but only in relation

to interests therein which are *not* held by or on behalf of the Crown. It should of course be realised that a developer wishing to buy a Crown interest would have to make an advance application for permission to develop and in such a case sections 36 and 37 would apply to the application.

The provisions of Part IV of this Act which enable owner-occupiers or resident-owner-occupiers to serve purchase notices when their land is blighted by specified planning proposals apply equally to Crown Land. Persons, therefore, having interests in Crown Land, who qualify under Part IV, may serve purchase notices in accordance with that Part in respect of their interests.

Where compensation becomes payable under Part 1 of this Act and includes sums in respect of severance from, or injurious affection to, other land an interest in which belongs to Her Majesty in right of the Duchy of Lancaster or to the Duchy of Cornwall, the unexpended balance of that other land is reduced or extinguished under paragraph 2 of the Sixth Schedule as though the Duchy interest in the land were a private interest.

As regards the powers of the Minister of Housing and Local Government to authorise acquisitions under section 6 of the Town Development Act 1952, those powers as now extended under section 46 of this Act to include advance acquisitions are applied to acquisitions of Crown Land to the same extent as they applied to acquisitions of Crown Land before being so extended. For the specific powers under that section, see above on page 148.

Recovery of Sums from Acquiring Authorities (section 51)

It will be remembered that, under the Town and Country Planning Act 1954, the Minister and the Central Land Board were empowered to recover certain sums from public authorities who made or had made compulsory acquisitions or purchases in the shadow of compulsory powers.

The basis for this recovery was that :

(*a*) in some cases the compensation payable by the acquiring authority was reduced because the Central Land Board had previously given credits out of the " Part VI claim " for the acquired land, or because compensation under Parts II, IV or V of that Act had previously been paid out of that " Part VI claim " as converted into the land's " unexpended balance " ; and

(*b*) in other cases, payments had to be made by the Central Land Board to landowners under Part I of that Act in respect

of such acquisitions made before the commencement of that Act, namely 1st January, 1955.

In all these cases the acquiring authority had stood to benefit directly or indirectly, and therefore recovery of that benefit was decreed.

It should be noticed that the Central Land Board has now been dissolved as from the 1st April, 1959, and its functions assumed by the Minister. This dissolution has taken place by virtue of an order made under section 63 of the 1954 Act.

Amendments made by section 51.

1. Section 51 of the present Act now makes one change in the above general scheme of recovery ; it removes the Central Land Board's former right to recover such sums in one situation. That situation was where in effect the " unexpended balance " of the acquired land (and therefore the compensation for the acquisition) had been reduced because the claim established under Part VI of the 1947 Act had been pledged against outstanding development charges relating to other land, which were owed to the Central Land Board (under *e.g.* the Builders near-ripe or Single house plot Schemes). Now that compensation is on a market-value basis instead of an unexpended-balance basis, the compensation payable by the acquiring authority is not reduced by reason of such prior pledge or credit, and therefore the right of the Minister (previously the Central Land Board) to recover is removed in respect of acquisitions in pursuance of notices to treat served after the 29th October, 1958, or in respect of sales in the shadow of compulsory powers by contract after that date.

The Minister's equivalent right, however, to recover where prior payments have been made of compensation under Parts II, IV, or V of the 1954 Act in respect of planning decisions or orders made before the service of the notice to treat or the making of the contract is preserved, provided of course that—as required by the 1954 Act—such compensation is duly registered (whether before or after the completion of the acquisition or purchase) against the land in the local land charges register and is therefore recoverable from subsequent developers of the land.

But in any case in which, after the completion of the acquisition or purchase, there is any interest left in the land which is *not* owned by the acquiring authority, the Minister's right to recover is postponed until such time as all such interests cease to exist or become vested in the acquiring authority.

Moreover, in any case in which the Minister is satisfied that the acquisition or sale is made for the purposes of a public open space,

it is now provided that no sum is to be recoverable by the Minister under this heading at all.

In cases where the prior compensation so paid was compensation in respect of orders made after 1st January, 1955, revoking or modifying planning permission previously granted (*i.e.*, compensation under Part IV of the 1954 Act) and the Minister recovers any sum under his right of recovery (preserved as above), the amount so recovered must now be paid to the local planning authority which paid the prior compensation under Part IV of the 1954 Act, less any sum paid to that authority by the Minister as a contribution or grant towards the compensation.

2. Besides making the above change, section 51 of the 1959 Act also restates retrospectively a paragraph of section 52 (2) of the 1954 Act. Section 52 (2) of the 1954 Act set out certain exceptional cases in which the Central Land Board could not recover anything from an acquiring authority even though the Board had had to make a payment under Part I of the 1954 Act in respect of a compulsory acquisition or purchase made by that authority. One of those exceptional cases (paragraph (*b*) of the subsection) was where the land was acquired for the purposes of development or redevelopment of an area as a whole.

This paragraph is now restated so as to make it clear that the exceptional cases covered by that paragraph are limited to cases where the acquisition took place before the 18th November, 1952, for the purposes of development or redevelopment of an area as a whole under *either* Planning Act powers *or* local Act powers certified by the Minister to be powers for similar purposes.

This means, in effect, that these exceptional cases—in which the Minister (previously the Central Land Board) cannot recover from local authorities—do not include cases where an acquisition before the 18th November, 1952, for the purposes of development or redevelopment of an area as a whole has taken place under (*e.g.*) Housing Act powers. In these latter cases, therefore, which caused some argument between the Central Land Board and certain local authorities, the Minister will now be clearly entitled to recover. As to whether this does merely restate existing, but obscure, law, or whether it in effect makes a retrospective change in the law, legal opinion differs strongly. At all events the obscurity is now removed, whether it is just or not.

3. A third change is also brought about by section 51 of the 1959 Act in the operation of section 52 of the 1954 Act. Section 51 adds to section 52, by means of a further retrospective subsection, another exceptional case in which the Minister (previously the Central Land Board) cannot recover from an acquiring authority. The new sub-

section applies to cases where an authority acquired agricultural land in pursuance of a notice to treat served, or contract made, before the 18th November, 1952, in such circumstances that a payment became payable under Part I of the 1954 Act by the Central Land Board. In such cases, if the Minister of Housing and Local Government certifies that he is satisfied that the acquiring authority have no intention *either* of using any part of the land (other than temporarily) for any purpose other than agricultural purposes, *or* of disposing of it with a view to its being used for any other purpose, the Minister (previously the Central Land Board) cannot now—by reason of the new subsection—recover anything from the acquiring authority in respect of that part of the land.

There are apparently only a few local authorities affected by this provision, but they will benefit from it in those cases where they had to acquire more agricultural land than they actually required for their purposes and consequently left part of it in agricultural use. The amount which is thereby made irrecoverable by the Minister (previously the Central Land Board) is so much of the amount of the Board's payment under Part I (which the Minister would otherwise be entitled to recover in full) as is attributable to that part of the acquired land which is left in agricultural use.

Reduction of "Unexpended Balances" after Compulsory Acquisitions (section 54 and the Sixth Schedule)

It will be recalled that the framework of the Town and Country Planning Act 1954 was that, first of all, certain payments were to be made to landowners out of the claims on the £300 million Compensation Fund established under Part VI of the 1947 Act, where certain specified events had happened to the land in question before 1st January, 1955. Then after such payments had been deducted from the established claims, any balance remaining in respect of each area of land became converted into an "unexpended balance of established development value" for that land. This "unexpended balance" was then liable to be reduced or extinguished to the extent that any "new development" had taken place on the land since the 1st July, 1948, or subsequently took place *after* the commencement of the 1954 Act, and the resulting balance (if any) constituted a fund out of which compensation might fall to be paid when there were subsequent planning restrictions or acquisitions which affected that land. As each subsequent event takes place giving rise to compensation, the "unexpended balance" is correspondingly reduced, so that finally, if not at once, the fund becomes exhausted.

Although Part III of the 1954 Act (relating to compensation payable on compulsory acquisitions) is repealed by the 1950 Act, the rest of the 1954 Act is virtually unaffected, and the " unexpended balance " still remains as a fund out of which compensation is payable for planning restrictions imposed on or after 1st January, 1955 and for the future.

It is necessary, therefore, when a compulsory acquisition of an interest in land takes place for which, under the 1959 Act, market value forms the basis of compensation, that the " unexpended balance " of the land should be appropriately reduced, or extinguished as the case may be. Out of the residue then left, if any, compensation may subsequently be payable in respect of other interests in the land under Part II of the 1954 Act (where planning permission is refused or only granted subject to onerous conditions), or under Part IV of that Act (where previous planning permission is revoked or modified), or the residue may be further reduced or extinguished when " new development " takes place upon the land, or when other interests in the land are themselves subsequently acquired under compulsory powers.

Machinery

The machinery for making the appropriate reductions is complicated because a compulsory acquisition may or may not be an acquisition of all the interests in the land concerned. The necessary machinery is supplied by the Sixth Schedule of the 1959 Act and it deals with three different situations.

1. First, there is the simple situation where, after a compulsory acquisition, all substantial interests in the land acquired are held by the acquiring authority. This covers both the case where all such interests are acquired at the same time, and also the case where some already belonged to the authority and the remainder are acquired by means of the acquisition in question. For this purpose, any tenancy for a year, or from year to year, or less, can be ignored.

In this simple situation the " unexpended balance " of the land is extinguished, and there is no fund remaining for subsequent compensation under the 1954 Act.

2. The second situation is where, after the acquisition, there is a substantial interest (*i.e.*, an interest greater than a tenancy for a year, or from year to year), which does *not* belong to the acquiring authority. In such a case an apportionment of the " unexpended balance " has to take place as between the remaining private interest and the interests now held by the acquiring authority. The unexpended balance is then reduced by so much of the unexpended

balance as is attributable on this apportionment to the interests held by the acquiring authority.

It is not proposed to describe here the machinery for making the necessary apportionment in this type of case, and for this reference should be made to the text of Part II of the Sixth Schedule (which reproduces the Fifth Schedule of the 1954 Act) and the notes thereto, where the process is fully described—see pages 407–9 and 413–4.

3. The third situation is where, on a compulsory acquisition made after the 29th October, 1958, the compensation payable includes compensation for severance from other land held with the acquired land, or injurious affection to other land, whether or not held with the acquired land. In such a case it is appropriate that the " unexpended balance " of that other land should be reduced. The amount of the reduction is, in effect, so much of the compensation as is compensation for the damage done by the severance or injurious affection to the *development* value of that other land. This proportion of the compensation is calculated by subtracting from the full amount of the compensation for the severance or injurious affection the sum which would have been the amount of compensation if the affected land had been restricted to its existing use and Third Schedule tolerances.

It will be noticed that the effect in this case is that a proportion of the compensation *calculated at current prices*, is to be deducted from an " unexpended balance " which represented a development value *calculated at* 1947 *prices*. The result will be that the " unexpended balance " of that other land may be at once finally, or more quickly, exhausted. See also example No. 13 in Chapter X, on page 172.

The above rules apply both when a compulsory acquisition takes place in the pursuance of a notice to treat served or deemed to be served after the 29th October, 1958, and when a purchase in the shadow of compulsory powers takes place by contract made after that date. In the latter case, of course, it is the price which has to be divided up for the purpose of the third rule.

Inquiries, Notices and Regulations (section 55)

Inquiries

For the purpose of any of his functions under the 1959 Act the Minister of Housing and Local Government may hold local inquiries, as he can under the 1947 Act. This result is achieved by applying section 104 of the 1947 Act, which relates to the holding of such local inquiries, for the purposes of the 1959 Act. The effect is as follows.

When such an inquiry is held, the person holding it may by summons require any person to give evidence or to produce documents (other than documents of title), and he may take evidence on oath or make witnesses subscribe to a declaration of truth. A person served with a summons need not attend if it involves going more than 10 miles from his place of residence, unless the expenses of attendance are paid or tendered to him.

It is an offence to refuse or neglect wilfully to obey such a summons or to give evidence, or to alter, conceal, destroy or refuse to produce a document the production of which is commanded by the summons.

The costs incurred by the Minister in holding an inquiry are to be paid by such local authority or party to the inquiry as the Minister directs. The Minister has also power to make orders as to the costs of the parties to the inquiry, and such orders may be made rules of the High Court, on application to the High Court. This power to make orders as to the costs of the parties is very rarely exercised by the Minister in practice.

Service of Notices

A number of important notices are required to be served under the 1959 Act. For example, the notice of intention to proceed with long-standing notices to treat (*section* 14 (2)) ; the counter-notice in response to a purchase notice under section 19 of the 1947 Act (*section* 35 (1)) ; the notice of planning applications to be given to " owners " (*section* 37) ; a purchase notice when land is rendered unsaleable by planning proposals (*section* 39 (2)) ; this list is not, of course, exhaustive. For the service of all such notices required under the Act, the provisions of section 105 of the 1947 Act are now incorporated in the 1959 Act.

The effect of these provisions is that normal service of a notice on a private person can be effected (*a*) by personal delivery, or (*b*) by leaving it at the person's last known or usual place of abode or at the address furnished by him for service, or (*c*) by sending it registered to him at his last known or usual place of abode or at the address furnished by him for service. Normal service of a notice on a company is by delivery at, or posting it registered to the secretary of the company at the registered or principal office of the company.

There are special provisions for cases where a notice is required or authorised to be served on a person as being the occupier of or having a interest in premises. This is clearly of great importance for the purpose of this Act. In such a case the notice can be addressed to that person by name, or by the description " owner " or

" occupier " of the premises if his name cannot be reasonably ascertained, and then delivered at, left or posted by registered post to the addresses mentioned above. Alternatively it can be addressed as above, marked as a document of importance, and sent registered *to the premises* in question, and then if it is not returned, it is deemed to be served ; alternatively when it is so addressed and marked, it may either be delivered to some person on the premises or be affixed conspicuously to some object on the premises, and in these circumstances is deemed to be duly served.

There are further provisions for cases where notices have to be served on all persons having interests in or occupying land, and the land or part of it appears to be unoccupied. In such a case the notice should be addressed to " the owners and occupiers " of the unoccupied (part of the) land, which must be described therein, and fixed conspicuously on some object on the land. This method will not be effective service on persons who have supplied an address for service.

Regulations

Regulations or Orders for the purposes of the Act are to be made by the Minister of Housing and Local Government by Statutory Instrument, and it is provided that such statutory instrument shall be subject to annulment by a resolution of either House of Parliament. The effect of this is that section 5 (1) of the Statutory Instruments Act 1946 requires such regulations, after being made, to be laid before Parliament, and either House may within 40 days thereof resolve to address Her Majesty praying for the annulment of the instrument. Her Majesty may then by Order in Council revoke the instrument.

Orders made under the Act may be varied or revoked by other Orders.

The Regulations and Orders so far made for the purposes of the Act are :—

1. The Town and Country Planning General Development Order 1959 (S.I. No. 1286).
2. The Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (S.I. No. 1287).
3. The Town and Country Planning (Limit of Annual Value) Order 1959 (S.I. No. 1318).
4. The Housing (Prescribed Forms) (Amendment) Regulations 1959 (S.I. No. 1400).

These Regulations are reproduced in Appendix No. II.

INTERPRETATION (section 57)

Section 57 deals with the meanings to be given to words and phrases used in the Act, and full reference should be made to the text and notes.

Apart from the various specific definitions set out in sub-sections (1) or (2), it should be noticed that, generally speaking, the meanings used in the 1947 Act (see in particular section 119 of that Act) are incorporated in this Act for defining expressions common to both Acts.

Some specific definitions are also incorporated from the 1954 Act, namely, " compulsory acquisition," " public authority possessing compulsory purchase powers " (see section 69 (1) of the 1954 Act) ; " contract " (see section 69 (6)) ; " planning decision " (see section 69 (6)) ; and " deriving title " (see section 69 (7)).

Particular note should be taken of the phrase which has been used in the Act for what is commonly known as a purchase in the shadow of compulsory powers, namely, " a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition." This is defined as a sale to a " public authority possessing compulsory powers," *i.e.*, a person or body of persons who *could be* or have been authorised to acquire the interest in question compulsorily for the purpose for which it was purchased (see section 69 (1) of the 1954 Act). This is to be contrasted with the phrase used in Part II of the Act, namely, an acquisition " in the exercise (directly or indirectly) of compulsory powers," this latter phrase is defined in section 30 (5) of the 1959 Act, so as to include cases of acquisition by agreement, but only where the authority concerned *was* authorised by or under an enactment to acquire the land compulsorily.

FINANCIAL PROVISIONS (section 56)

The Act requires Parliament to provide moneys for :—

(*a*) the administrative expenses of the Minister brought about by the Act ;

(*b*) any increase attributable to this Act in sums payable out of monies already provided by Parliament under other Acts ;

(*c*) the payment by government departments of compensation under section 13 (to persons displaced by compulsory acquisitions) and under sections 18 and 21 (where planning permission for additional development is granted within five years after compulsory acquisition, or where Crown " additional development " is initiated within that period).

AMENDMENTS AND REPEALS (section 58 and the Seventh and Eighth Schedules)

A large number of important amendments and repeals are made in the body of the Act. Section 58 and the Seventh and Eighth Schedules deal generally with amendments and repeals, some of which are consequential on or repeat the effect of those made in the body of the Act.

The Schedule lists the amendments made, which are briefly as follows :—

(*a*) *to the Agriculture Act* 1947, *section* 58 (7) (*b*). The amendment preserves the power of the Minister of Agriculture, Fisheries and Food to require a smallholding authority to provide information about the sale, exchange, letting or appropriation of land used for providing small holdings, where that Minister has made a contribution towards any loss incurred in providing such small holdings and the land is disposed of or appropriated in a way different from that which was proposed when the Minister's contribution was assessed, but provides in effect that the supply of this information shall no longer be made a condition of any consent to such disposal or appropriation.

(*b*) *to the Town and Country Planning Act* 1947,

Section 18. The effect of a new subsection is that when a planning permission is granted by a development order subject to limitations, the normal use of the land (apart from its use in accordance with that permission) can be resumed at any time without further permission, unless that " normal " use was in breach of planning control.

Section 19. The effect of these amendments has been incorporated above in relation to the changes in purchase notice procedure, introduced by section 35, see pages 123–27. For section 19 as amended and now reproduced, see Ninth Schedule of this Act on pages 425–8.

The amendments to section 19 do not have effect in relation to purchase notices served before the 16th August, 1959.

As regards purchase notices served on or after that date, the amendments made by section 35 and by the Seventh Schedule of this Act apply whether such notices are served under section 19 itself of the 1947 Act or under that section as applied by sections 22 or 27 of that Act, or by section 59 of the 1954 Act, or by a Building Preservation Order unless the Order provides to the contrary.

Section 20 (3) *and* (4). The effect is to preserve unaltered the basis of compensation under that section on the basis of existing use value, where a purchase notice under section 19 is " avoided " in whole or in part by a direction of the Minister that alternative development should be permitted, but compensation becomes payable because the permitted development is of less value than Third Schedule rights under the 1947 Act.

Section 23 *and* 24. The effect of the amendments enables local planning authorities to serve enforcement notices in respect of the non-compliance with a limitation subject to which a planning permission was granted, in just the same way as it can do so in respect of non-compliance with conditions. See further the narrative on section 38 on page 127.

Section 27. This is a purely consequential amendment, arising from the amendments to section 19 of the 1947 Act.

Section 54. The effect of a new subsection is that when land which was requisitioned before the 1st July, 1948, and to which Part VIII of the Requisitioned Land and War Works Act 1945 applies is compulsorily acquired in pursuance of a notice to treat served after the 29th October, 1958, the Third Schedule tolerances are treated as attached to that *land in its state at the beginning of* requisitioning, for the purpose of making any assumption under section 3 (3) and (4) of this Act that planning permission would be granted for " Third Schedule development."

(*c*) *to the Town and Country Planning Act* 1954,

Section 29 (6). The effect is to ensure that a reference to section 52 (6) of that Act is understood in appropriate cases, as a reference to that subsection as now amended ; see section 51 (3) of the 1959 Act.

Section 53 (1) *and* (2). The effect of these amendments reproduces the effect of section 45 of the 1959 Act ; see that section on pages 145–8. These amendments do not have effect in relation to compensation accruing due on or before the 29th October, 1958.

(*d*) *to the Housing Act*, 1957,

Section 47 (2). The effect of the new subsection (2), substituted for the former subsection, reproduces the effect of section 26 (4) of the 1959 Act, in relation to land purchased in or near a clearance area under Part III of the Housing Act 1957 : namely that if such land is sold, exchanged or

leased at a figure less than the best price, consideration or rent (having regard to any conditions and restrictions, including any conditions as to payment or the giving of security for payment, subject to which it is disposed of), the consent of the Minister of Housing and Local Government must first be obtained. Previously such a disposal was not permitted.

Second Schedule, paragraph 2 (1), *proviso.* The effect is to provide that the amount of a " well-maintained " payment under sections 30 or 60 of the Housing Act 1957 shall not be greater than the amount by which the full value of the unfit house exceeds the site value thereof. See above on pages 65–6. This amendment does not have effect in relation to compulsory acquisitions made in pursuance of a notice to treat served or deemed to be served on or before the 29th October, 1958.

The Eighth Schedule lists the repeals made, all of which have effect only in relation to compulsory acquisitions in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958, and to purchases in the shadow of compulsory powers in pursuance of a contract made after that date. These repeals are not effective in relation to such compulsory acquisitions or purchases initiated on or before that date.

The major repeals are of those provisions dealing generally with compensation for compulsory acquisition (sections 51 and 55 of the 1947 Act, and Part III of the 1954 Act), and of the special provisions relating to such compensation in respect of war-damaged land (section 14 of the War Damage Act 1943, and sections 53 and 56 of the 1947 Act), and in respect of special categories of land, such as land held by local authorities for their general statutory purposes, operational land of statutory undertakers, and land held on charitable trusts (sections 82 (5), 84 (4) and 85 (4) of the 1947 Act).

For reference to these repeals see text of the Act on pages 422-4.

Vesting of Ecclesiastical Property (section 53)

Church property in England is vested in the incumbents of benefices, with the result that if a benefice becomes vacant, the freehold of the property is in abeyance pending the admission of a new incumbent. For the purposes of the Act, it is necessary—as it was for the purposes of the 1947 Act—that during such a vacancy there should be a body able to deal with the property, and accordingly it is provided that the Church Commissioners should

be treated as having the freehold of the ecclesiastical property in question vested in them during such vacancy.

The Church Commissioners are the body created by the Church Commissioners Measure 1947 to supersede the Ecclesiastical Commissioners and governors of Queen Anne's Bounty, and to perform the various functions of those former bodies as regards church property and finances.

For the purpose of the section, ecclesiastical property means land belonging to a benefice, or forming all or part of a church subject to a bishop's jurisdiction, or forming the site of such a church, or forming all or part of a burial ground subject to a bishop's jurisdiction.

These provisions do not apply to Wales or Monmouthshire, where the Church is disestablished. All Church property formerly vested in the Welsh Commissioners is now vested in the Representative Body of the Church in Wales, in county councils and in the University of Wales, so that the difficulty arising from a vacancy in a benefice does not arise.

Short Title, Commencement and Extent (section 59)

The Act is to be cited as the Town and Country Planning Act 1959.

The previous Town and Country Planning Acts from 1947 until 1954 are known as the Town and Country Planning Acts 1947 to 1954, and those Acts and this Act (apart from Part II which relates principally to Ministerial control over local authorities and other public bodies) may now be cited as the Town and Country Planning Acts 1947 to 1959.

The Act does not extend to Northern Ireland. Subject to the modifications set out at the end of some sections, the Act applies to Scotland, but the Act has been re-enacted for Scotland in a Scottish form.

The Act came into force on 16th August, 1959, being one month after the date of passing the Act.

CHAPTER X

PRACTICAL PROBLEMS

(A) The new Two-Price system

One of the difficulties facing those concerned with the administration of land is that the 1959 Act, whilst abolishing the two price system of the 1954 Act so far as compensation for compulsory purchase is concerned, (by establishing the current market value basis) creates a new two price system, in that compensation for planning restrictions continues to be assessed by reference to Part II of the 1954 Act. The 1954 Act provides that the " ceiling " for compensation payable, in respect of planning refusals or the imposition of onerous conditions on the grant of planning consents, shall be the unexpended balance of established development value remaining attached to the benefit of such land. These balances are, of course, the residues of the claims made under Part VI of the 1947 Act by the owners of all interests in the land, plus the supplements in lieu of interest, and less the payments made to date. The amounts available as unexpended balances fluctuate widely as between similar properties and, in any event, they are based on 1947 values.

In some cases it may well be financially more desirable for an owner faced with a planning refusal from the *local planning authority* to serve a purchase notice on the appropriate *local authority* rather than to claim compensation under Part II of the 1954 Act.

EXAMPLE NO. 8

The owner of a factory situated in an area zoned for residential purposes in the current development plan acquired a parcel of waste land years ago for the purpose of constructing additional workshops. An unexpended balance of established development value in the sum of £500 is now attached to this additional land. The land would now be worth £2,000 for industrial development, and £1,000 for housing development. Planning consent to erect an industrial building is refused and the planning authority indicate that they propose to use the site ultimately for highway purposes.

If a claim for the planning refusal were submitted under Part II of the 1954 Act, it would be calculated as follows :—

(1) Value of the land if the decision had been to the "contrary effect." (*i.e.*, if industrial permission granted)	£2,000
(2) Deduct value of the land as affected by the refusal, *i.e.*, as waste land ... ... say	£50
Loss sustained	£1,950
BUT, the "ceiling" of compensation, being the amount of the unexpended balance, only is payable, viz.	£500

If the owner can show that the land in its present state is incapable of reasonably beneficial use a purchase notice can be served and the compensation payable would be assessed at housing value (see section 4 (2) of this Act). In this event the owner would thus recover £1,000.

EXAMPLE NO. 9

A small private hotel in London is situated in an office zone in the current development plan. The hotel has traded at a substantial loss for the last three years and the business cannot continue. The premises will not attract a purchaser as an hotel. The property can be sold for conversion to offices at a price of £30,000. There is an unexpended balance of established development value of £10,000 based on the 1947 value of such a conversion. Planning permission to change the use to offices is refused, since the planning authority claim that the premises are capable of use for residential purposes in accordance with the Minister's direction in the London Plan. Assume that consent is offered to convert the hotel into flats for which purposes the property is worth £7,500.

If a claim for compensation in respect of the planning refusal were submitted it would be rejected, as section 20 of the 1954 Act provides that no compensation is recoverable in respect of the refusal to a change of use.

If a purchase notice is served and were confirmed (and in this connection it will be remembered that the Minister may pay regard only to the existing use and Third Schedule development in determining if the land is capable of reasonably beneficial use) it would appear that compensation would be assessed under the provisions of section 4 (2) of this Act, modified by section 4 (6) (*b*) since it is likely that planning permission for the zoned use would be granted only at a future time by virtue of the Minister's direction in the written statement. Compensation would then be assessed as follows :—

Value of premises with assumed permission for conversion to use as offices	£30,000
P.V. of £1 in 3 years at 8% (it being assumed that permission would be granted after the lapse of 3 years)	.794
	£23,820
Add value of premises for the next 3 years, *i.e.*, liability to keep in repair, (as no reasonable temporary use can be made of the property)	
say MINUS	320
Compensation payable ...	£23,500

(B) Assumptions as to planning permission
Section 2

EXAMPLE NO. 10—GREEN BELT LAND

Assume a ten acre field situated in the green belt of the current development plan but with an unexpended balance of £5,000 attaching to it. The owner has refrained from applying for planning permission in order to obtain a refusal and thus collect the unexpended balance, as he thinks this may encourage the possibility of compulsory purchase (a common fallacy). If the land is now acquired compulsorily by the local authority for the purposes of open space (*e.g.*, a park), the statutory assumptions (including the certificate procedure) in this Act are likely to be of no benefit to him, but the open market value of the land will reflect the right to submit an application for development permission, obtain a refusal and recover the unexpended balance under Part II of the 1954 Act. The claim for compensation on compulsory purchase might be agreed on the following lines :—

Value of 10 acres of pasture at £80 per acre		£800
Add Value of unexpended balance	£5,000	
P.V. of £1 in 1 year at 5% (to allow one year before receipt of the money due to the procedure)	.952	
	£4,760	
Deduct for risk and trouble of making the claim 10%	£475	
		£4,285
Open Market Value		£5,085

N.B. The amount deducted for risk and the purchaser's trouble in making the claim must obviously vary in individual cases and

the figure of 10% is, of course, adopted for example purposes only. Where the case for recovering compensation is an obvious one, acquiring authorities may feel it unnecessary to press for such an allowance.

Section 3 : Proposals of the acquiring authority

EXAMPLE NO. 11

(*a*) *Simple*

An acre of land zoned for residential purposes in the current development plan for low density development is worth £3,000 per acre in the open market. The local authority purchase compulsorily for housing but intend to erect blocks of flats at high density for which purpose the land is worth £5,000 per acre. The compensation recoverable is the latter figure.

(*b*) *Less simple*

A good class house has three acres of grounds and is worth £10,000 as a residence. Two acres are acquired for the purpose of developing an estate of council houses. The owner must consider his claim for compensation carefully and choose the most profitable basis. Assume that land can be sold for housing purposes similar to the council development at £2,000 per acre, and such development will cause a reduction in the value of the house of £3,000. Assume further that land can be sold for good class housing at £1,500 per acre and such development will cause a reduction in the value of the house of £1,500 to cover both the loss of grounds and the injurious affection in this latter case.

(i) *Claim on existing use basis*
(*i.e.*, as a Residence)

Value of Residence before acquisition with three acres of land	£10,000
Value of Residence and one acre of land after acquisition	£7,000
Claim for injurious affection	£3,000
Add value of 2 acres of garden land, at say	£500
Total compensation	£3,500

(ii) *Claim based on proposals of the (acquiring authority)*
(*i.e., as a Building estate*)

Value of land taken

Assume planning permission to build houses on the two acres with the benefit of which they can be sold for	£4,000
Compensation for injurious affection sustained to the house	Nil
Compensation payable	£4,000

It is necessary for compensation claims to be consistent. Hence if the owner claims on the basis of developing the land himself he cannot recover in addition the injurious affection sustained to his house by reason of such development.

(iii) *Claim based on private building proposals*

Value of two acres of building land for good class low density development		£3,000
Add Value of Residence before sale ...	£10,000	
Less injurious affection owing to development, and loss of grounds ...	£1,500	
		£8,500
Total value of property for private development before acquisition ...		£11,500
Deduct Value of house and one acre remaining after acquisition and development with Council estate		£7,000
Compensation payable		£4,500

(C) The Planning assumptions and Injurious Affection and Severance

The planning assumptions apply only to the land actually acquired. They do not affect claims for injurious affection and severance (*i.e.*, compensation in respect of the loss sustained to land held with that acquired is the open market diminution in the value of such land without reference to the statutory assumptions).

EXAMPLE NO. 12

An estate of 150 acres is zoned for residential use in the current development plan. The local authority acquire 25 acres for industrial development for which there is a strong and immediate demand. Such development would cause injurious affection to the remaining land as residential land but a prospect arises in the open market that at a future date such remaining land may be zoned for industrial use in the plan, with the result that the open market value of the land remains constant. In such a case the claimant, although entitled to recover compensation for the land acquired on the basis of industrial values will be unable to recover compensation for injurious affection to his remaining land as no loss has been sustained to its open market value.

The Sixth Schedule

In cases where compensation is payable for injurious affection or severance to other land held with that acquired, and the compensation so paid reflects the development value of that other land,

the Sixth Schedule provides for adjustments to be made to any unexpended balance of established development value attaching to that other land.

EXAMPLE No. 13

An owner has two fields lettered A and B. Each of the fields has an unexpended balance of £1,000. Field A is acquired by the local authority for use as a refuse dump and under the provisions of the Sixth Schedule the unexpended balance on field A is thereupon extinguished. Assume that field B would have sold for housing development at £1,800 before the acquisition of field A and is injuriously affected to the extent of 50 per cent., hence being now worth only £900. The Sixth Schedule provides that from the unexpended balance of field B must be deducted the amount by which the compensation payable for injurious affection (namely, £900) exceeds the compensation which would have been so payable on the assumption that planning permission for the development of field B would be refused for all classes of development except those specified in the Third Schedule to the Act of 1947. Assume that the injurious affection to the agricultural value of field B would be agreed at £100. The effect is that the unexpended balance attaching to field B would be reduced as follows :—

Unexpended Balance at time of Acquisition of field A		£1,000
Less Compensation paid for injurious affection to field B	£900	
Deduct Compensation payable for injurious affection on an " existing use basis " ...	£100	
	——	£800
Future unexpended balance of established development value available in respect of field B		£200

(D) Valuation of " blighted " properties under Part IV

The wording of section 39 (2) (*d*) of the Act appears to contain an ambiguity, which if construed against the claimant would appear to give rise to a result not intended by Parliament. Where an owner-occupier who qualifies under Part IV can show that by reason of the threat of future compulsory purchase affecting land in which his property is situated he is unable to sell his property at a proper price in the open market, he may serve a purchase notice on the appropriate authority. It is necessary to show that the hereditament can only be sold in the open market at a price

substantially lower than it would fetch if no part of *the hereditament* were comprised in the affected land. It is by no means clear, however, that the entire proposal which gives rise to the threat of compulsory purchase is to be disregarded. If the opposite view is taken, namely that the " blight " must only be disregarded to the extent to which it affects the relevant hereditament, all the surrounding properties must then be taken as being affected by the " blight," when considering the value of the relevant hereditament. This may have some surprising results. Consider the case of a group of properties designated as subject to compulsory purchase for the purpose of constructing a sewage disposal works. Assume that your client's house is in the centre of the affected area. If the narrow view were taken of the wording in section 39 (2) (*d*) it might be argued that what has to be ascertained is :

(*a*) the value of the property subject to designation as part of a sewage disposal works.

(*b*) the value of the property free from designation but surrounded by designated property shortly to become a sewage disposal works.

On either view, the value of the house would be nominal and thus the owner could not qualify to serve a purchase notice.

If the owner does so qualify, compensation arising from the purchase notice would fall to be assessed in the manner dealt with in Chapter VIII on page 141.

(E) War damaged land

It will be remembered that under the provisions of section 53 of the Act of 1947, the compensation payable on the compulsory acquisition of war damaged land, with the benefit of a cost of works payment, was arrived at on the basis that all the war damage had been notionally restored immediately before the date of service of the notice to treat. The Act of 1959 abolishes this special basis and substitutes the price payable in the open market for such property with the benefit of the war damage claim passing to the purchaser.

Case (A)—The 1959 Act Reduces Compensation

EXAMPLE NO. 14

A severely damaged property in the shopping centre of a provincial city stands in a vast area of devastation. Re-development works have commenced, but it is anticipated that five years will elapse before the immediate area surrounding this property is re-developed. The current development plan zones the property

as part of a secondary shopping street. The property before war damage was used as a shop with two flats over.

(*a*) *Compensation under the Acts of* 1947/54

Rental value of notionally restored building.		
Reduced market rental for first five years £200 p.a.		
Y.P. for 5 years at 7% 4.1		
		£820
Reversion to full market rental	£750	
Y.P. in perpetuity at 7% ... 14.286		
Y.P. 5 years at 7% 4.1		
	10.186	
		£7,640
Compensation payable		£8,460

(*b*) *Compensation under the Act of* 1959

Present rental value of existing ruined buildings ...		Nil
Assume rebuilding in five years		
Estimated rental value	£750	
Y.P. in perpetuity at 8% ... 12.5		
Y.P. for 5 years at 8% ... 4.		
	8.5	
		£6,375
Compensation payable ... =		£6,375

Note : A higher yield of 8% would be expected in this case by the purchaser as he would take the risks of :—

(i) A correct estimate of the time before rebuilding.
(ii) The rental value being maintained.
(iii) The trouble of negotiations with the War Damage Commission, in which he might not recover the whole cost of reinstating the property.

Case (B)—The 1959 *Act Increases Compensation*

EXAMPLE NO. 15

A three-storey office building on a large site has been severely damaged by enemy action in 1941 but is a cost of works case. The site is suitable for a seven-storey office development for which there is a keen demand. The site area is 8,000 sq. ft. The floor space in the damaged building was 12,000 sq. ft. The plot ratio for redevelopment is 5 to 1.

(*a*) *Compensation under the Acts of* 1947/54

Rental value of notionally reinstated building.

12,000 sq. ft. at 20*s.* per sq. ft.		£12,000
Y.P. in perpetuity at 6½%	say	15.
Compensation payable ...		£180,000

(*b*) *Compensation under the Act of* 1959

(1) *Value of Site for Redevelopment*

Gross floor space on plot ratio of 5 to 1 = 40,000 sq. ft.
Net floor space for letting say 80% = 32,000 sq ft.

Rental value for modern building 32,000 sq. ft. at 22*s.* 6*d.* per sq. ft.			£36,000 p.a.
Y.P.		say	15.
Value of development when completed ...			£540,000
Deduct			
Cost of development			
Cubic content 440,000 cu. ft. at 8*s.*	£176,000		
Architects and Quantity Surveyors' fees at 8½% ...	£15,000		
Legal and Agency fees at 2½% on gross realisation ...	£13,500		
Interest on capital £200,000 for one year at 7% ...	£14,000		
	£218,500		
Adventurer's Profit and risk. 20% on gross realisation ...	£108,000		
		£326,500	
Value of Site ...			£213,500

(2) *Value of Claim for Converted Value Payment*

Value before Damage

1939 Rental Value		
12,000 sq. ft. at 5*s.*		£3,000 p.a.
Y.P. in perpetuity at 6½%	say	15.
		£45,000
Value after Damage		
Site Area, 8,000 sq. ft. at £2 10*s.* 0*d.* per sq. ft. ...		£20,000
Value payment		£25,000

Add 60% Supplement thereto*		£15,000
Add Interest at 2½% per annum less tax,	say	£9,500
Total amount of Converted Value Payment ...		£49,500

Total Compensation payable on Compulsory Purchase

(1) Value of Site for Re-development	£213,500
(2) Converted Value Payment	£49,500
Market value of the property and the right to receive war damage compensation	£263,000

*N.B. The supplement may, of course, be restricted to 45 per cent. in certain cases. It is assumed for the purposes of this Example that agreement as to the amount of the converted value payment has been reached between the War Damage Commission, the acquiring authority and the claimant.

(F) The Long-standing notice to treat. Sections 14 and 15

EXAMPLE NO. 16

A brick built, bay windowed, early Victorian villa was required for a highway improvement and notice to treat was served in 1939 and resisted by the owner occupier. The advent of war postponed the road works and during the war the owner died and the house sustained war damage. It has since been left vacant and neglected. The combined effects of war damage and lack of maintenance now exhibit cracked walls, swagged floors, bulged fronts, crooked roofs, leaky gutters and other ills of an originally bad constitution aggravated by neglect. In short, the house by January, 1958, was fit only for demolition and the market value at that date would be that of a site. If a notice of intention to proceed is served the claimant should compare :

(1) The 1939 market value of the house in the condition it then stood, and

(2) the compulsory purchase value (as at 1st January 1958) of the house in its condition at that time, *i.e.*, as a site.

If, as is probable, the 1939 value of the house is greater than the compensation that would be assessed under the Acts of 1947 and 1954 for the existing use value of the site, the claimant should not elect for the 1958 basis of compensation but should press for the 1939 basis of compensation. If the claimant considers, in addition, that the 1939 value of the house exceeds even the current market value of the site, he should ensure that compensation is agreed or referred to the Lands Tribunal for determination within

one year of the date of service of the notice of intention to proceed. (section 14 (4)).

(G) The First Schedule—Paragraph 4

It will be remembered that where an acquisition takes place and the owner holds other land adjacent or contiguous thereto, the compensation paid for the land acquired may be reduced or increased either

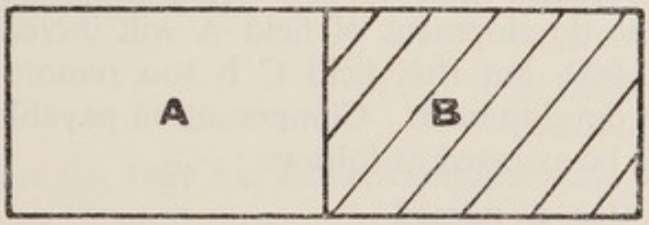
(*a*) by reason of " set off " of an increase in value of such other land under section 9 (4) or

(*b*) by reason of payment for injurious affection in respect of the decrease in value of such other land.

Where such other land is itself subsequently acquired, the provisions of paragraph 4 of the First Schedule apply so as to ensure that unfairness does not arise in the assessment of compensation either to the claimant or to the acquiring authority.

These provisions also ensure that if yet other land in the same ownership is subsequently acquired, there is no repeat of the same set-off by reference to the same land as there was on the previous acquisition.

EXAMPLE NO. 17 (the same interest in land being concerned)



Fields A and B are in the same ownership. A compulsory purchase order is made for both fields but notice to treat is only served on field B in the first instance. It is agreed that both fields were worth £1,000 each for housing development and it is further agreed that the development of field B will enhance the building value of field A by £200.

Compensation will thus be assessed as follows :—

Value of field B as agreed	£1,000
Less Set-off to field A as agreed	£200
Compensation paid for field B =	£800

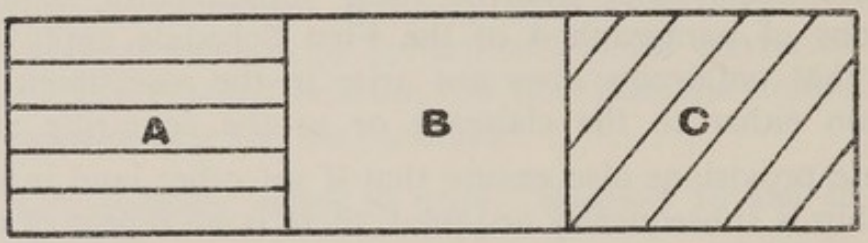
The owner is now left with field A worth, £1,200.

Assume that two years later notice to treat is served in respect of field A and values have not changed.

The acquiring authority will not be entitled to rely on section 9 (2) in order to disregard the effect on value of field A by the carrying out of the " scheme " to the extent to which set off was taken into account, by virtue of paragraph 4 (1) of the First Schedule. Thus the compensation payable for field A will be £1,200.

This example also illustrates that the owner (or his successor in title) will not suffer as a result of the acquisition being carried out in stages, in this case.

EXAMPLE No. 18. (The same owner is concerned)



Fields A, B and C are in the same ownership. A compulsory purchase order is made for all three fields.

Notice to treat is served on field A only in the first instance. It is agreed that field A is worth £5,000, field B is worth £4,000 and field C is worth £3,000, all for housing development. It is further agreed that the development of field A will increase the value of field B by £2,000, but that field C is too remote from A to be affected by its development. Compensation payable on acquisition of field A. will be assessed as follows :—

Housing value, as agreed	£5,000
Less set off to field B as agreed	£2,000
Compensation paid	£3,000

The owner now possesses only fields B and C but these are now worth £9,000 instead of £7,000 as previously.

Assume that notice to treat is next served on field C. Assume further that the development of field C would increase the value of field B by a further £1,000. Thus both the development and prospective development on fields A and C have caused a total increase in the value of field B of £3,000 to date.

If paragraph 4 (1) of the First Schedule did not exclude the operation of section 9 (4) the owner would receive nothing for the acquisition of field C because the total enhancement due to the

scheme equals the value of this field. But as section 9 (4) must be excluded to the extent to which set off has been taken into account already, the owner will receive :—

Value of field C, as agreed		£3,000
Less Total increase in value of field B due to the scheme	£3,000	
Deduct Set off already taken into account on field B arising from the acquisition of field A	£2,000	
Set off now to be taken into account		£1,000
Compensation payable for field C		£2,000

Thus the owner has now got the following :—

(1) Compensation for A	£3,000
(2) Compensation for C	£2,000
(3) Market value of field B	£7,000
Total	£12,000

Prior to the acquisitions the owner had

(1) Market value of A	£5,000
(2) Market value of B	£4,000
(3) Market value of C	£3,000
	£12,000

(H) A case where the 1959 Act reduces compensation on compulsory purchase.

EXAMPLE NO. 19

A freehold house worth £5,000 on the fringe of an office centre has an unexpended balance of established development value of £4,000 based on the possibility of a change of use to offices. The property is now included in a residential use zone in the current development plan. It is acquired for street widening.

(A) *Compensation payable if Notice to Treat served on 29th October, 1958*

Existing use value of the house	£5,000
Add Unexpended balance of established development value	£4,000
Total	£9,000

(B) *Compensation payable if Notice to Treat served on 30th October, 1958*

Market value of the house	£5,000

The unexpended balance will pass to the purchaser but has no market value at the present time because application for permission to develop the property as offices would be refused and no compensation is payable for such refusal under Part II of the 1954 Act. The house, moreover, is substantial and it cannot be alleged that it is incapable of reasonably beneficial use so that a purchase notice cannot be served.

(I) A case where the 1959 Act increases compensation on compulsory purchase

EXAMPLE NO. 20

A similar freehold property as that in valuation example No. 19, but where the property falls within an office zone in the current development plan. The house is now owner occupied for residential purposes but could be let for £1,000 p.a. on full repairing lease with planning permission for office use.

(A) *Compensation payable if notice to treat served on 29th October, 1958*

Existing use value of house	£5,000
Add Unexpended balance of established development value	£4,000
Total	£9,000

(B) *Compensation payable if notice to treat served on 30th October, 1958*

Rental value with assumed permission for use as offices	£1,000
Y.P. in perpetuity at 8%	12.5.
	£12,500

ANNOTATED TEXT OF THE TOWN AND COUNTRY PLANNING ACT, 1959

(7 & 8 ELIZ. 2 CH. 53)

ARRANGEMENT OF SECTIONS

PART I

COMPENSATION FOR COMPULSORY ACQUISITION OF LAND

Section

1. General provisions as to measure of compensation.
2. Assumptions as to planning permission.
3. Assumptions not directly derived from development plans.
4. Special assumptions in respect of certain land comprised in development plans.
5. Certification of appropriate alternative development.
6. Appeals against certificates under s. 5.
7. Extension of ss. 5 and 6 to special cases.
8. Supplementary provisions as to certification of appropriate alternative development.
9. Modification of rules for assessment of compensation.
10. Acquisition of houses unfit for human habitation.
11. War-damaged land.
12. Other special cases.
13. Power to pay allowances to persons displaced.
14. Long-standing notices to treat.
15. Rights of owner where notice given of intention to proceed.
16. Recent entry under long-standing notice to treat.
17. Outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission.
18. Additional compensation for new planning permission in respect of land acquired.
19. Supplementary provisions as to compensation under s. 18.
20. Extension of ss. 18 and 19 to planning permission where no planning decision made.
21. Extension of s. 18 to Crown development.

PART II

ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND BY LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

22. Exercise of powers of acquisition by agreement.
23. Exercise of powers of appropriation.
24. Adjustment of accounts on appropriation of land.
25. Amendment of s. 21 of Land Settlement (Scotland) Act, 1919.
26. Exercise of powers of disposing of land.
27. Application of capital money on disposal of land.

28. Appropriation of land by parish councils and parish meetings.
29. Protection of persons deriving title under transactions requiring consent.
30. General provisions relating to Part II.

PART III

ADMINISTRATIVE PROCEDURES AND RELATED PROCEEDINGS

31. Proceedings for challenging validity of certain orders and decisions.
32. Appeals from certain decisions under Town and Country Planning Acts.
33. Procedure in connection with statutory inquiries.
34. Inquiries as to compulsory purchase of land for parish councils.
35. Provisions as to purchase notices.
36. Publication of notice of applications for planning permission.
37. Notification of applications for planning permission to owners and agricultural tenants.
38. Enforcement of limitations imposed by development orders.

PART IV

OBLIGATION TO PURCHASE INTERESTS OF OWNER-OCCUPIERS AFFECTED BY PLANNING PROPOSALS

39. Notice requiring purchase of owner-occupier's interest.
40. Objection to notice requiring purchase of claimant's interest.
41. Reference of objection to Lands Tribunal.
42. Effect of valid notice requiring purchase of claimant's interest.
43. Supplementary provisions relating to Part IV.

PART V

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

44. Land declared (otherwise than by development plan) to be subject to compulsory purchase.
45. Compensation for damage to requisitioned land.
46. Acquisition of land in connection with town development in England and Wales.
47. Acquisition of land in connection with town development schemes in Scotland.
48. Acquisition of land for highways.
49. Advances to highway authorities in respect of land acquired for highways.
50. Amendment of s. 81 of Lands Clauses Consolidation (Scotland) Act, 1845.
51. Recovery of certain sums from acquiring authorities.
52. Application of Act to Crown.
53. Special provision as to ecclesiastical property in England.
54. Adjustment of unexpended balances of established development value.
55. Provisions as to inquiries, notices, regulations and orders.

56. Financial provisions.
57. Interpretation.
58. Minor and consequential amendments and repeals.
59. Short title, citation, commencement and extent.

SCHEDULES :

First Schedule—Special provisions relating to section nine.
Second Schedule—Acquisition of houses as being unfit for human habitation.
Third Schedule—Application of section eighteen to special cases.
Fourth Schedule—Authorities to whom Part II applies.
Fifth Schedule—Supplementary provisions as to purchase of owner-occupier's interest.
Sixth Schedule—Reduction or extinguishment of unexpended balance of established development value.
Seventh Schedule—Enactments amended.
Eighth Schedule—Enactments repealed.
Ninth Schedule—Section nineteen of the Town and Country Planning Act, 1947, as amended.
Tenth Schedule—Section seventeen of the Town and Country Planning (Scotland) Act, 1947, as amended.

PREAMBLE

An Act to make further provision as to compensation in respect of the compulsory acquisition of land, and as to other matters relating to the acquisition, appropriation and disposal of land by public authorities ; to make provision as to proceedings in respect of certain matters arising under the Town and Country Planning Acts, 1947 to 1954, and the Town and Country Planning (Scotland) Acts, 1947 to 1954, as to applications for planning permission under those Acts, and as to enforcement notices thereunder ; to make further provision as to procedure in connection with statutory inquiries, as to compensation for damage to requisitioned land, and as to advances to highway authorities in respect of land acquired for highways ; and for purposes connected with the matters aforesaid.

(16*th July*, 1959)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I

COMPENSATION FOR COMPULSORY ACQUISITION OF LAND

1. General provisions as to measure of compensation.—(1) The following provisions of the Town and Country Planning Act, 1947

(in this Act referred to as " the Act of 1947 "), and of the Town and Country Planning Act, 1954 (in this Act referred to as " the Act of 1954 "), that is to say,—

(*a*) subsection (2) and subsections (4) to (6) of section fifty-one of the Act of 1947 (which require compensation to be assessed on the basis of the existing use of the land), and

(*b*) Part III of the Act of 1954 (which provides for certain compensation in addition to compensation on the basis of existing use),

shall cease to have effect, except for the purpose of assessing compensation in respect of compulsory acquisitions to which this section does not apply ; and, subject to the following provisions of this Part of this Act, compensation in respect of compulsory acquisitions to which this section applies shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (in this Act referred to as " the Act of 1919 ").

(2) This section applies to every compulsory acquisition of an interest in land in pursuance of a notice to treat served after the twenty-ninth day of October, nineteen hundred and fifty-eight.

(3) In the application of this section to Scotland—

(*a*) for references to the Act of 1947 and to section fifty-one of that Act there shall be substituted references respectively to the Town and Country Planning (Scotland) Act, 1947 (in this Act referred to as " the Scottish Act of 1947 ") and to section forty-eight of that Act ; and

(*b*) for references to the Act of 1954 and to Part III of that Act there shall be substituted references respectively to the Town and Country Planning (Scotland) Act, 1954 (in this Act referred to as " the Scottish Act of 1954 ") and to sections thirty-two to thirty-eight of that Act.

Notes to Section 1

The section in effect repeals section 51 (2) and (4)–(6) of the 1947 Act and Part III of the 1954 Act in respect of any compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958. For the effect of these repealed provisions see the notes below. The principal changes so brought about are :—

(*a*) that compensation on such compulsory acquisitions no longer reflects merely the value of the land's existing use and 1947 Act Third Schedule rights ;

(*b*) that existing planning permissions may always be taken into account in assessing such compensation ;

(*c*) that supplements are no longer payable under Part III of the 1954 Act either in respect of the land's unexpended balance of

established development value or in respect of permitted, but incomplete, development carried out on the land.

Subsections (1) and (3) of section 51 of the 1947 Act are also repealed by the Eighth Schedule in relation to such compulsory acquisitions.

The section further provides that compensation for such acquisitions is to be assessed according to the rules and provisions of the Acquisition of Land (Assessment of Compensation) Act 1919, as modified by this Act. For such modifications, see section 9 below.

" subsection (2) . . . section 51 of the Act of 1947." Subsection (2) provided that the value of an acquired interest should be assessed (at current prices and in accordance with Rules (1)–(4) and (6) of the 1919 Act) on the assumption that permission would only be granted for development within the Third Schedule of the 1947 Act. Subsection (4) provided that existing planning permissions should not be taken into account except where either a development charge had been paid or there was exemption from a development charge : see further section 34 of the 1954 Act, now also repealed. Subsection (5) provided that on compulsory acquisition of buildings in respect of which a purchase notice had been served under section 19 of the 1947 Act in consequence either of a refusal of permission for development which would have involved the demolition of the building, or of the revocation or modification of such permission, no account should be taken of the value of the building except in so far as the value of the materials would exceed the cost of demolition. Subsection (6) provided that where land was acquired as a result of a purchase notice under section 19 of the 1947 Act and the notice was " avoided " as to part of the land by a direction of the Minister that permission should be granted for " other development," no account should be taken of any increase or decrease in the value of the acquired interest due to the direction or the permission granted.

" Part III of the Act of 1954." Part III consisted of sections 30–37 inclusive. Section 30 defined the application of Part III, namely to compulsory acquisitions in pursuance of a notice to treat served on or after 1st January, 1955. Section 31 provided for a supplement to be added to " existing use " compensation for such acquisitions, consisting of the " unexpended balance " of the land. Section 32 added a further supplement in respect of works carried out on the land before its acquisition in the course of permitted but incomplete development. Section 33 enabled purchasers of land to secure the benefit of existing planning permissions for the purpose of assessing compensation if the land was acquired within 5 years of purchase. Section 34 defined other cases in which existing planning permissions could be taken into account in assessing compensation, replacing equivalent provisions of the 1947 Act. Section 35 permitted the discretionary payment of a supplement in respect of an unexpended balance even where a Part VI claim under the 1947 Act had not been established. Section 36 dealt with compensation for severance, injurious affection and disturbance caused by compulsory acquisitions to which Part III applied. Section 37 provided for appropriate reductions of unexpended balances after the payment of compensation under

Part III : for equivalent provisions relating to such reductions after acquisitions to which Part 1 of this Act applies, or after purchases in the shadow of compulsory powers, see Sixth Schedule below.

" subject to the following provisions." See section 9 for modifications of the rules contained in the 1919 Act, and see further pages 51-61.

" Acquisition of Land . . . Act 1919." See pages 45–49 for the rules for assessing compensation contained in the 1919 Act. Formerly the 1919 Act applied only to compulsory acquisitions by a government department, or a local or public authority, within the meaning of that Act. The New Towns Act 1946 extended its application to compulsory acquisitions by development corporations, and the 1947 Act extended it to such acquisitions by statutory undertakers ; and now the Act is in effect made of universal application. See further page 356.

As regards the six rules set out in section 2 of that Act, see pages 46–9 above. For reference purposes, the following are some of the more important cases decided under those rules :—

Rule 1 (removal of the 10 per cent. allowance). For the former rule, see *Jervis* v. *Newcastle Waterworks Co.* (1897) 13 T.L.R. 14, 312.

Rule 2 (willing seller in the open market). *I.R.C.* v. *Clay*, *I.R.C.* v. *Buchanan* [1914] 3 K.B. 466 ; *Vyricherla Narayana Gajapatiraju* v. *R.D.O., Vizagapatam* [1939] A.C. 302 ; see also *Glass* v. *I.R. C.* (1915) S.C. 449.

Rule 3 (special suitability). *I.R.C.* v. *Clay*, supra ; *Vyricherla, etc.* v. *R.D.O. Vizagapatam*, supra ; *Pointe Gourde Quarrying Co.* v. *The Sub-Intendent of Crown Lands, Trinidad* [1947] A.C. 565 ; *Lester and Jones* v. *Secretary of State for War* (1951) 2 P.C.R. 74 ; *London Investment Co.* v. *Middlesex County Council* (1952) 2 P.C.R. 331 ; *Corrie* v. *C.L.B.*, (1954) 4 P.C.R. 276 ; *Lambe* v. *Secretary of State for War* [1955] 2 Q.B. 612.

Rule 4 (enhancement due to unlawful user). *Higham* v. *Havant and Waterloo U.D.C.* [1951] 2 K.B. 527 ; *British Electrical Authority* v. *Cardiff Corporation* (1951) 2 P.C.R. 189.

Rule 5 (equivalent reinstatement). *Metropolitan, etc., Railways* v. *Burrow*, reported in Cripps on Compensation at page 1811 ; *Devon Territorial Army Association* v. *Plymouth Corporation*, reported in Cripps at page 4151 ; *A. and B. Taxis Ltd.* v. *Secretary of State for Air* [1922] 2 K.B. 328 ; *Aston Charities Trust* v. *Stepney Borough Council* [1952] 2 Q.B. 642 ; *London Diocesan Fund* v. *Stepney Corporation* (1953) 4 P.C.R. 9 ; *Edge Hill Light Railway Co.* v. *Secretary of State for War*, (1956) 6 P.C.R. 211.

Rule 6 (disturbance). For compensation as to disturbance, see principally *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26. See also *Watson* v. *Secretary of State for Air* [1954] 1 W.L.R. 1477 ; *Rought* v. *West Suffolk County Council* [1957] A.C. 403 ; *Harvey* v. *Crawley Development Corporation* [1957] 1 Q.B. 485 ; *L.C.C.* v. *Tobin* [1959] 1 W.L.R. 354.

" notice to treat served." This includes a notice to treat deemed to

be served (under *e.g.*, section 19 of the 1947 Act, or section 42 of this Act), see section 119 (3) of the 1947 Act, imported into this Act by section 57 (3).

"**29th October 1958,**" *i.e.*, the date of the presentation of the Bill of this Act.

2. Assumptions as to planning permission.—(1) For the purpose of assessing compensation in respect of any compulsory acquisition to which section one of this Act applies, such one or more of the assumptions mentioned in sections three and four of this Act as are applicable to the relevant land or any part thereof shall be made in ascertaining the value of the relevant interest.

(2) Any planning permission which, in accordance with any of the provisions of those sections, is to be assumed as therein mentioned is in addition to any planning permission which may already be in force at the date of service of the notice to treat.

(3) Nothing in those provisions shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development, notwithstanding that it is not development for which in accordance with those provisions the granting of planning permission is to be assumed ; but, in determining whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land, regard shall be had to any contrary opinion expressed in relation to that land in any certificate issued under the following provisions of this Part of this Act.

(4) For the purposes of any reference in this section, or in section three of this Act, to planning permission which is in force on the date of service of the notice to treat, it is immaterial whether the planning permission in question was granted—

(*a*) unconditionally or subject to conditions, or

(*b*) in respect of the land in question taken by itself or in respect of an area including that land, or

(*c*) on an ordinary application or on an outline application or by virtue of a development order,

or is planning permission which, in accordance with any direction or provision given or made by or under any enactment, is deemed to have been granted.

NOTES TO SECTION 2

The section provides that, in addition to existing planning permissions, permissions are to be assumed, as appropriate, under sections 3 and 4 for the purpose of assessing compensation in respect of a compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958. Assumptions under section 3 are assumptions not directly derived from development plans. Assumptions under section 4, however, are all based on development plans.

It is further made clear that the assumptions to be made in accordance with sections 3 and 4 are not exclusive. The fact that a permission is *not* a permission which has to be assumed under those sections does not mean that that permission would necessarily be refused : but in considering whether that permission could reasonably have been expected to be granted, any view to the contrary which is expressed in a " certificate of alternative development " under section 5 must be taken into account.

For the purpose of this and the following section, an existing permission, *i.e.*, a permission in force at the date of the service of the notice to treat, means any form of permission, whether actually granted or deemed to be granted ; whether granted conditionally or unconditionally ; whether granted only for the land in question or for other land as well ; whether granted on an ordinary or an outline application or by development order.

" For the purpose of assessing compensation." It is to be noted that the assumptions are to be limited to this purpose, but it is thought that an assumption made (*e.g.*) as a result of a " certificate of alternative development " (section 5) may have some relevance to the prospects of planning permission for similar land : but see note on section 5 (7).

" compulsory acquisition . . . applies ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958.

" sections 3 and 4 ". Under section 3 the assumptions to be made are for permission for (i) the development proposed for the land by the acquiring authority, (ii) Third Schedule development, except in certain cases, and (iii) development specified in a " certificate of alternative development " issued under section 5. Under section 4, the assumptions are all based on particulars of definition, allocation or other proposals in the development plan.

" as are applicable ", *e.g.*, the assumption of permission for the development proposed by the acquiring authority will only be applicable if there is no such existing permission ; the assumptions based on proposals in a development plan will only arise if the land is included within a development plan in force and is therein allocated or defined for a certain use or uses, *etc.*

" shall be made ". It is to be noted that any assumption which is applicable has to be made. In this sense they are cumulative, but their effect is not, of course, cumulative. The land is to be valued in the market, according to the rules of the 1919 Act as now modified (see section 9), with the benefit of all applicable permissions, but the different values which would be given separately to the land by each of the assumptions are not, as one optimist apparently thought, to be added together.

" any certificate . . . this Part of this Act ". The only form of certificate arising under Part I is the " certificate of alternative development " under section 5 : and see section 7 for an extension of section 5.

" or in section 3 ". But see section 3 (2) as regards planning permissions which do not enure for the benefit of the land.

" subject to conditions ". For the form and certainty of conditions, see *Fawcett Properties* v. *Buckingham C.C.* [1959] 2 W.L.R. 884 and Circular No. 58/51. For views as to the effect of a condition or conditions being invalid, see *Pyx Granite Co.* v. *Minister of Housing and Local Government* [1959] 3 W.L.R. 346 and see further 1958 J.P.L. 476. For ways in which a permission may be limited to particular persons or persons of specified characteristics, see 1958 J.P.L. 80. And see further 1957 J.P.L. 475, 563 and 649 for a review of conditions imposed on planning permissions.

" an outline application ", *i.e.*, an application made under section 16 of the 1947 Act, but in outline only, as permitted by Article 5 (2) of the Town and Country Planning General Development Order 1950 (S.I. No. 728). An outline permission is a permission having full effect, see *Hamilton* v. *West Sussex C.C.* [1958] 2 Q.B. 286. See further section 57 (1) of this Act.

" a development order ". See (*e.g.*) Article 3 of the Town and Country Planning General Development Order 1950 (S.I. No. 728).

" planning permission . . . deemed to have been granted ". See note on page 246.

3. Assumptions not directly derived from development plans.—(1) In a case where—

(*a*) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part thereof, and

(*b*) on the date of service of the notice to treat there is not in force planning permission for that development,

it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, such as would permit development thereof in accordance with the proposals of the acquiring authority.

(2) For the purposes of paragraph (*b*) of the preceding subsection, no account shall be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested therein.

(3) Subject to the next following subsection, it shall be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in the Third Schedule to the Act of 1947 (which relates to development included in the existing use of land).

(4) Notwithstanding anything in the last preceding subsection—

(*a*) it shall not by virtue of that subsection be assumed that planning permission would be granted, in respect of the

relevant land or any part thereof, for development of any class specified in Part II of the said Third Schedule, if it is development for which planning permission was refused at any time before the date of service of the notice to treat and compensation under section twenty of the Act of 1947 became payable in respect of that refusal ;

(*b*) where, at any time before the said date, planning permission was granted, in respect of the relevant land or any part thereof, for development of any class specified in Part II of the said Third Schedule, but was so granted subject to conditions, and compensation under section twenty of the Act of 1947 became payable in respect of the imposition of the conditions, it shall not by virtue of the last preceding subsection be assumed that planning permission for that development, in respect of the relevant land or that part thereof, as the case may be, would be granted otherwise than subject to those conditions ;

(*c*) where, at any time before the said date, an order was made under section twenty-six of the Act of 1947, in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation became payable in respect of that order under section twenty-seven of that Act, it shall not by virtue of the last preceding subsection be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.

(5) Where a certificate is issued under the following provisions of this Part of this Act, it shall be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in relation thereto in that certificate as being development for which planning permission might reasonably have been expected to be granted :

Provided that if, in any such certificate, it is indicated that, in the opinion of the authority issuing the certificate, any such planning permission would only have been granted—

(*a*) subject to conditions specified in the certificate, or

(*b*) at a future time so specified, or

(*c*) both subject to conditions so specified and at a future time so specified,

the assumption shall be that planning permission for development of that class would be granted, in respect of the relevant land or that part thereof, but would only be granted subject to those

conditions, or at that future time, or both subject to those conditions and at that future time, as the case may be.

(6) In the application of this section to Scotland, for references to the Act of 1947, and to sections twenty, twenty-six and twenty-seven of that Act, there shall be substituted references respectively to the Scottish Act of 1947 and to sections eighteen, twenty-four and twenty-five of that Act.

Notes to Section 3

The section states the assumptions (other than assumptions based on development plans, dealt with by the next section) which are to be made as to planning permissions, in assessing the market value of an interest in land compulsorily acquired in pursuance of a notice to treat served after the 29th October, 1958. Briefly the assumptions under this section are :—

(i) that permission (if it does not already exist) would be granted for development on the land, or the appropriate part of it, in accordance with the proposals of the acquiring authority for development of the land ;

(ii) that permission would be granted for development on the land, or the appropriate part of it, of any class specified in the Third Schedule of the 1947 Act—except in the three cases set out in subsection (4), see notes below ;

(iii) that permission would be granted for any development specified in a " certificate of alternative development," obtained under section 5, as being development which might reasonably have been permitted, subject to any conditions and/or at any future time specified in the certificate.

" proposals of the acquiring authority ". Where the proposals of the authority are clear and defined, the assumed permission which is tied to those proposals is readily definable. But where, as often, the proposals prior to acquisition are outline proposals only, difficulty will arise in ascertaining what the assumed permission can be. There is no provision in this respect (as there is for assumptions where there is an applicable range of uses contained in the development plan, under section 4 (3) and (4)) for further defining the permission to be assumed. It should also be noted that the authority's proposals may not involve development, and that in such cases there is no assumption to be made. It has been stated by the Minister that when a compulsory purchase order is under inquiry, any detailed proposals ought to be made known, if they are firm, but where they are fluid, care should be taken to avoid giving the impression that they are firm, see M.H.L.G. Circular 48/59.

" so granted as not to enure ", *i.e.*, the rare form of " personal " permission. This qualifies the general definition clause in section 2 (4) ; see notes on page 189. For ways in which a permission may be limited to particular persons or persons of specified characteristics, see 1958 J.P.L. 80 and 1957 J.P.L. 649. Section 18 (4) of the 1947 Act provides that permissions enure to the benefit of the land unless it is otherwise provided in them.

" Third Schedule to the Act of 1947 ". The Schedule which describes the classes of development included in " existing use " for the purposes of the 1947 Act was amended by the Seventh Schedule of the 1954 Act. Part II of the Schedule specifies such classes as are included in " existing use " for all purposes including compensation under section 20 of the 1947 Act. Section 112 (2) and (3) of the 1947 Act apply for the purposes of the Third Schedule, see section 57 (5) of this Act and note on page 358.

" section 20 of the Act of 1947 ". Section 20 of the 1947 Act provides for the payment of compensation (assessed in accordance with the Fourth Schedule of that Act) where permission is refused, or conditionally granted, by the Minister for development of any class specified in Part II of the Third Schedule of the 1947 Act.

" section 26 of the Act of 1947 ". Section 26 of the 1947 Act enables local planning authorities to bring all development or use of land into conformity with the proper planning of their areas, by the service of orders which may require uses to be discontinued and buildings to be removed, or may impose conditions or require appropriate steps to be taken.

" section 27 of that Act ". Section 27 of the 1947 Act provides for the payment of compensation where an order is made under section 26 (see note above) and any person thereby suffers damage by depreciation of his interest in land or by being disturbed in his enjoyment of land.

" certificate . . . under the following provisions ", *i.e.*, a certificate of alternative development under sections 5–8 of the Act, where the land is not part of an area of comprehensive development defined in any current development plan and is not zoned for residential, commercial or industrial uses, or is not included in any current development plan. It should be noted that such a certificate need not have been applied for in relation to the proposed acquisition, but in relation to the previous acquisition of another interest.

" subject to conditions." See note on page 189. Such conditions if any will be indicated in the certificate, see section 5 (5). In cases where conditions are assumed, the market value of the relevant interest may be affected by the expectation of compensation under Part II of the 1954 Act if the conditions are not conditions to which section 20 (2) of that Act applies.

" only . . . at a future time ". This implies that permission would not be granted at the present time, and a right of appeal on this point would lie to the Minister under section 6, just as in the case of conditions specified. In such cases of assumed deferment the deferment would carry with it no assumption of compensation under Part II of the 1954 Act, except in cases to which section 20 (3), proviso, of that Act applies : and in the latter cases repayment at the end of the deferment may have to be taken into account.

4. Special assumptions in respect of certain land comprised in development plans.—(1) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms

part of a site defined in the current development plan as the site of proposed development of a description specified in relation thereto in the plan, it shall be assumed that planning permission would be granted for that development.

(2) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current development plan as an area allocated primarily for a use specified in the plan in relation to that area, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development which—

(*a*) is development for the purposes of that use of the relevant land or that part thereof, and

(*b*) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.

(3) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current development plan as an area allocated primarily for a range of two or more uses specified in the plan in relation to the whole of that area, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development which—

(*a*) is development for the purposes of a use of the relevant land or that part thereof, being a use falling within that range of uses, and

(*b*) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.

(4) If the relevant land or any part thereof is land subject to comprehensive development, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development for the purposes of a use of the relevant land or that part thereof falling within the planned range of uses (whether it is the use which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question, is indicated in the plan as the proposed use of the relevant land or that part thereof, or is any other use falling within the planned range of uses) being development for which, in the circumstances specified in the next following subsection, planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.

(5) The circumstances referred to in the last preceding subsection are those which would have existed if—

(*a*) the area in question had not been defined in the current development plan as an area of comprehensive development, and no particulars or proposals relating to any land in that area had been comprised in the plan, and

(*b*) in a case where, on the date of service of the notice to treat, land in that area has already been developed in the course of the development or redevelopment of the area in accordance with the plan, no land in that area had been so developed on or before that date ;

and in that subsection " the planned range of uses " means the range of uses which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question, are indicated in the plan as proposed uses of land in that area.

(6) Where in accordance with any of the preceding subsections it is to be assumed that planning permission would be granted as therein mentioned—

(*a*) the assumption shall be that planning permission would be so granted subject to such conditions (if any) as, in the circumstances mentioned in the subsection in question, might reasonably be expected to be imposed by the authority granting the permission, and

(*b*) if, in accordance with any map or statement comprised in the current development plan, it is indicated that any such planning permission would be granted only at a future time, then (without prejudice to the preceding paragraph) the assumption shall be that the planning permission in question would be granted at the time when, in accordance with the indications in the plan, that permission might reasonably be expected to be granted.

(7) Any reference in this section to development for which planning permission might reasonably have been expected to be granted is a reference to development for which planning permission might reasonably have been expected to be granted if no part of the relevant land were proposed to be acquired by any authority to whom the Act of 1919 applies.

(8) In this section " the current development plan," in relation to any land, means a development plan comprising that land, in the form in which (whether as originally approved or made by the Minister or as for the time being amended) that plan is in force on the date of service of the notice to treat, and " land subject to

comprehensive development" means land which, on the date of service of the notice to treat, consists or forms part of an area defined in the current development plan as an area of comprehensive development.

NOTES TO SECTION 4

The section specifies what assumptions as to planning permissions may be made on the basis of the relevant development plan in force, in assessing the value of an interest in land compulsorily acquired in pursuance of a notice to treat served after the 29th October, 1958.

There are four such assumptions :—

Where the acquired land is *not* defined as part of an area of comprehensive development, then

(*a*) if it is defined as the site of specified development (*e.g.*, a road ; school ; hospital), permission shall be assumed for that development ; or

(*b*) if it is allocated (*i.e.*, zoned) primarily for one specified use (*e.g.*, residential ; light-industrial), permission shall be assumed for any development for the purposes of that use which might reasonably have been expected to be permitted ; or

(*c*) if it is allocated (*i.e.*, zoned) primarily for a range of specified uses (*e.g.*, central business zoning), permission shall be assumed for development for the purposes of any use falling within that range of uses, being development which might reasonably have been expected to be permitted.

Where the acquired land is defined as part of an area of comprehensive development, then :

(*d*) permission shall be assumed for any development for the purposes of a use falling within the whole range of uses proposed in the development plan for that area, being development which might reasonably have been expected to be permitted if (i) the development plan had not so defined the area and contained no proposals relating to any land in that area, and (ii) any development actually carried out in the course of the comprehensive development had not been carried out by the date of the service of a notice to treat.

The above provisions apply equally when it is only part of the acquired land which falls under the given heads : but in that case the development and the assumption relate only to that part of the acquired land.

Where permission is assumed under any of the above heads, it must be assumed to be subject to any conditions as in the circumstances might reasonably be expected to be imposed, or to be granted at such future time as it might reasonably be expected to be granted having regard to any indications as to time in a map or statement comprised in the development plan.

Subsection 1. It should be noted that the permission relates strictly to the defined development. If the area of the development forms part

only of the acquired land, the other part of the acquired land receives no such assumption in favour of it.

" relevant land ", *i.e.*, the land in which the acquired interest subsists, see section 57 (2).

" land subject to comprehensive development ", *i.e.*, land consisting or forming part (on the date of the service of the notice to treat) of an area defined as an area of comprehensive development in the current development plan, see subsection (8). Section 5 (3) of the 1947 Act provides that a development plan may define as an area of comprehensive development any area which in the opinion of the local planning authority should be developed or re-developed as a whole for the purpose of dealing with (*a*) areas of extensive war damage or of bad layout or obsolete development, or (*b*) relocation of population, industry, or replacement of open spaces in the course of development or redevelopment of any other area, or (*c*) any other purpose specified in the plan.

" defined ", " allocated ". The powers of definition for particular sites, or of allocation, by a development plan are contained in section 5 (2) (*a*) of the 1947 Act. The plan may " define the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces." It may also " allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan." Allocations in a plan are more generally called " zonings."

" current development plan ". This means a plan actually in operation (not a draft plan) in its form as approved by the Minister (under section 5 of the 1947 Act) or as made by the Minister (under section 7 of that Act) or as subsequently amended (under section 6 or 7 of that Act), see subsection (8). A plan or its amendments come into operation when they have been approved or made by the Minister and the local planning authority have published a notice under section 11 (1) of the 1947 Act. For requirements as to the form and contents of development plans, see the Town and Country Planning (Development Plans) Regulations 1948 (S.I. 1948 No. 1767) and Amendment Regulations 1954 (S.I. 1954 No. 933) and 1959 (S.I. 1959 No. 1581) : and see further the Town and Country Planning (Development Plans) Direction 1954, and Circular 45/54.

" primarily ". Most development plans specify clearly what subsidiary uses would be permitted, and in what circumstances, in areas zoned primarily for one or a range of primary uses. But such subsidiary uses (*i.e.*, shops in a residential area) are not covered by subsections (2) and (3), and it is thought that the words " development for the purposes of that use " in paragraph (*a*) of each of these subsections is not wide enough to let in such subsidiary uses for the purpose of assuming planning permissions. Though for example some shop development might, in a wide sense, be said to be " for the purpose of " a primary residential use, the phrase will probably be construed in its narrow sense, restricting the assumption to be made to the range of development possible within the primary use or uses. Thus, for example, in an area zoned for residential use, the most likely question will be " Might permission

reasonably be expected to be granted for this site for *houses* or for a *block of flats* ? "

" for the purposes of ". See note above on " *primarily* ".

" might reasonably have been expected to be granted ". For meaning, see subsection (7). Very wide considerations may fall to be made in assessing whether a permission might reasonably have been expected to be granted. While one is restricted under sub-section (2) to the development possible within one primary use (see note above on " primarily "), in subsection (4) the net is very much wider, since one has there to consider what development would be permitted within a *range* of primary uses. Thus in an area zoned, say, for residential and shop use, the question will range over houses, blocks of flats, shops alone, shops with flats above, department stores, etc.

Subsection 4. It should be noted that as regards areas of comprehensive development, one is not restricted to the development proposed by the development plan for the acquired land, but can take into account any development for the purposes of any use within the range proposed for that area. But while taking this whole range into account, one is restricted (under subsection (5)), in considering what permission for development might reasonably have been expected to be granted within that range, to the existing state of things prior to the comprehensive development, *i.e.*, the scheme of comprehensive development, any particulars or proposals in the development plan which relate to any land within the whole area and any development already carried out under the scheme before the service of the notice to treat must be disregarded.

" subject to such conditions . . . to be imposed ". In considering what conditions might reasonably be expected to be imposed, particular attention will have to be paid to standard requirements of the planning authority in question, *e.g.*, as to density, plot-ratios, etc. See further note on page 189.

" at a future time ". See note on page 192.

" authority to whom the Act of 1919 applies ". See section 57 (1) and note thereto on page 356.

5. Certification of appropriate alternative development.—(1) Where an interest in land is proposed to be acquired by a public authority possessing compulsory purchase powers, and that land or part thereof does not consist or form part of—

(*a*) an area defined in the current development plan as an area of comprehensive development, or

(*b*) an area shown in the current development plan as an area allocated primarily for a use which is of a residential, commercial or industrial character, or for a range of two or more uses any of which is of such a character,

then, subject to the next following subsection, either of the parties directly concerned may apply to the local planning authority for a certificate under this section.

(2) If, in the case of an interest in land falling within the preceding subsection, the authority proposing to acquire it have served a notice to treat in respect thereof, or an agreement has been made for the sale thereof to that authority, and a reference has been made to the Lands Tribunal to determine the amount of the compensation payable in respect of that interest, no application for a certificate under this section shall be made by one of the parties directly concerned after the date of that reference except either—

(*a*) with the consent in writing of the other of those parties, or

(*b*) with the leave of the Lands Tribunal.

(3) An application for a certificate under this section made by one of the parties directly concerned—

(*a*) shall specify one or more classes of development appearing to the applicant to be classes of development which would in the relevant circumstances be appropriate for the land in question, and

(*b*) shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served upon the other of those parties.

(4) Where an application is made to a local planning authority for a certificate under this section in respect of an interest in land, the local planning authority shall, not earlier than twenty-one days after the date specified in the statement accompanying the application in accordance with paragraph (*b*) of the last preceding subsection, issue to the applicant a certificate stating either—

(*a*) that, in the opinion of the local planning authority, planning permission for development of one or more classes specified in the certificate (whether being classes of development specified in the application or not) might, in the relevant circumstances, reasonably have been expected to be granted in respect of the land in question, or

(*b*) that, in the opinion of the local planning authority, planning permission could not, in the relevant circumstances, reasonably have been expected to be granted for any development of the land in question, other than the development (if any) which is proposed to be carried out by the authority by whom the interest is proposed to be acquired.

(5) Where, in the opinion of the local planning authority, planning permission might reasonably have been expected to be granted as mentioned in paragraph (*a*) of the last preceding subsection, but would only have been granted subject to conditions, or at a future time, or both subject to conditions and at a future time,

the certificate shall specify those conditions, or that future time, or both of them, as the case may be, in addition to the other matters required to be contained in the certificate.

(6) For the purposes of the last preceding subsection, a local planning authority may formulate general requirements applicable to such classes of cases as may be described therein ; and any conditions required to be specified in a certificate in accordance with that subsection may, if it appears to the local planning authority to be convenient to do so, be specified by reference to those requirements, subject to such special modifications thereof (if any) as may be set out in the certificate.

(7) In determining, for the purposes of the issue of a certificate under this section, whether planning permission for any particular class of development might, in the relevant circumstances, reasonably have been expected to be granted in respect of any land, the local planning authority shall not treat development of that class as development for which planning permission would have been refused by reason only that it would have involved development of the land in question (or of that land together with other land) otherwise than in accordance with the provisions of the development plan relating thereto.

(8) Where an application for a certificate under this section relates to land of which part (but not the whole) consists or forms part of such an area as is mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of this section, any certificate issued under this section in pursuance of that application shall be limited to so much of that land as does not fall within any such area.

(9) On issuing to one of the parties directly concerned a certificate under this section in respect of an interest in land, the local planning authority shall serve a copy of the certificate on the other of those parties.

(10) In this section " in the relevant circumstances", in relation to an application for a certificate, means if the land to which the application relates were not proposed to be acquired by any authority to whom the Act of 1919 applies ; and in this and the three next following sections " the parties directly concerned", in relation to an interest in land, means the person entitled to the interest and the authority by whom it is proposed to be acquired.

Notes to Section 5

Where land which is not covered by a current development plan, or is not part of a defined area of comprehensive development and is not allocated (*i.e.*, zoned) primarily for residential, commercial or industrial use, is proposed to be acquired compulsorily or purchased in the shadow

of compulsory powers, this section enables either the owner of any interest in that land, or the acquiring authority, to apply to the local planning authority for a " certificate of alternative development."

The applicant must specify in his application what alternative development he thinks would be appropriate for the land if it were not to be acquired, and must serve a copy of the application on the other party, giving in his application the date on which the copy was, or will be, so served. The certificate must not be issued by the local planning authority until at least 21 days have elapsed since the date given in the application as the date of service on the other party. The certificate must be issued within 2 months of the receipt of the application, see Article 3 (2) of the General Development Order 1959 (S.I. 1959, No. 1286) on page 436. The other party is entitled to a copy of the certificate from the local planning authority.

The certificate, when granted, must specify (*a*) what class or classes of development might reasonably, in the opinion of the local planning authority, have been permitted on the land, or (*b*) that no development other than that proposed for it by the acquiring authority might reasonably have been permitted. A local planning authority must not reject any class of development simply because it conflicts with the development plan. When it specifies any class or classes of alternative development the certificate must also specify any conditions subject to which, and/or the future time at which, the permission for that development might reasonably have been expected to be granted. Such conditions or particulars as to that future time may be given by reference to general requirements in such matters, which the local planning authority may formulate for any class of cases.

Any class or classes of alternative development specified in the certificate as being appropriate will then be assumed to be permissible (subject to any conditions, or at any future time specified) for the purpose of section 3 (5). If no such development is specified, then the development proposed for the land by the acquiring authority is assumed to be permissible under section 3 (1), if in fact there is no existing permission for that development.

The section applies equally whether the whole of the acquired land or only part of it is land which is not part of an area of comprehensive development, or an area primarily for residential, commercial or industrial uses. But where only part of the acquired land is outside such areas, then the certificate will relate solely to that part.

The right to apply for a certificate arises when the land becomes " proposed to be acquired." See note on this phrase below, and section 8 (2).

Section 7 extends the right to apply for a certificate to special cases. Section 6 provides for appeals from certificates given under this section. Section 8 provides machinery for the making of applications for certificates or of appeals from them and for the issuing of certificates, and see the Town and Country Planning General Development Order 1959 (S.I. 1959 No. 1286), Articles 3–6, on pages 436-7.

" proposed to be acquired ", *i.e.*, where (*a*) a notice is published or served for the purposes of a compulsory acquisition in accordance with any Act or standing order of either House of Parliament, *e.g.*, the first statutory notice given of the submission of a compulsory purchase order to the Minister for confirmation, or (*b*) any statutory purchase notice has been served and the authority is deemed to have served a notice to treat, or (*c*) an offer in writing has been made to negotiate for the purchase of the relevant interest, see section 8 (2). It has been stated (M.H.L.G. Circular 48/59) that acquiring authorities, when serving a notice to treat, should ensure that the owner knows of his certificate rights.

" public authority . . . purchase powers ". For definition, see section 69 (1) of the 1954 Act, set out under section 57 below at page 356.

" land or part thereof ". Where only part of the acquired land is outside such areas, the certificate will relate solely to that part, see subsection (8).

" does not consist or form part of ". The section in effect applies principally to (i) land not included within any development plan, (ii) " white land " in development plans, *i.e.*, uncommitted land, (iii) Green Belt land, (iv) land for which an agricultural or open space use is indicated, and (v) land defined as special sites for (*e.g.*,) hospitals or schools.

" current development plan ", *i.e.*, a development plan which is in force (*i.e.*, not a draft plan). See section 11 (3) of the 1947 Act for the time when a plan comes into operation. For the form of the development plan which has to be considered, see section 8 (3). See further note on page 196.

" area of comprehensive development ". See note on page 196.

" allocated ". See note on page 196.

" primarily ". See note on page 196.

" local planning authority ". In practice a local authority may frequently have to apply, in effect, to itself for a certificate under this section. It has been stated (M.H.L.G. Circular 48/59) that when an owner has made an application for permission before an acquisition of his land is initiated, the local planning authority should, when refusing permission or granting it subject to conditions, inform the owner of his certificate rights, if they are then aware of the proposal to acquire.

Subsection (2.) Application may be made by either the owner or the acquiring authority at any time after the land becomes " proposed to be acquired " (see section 8 (2)) and before a reference has been made to the Lands Tribunal to assess compensation. After such reference has been made, the consent in writing of the other party or the leave of the Tribunal is necessary before application can be made by either of the parties. This provision does not apply to appeals under section 6, and pending such appeals, no doubt, proceedings before the Lands Tribunal will be stayed.

" a reference has been made to the Lands Tribunal ". For the jurisdiction and procedure of the Lands Tribunal, see sections 1 and 4 of the Lands Tribunal Act 1949 and the Lands Tribunal Rules 1956 (S.I. 1956 No. 1734), and Amendment Rules 1958 (S.I. 1958 No. 1746).

" in the relevant circumstances ". See subsection (10).

" one or more classes specified in the certificate ". For the effect of this, see section 3 (5). Where the local planning authority specify development other than the classes of development specified in the application, or contrary to representations made by either of the parties, they must give their reasons for so doing, see General Development Order, 1959, Article 3 (3) on page 436.

" development . . . proposed to be carried out ". For the position in this event, see section 3 (1).

Subsection (5). Such matters as are mentioned in this section form part of the assumption to be made under section 3 (5).

" subject to conditions ". See note on page 189.

" at a future time ". See note on page 192.

Subsection (7). The General Development Order 1950 (S.I. 1950 No. 728), Article 8, enables planning authorities to give permission conflicting with the development plan : see Direction attached to M.H.L.G. Circular 45/54. It will be noticed that the effect weakens the relevance of development specified in a certificate to applications for permission in relation to other land, at any rate where the development so specified is development not in accordance with the development plan.

" authority to whom the Act of 1919 applies ". See section 57 (1). This means principally government departments, local and public authorities and statutory undertakers, see note on page 356.

" parties directly concerned ". These two parties are entitled to a copy of the certificate as of right (although other interested parties may obtain a copy on application, see General Development Order 1959, Article 5 on page 436). Only the parties directly concerned may appeal under section 6 against the contents of a certificate.

6. Appeals against certificates under section 5.—(1) Where the local planning authority have issued a certificate under the last preceding section in respect of an interest in land,—

(*a*) the person for the time being entitled to that interest, or

(*b*) any public authority possessing compulsory purchase powers by whom that interest is proposed to be acquired,

may appeal to the Minister against that certificate.

(2) On any appeal under this section against a certificate the Minister shall consider the matters to which the certificate relates, as if the application for a certificate under the last preceding section had been made to him in the first instance, and shall either confirm the certificate, or vary it, or cancel it and issue a different certificate in its place, as he may consider appropriate :

Provided that before determining any such appeal the Minister shall, if any such person or authority as is mentioned in paragraph (*a*) or paragraph (*b*) of the preceding subsection so desires, afford to each such person or authority and to the local planning authority

an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(3) Where an application is made for a certificate under the last preceding section, and at the expiry of the time prescribed for the issue thereof (or, if an extended period is at any time agreed upon in writing by the parties directly concerned and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in accordance with that section, the preceding provisions of this section shall apply as if the local planning authority had issued such a certificate containing such a statement as is mentioned in paragraph (*b*) of subsection (4) of the last preceding section.

Notes to Section 6

The section provides for appeals against " certificates of alternative development " given under the last section. The appeal lies to the Minister and may be made either by the owner of the interest to be acquired or by the acquiring authority. The Minister, on such appeal, is to deal with the matter as though the application had been made direct to him, and can confirm or vary the certificate or can cancel it and issue a different one : but if either party desires it the Minister must give the parties and the local planning authority an opportunity to appear before a person appointed by him and to make representations.

The right of appeal also lies in cases where a local planning authority fails to issue a certificate within the time prescribed by the Town and Country Planning General Development Order 1959, or within any extended period agreed in writing by the parties and the planning authority. In such a case an appeal will lie as if a certificate had been granted stating that permission could not reasonably have been expected to be granted (if the land were not being acquired compulsorily) for development other than that proposed for it by the acquiring authority.

See section 8 for machinery for making such appeals, and the General Development Order, 1959 (S.I. 1286), Article 4 on page 436. The time for appealing is within 1 month from the issue of the certificate.

See section 31 for specified grounds on which an appeal may be made to the High Court against the Minister's decision under this section.

" public authority . . . purchase powers ". For definition, see section 69 (1) of the 1954 Act, set out under section 57 below at page 356.

" proposed to be acquired ". See note on page 201 and section 8 (2).

" and to the local planning authority ". The local planning authority cannot initiate a hearing, but if one is desired by either party, the Minister must also hear the representations of the local planning authority.

" expiry of the time prescribed ", *i.e.*, expiry of two months from the receipt of the application as provided by the Town and Country Planning General Development Order 1959, Article 3 (2), made under section 8 (1). The time can be extended by agreement in writing between both parties *and* the local planning authority.

"**paragraph (b) . . . last preceding section**", *i.e.*, a statement that permission could not reasonably have been expected to be granted for any development other than development (if any) proposed to be carried out on the land by the acquiring authority.

7. Extension of sections 5 and 6 to special cases.—(1) Where an interest in land is proposed to be acquired in the circumstances mentioned in subsection (1) of section five of this Act, and, by reason that the person entitled to the interest is absent from the United Kingdom or cannot be found, the compensation payable in respect of the interest falls to be determined by the valuation of a surveyor under section fifty-eight of the Lands Clauses Consolidation Act, 1845, or, in Scotland, of a valuator under section fifty-six of the Lands Clauses Consolidation (Scotland) Act, 1845, the surveyor or valuator, before carrying out his valuation, may apply to the local planning authority for a certificate under the said section five ; and the provisions of sections five and six of this Act shall apply in relation to an application made by virtue of this subsection as they apply in relation to an application made by virtue of subsection (1) of the said section five.

(2) Where, in pursuance of an application made by virtue of the preceding subsection, the local planning authority issue a certificate to the surveyor or valuator, the authority shall serve copies of the certificate on both the parties directly concerned.

(3) Where an interest in land in Scotland is proposed to be acquired in the circumstances mentioned in subsection (1) of section five of this Act, and that interest is the dominium utile of the land, an application to the local planning authority for a certificate under that section may be made by any person entitled to any feu duty or ground annual or other annual or recurring payment or incumbrance out of the land (not being stipend or standard charge in lieu of stipend) in the like circumstances and in the like manner as such an application may be made by the person entitled to the interest.

(4) Where, in pursuance of an application made by virtue of the last preceding subsection, the local planning authority issue a certificate to the applicant, the authority shall serve copies of the certificate on both the parties directly concerned.

(5) An application for a certificate made by virtue of subsection (1) or subsection (3) of this section shall specify the matters referred to in paragraph (*a*) of subsection (3) of the said section five, and shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on each of the parties directly concerned ; and, in relation to such an

application, subsection (4) of the said section five shall have effect with the substitution, for the reference to the date specified in the statement accompanying the application in accordance with paragraph (*b*) of the said subsection (3), of a reference to the date specified in the statement accompanying the application in accordance with this subsection, or, where more than one date is so specified, the later of those dates.

(6) Where a certificate has been issued in pursuance of an application made by virtue of subsection (3) of this section, or in a case where an application for a certificate could have been made thereunder, the provisions of section six of this Act shall apply as if any reference to the person entitled to the interest in question, or to the parties directly concerned, included a reference to the person who made or could have made that application, as the case may be.

Notes to Section 7

The section extends the right, which is given by section 5 to owners and acquiring authorities to apply for certificates of alternative development, to a surveyor who is selected to determine the compensation payable in respect of a compulsory acquisition in special cases where the owner of an interest in the land is absent from the United Kingdom or cannot be found. The appointment of such a surveyor to determine compensation arises under section 58 of the Lands Clauses Consolidation Act 1845, see notes below. When the local planning authority issues a certificate which a surveyor has applied for under this section, it must serve a copy of the certificate on both the owner and the acquiring authority. See section 8 for the machinery for making applications, etc., and also the Town and Country Planning General Development Order 1959 (S.I. 1959 No. 1286), Articles 3–6 on pages 436–7.

" in the circumstances . . . section 5 ", *i.e.*, acquired by a public authority possessing compulsory powers where the land is not part of any defined area of comprehensive development or of any area zoned for residential, commercial or industrial uses, and see page 201.

" section 58 of the Lands Clauses Consolidation Act 1845 ". The section provides for the assessing of compensation by a surveyor where the owner is prevented from treating by absence from the United Kingdom or cannot, after diligent inquiry, be found. Such a surveyor is now selected from the members of the Lands Tribunal in the way provided for the selection of a member to deal with any case by the Lands Tribunal, see Lands Tribunal Act 1949, sections 1 (6) and 3 (2). Such cases are rare, but see one recorded at 1955 J.P.L. 783.

" sections 5 and 6 ". Section 5 gives the right to apply for a certificate, and provides what the contents of a certificate shall be. Section 6 provides a right of appeal from a certificate or (in effect) a failure to issue a certificate.

" the authority shall serve ". In view of the fact that in the situation covered by this section the owner is absent from the United Kingdom or

cannot be found, the authority will in his case have to resort to methods of service other than personal service. See section 55 (1) of this Act and section 105 of the 1947 Act.

Subsection (5). The effect of this subsection is that when making an application under this section, a surveyor must, besides specifying the development which he thinks appropriate, send with it a statement giving the date when he has served or will serve a copy of the application on *both* the owner *and* the acquiring authority : and the local planning authority must issue its certificate not earlier than 21 days after that date, or if there are two dates, the later of them. The matters referred to in section 5 (3) (*a*) are the classes of development which the applicant considers would be appropriate if the land were not going to be acquired. Section 5 (4) requires the local planning authority to issue its certificate not earlier than 21 days after the date given by the applicant as the date on which he has served, or will serve, a copy of his application on the other party.

" the parties directly concerned ", *i.e.*, the owner and the acquiring authority, see section 5 (10). See note on page 202.

8. Supplementary provisions as to certification of appropriate alternative development.—(1) Without prejudice to any other matters for which provision may be made by development orders, provision may be made by a development order for regulating the manner in which applications under section five or section seven of this Act, and appeals under section six of this Act, are to be made and dealt with respectively, and in particular—

(*a*) for prescribing (subject to the provisions of subsection (4) of section five of this Act) the time within which a certificate is required to be issued under the said section five ;

(*b*) for prescribing the manner in which notices of appeals under section six of this Act are to be given, and the time for giving any such notice ;

(*c*) for requiring local planning authorities to furnish the Minister, and such other persons (if any) as may be prescribed by or under the order, with such information as may be so prescribed with respect to applications under section five or section seven of this Act, including information whether any such application has been made in respect of any particular land and information as to the manner in which any such application has been dealt with, together, in such cases as may be so prescribed, with copies of certificates issued under the said section five ;

(*d*) for requiring a local planning authority, on issuing a certificate specifying conditions by reference to general requirements in accordance with subsection (6) of the said

section five, to supply a copy of those requirements (or of so much thereof as is relevant to the certificate) with each copy of the certificate, unless, before the certificate is issued, the requirements in question have been made available to the public in such manner as may be specified in the development order.

(2) For the purposes of sections five and six of this Act, an interest in land shall be taken to be an interest proposed to be acquired by a public authority possessing compulsory purchase powers in the following (but no other) circumstances, that is to say,—

(*a*) where, for the purposes of a compulsory acquisition by that authority of land consisting of or including the land in which that interest subsists, a notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, has been published or served in accordance with that Act or Order ; or

(*b*) where a notice requiring the purchase of that interest has been served under any enactment (including any enactment contained in this Act) and in accordance with that enactment that authority are to be deemed to have served a notice to treat in respect of that interest ; or

(*c*) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.

(3) For the purpose of determining whether an application can be made at any time in relation to any land under subsection (1) of section five or under section seven of this Act, any reference in the said subsection (1) to the current development plan shall be construed as a reference to a development plan comprising that land, in the form in which (whether as originally approved or made by the Minister or as for the time being amended) that plan is in force at that time:

Provided that in any case where—

(*a*) the interest in land in question is to be acquired in the circumstances mentioned in paragraph (*b*) of the last preceding subsection, or

(*b*) the acquiring authority (otherwise than in those circumstances) have served a notice to treat in respect of that interest, or

(*c*) the acquiring authority have entered into a contract for the purchase of that interest,

any such reference shall be construed as a reference to a development plan comprising that land, in the form in which (whether as originally approved or made by the Minister or as for the time being amended) that plan was in force on the date of service of the notice to treat, or on the date of the contract, as the case may be, or, in a case where both dates are applicable, on the later of those dates.

(4) In the application of this section to Scotland, subsection (1) shall have effect as if after the words " to be made and dealt with respectively " there were inserted the words " and other procedural matters ancillary to such applications and appeals ", and as if there were added at the end thereof the following paragraphs, that is to say—

" (*e*) for requiring a public authority possessing compulsory purchase powers who—

(i) propose to acquire the dominium utile of any land (where the land or part thereof does not consist or form part of any such area as is mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of section five of this Act), and

(ii) also propose to require the discharge of the land from any feu-duty or other incumbrance such as is mentioned in subsection (3) of section seven of this Act,

to serve, at such time as may be specified in the order, notice of the proposals on the person entitled to the feu-duty or other incumbrance ;

(*f*) for requiring a public authority possessing compulsory purchase powers, when serving a notice to treat in relation to, or purchasing, the dominium utile of any land (where the land or part thereof does not consist or form part of any such area as is mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of section five of this Act) to give notice of the fact that they have done so to such persons as may be prescribed in the order, being persons who might be entitled to apply under subsection (3) of section seven of this Act for a certificate relating to the land."

Notes to Section 8

The section provides for the making of a development order to regulate

(*a*) the manner in which applications for certificates of alternative development under section 5 or 7, and appeals under section 6 from such certificates, are to be made and dealt with ; and in particular

(*b*) the time within which certificates must be issued ;

(*c*) the manner and time in which notice of appeal under section 6 is to be given ;

(*d*) the furnishing by local planning authorities to the Minister or other persons of information relating to applications for certificates under sections 5 and 7 ;

(*e*) the furnishing by local planning authorities to the parties of copies of that authority's general requirements, where conditions are specified in a certificate by reference to those requirements.

All these matters are dealt with by the Town and Country Planning General Development Order 1959 (S.I. No. 1286) Articles 3–6 on pages 436–7.

The section also defines the circumstances in which an interest in land becomes " proposed to be acquired " for the purposes of sections 5 and 6 so as to give to owners and acquiring authorities the right to apply for a certificate of alternative development.

The right arises where, broadly, a public authority with compulsory powers

(*a*) publishes or serves any required statutory notice in relation to the compulsory acquisition, or

(*b*) after being served with a " purchase notice " is thereafter deemed to have served a notice to treat, or

(*c*) makes an offer in writing to negotiate for the purchase of the interest.

The section also defines the term " current development plan " for the purposes of sections 5 (1) or 7.

" applications under section 5 or section 7 ", *i.e.*, applications for a certificate of alternative development made (*a*) by the owner or the acquiring authority, or (*b*) by a surveyor selected to determine compensation where the owner is absent from the United Kingdom or cannot be found. See Article 3 of the General Development Order 1959 for the making of such applications and the issuing of certificates, on page 436.

" appeals under section 6 ", *i.e.*, appeals to the Minister from a certificate of alternative development given under section 5. See Article 4 of the General Development Order 1959 for the time and procedure for making such appeals, on page 436.

" furnish . . . such other persons ". See Article 5 of the General Development Order 1959 on page 436.

" subsection (6) of the said section 5 ". Section 5 (6) provides that where a local planning authority specifies development which might reasonably have been expected to be permitted but subject to conditions, it may do so by reference to its general requirements as regards conditions in relation to specified classes of case. See Article 6 of the General Development Order 1959 on page 436.

Subsection 2. Paragraph (*a*) relates to the publication or service of such notices as are required under, for example, the First Schedule of the Acquisition of Land (Authorisation Procedure) Act 1946. That schedule requires (i) publication of notices in local newspapers (ii) service of notices

on owners and occupiers, or (iii) the affixing of notices on land addressed to owners and occupiers, before a local authority submits a compulsory purchase order to the confirming authority.

Paragraph (*b*) relates to cases where a purchase notice is served by an owner of land (including a purchase notice under Part IV of this Act, where land is substantially depreciated by a threat of compulsory acquisition) and the authority are deemed to have served a notice to treat ; see particularly section 19 (1B) of the 1947 Act as amended by section 35 of this Act, and also section 42 (1) of this Act.

" offer . . . to negotiate ". It is not necessary that an actual offer for the land should have been made. For the legal distinction between an " offer " and an " invitation to treat " (which an offer to negotiate is), see *Harvey* v. *Facey* [1893] A.C. 552.

Subsection (3). The development plan in force may change from time to time. The effect of the subsection is broadly that when a notice to treat has been actually served or is deemed to be served or a contract for purchase in the shadow of compulsory powers has been made, one can look only at the form of the development plan as it exists *at the time of service or contract made* for the purpose of deciding whether the land to be acquired is land in respect of which application for a certificate of alternative development may be made. But in the period before that time (and after, of course, a proposal to acquire within subsection (2)) the same question can only be answered by reference to the form of the development plan as it exists at the time when it is proposed to apply for a certificate.

" that plan is in force ". See note on **" current development plan "** on page 196.

" circumstances . . . paragraph (b) ", *i.e.*, where a purchase notice (including one under Part IV of this Act) has been served, and the authority is thereafter deemed to have served a notice to treat.

9. Modification of rules for assessment of compensation.—(1) In addition to the rules applicable in accordance with section two of the Act of 1919 (which prescribes rules for the assessment of compensation), the following provisions of this section shall have effect for the purpose of assessing the compensation payable in respect of compulsory acquisitions to which section one of this Act applies :

Provided that, in cases falling within Part I of the First Schedule to this Act, those provisions shall have effect subject to the provisions of that Part of that Schedule.

(2) In each of the cases mentioned in the first column of the following table, no account shall be taken of any increase or diminution of the value of the relevant interest which is attributable—

(*a*) to the carrying out of any such development as is mentioned in relation thereto in the second column of that table, or

(*b*) to the prospect that any such development will or may be carried out,

in so far as any such development (whether actual or prospective) is or would be development arising from the circumstances of that case.

TABLE

Case	Development
1. In the case of every acquisition for purposes involving development of any of the land authorised to be acquired.	Development of any of the land authorised to be acquired, other than the relevant land, being development for any of the purposes for which any part of the first-mentioned land (including any part of the relevant land) is to be acquired.
2. Where any of the relevant land forms part of an area defined in the current development plan as an area of comprehensive development.	Development of any land in that area, other than the relevant land, in the course of the development or redevelopment of the area in accordance with the plan.
3. Where on the date of service of the notice to treat any of the relevant land forms part of an area designated as the site of a new town by an order under the New Towns Act, 1946.	Development of any land in that area, other than the relevant land, in the course of the development of that area as a new town.
4. Where any of the relevant land forms part of an area defined in the current development plan as an area of town development	Development of any land in that area, other than the relevant land, in the course of town development within the meaning of the Town Development Act, 1952.

Case	Development
5. Where any of the relevant land forms part of an area to which a town development scheme under Part II of the Housing and Town Development (Scotland) Act, 1957, relates, being a scheme which is in operation on the date of service of the notice to treat.	Development of any land in that area, other than the relevant land, in the course of the execution of the scheme.

(3) The provisions of the next following subsection shall have effect where, on the date of service of the notice to treat, the person entitled to the relevant interest is also entitled in the same capacity to an interest in other land contiguous or adjacent to the relevant land (in this and the next following subsection referred to as " the interest in adjacent land "), and in any of the cases mentioned in the first column of the table set out in the last preceding subsection there is an increase in the value of the interest in adjacent land which is attributable—

(*a*) to the carrying out of any such development as is mentioned in relation to that case in the second column of that table, or

(*b*) to the prospect that there will or may be carried out any such development as is mentioned in relation to that case in the second column of that table (modified, for the purposes of this paragraph, by the omission of the words " other than the relevant land " wherever those words occur),

in so far as any such development (whether actual or prospective) is or would be development arising from the circumstances of that case.

(4) Where the last preceding subsection applies, the increase in the value of the interest in adjacent land shall be taken into account, and the amount thereof shall be deducted from the amount of the compensation which apart from this subsection would be payable in respect of the compulsory acquisition.

(5) The provisions of Part II of the First Schedule to this Act shall have effect with respect to paragraph 3 of the said table.

(6) No account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that (whether by way of designation, allocation or other particulars contained in the current development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority to whom the Act of 1919 applies.

(7) Any reference in this section to development (whether actual or prospective) which is or would be development arising from the circumstances of a case mentioned in the first column of the table set out in subsection (2) of this section—

(*a*) in relation to any acquisition for purposes involving development of any of the land authorised to be acquired, shall (subject to the next following paragraph) be construed as a reference to development (whether actual or prospective) which would not have been likely to be carried out if the acquiring authority had not acquired, and did not propose to acquire, any of that land, and

(*b*) in relation to any acquisition falling within one or more of paragraphs 2 to 5 in the said first column, shall be construed as including (or, if the acquisition is not for purposes involving development of any of the land authorised to be acquired, shall be construed as) a reference to any development (whether actual or prospective) which would not have been likely to be carried out if the area or areas referred to in that paragraph or those paragraphs had not been defined or designated as therein mentioned or (in a case falling within paragraph 5) if the scheme therein mentioned had not come into operation.

(8) In this section "the current development plan" has the same meaning as in section four of this Act, and "the land authorised to be acquired", in relation to the compulsory acquisition of an interest in land in pursuance of a notice to treat,—

(*a*) where the compulsory acquisition was authorised by a compulsory purchase order or a special enactment, means the aggregate of the land comprised in that authorisation, and

(*b*) where the compulsory acquisition does not fall within the preceding paragraph, but is effected under powers exercisable by virtue of any enactment for defence purposes (within the meaning of the Land Powers (Defence) Act, 1958), means the aggregate of the land comprised in the notice to treat and of any land contiguous or adjacent thereto which is comprised in any other notice to treat

served under the like powers not more than one month before and not more than one month after the date of service of that notice,

and any reference to development of any land shall be construed as including a reference to the clearing of that land.

(9) In the application of this section to Scotland, subsection (4) shall have effect as if there were inserted at the end thereof the following proviso, that is to say,—

" Provided that nothing in this subsection shall affect the amount which is to be taken as the amount of the compensation for the purposes of section sixty-two of the Scottish Act of 1954 (which relates to the consideration payable for the discharge of land from feu-duty and other incumbrances) ".

NOTES TO SECTION 9

The section in effect makes three additions to the statutory rules for assessing compensation already laid down by the Acquisition of Land (Assessment of Compensation) Act 1919.

Broadly the three new " rules " are that :—

(*a*) no account is to be taken, in assessing compensation, of any increase or decrease in the value of the acquired interest which is attributable to ;

(i) any development carried out on any of the land authorised to be acquired (other than the relevant land itself) in the scheme of development for the purpose of which that interest is acquired ; or to the prospect of such development ;

(ii) any development of other land carried out in the course of developing or redeveloping a defined area of comprehensive development, of which the acquired land (or any part of it) forms part ; or to the prospect of such development ;

(iii) any development of other land carried out in the course of developing any area designated as a " new town " of which the acquired land (or part of it) forms part ; or to the prospect of such development ;

(iv) any development of other land carried out in the course of developing any area defined as an area of " town development" of which the acquired land (or part of it) forms part ; or to the prospect of such development.

But in some cases the effect of such development of the above kinds is not to be disregarded, see note below on " in so far as . . . circumstances of that case ".

(*b*) any enhancement in the value of contiguous or adjacent land retained in the same capacity by the owner of the acquired interest which is caused :

(i) by the carrying out of development, either on the acquired land or on other land, falling within the area of the compulsory

purchase order, or comprehensive development area, or new town or town development area, as the case may be, or

(ii) by the prospect of any such development on the acquired land or on other such land

shall be set off against the compensation payable in respect of the acquired land, with the same exceptions as those referred to above under (*a*)—and see note below on " in so far as . . . circumstances of that case ".

(*c*) no account shall be taken of any depreciation in the value of the acquired interest attributable to any indication given in the development plan or elsewhere, that that interest is, or is likely, to be acquired.

" rules . . . Act of 1919 ". The rules in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 are set out on pages 46–9. For cases decided under those rules, see page 186.

" compulsory acquisitions . . . Act applies ", *i.e.*, acquisitions in pursuance of a notice to treat served or deemed to be served after 29th October, 1958 (when the Bill of this Act was presented).

" cases falling within Part 1 of the First Schedule ". Part 1 of the First Schedule provides broadly (*a*) that the set-off provisions in subsection (4) of this section shall not apply in cases to which other set-off provisions under certain Acts or local Acts already apply ; (*b*) that where enhancement of contiguous or adjacent land has been taken into account in assessing compensation (or a price), then neither subsections (2) and (4) of this section nor any set-off provisions in other Acts shall apply to the amount of that enhancement in assessing the compensation for any subsequent compulsory acquisition affecting that contiguous or adjacent land ; and (*c*) that where any diminution in the value of any land which is taken into account in assessing compensation for injurious affection as a result of an acquisition, subsection (2) of this section shall not apply in assessing compensation for any subsequent acquisition of that land.

Subsection (2). For the former rule (which was not statutory) that the " scheme " and any advantage accruing from it should be ignored, see *Fraser* v. *Fraserville City* [1917] A.C. 187 ; *Re Lucas and Chesterfield Gas and Water Board* [1909] 1 K.B. 16 ; *Cedar Rapids Manufacturing and Power Co.* v. *Lacoste* [1914] A.C. 569 ; *Fredman* v. *Plymouth Corporation* (1951) 2 P.C.R. 86, at 91.

" development ". This includes, for the purpose of this section, the clearing of any land, see subsection (8).

" in so far as . . . circumstances of that case ". The effect of this provision and subsection (7) is that if any of the development set out in the second column of the table would have been likely to be carried out even if the land had not been

(i) acquired for the purposes for which it was acquired ;
(ii) defined as an area of comprehensive development, or
(iii) designated as the site of a new town, or
(iv) defined as an area of town development ;

then any increase or decrease in the value of the acquired interest due to such development can be taken into account in spite of the general prohibition contained in this subsection.

" the land authorised to be acquired ", *i.e.*, in normal cases, the aggregate of the land authorised to be acquired with the relevant land under the same compulsory purchase order or special enactment, see subsection (8).

" any of the relevant land ". These provisions apply equally whether it is the whole or only part of the relevant land which is within an area of comprehensive development, or an area designated as the site of a new town, or an area of town development.

" forms part ". It should particularly be noted that, as regards cases 2, 3 and 4 of the Table, it is not necessary that the compulsory acquisition should be *for the purposes of* the comprehensive development, or the " new town " development or the " town development." In most cases it will be so : but the prohibition contained in the subsection will also operate if the compulsory acquisition is for some other purpose than the above, provided that *any* of the acquired land *forms part* of the given areas.

" current development plan ". This has the same meaning as in section 4 (8), see subsection (8) of this section. See further note on page 196.

" area of comprehensive development ". See note on page 196.

" designated . . . New Towns Act 1946 ". Section 1 of the New Towns Act 1946 enables the Minister to make an order (in accordance with the First Schedule of that Act) designating an area as the site of a new town if he is satisfied, after consultation with local authorities, that it is expedient in the national interest that the area should be so developed by a development corporation established under the Act.

" town development ". See the definition from the Town Development Act 1952 set out on page 335. An " area of town development " has now been defined by an amendment of the Town and Country Planning (Development Plans) Regulations 1948 as " an area (comprising one or more parts which are defined on one occasion) in the whole of which town development within the meaning of the Town Development Act 1952 is to be carried out ", see S.I. 1959 No. 1581.

" in the same capacity ", *i.e.*, if both were held by him beneficially ; or both held by him as trustee of one particular trust ; or both held by him as personal representative of one particular person ; see section 57 (6).

" contiguous or adjacent ". The effect of the cases is, it is thought, that " contiguous " means actually touching, but " adjacent " has a wider meaning which includes near or close to, according to circumstances.

In relation to the use of the word " contiguous " in section 3 (3) of the Rating and Valuation (Apportionment) Act 1928, Lord Hewart said in *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee* [1931] 2 K.B. 21, " No person of education or intelligence would understand or suspect that a writer or speaker was using the word " contiguous " in its loose sense of " neighbouring," unless there were something in the context that

compelled that conclusion." This confirms earlier decisions in this country relating to the use of the term in other contexts (see *Haynes* v. *King* [1893] 3 Ch. 439 and *Southwark Revenue Officer* v. *Hoe and Co. Ltd.* (1930) 143 L.T. 544). Since the use of the word " adjacent " in conjunction with " contiguous " indicates *prima facie* that a different meaning is intended in each case, it would follow that the former word is restricted as the latter has a wide meaning. There is one authority, a New Zealand one, which gives " contiguous " the wider meaning of neighbouring, but this is not to be preferred ; see *Waihi Gold Mining Co. Ltd.* v. *Dudson* (1909) 29 N.Z.L.R. 499.

The term " adjacent " has a relative meaning. " ' Adjacent ' is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances," *Wellington Corporation v. Lower Hutt Corporation* [1904] A.C. 773 and see also *Re Ecclesiastical Commissioners Conveyance* [1936]. Ch. 430. It is therefore impossible to lay down any rules as what would or would not constitute " adjacent land," but it is thought that one of the primary considerations is the size of the respective areas involved. Thus, to take an extreme example, continents may be " adjacent " when there are several hundred miles between them : and similarly estates may be adjacent when there is a greater distance between them than between, say, two " adjacent " fields. Intervening obstacles, such as roads or rivers, may be factors to take into account, but by themselves would not be conclusive.

" omission . . . those words occur ". The result of the omission is that one has to consider any enhancement of the value of contiguous or adjacent land caused by such development (or prospect of development) *both* on the acquired land itself *and* on the rest of the given areas.

" shall be deducted ". If permission were subsequently refused for such development on the adjacent land, the owner cannot recover back the set-off. An outline application for such permission before agreeing a set-off would protect the owner.

" Part II of the First Schedule ". Part II of the First Schedule deals with the effect, on case 3 of the Table, of a development corporation for a New Town ceasing to act, and also with the form of the order (designating the site of the New Town) which has to be considered for the purpose of paragraph 3. See further the New Towns Act 1959, and note on page 368.

Subsection (6). This subsection extends the scope of the previous rule laid down statutorily in section 51 (3) (now repealed) of the 1947 Act which required depreciation due to designation in a development plan to be disregarded.

" by any other means ". These words are wide enough to cover informal information given by (*e.g.*), local authorities, and *a fortiori* resolutions passed by such authorities whereby depreciation by the prospect of acquisition arises. They would also cover notices given

under section 33 of the 1954 Act, before that section was repealed by section 1 of this Act.

" authority to whom the Act of 1919 applies ". See section 57 (1) and note on page 356.

" same meaning as in section 4 ". See 4 (8) and note on page 196.

" special enactment ". For definition see section 57 (1).

" Land Powers (Defence) Act 1958 ". " Defence purposes " under that Act includes any purpose of any of Her Majesty's naval, military or air forces, the service of any visiting force within the meaning of Part 1 of the Visiting Forces Act 1952, and any purpose of the Minister of Supply connected with the service of any of the forces aforesaid.

10. Acquisition of houses unfit for human habitation.—The provisions of the Second Schedule to this Act shall have effect as to compensation in respect of the acquisition of land in the circumstances mentioned in that Schedule.

NOTES TO SECTION 10

The section applies the provisions of the Second Schedule, which relate to houses unfit for human habitation, to the assessment of compensation in respect of compulsory acquisition of such houses. For the provisions and effect of the Schedule, see pages 368–83.

11. War-damaged land.—(1) Section fourteen of the War Damage Act, 1943 (which relates to war damage payments where partially damaged land is acquired by a public authority possessing compulsory purchase powers), section fifty-three of the Act of 1947 (which relates to acquisitions attracting converted value payments under the War Damage Act, 1943), and the following provisions of section fifty-six of the Act of 1947 (which relates to war-damaged land in respect of which compensation is assessable on the basis of equivalent reinstatement) that is to say—

(*a*) in subsection (2) of that section, the words from " and the right to receive any value payment " to the end of the subsection, and

(*b*) subsection (3) of that section,

shall not have effect (in so far as they would be applicable respectively apart from this section) in relation to a compulsory acquisition to which section one of this Act applies, or to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition.

(2) In the application of this section to Scotland, for references to sections fifty-three and fifty-six of the Act of 1947 there shall be substituted references respectively to sections fifty and fifty-three of the Scottish Act of 1947.

NOTES TO SECTION 11

The section repeals section 14 of the War Damage Act 1943, and section 53 and section 56 (3) and part of (2) of the 1947 Act, in relation to compulsory acquisitions in pursuance of a notice to treat served after the 29th October 1958 or to purchases in the shadow of compulsory powers in pursuance of a contract made after that date.

" Section 14 of the War Damage Act 1943 ". The section provided that where a payment of the cost of works would otherwise be appropriate in respect of war-damaged land, but the land in question was compulsorily acquired or purchased in the shadow of compulsory powers, a cost of works payment was to be made in respect of the damage so far as it had been made good at the date of acquisition, and a value payment in respect of the damage so far as it had not been made good. The circumstances in which a cost of works payment and a value payment are respectively appropriate are set out in section 7 of that Act. The right to receive the converted value payment under section 14 was given to the acquiring authority by section 53 of the 1947 Act, in respect of such acquisitions or purchases initiated after the 1st July, 1948.

" section 53 of the Act of 1947 ". Section 53 provided that where land had sustained war damage not yet made good and for which the appropriate payment was one of a cost of works, then on a compulsory acquisition in pursuance of a notice to treat served after 1st July, 1948, compensation should be assessed at existing use value on the basis that the damage had been made good at the date of the notice to treat, and that the right to receive payment for the war damage should vest in the acquiring authority, who received a converted value payment under section 14 of the War Damage Act 1943.

" section 56 . . . subsection (2) . . . subsection (3) ". Section 56 of the 1947 Act provided that in the case of acquisitions after 6th August, 1947 of land which, but for war damage would attract compensation on the basis of equivalent reinstatement under Rule (5) in section 2 of the 1919 Act, the compensation is to be assessed on that basis by reference to the state of land immediately before the occurrence of the war damage. The repealed words of subsection (2) gave to the acquiring authority the right to receive any value payment under the War Damage Act 1943 which the owner would have received if the acquisition had not taken place. Subsection (3) had the same effect as the repealed words of subsection (2), in the case of sales in the shadow of compulsory powers of similar war damaged land, in that it gave to the purchasing authority the owner's former right to receive a value payment.

" compulsory acquisition . . . section 1 of this Act ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958 (when the Bill of this Act was presented).

" sale . . . such an acquisition ", *i.e.*, a sale in the shadow of compulsory powers by contract made after the 29th October, 1958, see section 57 (8).

12. Other special cases.—(1) The provisions specified in the next following subsection shall cease to have effect, except (where applicable) for the purpose of assessing compensation in respect of compulsory acquisitions to which section one of this Act does not apply.

(2) The said provisions are—

(*a*) subsection (5) of section eighty-two of the Act of 1947 (which relates to certain acquisitions of land held by local authorities for statutory purposes) ;

(*b*) subsection (4) of section eighty-four of that Act (which relates to certain acquisitions of operational land of statutory undertakers) ;

(*c*) subsection (4) of section eighty-five of that Act (which relates to certain acquisitions of land held on charitable trusts) ; and

(*d*) the provisions of subsection (4) of section eighty-four of that Act as applied by regulations under section ninety of that Act (which relates to the National Coal Board).

(3) In relation to compulsory acquisitions of interests in land which has been acquired by statutory undertakers for the purposes of their undertaking, the provisions of this Part of this Act shall have effect subject to the provisions of subsection (5) of section forty-five of the Act of 1947 (which makes special provision as to the compensation payable in respect of certain acquisitions of land so acquired).

(4) In the application of this section to Scotland, for references to sections forty-five, eighty-two, eighty-four, eighty-five and ninety of the Act of 1947, there shall be substituted references respectively to sections forty-two, seventy-nine, eighty-one, eighty-two and eighty-six of the Scottish Act of 1947.

Notes to Section 12

The section repeals, in relation to compulsory acquisitions in pursuance of a notice to treat served after the 29th October, 1958, those provisions of the 1947 Act which enabled compensation in special cases to be assessed by reference to the use prevailing in land contiguous or adjacent to the acquired land. Compensation in such cases now falls to be assessed generally on the ordinary market value basis.

These special cases were acquisitions of :—

(*a*) land held by local authorities for general statutory purposes ;

(*b*) operational land of statutory undertakers ;

(*c*) land held on charitable trusts or for ecclesiastical or other charitable purposes ;

(*d*) specified land held by the National Coal Board for the purposes of their undertaking.

In the case, however, of an acquisition of operational land of statutory undertakers, the compensation will continue as before to be assessed under the Fourth Schedule of the 1944 Act if the appropriate Minister does not certify (as he can do, under paragraph 10 of the First Schedule of the Acquisition of Land (Authorisation Procedure) Act 1946) that that land can be purchased and not replaced without serious detriment to the undertaking, or that if purchased it can be replaced by other land without serious detriment to the undertaking.

" section 1 does not apply ", *i.e.*, acquisitions in pursuance of a notice to treat served or deemed to be served on or before the 29th October, 1958.

" subsection (5) of section 82 ". The subsection provided that, in respect of land held by a local authority for general statutory purposes, the compensation in respect of a compulsory acquisition should be assessed on the assumption that planning permission would be granted for development by which the use of land would be made to correspond with the use prevailing generally in the case of contiguous or adjacent land.

" subsection (4) of section 84 ". This applied the same principles as in the above note to " operational land " of " statutory undertakers." These terms were defined in section 119 of that Act. For a discussion of the definition of "operational land," see 1956 J.P.L. 95 : and see further *R*, v. *Minister of Fuel and Power, ex parte Warwickshire County Council* [1957] 2 All E.R. 731.

" subsection (4) of section 85". This applied the "prevailing use" principles to land held on charitable trusts or for ecclesiastical or other charitable purposes, where (*a*) the land was " functional land " on 1st July, 1948, or (*b*) the land was being used at the time of the notice to treat for a purpose for which there was no general demand or market.

" regulations . . . section 90 ". The Town and Country Planning (National Coal Board) Regulations 1951 (S.I. 1951, No. 716) applied the " prevailing use " principle to specified land of the National Coal Board.

" subsection (5) of section 45 of the Act of 1947 ". Section 45 (5) provides that where operational land of statutory undertakers is compulsorily acquired and no certificate under paragraph 10 of the First Schedule of the Acquisition of Land (Authorisation Procedure) Act 1946 is issued by the appropriate Minister, the compensation is to be assessed under the Fourth Schedule of the 1944 Act (preserved in the Eleventh Schedule of the 1947 Act).

Paragraph 10 of the First Schedule of the 1946 Act provides that where a compulsory purchase order is prepared in relation to operational land of statutory undertakers, that order is not to be made or confirmed in respect of that land unless the appropriate Minister, on representation being made to him, certifies that he is satisfied that the land can be purchased and not replaced without serious detriment to the undertaking, or if purchased can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

The Fourth Schedule of the 1944 Act makes special provision for

compensating statutory undertakers in respect of the compulsory acquisition of their operational land, including compensation for the cost of adjustments rendered necessary to their undertaking by the compulsory acquisition and any decrease in net receipts caused by such adjustments or otherwise brought about by the acquisition.

13. Power to pay allowances to persons displaced.—(1) In connection with any compulsory acquisition to which section one of this Act applies, and in connection with any sale of an interest in land by agreement in circumstances corresponding to such an acquisition, the acquiring authority—

(*a*) may pay to any person displaced from a house or other building on that land such reasonable allowance as they think fit towards his expenses in removing therefrom ; and

(*b*) may pay to any person carrying on any trade or business in any such house or other building such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent upon his having to quit the house or building.

(2) In estimating loss, for the purposes of paragraph (*b*) of the preceding subsection, the authority shall have regard to the period for which the premises occupied by the person in question might reasonably have been expected to be available for the purpose of his trade or business, and to the availability of other premises suitable for that purpose.

(3) The preceding provisions of this section shall have effect without prejudice to the operation of any other enactments authorising the making of payments to or in respect of persons displaced or otherwise affected by acquisitions by public authorities possessing compulsory purchase powers.

NOTES TO SECTION 13

The section empowers authorities who acquire land in pursuance of a notice to treat served after 29th October, 1958, or who purchase land in the shadow of compulsory powers by contract made after that date, to pay :

(*a*) to any person thereby displaced from a house or other building a reasonable sum towards his removal expenses.

(*b*) to any person carrying on any trade or business in any house or building on that land a reasonable sum towards the loss he will suffer by disturbance of his trade or business as a result of having to quit. In estimating the loss, regard shall be paid to the period for which the premises might reasonably have been expected to be

available for the trade or business, and to the availability of other premises for that purpose.

" compulsory acquisition . . . section 1 ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after 29th October, 1958 (when the Bill of this Act was presented).

" sale . . . to such acquisition ". For definition, see section 57 (8).

" may pay ". The power is discretionary, and does not in any way affect the obligation to pay compensation for disturbance to those who are entitled to it : for such entitlement, see pages 4 and 74. For a discussion of the similar discretionary power under section 63 of the Housing Act 1957, see 1958 J.P.L. 641. See further subsection (3) of the section and note thereto.

" to any person ". The right is not limited to those persons who will generally benefit thereby, *viz.*, those having an interest in the acquired land being a tenancy for a year or from year to year, or less, whose interest is determined (*e.g.*) by notice to quit. Such persons are not entitled to a notice to treat, see *R.* v. *Kennedy* [1893] 1 Q.B. 533 and sections 18 and 121 of the Lands Clauses Consolidation Act 1845. Section 121 of the 1845 Act provides a measure of compensation for those with short tenancies whose interests are determined prematurely (*e.g.*, otherwise than by proper notice to quit).

" house or other building ". It will be noticed that payments cannot be paid for removal expenses from, or loss by disturbance from, land other than a " house or other building." " Building " is defined in section 119 (1) of the 1947 Act : and see further *Re Hammersmith, etc., Clearance Order* [1937] 3 All E.R. 539 ; *Re Camberwell, etc., Clearance Order* [1938] 2 K.B. 210 ; *Re South Shields C.P.O.* [1939] 1 All E.R. 419.

" might reasonably have been expected to be available ". It seems that the provisions of Part II of the Landlord and Tenant Act, 1954, can be taken into account in considering the period for which the premises might have been available. Section 39 of that Act only prevents the Act being taken into account in assessing compensation under section 121 of the Land Clauses Consolidation Act 1845. The matters to be considered are the length of the tenancy, the prospects of renewal, and the age of the premises and the likelihood of their demolition on that or any other account.

" any other enactments ", *e.g.*, sections 49, 63 and 68 of the Lands Clauses Consolidation Act 1845, relating to claims for disturbance, severance or injurious affection ; and sections 32, 63 and 100 of the Housing Act 1957 which permit discretionary payments similar to those allowed by this section.

" public authorities . . . purchase powers ". See section 57 (1) and note on page 356.

14. Long-standing notices to treat.—(1) This section applies to every notice to treat served before the sixth day of August, nineteen hundred and forty-seven, by a public authority possessing com-

pulsory purchase powers, being a notice in respect of which the following conditions are fulfilled, that is to say,—

(*a*) that the acquisition of the interest in land to which the notice relates has not before the commencement of this Act been completed by the vesting of that interest in the acquiring authority ;

(*b*) that the acquiring authority have not before the commencement of this Act exercised any right of entering upon and taking possession of land in pursuance of that notice ;

(*c*) that compensation in respect of the acquisition of that interest has not before the commencement of this Act been paid to and accepted by the person entitled to the interest, or any other person competent to give an effective discharge for such compensation ;

(*d*) that the amount of the compensation payable in respect of the acquisition of that interest has not before the commencement of this Act been determined by the Lands Tribunal or by an official arbitrator appointed under the Act of 1919, or determined under section fifty-eight of the Lands Clauses Consolidation Act, 1845 ; and

(*e*) that the notice has not been withdrawn before the commencement of this Act.

(2) If a public authority possessing compulsory purchase powers intend to proceed with the compulsory acquisition of an interest in land, in pursuance of a notice to treat to which this section applies, they shall, before the end of the period of six months beginning with the commencement of this Act, serve on the person for the time being entitled to that interest a notice in the prescribed form (in this Act referred to as a " notice of intention to proceed ") stating that fact ; and if, at the end of that period, no notice of intention to proceed has been served in accordance with this subsection in respect of an interest to which such a notice to treat relates, the notice to treat shall thereupon cease to have effect in so far as it relates to that interest.

(3) The form prescribed under the last preceding subsection shall include such explanation of the provisions of this and the next following section as appears to the Minister to be requisite for informing recipients of notices of intention to proceed of their rights and obligations under those provisions.

(4) Where a notice of intention to proceed has been served, in respect of the compulsory acquisition of an interest in land, and, at the end of the period of one year beginning with the date of service of that notice, the compensation payable in respect of the

acquisition of that interest has not been agreed, and no proceedings have been begun for the determination of any question relating to that compensation, the notice to treat, with respect to which the notice of intention to proceed was served, shall cease to have effect in so far as it relates to that interest :

Provided that this subsection shall not apply if, before the end of the said period of one year, the acquiring authority have exercised a right of entering upon and taking possession of land in pursuance of the notice to treat.

(5) The authority by whom a notice to treat to which this section applies has been served shall not be entitled after the commencement of this Act to exercise any rights or powers in pursuance of that notice, unless they have served a notice of intention to proceed in accordance with this section.

(6) Nothing in this section shall affect any question as to the validity of a notice to treat apart from the provisions of this section.

(7) In the application of this section to Scotland—

(*a*) for any reference to the sixth day of August, nineteen hundred and forty-seven there shall be substituted a reference to the thirteenth day of August, nineteen hundred and forty-seven ;

(*b*) for any reference to an official arbitrator there shall be substituted a reference to an official arbiter ; and

(*c*) for any reference to section fifty-eight of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to section fifty-six of the Lands Clauses Consolidation (Scotland) Act, 1845.

NOTES TO SECTION 14

The section makes provision for disposing of notices to treat which have become outstanding for an excessive period. Where

(1) a notice to treat was served before the 6th August, 1947, *and*

(2) the interest to be acquired had not vested in the acquiring authority before the 16th August, 1959, *and*

(3) the acquiring authority had not duly entered on and taken possession of the land before the 16th August, 1959, *and*

(4) the compensation payable had not been paid to and accepted by the owner of the interest or his qualified agent before the 16th August, 1959, *and*

(5) the amount of the compensation had not been determined before the 16th August, 1959, *and*

(6) the notice to treat had not been withdrawn before the 16th August, 1959, *and*

then the acquiring authority cannot after the 15th February, 1960, proceed with the acquisition unless it has served a " notice of intention to proceed."

A " notice of intention to proceed " with a long standing notice to treat must be served by an acquiring authority on or after the 16th August, 1959 and before the 16th February, 1960.

If no notice of intention to proceed is served within that period, the notice to treat shall cease to have effect in relation to the relevant interest.

Where a " notice of intention to proceed " is served on an owner by an acquiring authority, the owner has a right to elect, in effect, as to the date by reference to which compensation is to be assessed, see next section.

When a " notice of intention to proceed " has been served and within one year from that time (i) no compensation has been agreed and (ii) no proceedings have been begun for the determination of any question relating to that compensation and (iii) the acquiring authority have not exercised any right of entering upon and taking possession of the land, then the notice to treat shall cease to have effect in relation to the relevant interest.

For cases where the acquiring authority has entered on such land between the 29th October, 1958 and before the 16th August, 1959, see section 16.

" notice to treat ". Where an acquiring authority has evinced an intention to abandon rights given to it by a notice to treat, the owner may treat those rights as abandoned and is entitled to a declaration that they are abandoned, see *Grice* v. *Dudley Corporation* [1957] Ch. 329, c.f. *Jacobs* v. *Exeter Corporation* (1957) J.P.L. 204.

" 6th August 1947 ", *i.e.*, the date of the passing of the 1947 Act.

" public authority . . . purchase powers ". See section 57 (1) and note on page 356.

" official arbitrator . . . Act of 1919 ". The Acquisition of Land (Assessment of Compensation) Act 1919 provided for questions of disputed compensation on compulsory acquisitions to be referred to and determined by one of a panel of official arbitrators to be appointed under the Act. The Lands Tribunal replaced for this purpose the official arbitrators as from 1st January, 1950.

" section 58 . . . Consolidation Act 1845 ". See note on page 205.

" notice in the prescribed form ", *i.e.*, prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (S.I. No. 1287) Form No. 1, on page 443.

" in so far . . . that interest ". The notice to treat survives in respect of any other interest to which it relates.

15. Rights of owner where notice given of intention to proceed.— (1) Where a notice of intention to proceed has been served under the last preceding section, in respect of the compulsory acquisition of an interest in land in pursuance of a notice to treat to which that section applies (in this section referred to as " the original notice to treat "), the person for the time being entitled to that interest may (subject to the following provisions of this section) elect that compensation in respect of the compulsory acquisition of that

interest shall be assessed as if the original notice to treat had been served on the first day of January, nineteen hundred and fifty-eight.

(2) Any such election shall be signified in a notice of claim given in accordance with the provisions of subsection (2) of section five of the Act of 1919, and shall not have effect if that notice is given after the end of the period of six months beginning with the date of service of the notice of intention to proceed.

(3) A person who has become entitled to the interest in question in pursuance of a transaction effected for valuable consideration after the service of the original notice to treat, or who derives title to it from a person who so became entitled to it, shall not have any such right of election as is mentioned in subsection (1) of this section.

(4) Where such an election is signified in accordance with the preceding provisions of this section, the provisions of any enactment relating to the compulsory acquisition of interests in land or to compensation in respect of such acquisitions shall apply (subject to the next following subsection) as if the original notice to treat had been served on the first day of January, nineteen hundred and fifty-eight.

(5) If, after an election has been so signified by the person entitled to the relevant interest, the original notice to treat is withdrawn, the compensation payable to him under subsection (2) of section five of the Act of 1919, in respect of any loss or expenses occasioned by that notice having been given to him and withdrawn, shall be limited to the aggregate of—

(*a*) any loss or expenses so occasioned after the service of the notice of intention to proceed, and

(*b*) any expenses reasonably incurred by him, before the service of the last-mentioned notice, in preparing and supporting a claim for compensation in respect of the acquisition.

Notes to Section 15

The section enables an owner of an interest in land, on whom a " notice of intention to proceed " is served under the last section, to elect whether, in effect, compensation is to be assessed by reference to the 1st January, 1958, instead of by reference to the date on which the original notice to treat was served.

This right of election, however, is not available to an owner who acquired his interest, or who derives title from a person who acquired that interest, for valuable consideration after the date of the service of the original notice to treat. Such an owner must take compensation assessed by reference to the date on which the notice to treat was served.

An owner exercising his right of election under this section must do so

by way of a " notice of claim " made under section 5 (2) of the 1919 Act within six months of the service of the " notice of intention to proceed."

When an owner elects under this section, then the notice to treat is deemed to have been served on the 1st January, 1958, both for the purposes of compensation and all other matters relating to the compulsory acquisition. If, after such an election by the owner, the notice to treat is withdrawn by the acquiring authority, the owner can recover under section 5 (2) of the 1919 Act only

(*a*) any loss or expenses occasioned after service of the " notice of intention to proceed " by reason of the notice to treat being served upon him and then withdrawn, *and*

(*b*) any expenses reasonably incurred by him before the service of the " notice of intention to proceed " in preparing and supporting a claim for compensation.

" 1st January, 1958 ". The effect broadly will be that compensation would be assessed on existing use basis under Part V of the 1947 Act, plus any discretionary payment under section 35 of the 1954 Act. In such cases as these no Part VI claim under the 1947 Act will have been established (see section 91 (1) of that Act) and therefore there is no supplement payable as of right under section 31 of the 1954 Act in respect of the unexpended balance. But a section 35 payment can be claimed. The land for these purposes is to be taken in its condition as on the 1st January, 1958. See further pages 77–81.

" section 5 of the Act of 1919 ". A notice of claim under section 5 (2) of the 1919 Act must state the exact nature of the interest in respect of which compensation is claimed, and must give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.

The subsection gives the acquiring authority the right to withdraw the notice to treat within 6 weeks after the delivery of a notice of claim, but makes the authority liable to pay compensation for any loss or expenses occasioned to the owner by the notice to treat having been given to him and then withdrawn. For the assessment of surveyors' fees incurred as a result of the service of a notice to treat which is subsequently withdrawn, see *Duke of Grafton* v. *Secretary of State for Air* (1956) 6 P.C.R. 374 ; and generally see *L.C.C.* v. *Montague Burton* [1934] 1 K.B. 360.

Subsection (5) of this section now defines the compensation payable for a withdrawal after the owner has made an election.

" derives title ". See section 57 (4) and notes thereto.

16. Recent entry under longstanding notice to treat.—(1) Where a notice to treat was served before the sixth day of August, nineteen hundred and forty-seven, by a public authority possessing compulsory purchase powers, and—

(*a*) the conditions specified in paragraphs (*a*), (*c*), (*d*) and (*e*) of subsection (1) of section fourteen of this Act are fulfilled in relation to that notice, but

(*b*) on a date after the twenty-ninth day of October, nineteen hundred and fifty-eight, and before the commencement of this Act, the acquiring authority exercised a right of entering upon and taking possession of land in pursuance of that notice,

the following provisions of this section shall have effect.

(2) It shall be the duty of the acquiring authority, before the end of the period of six months beginning with the commencement of this Act, to serve on the person for the time being entitled to the relevant interest a notice in the prescribed form.

(3) The form prescribed under the last preceding subsection shall include such explanation of the provisions applicable by virtue of this section as appears to the Minister to be requisite for informing recipients of notices under that subsection of their rights and obligations under those provisions.

(4) Where subsection (1) of this section applies, the provisions of section fifteen of this Act (except subsection (5) of that section) shall have effect as if the notice to treat had been a notice to which section fourteen of this Act applied, and the acquiring authority had served a notice of intention to proceed in respect of the compulsory acquisition of the relevant interest in pursuance of that notice to treat, and as if that notice of intention to proceed—

(*a*) had been served on the date on which the acquiring authority served a notice under subsection (2) of this section in respect of the relevant interest, or

(*b*) in default of service of such a notice under subsection (2) of this section, had been served at the end of the period of six months beginning with the commencement of this Act.

(5) In the application of this section to Scotland, for the reference to the sixth day of August, nineteen hundred and forty-seven, there shall be substituted a reference to the thirteenth day of August, nineteen hundred and forty-seven.

Notes to Section 16

The section deals with certain long-standing notices to treat which would otherwise be dealt with under the two preceding sections if the acquiring authority had not exercised a right of entering upon and taking possession of the land after the 29th October, 1958 (when the Bill of this Act was presented) and before the 16th August, 1959 (when the Act came into force).

In such cases the main provisions of the preceding section are to apply, even though condition (*b*) in section 14 (1) cannot be satisfied by reason of the authority's entry on the land. The authority must serve a

notice on the owner in such a case before the 16th February, 1960 in the form prescribed by regulations, which will inform the owner of his obligations under the preceding section ; and for the purpose of that section the authority is to be taken to have served a " notice of intention to proceed " (see section 14 (2)) on the date on which it serves the notice mentioned above, or (if it fails to serve such a notice) on the 15th February, 1960.

The only provision of the preceding section which does not apply in such cases is the provision which limits the owner's right to compensation on the withdrawal of the outstanding notice to treat after the owner has elected under that section ; see notes below.

" the 6th August, 1947 ", *i.e.*, the date of the passing of the 1947 Act.

" the 29th October, 1958 . . . commencement of this Act ". The effect of entry on the land between these dates would otherwise be that sections 14 and 15 would be ousted because condition (*b*) in section 14 (1) could not be satisfied. It has been felt that authorities who acted on their knowledge of the Bill of the Act after it was presented on the 29th October, 1958, should not be permitted to oust these sections in this way. The commencement of the Act was the 16th August, 1959.

" prescribed form ", *i.e.*, in the form prescribed by the Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (S.I. No. 1287), Form 2 on page 444.

" section 15 of this Act ". Section 15 enables the owner of land, on whom a notice of intention to proceed with a long-standing notice to treat has been served, to elect whether to take compensation as at the 1st January, 1958 instead of the date of service of the notice to treat. His election must be made by notice of claim under section 5 (2) of the 1919 Act within six months of the service of the notice of intention to proceed. Subsection (5) of section 15 (which is excluded from operation in cases under section 16) limited the compensation, to which the owner would be entitled on a withdrawal of the notice to treat after his election, to all loss and expenses thereby incurred *after* the service of the notice of intention to proceed, and reasonable expenses incurred *before* that time in preparing and supporting a claim for compensation. In cases therefore to which this section 16 applies, the measure of such compensation will be that laid down in the 1919 Act section 5 (2), namely all loss or expense occasioned by the notice to treat having been given and withdrawn.

17. Outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission.—(1) The provisions of this section shall have effect in relation to a compulsory acquisition to which section one of this Act applies where—

(*a*) before the service of the notice to treat a planning decision or order has been made in such circumstances as to give rise to a claim for compensation for depreciation of the value of an interest in land, being land which consists of or includes the whole or part of the relevant land ;

(*b*) whether such a claim has been made or not, no notice stating that compensation has become payable for depreciation of the value of that interest in consequence of that planning decision or order has been registered before the date of service of the notice to treat ; but

(*c*) such a notice is registered on or after that date.

(2) Where the preceding subsection applies, the compensation payable in respect of the compulsory acquisition shall be assessed as if the notice referred to in paragraph (*c*) of the preceding subsection had been registered before the date of service of the notice to treat and had remained on the register of local land charges on that date.

(3) For the purposes of this section a planning decision or order shall be taken to give rise to a claim for compensation for depreciation of the value of an interest in land if (subject to the making and determination of a claim in accordance with the relevant provisions, and to the effect of any direction of the Minister under section twenty-three or section forty-five of the Act of 1954) a person is entitled to compensation for depreciation of the value of that interest in consequence of that decision or order.

(4) In this section any reference to compensation for depreciation of the value of an interest in land is a reference to compensation payable either—

(*a*) under Part II or Part V of the Act of 1954 in respect of depreciation of the value of that interest, or

(*b*) under subsection (1) of section twenty-two of the Act of 1947 in respect of loss or damage consisting of depreciation of the value of that interest ;

any reference to registration is a reference to registration in the register of local land charges under subsection (5) of section twenty-eight of the Act of 1954, or under the provisions of that subsection as applied by section thirty-nine or section forty-six of that Act ; and " the relevant provisions ", in relation to compensation under Part II or Part V of the Act of 1954, means the provisions of the said Part II, or those provisions as applied by the said Part V, and, in relation to compensation under subsection (1) of section twenty-two of the Act of 1947, means the provisions of regulations made under the Act of 1947 with respect to claims for compensation under that subsection.

(5) In the application of this section to Scotland—

(*a*) for references to the Act of 1947 and section twenty-two of that Act there shall be substituted references respectively to the Scottish Act of 1947 and section twenty of that Act ;

(*b*) for references to the Act of 1954 and to the following provisions of that Act, that is to say, subsection (5) of section twenty-eight, the provisions of that subsection as applied by section thirty-nine, section forty-five and the provisions of the said subsection (5) as applied by section forty-six, there shall be substituted respectively references to the Scottish Act of 1954 and the following provisions of that Act, that is to say, subsection (1) of section twenty-nine, section forty-one, section forty-seven and the provisions of the said subsection (1) as applied by section forty-eight ;

(*c*) for any reference to the registration of a notice in the register of local land charges there shall be substituted a reference to the recording of a notice in the appropriate register of sasines ; and

(*d*) in subsection (2), the words from ' and had remained ' to the end of the subsection shall be omitted.

NOTES TO SECTION 17

The section provides broadly that if, at the time when a notice to treat is served (after the 29th October 1958) there is outstanding in respect of all or part of the land to be acquired a right to compensation for depreciation in the value of the land caused by a previous planning decision or an order revoking or modifying a planning permission, but that compensation is not then registered against the land under the 1954 Act until after the service of the notice to treat, then the compensation payable in respect of the acquisition must be assessed on the basis that the prior compensation had already been registered before the notice to treat was served.

The compensation referred to is compensation for depreciation arising under

(*a*) Part II of the 1954 Act, in respect of planning decisions made on or after the 1st January, 1955.

(*b*) section 22 (1) of the 1947 Act (as amended by section 38 of the 1954 Act), in respect of orders made on or after the 1st January, 1955 revoking or modifying a planning permission previously granted.

(*c*) Part V of the 1954 Act, in respect of planning decisions, or orders revoking or modifying planning permissions, when made before 1st January, 1955.

It does not matter for the purpose of the section whether, at the time of the service of the notice to treat, a claim has or has not been made for such compensation ; but a claim must subsequently be made and the compensation registered.

" compulsory acquisition . . . section 1 ", *i.e.*, a compulsory acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958 (when the Bill of this Act was presented).

" consists of or includes the whole or part ". It follows that the section applies to four different cases, namely where the land in which the interest depreciated by the planning decision or order exists

(*a*) is exactly the whole of the acquired land ;

(*b*) forms part only of the acquired land ;

(*c*) includes all the acquired land, together with some other land ;

(*d*) includes part of the acquired land, together with some other land.

" a notice is registered ". The registration provisions are those provided for by section 28 (5) of the 1954 Act (for compensation under Part II of that Act) or by that section as applied for the purposes of Part IV and V of that Act. But section 28 (5) requires the registration of the compensation, only when the compensation has been determined on a claim duly made. Though it is not necessary that a claim should have been made before the service of the notice to treat, not only must a claim be made subsequently but the compensation for the depreciation must be registered.

" the relevant provisions ",

i.e., (*a*) sections 22 and 27 of the 1954 Act, and the Town and Country Planning (Compensation) Regulations 1954 (S.I. 1954 No. 1600), as regards compensation under Part II of the 1954 Act.

(*b*) section 22 of the 1947 Act as amended by section 38 of the 1954 Act, and the Town and Country Planning (General) Regulations 1948 (S.I. 1948 No. 1380), as regards compensation under section 22.

(*c*) sections 22 and 27 of the 1954 Act, as applied by section 45 (1) of that Act, and the Town and Country Planning (Compensation) Regulations 1954 (S.I. 1954 No. 1600), as regards compensation under Part V of the 1954 Act.

" any direction of the Minister ". Under sections 23 and 45 of the 1954 Act the Minister has the power to review a planning decision or order which gives rise to a claim for compensation under Part II or Part V of that Act, and can by direction either substitute a decision more favourable to the claimant than the planning decision which is the subject of the claim, or in effect amend that planning decision (or a revocation of planning permission, under Part V) by adding a grant, or undertaking to grant, permission for some alternative development.

" section 28 (5) of the Act of 1954 ". Section 28 (5) provided that where the Minister has deposited with the local planning authority a notice specifying the amount of any compensation under Part II of that Act determined by him and apportioned as necessary between different parts of the land, that notice is to be registered in the register of local land charges in accordance with the Local Land Charges (Amendment) Rules 1954 (S.I. 1954 No. 1677) made under section 15 (6) of the Land Charges Act 1925. Sections 39 and 46 of the 1954 Act apply these provisions in respect of compensation for depreciation paid, respectively, under section 22 (1) of the 1947 Act (as amended by section 38 of the 1954 Act) and under Part V of the 1954 Act.

18. Additional compensation for new planning permission in respect of land acquired.—(1) The provisions of this section shall have effect where, by a planning decision made before the end of the period of five years beginning with the date of completion of—

(*a*) a compulsory acquisition to which section one of this Act applies, or

(*b*) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,

permission is granted for the carrying out of additional development of any of the land which was comprised in the acquisition or sale.

(2) Subject to the following provisions of this section, if the principal amount of the compensation which was payable in respect of the compulsory acquisition, or, in the case of a sale by agreement, the amount of the purchase price, was less than the principal amount of the compensation which would have been payable in respect of a compulsory acquisition of the interest in question with the benefit of the planning decision referred to in the preceding subsection, the person to whom the compensation or purchase price was payable shall, on a claim duly made by him, be entitled to compensation from the acquiring authority of an amount equal to the difference.

(3) In the last preceding subsection the reference to the compensation which would have been payable in respect of a compulsory acquisition of the interest in question with the benefit of the planning decision therein mentioned is a reference to the compensation which would have been payable in respect of a compulsory acquisition of that interest by the acquiring authority, in pursuance of a notice to treat served on the relevant date, if that planning decision had been made before that date and the permission thereby granted had been in force on that date.

(4) No compensation shall be payable by virtue of this section in respect of a planning decision in so far as it relates—

(*a*) to land which on the relevant date consisted or formed part of an area defined in a development plan as an area of comprehensive development ; or

(*b*) to land acquired by the acquiring authority, whether compulsorily or by agreement, under paragraph (*a*) of subsection (1) of section four of the New Towns Act, 1946 (which relates to the acquisition by development corporations of land within areas designated as the sites of new towns) ; or

(*c*) to land acquired by the acquiring authority in consequence of the service of a notice under subsection (4) of section six

of the New Towns Act, 1946 (whereby a development corporation can be required to purchase an interest in land in a new town) ; or

(*d*) to land acquired by a local authority, whether compulsorily or by agreement, where on the relevant date the land consisted or formed part of an area defined in a development plan as an area of town development.

(5) If in accordance with the preceding provisions of this section the person referred to in subsection (2) of this section would be entitled to compensation as therein mentioned, but before the planning decision in question that person has died, or any other act or event has occurred whereby the right to compensation under this section, if vested in him immediately before that act or event, would thereupon have vested in some other person, the right to compensation under this section shall be treated as having devolved as if that right had been vested in him immediately before his death or immediately before that act or event, as the case may be, and the compensation shall be payable to the persons claiming under him accordingly.

(6) The provisions of the Third Schedule to this Act shall have effect for the purposes of this section.

(7) In this section any reference to the granting of permission for the carrying out of development of any land is a reference to the granting of permission for that development—

(*a*) either unconditionally or subject to conditions, and

(*b*) either in respect of that land taken by itself or in respect of an area including that land, and

(*c*) either on an ordinary application or on an outline application,

and any reference to an area defined in a development plan is a reference to an area defined in such a plan in the form in which (whether as originally approved or made by the Minister or as subsequently amended) that plan was in force on the relevant date.

(8) In this section and in the following provisions of this Part of this Act " additional development ", in relation to an acquisition or sale of an interest in land, means any development of the land in question other than the following, that is to say—

(*a*) where the acquiring authority are a local authority, and acquired the interest for the purposes of any of their functions, development for the purposes of the functions for which they acquired it ;

(*b*) where the acquiring authority are not a local authority, development for the purposes of the project in connection with which they acquired the interest ;

(*c*) development for which planning permission was in force on the relevant date ; and

(*d*) development for which—

(i) in the case of a compulsory acquisition, it was, for the purpose of assessing compensation in respect thereof, assumed (in accordance with the provisions of section three or section four of this Act) that planning permission would be granted, or

(ii) in the case of a sale by agreement, it would have been so assumed that planning permission would be granted if the interest (instead of being sold by agreement) had been compulsorily acquired by the acquiring authority in pursuance of a notice to treat served on the relevant date ;

" date of completion ", in relation to an acquisition or sale of an interest in land, means the date on which the acquisition or sale is completed by the vesting of that interest in the acquiring authority ; and " the relevant date ", in relation to a compulsory acquisition of an interest in land, means the date of service of the notice to treat, and, in relation to a sale of such an interest by agreement, means the date of the making of the contract in pursuance of which the sale was effected.

(9) In the application of this section to Scotland subsection (4) shall have effect as if for paragraph (*d*) thereof there were substituted the following paragraph, that is to say,—

" (*d*) to land acquired by a local authority, whether compulsorily or by agreement, where on the relevant date the land consisted or formed part of an area to which a town development scheme under Part II of the Housing and Town Development (Scotland) Act, 1957, related,"

and the following additional provisions shall have effect, that is to say—

(*a*) in calculating for the purposes of paragraph (*a*) of subsection (2) of section sixty-two of the Scottish Act of 1954 (which relates to the consideration payable for the discharge of land from feu-duty and other incumbrances) the amount of the compensation payable in respect of the acquisition or sale of the dominium utile in any land, that amount shall be increased by an amount equal to the compensation, if any, which would be payable under this section in respect of that acquisition or sale if subsection (6) of this section were disregarded ;

(*b*) in calculating for the purposes of paragraph (*b*) of the said subsection (2) the amount of the compensation which

would have been so payable in the circumstances mentioned in that paragraph, that amount shall be increased by an amount equal to the compensation, if any, which would have been payable under this section in respect of that acquisition or sale if—

(i) those circumstances had existed, and

(ii) subsection (6) of this section were disregarded ;

(*c*) where in respect of an acquisition or sale such as is mentioned in subsection (1) of this section any consideration has been paid under section one hundred and eight of the Lands Clauses Consolidation (Scotland) Act, 1845 (as read with section sixty-two of the Scottish Act of 1954), and a planning decision relating to the land in question is made thereafter in the circumstances mentioned in the said subsection (1), the person who has received the consideration shall, on a claim duly made by him, be entitled to receive from the acquiring authority an amount (in this and the next following paragraph referred to as "additional consideration") equal to the difference between—

(i) the amount of the consideration he has received, and

(ii) the amount of the consideration he would have received if that planning decision had been made before the date when the consideration which he has received was determined and the permission thereby granted had been in force before that date,

if the last mentioned amount is greater than the amount mentioned in sub-paragraph (i) of this paragraph ; and

(*d*) if in accordance with the last preceding paragraph a person would be entitled to additional consideration in respect of an acquisition or sale, but before the planning decision in question that person has died, or any other act or event has occurred whereby the right to the additional consideration, if vested in him immediately before that act or event, would thereupon have vested in some other person, the right to the additional consideration shall be treated as having devolved as if that right had been vested in him immediately before his death or immediately before that act or event, as the case may be, and the additional consideration shall be payable to the persons claiming under him accordingly.

NOTES TO SECTION 18

The section provides for the payment of additional compensation to owners when a planning decision grants permission within five years of the completion of a compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958 or a purchase in the shadow of compulsory powers by contract after that date, for " additional development " on any of the land so acquired. " Additional development " means, broadly, any development other than development for which planning permission *either* existed at the time of the notice to treat (or the contract, as the case may be) *or* was assumed in accordance with sections 3 and 4 of this Act.

This right to additional compensation does *not* arise in the case of :

(*a*) land forming part of a defined area of comprehensive development at the date of the notice to treat (or contract), or

(*b*) land acquired by a development corporation as part of an area designated as the site of a " new town," whether compulsorily or by agreement or by virtue of a " purchase notice " under section 6 (4) of the New Towns Act 1946, or

(*c*) land acquired by a local authority and forming part of a defined area of town development at the date of the notice to treat (or contract).

The amount of the additional compensation is the difference between the sum of compensation or the price actually paid for the acquisition and the sum which would have been payable if the new planning permission had existed at the date of the notice to treat (or contract). There is no provision for recovery back by the acquiring authority, if the former sum exceeds the latter.

The Third Schedule deals with elements of disturbance, severance, injurious affection and enhancement in the value of contiguous or adjacent land, so that such elements are properly reflected in the calculation of additional compensation under this section.

Provision is also made for assignees of the right to additional compensation, personal representatives, trustees in bankruptcy and liquidators, etc., to receive the additional compensation under this section, where the owner has assigned the right or has died or gone bankrupt since the acquisition or (if a company) has been liquidated.

Section 19 provides for former owners of acquired interests to be informed by acquiring authorities of any subsequent planning permission which would give rise to a claim for additional compensation under this section. Section 20 provides for similar additional compensation in cases in which no planning decision is actually made because permission is deemed to be granted or is granted by development order. Section 21 provides for the application of this section and section 19 to Crown development carried out within five years of a compulsory acquisition or sale.

" planning decision ", *i.e.*, a decision or an application under Part III of the 1947 Act, see section 57 (1). It should be noticed that such permissions may be given on application by persons not having an interest

in the land ; but in that event " owners " will now receive notice under section 37 below.

" date of completion ", *i.e.*, the date when the acquired interest became vested in the acquiring authority, see subsection (8).

" a compulsory acquisition . . . section 1 ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958 (when the Bill of this Act was presented).

" sale . . . corresponding to such an acquisition ", *i.e.*, a sale in the shadow of compulsory powers by contract made after the 29th October, 1958, see section 57 (8).

" permission is granted ", *i.e.*, any form of permission granted or deemed to be granted, conditionally or otherwise, see subsection (7).

" additional development ". See subsection (8).

" principal amount of the compensation ". This means the amount payable (by way of a principal sum, and not by way of interest) including any compensation for disturbance, severance, or injurious affection (see Third Schedule paragraph 1 (*a*) and 2 (*a*)), and taking into account any set off by reason of enhancement in the value of contiguous or adjacent land (see Third Schedule, paragraphs 3 (*a*) and 4 (*a*) and see further section 9 (3) and (4) for the operation of such set-off).

" person to whom . . . was payable ". In the case of mortgaged land, this means the mortgagor. In the case of land subject to a strict settlement or a trust for sale, it means the trustees ; see Third Schedule, paragraphs 5–8.

" claim duly made by him ". See section 19 (3) for the time within which a claim must be made.

" area of comprehensive development ". See note on page 196.

" section 4 (1) (a) of the New Towns Act 1946 ". The subsection empowers development corporations to acquire by agreement, or to become authorised by compulsory purchase order to acquire compulsorily, any land within an area designated under the Act as the site of a new town.

" section 6 (4) of the New Towns Act 1946 ". The subsection provides that where any land within an area designated by an order under section 1 of the Act as the site of a new town has not been acquired by the development corporation within seven years from the date on which the order became operative, any owner of that land can by notice in writing require the corporation to purchase his interest, whereupon the corporation becomes deemed to be authorised to acquire the interest and to have served a notice to treat on the date when the owner's purchase notice is served on the corporation.

" area of town development ". For definition see page 216.

" any other act or event ", *e.g.*, an assignment of the right ; a receiving order in bankruptcy ; an order vesting property in a liquidator under section 244 of the Companies Act, 1948.

" Third Schedule ". The Third Schedule provides in effect that the calculation of additional compensation under this section should take account of :—

(1) (*a*) sums actually payable for disturbance, severance and injurious affection in respect of the acquisition ;

(*b*) sums which would have been payable for disturbance, severance and injurious affection, if the new permission had existed at the time of the acquisition ;

(2) (*a*) sums actually set-off against the compensation (or price) by reason of the enhancement in the value of contiguous or adjacent land retained by the owner ;

(*b*) sums which would have been set-off against the compensation (or price) by reason of such enactment, if the new permission had existed at the time of the acquisition. There are also provisions to exclude the whole or part of such elements (apart from sums for disturbance) from the calculation where the owner has before the new permission disposed of the whole or part of the land which was retained by him.

Subsection (8) (a) and (b.) Permission for such development would have been assumed under section 3 (1), if it had not already existed, for the purpose of calculating the compensation.

" development for the purposes of the functions ". It would seem that this definition prevents compensation being paid, even where planning permission of a more profitable nature is subsequently granted, if that permission is for the same *functions* (*e.g.*, housing) as the original development proposed.

" section 3 or section 4 ". For the purpose of assessing compensation, section 3 provides for planning permission to be assumed for (i) development for the purposes proposed by the acquiring authority (this is already covered by paragraphs (*a*) and (*b*) of this subsection) (ii) development of any class contained in the Third Schedule of the 1947 Act, and (iii) development of any class specified in a " certificate of alternative development " issued under section 5. Section 4 provides for planning permission to be assumed by reference to proposals contained in the current development plan.

19. Supplementary provisions as to compensation under section 18.—(1) For the purpose of facilitating the making of claims for compensation under the last preceding section—

(*a*) the person entitled to receive the compensation or purchase price in respect of such an acquisition or sale as is mentioned in subsection (1) of that section, or

(*b*) any person claiming under him, as being a person who, if compensation under that section became payable, would be entitled thereto by virtue of subsection (5) of that section,

may give to the acquiring authority an address for service under this section.

(2) Where, at any time after a person has given to an acquiring authority an address for service under this section, a planning

decision is made in the circumstances mentioned in subsection (1) of the last preceding section, whereby permission is granted for the carrying out of additional development as therein mentioned, it shall be the duty of the acquiring authority to give notice of the decision in the prescribed form to that person at that address :

Provided that an acquiring authority shall not be required by virtue of this subsection to give notice of a planning decision to the person mentioned in paragraph (*a*) of the preceding subsection at a time after an address for service has been given to them by such a person as is mentioned in paragraph (*b*) of that subsection, if they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred such as is mentioned in subsection (5) of the last preceding section.

(3) A claim for compensation under the last preceding section in respect of a planning decision—

(*a*) if made by a person who has not given the acquiring authority an address for service under this section, shall not have effect if made more than six months after the date of the decision ; and

(*b*) if made by a person who has given the acquiring authority such an address, shall not have effect if made after the end of the period of six months beginning with the date on which notice of the decision is given to him in accordance with the last preceding subsection :

Provided that, in relation to a planning decision where there is an appeal (including any appeal made by virtue of subsection (3) of section sixteen of the Act of 1947), references in this subsection to the date of the decision shall be construed as references to the date of the decision on the appeal.

(4) Where a person has given to an acquiring authority an address for service under this section, and that authority, before the end of the period mentioned in subsection (1) of the last preceding section, cease to be entitled to an interest in the whole or part of the land comprised in the acquisition or sale, without remaining or becoming entitled to a freehold interest in, or tenancy of, that land or that part thereof, as the case may be, they shall notify the local planning authority ; and thereafter it shall be the duty of the local planning authority to give notice to the acquiring authority of any planning decision made in the circumstances mentioned in subsection (1) of the last preceding section, whereby permission is granted for the carrying out of additional development as therein mentioned.

(5) Notice under the last preceding subsection of a planning decision—

(*a*) in the case of a decision made by the local planning authority, shall be given within seven days after the making of the decision, and

(*b*) in any other case, shall be given within seven days after the making of the decision has been notified to the local planning authority.

(6) Subject to the preceding provisions of this section, the provisions of the Act of 1919 (so far as applicable) shall apply in relation to the assessment of compensation under the last preceding section as they apply in relation to the assessment of compensation in respect of the compulsory acquisition of an interest in land.

(7) In the application of this section to Scotland, for any reference to section sixteen of the Act of 1947 there shall be substituted a reference to section fourteen of the Scottish Act of 1947 and for any reference to a freehold interest in any land there shall be substituted a reference to the dominium utile in that land ; and the preceding provisions of this section, except subsection (6), shall apply to claims for additional consideration such as is mentioned in paragraph (*c*) of subsection (9) of the last preceding section as they apply to claims for compensation payable under that section, with the substitution—

(*a*) for any reference to the person entitled to receive the compensation or purchase price in respect of such an acquisition or sale as is mentioned in subsection (1) of that section, of a reference to any person who has received consideration under section one hundred and eight of the Lands Clauses Consolidation (Scotland) Act, 1845 (as read with section sixty-two of the Scottish Act of 1954) in respect of such an acquisition or sale,

(*b*) for any reference to compensation under the last preceding section, of a reference to additional consideration as aforesaid, and

(*c*) for any reference to subsection (5) of the last preceding section, of a reference to paragraph (*d*) of subsection (9) of that section.

Notes to Section 19

The section enables persons to whom additional compensation under section 18 may become payable (*i.e.*, owners of acquired interests, or persons claiming under them by virtue of section 18 (5)) to receive notice of subsequent planning decisions granting permission for additional

development within five years after the acquisition or purchase. Such persons may give an address for service to the relevant acquiring authority, and that authority must then notify them of any such planning permissions. But if the acquiring authority has reasonable grounds for believing that the original person entitled to compensation is dead or that some other person has become entitled in his place (see section 18 (5)), it need not notify that original person.

Where the acquiring authority, after receiving such an address for service, disposes of any part of the land so that it is neither the freeholder nor the tenant of any part of it within the five-year period, it must notify the local planning authority, and thereafter the local planning authority must give notice to the acquiring authority of any permission for additional development granted within the five-year period. The time for such notification is within seven days of the making of the decision, or, if the decision is not made by the local planning authority, within seven days of the notice of the decision received by the local planning authority.

The time within which a claim for additional compensation under section 18 must be made depends on the question whether the claimant gave an address for service to the acquiring authority. If he did, he must make his claim within six months after receiving notice. If he did not, he must make his claim within six months after the date of the decision itself. If the decision is the subject of an appeal, the six months period in each case runs from the date of the decision on the appeal.

See the next section for additional compensation in cases in which no actual planning decision is made, because permission is deemed to be granted or is granted by development order.

" the person entitled to receive ". In the case of mortgaged land, which was compulsorily acquired or bought, this means the mortgagor, not the mortgagee. In the case of land subject to a strict settlement or a trust for sale, it means the trustees of the settlement or trust for sale ; see Third Schedule, paragraphs 5–8.

" acquisition or sale . . . subsection (1) of that section ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October, 1958 (when the Bill of this Act was presented) ; or a purchase in the shadow of compulsory powers by contract made after that date, see section 57 (8).

" any person . . . would be entitled ", *e.g.*, an assignee, a personal representative, a trustee in bankruptcy, a liquidator of a company, see section 18 (5).

" planning decision . . . last preceding section ", *i.e.*, a planning permission granted within five years after the completion of the compulsory acquisition or sale by the vesting of the acquired interest in the acquiring authority. See section 57 (1) for the meaning of planning decision.

" in the prescribed form ", *i.e.*, in the form set out in the Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959 (S.I. 1959 No. 1287), Form 3, on page 445, *infra*.

" any other act or event ", *e.g.*, the assignment of the right ; a receiving order in bankruptcy ; a vesting order, see section 18 (5).

" section 16 (3) of the Act of 1947 ". The subsection enables the applicant for planning permission to appeal to the Minister where the local planning authority have not either given a decision on his application within the prescribed period (generally two months from the receipt of application) or an agreed extended period, or notified him that his application has been called in by and referred to the Minister for decision. For the prescribed period and time for appealing, see Town and Country Planning General Development Order 1950 (S.I. 1950 No. 728), Articles 5 (8) and 11.

" freehold interest . . . tenancy ". The effect of this is that when the acquiring authority, for example, grants an easement over the relevant land, the local planning authority does not have to be brought in. Where however an acquiring authority effectively disposes of the land, it should protect itself against the payment of additional compensation (for which it alone is liable) by taking an indemnity, or a restrictive covenant against additional development, from its purchaser.

" provisions of the Act of 1919 ". The main provisions applicable are the rules contained in section 2 of that Act, namely the Acquisition of Land (Assessment of Compensation) Act 1919, see page 46 ; and page 186 for cases decided thereunder.

20. Extension of sections 18 and 19 to planning permission where no planning decision made.—(1) The provisions of sections eighteen and nineteen of this Act (except subsection (2) of the said section nineteen) shall have effect in relation to any planning permission which, in accordance with any direction or provision given or made by or under an enactment, is deemed to be granted for any development, as if a planning decision granting that permission had been made at the time when, in accordance with the enactment in question, the permission is deemed to be granted :

Provided that, in the case of a direction given under an enactment which contains no provision as to the time when the permission is deemed to be granted, those provisions shall have effect as if such a planning decision had been made at the time when the direction is given.

(2) The provisions of sections eighteen and nineteen of this Act (except subsection (2) of the said section nineteen) shall have effect in relation to any planning permission which is granted for any development by virtue of a development order, as if—

(*a*) a planning decision granting that permission had been made at the time of the occurrence of the event in consequence of which (in accordance with the provisions of the order) the development is deemed to be sanctioned by a government department, or

(*b*) in a case not falling within the preceding paragraph, such

a planning decision had been made at the time when the development is initiated.

(3) Where the provisions of section eighteen of this Act have effect as applied by subsection (1) or subsection (2) of this section, then if—

(*a*) before the time of the planning decision which is to be assumed in accordance with those provisions as so applied, a person who (in accordance with the provisions of subsection (1) of section nineteen of this Act as so applied) is entitled to give an address for service under that section has given such an address to the acquiring authority, and

(*b*) the development is proposed to be carried out by the acquiring authority, or, if it is proposed to be carried out by a person other than the acquiring authority, notice of that proposal is given to the acquiring authority by the person proposing to carry out the development,

it shall (subject to the next following subsection) be the duty of the acquiring authority to give notice of that proposal in the prescribed form to the first-mentioned person at the address given by him to the authority.

(4) An acquiring authority shall not be required by virtue of the last preceding subsection to give notice of proposed development to the person mentioned in paragraph (*a*) of subsection (1) of section nineteen of this Act at a time after an address for service has been given to them by such a person as is mentioned in paragraph (*b*) of the said subsection (1), if they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred such as is mentioned in subsection (5) of section eighteen of this Act.

(5) Any reference in this section to subsection (1) of section nineteen of this Act shall include a reference to that subsection as extended by subsection (7) of that section, and any reference in this section to subsection (5) of section eighteen of this Act shall accordingly include a reference to paragraph (*d*) of subsection (9) of the said section eighteen.

Notes to Section 20

Sections 18 and 19 provide for the payment of additional compensation where within five years of a compulsory acquisition or purchase in the shadow of compulsory powers a planning decision is made granting permission for additional development of the acquired land : this section now applies those provisions to cases where permission is either *deemed* to be granted, instead of being granted in fact, or is granted by *development order*, instead of by planning decision.

If the acquiring authority itself proposes to carry out the additional development, or has been given notice of the development by the person proposing to carry it out, it must give notice to any person who has given it an address for service under section 18 (1). The notice to be given must be in the form prescribed by the Prescribed Forms of Notices Regulations, see below. But if the acquiring authority has reasonable grounds for believing that the person entitled to compensation has died or that some other person has become entitled in his place (*i.e.* under section 18 (5)), at any time after that other person (including a personal representative) has given an address for service, the acquiring authority need not serve the former person.

" subsection (2) of the said section 19 ". Section 19 (2) is the subsection which makes it the duty of an acquiring authority to give notice in the prescribed form of any planning decision permitting additional development and made within five years of a compulsory acquisition. That subsection (2) is replaced, in cases dealt with by this section, by subsections (3) and (4) of this section, which are summarised in the second paragraph of the headnote.

" deemed to be granted ", *e.g.*, under section 35 of the 1947 Act, where a permission is deemed to be granted by a direction of a government department in authorising development by a local authority or statutory undertakers under any enactment ; and see further section 32 (1) of that Act in relation to display of advertisements involving development. Where an acquiring authority effectively disposes of the land (see section 19 (4)) after the acquisition, it has been stated that the authority which purchases it should inform the acquiring authority of any development carried out subsequently within the 5-year period under a *deemed* permission or a permission *granted by development order*. In respect of such development, the local planning authority cannot give notice to the acquiring authority of any planning decision under section 19 (4) : see M.H.L.G. Circular 48/59.

" by virtue of a development order ". See *e.g.*, Article 3 of the Town and Country Planning General Development Order 1950 (S.I. 1950 No. 728) and the development specified in the First Schedule of that order ; or the Town and Country Planning General Development (Amendment) Order 1958 (S.I. 1958 No. 1460) in relation to opencast coal prospecting.

" development is initiated ", *i.e.*, when the operations are begun or the new use is instituted, or the earlier of these two dates, if the development consists of both operations and a change of use, see section 57 (9).

" before the time . . . to be assumed ", *i.e.*, in the case of a deemed permission, either :—

(*a*) the time when, under the enactment in question, it is deemed to be granted, or

(*b*) the time when a direction is given under the enactment in question, if there is no provision in that enactment as to time ;

and in the case of a permission granted by development order, either :—

(*a*) the time when the event occurs as a result of which the

development is deemed to be sanctioned by a government department, or

(*b*) in other cases, the time when the development is initiated.

" subsection (1) of section 19 ". A person entitled to give an address for service is either

(*a*) the person entitled to receive the compensation or purchase price in respect of the acquisition (and see the Third Schedule, paragraphs 5–8, as regards mortgaged land or land subject to a settlement or trust for sale) ; or

(*b*) any person claiming under him, by virtue of section 18 (5), *e.g.*, a personal representative, a trustee in bankruptcy, or a liquidator.

" in the prescribed form ". See the Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959 (S.I. 1959 No. 1287), Form 4, on page 446, *infra*.

" person mentioned in paragraph (a) ", *i.e.*, the person mentioned in (*a*) of the previous note but one.

" person mentioned in paragraph (b) ", *i.e.*, the person mentioned in (*b*) of the previous note but two.

" any other act or event ", *e.g.*, the assignment of the right ; a receiving order in bankruptcy ; a vesting order ; see section 18 (5).

21. Extension of section 18 to Crown development.—(1) Where, before the end of the period of five years beginning with the date of completion of—

(*a*) a compulsory acquisition to which section one of this Act applies, or,

(*b*) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,

there is initiated any additional development of any of the land which was comprised in the acquisition or sale, and by reason of any such circumstances as are mentioned in the next following subsection the development in question is development for which planning permission is not required, the provisions of sections eighteen and nineteen of this Act (except subsection (2) of the said section nineteen) shall apply as if a planning decision granting permission for that development had been made at the time when the additional development is so initiated.

(2) The said circumstances are either or both of the following, that is to say,—

(*a*) that the development is initiated by or on behalf of the Crown ;

(*b*) that there is a Crown or Duchy interest in the land and the development is initiated in right of that interest.

(3) Subject to the next following subsection, subsections (3) and (4) of section twenty of this Act shall apply where the provisions

of section eighteen of this Act have effect as applied by subsection (1) of this section as they apply where those provisions have effect as applied by subsection (1) or subsection (2) of the said section twenty.

(4) Where, by virtue of the last preceding subsection, it is the duty of a government department to give notice of development initiated by or on behalf of that department, and the Minister or Board in charge of the department certifies that for reasons of national security it is necessary that the nature of the development should not be disclosed, except to the extent specified in the certificate, the department shall give notice of the development, but shall not be required to give any particulars of the nature thereof except to the extent specified in the certificate.

(5) In this section "Crown or Duchy interest" means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.

Notes to Section 21

The section extends the right to claim additional compensation under section 18 to cases where (*a*) additional development is initiated by or on behalf of the Crown on any acquired land within five years of the acquisition or purchase, or (*b*) additional development is initiated within that period in right of a Crown or Duchy interest existing in the acquired land. In such cases no planning permission is necessary for the development, but section 18 and section 19 are applied to such cases as though permission had been granted for such development at the time when the development is initiated, *i.e.*, when the operations (if any) are commenced or the new use (if any) is instituted, or at the earlier of these times where the development consists both of operations and of a change of use.

The section also in effect provides that the acquiring authority must give notice, to a person who has given an address for service under section 19, of any such Crown development proposed by it on the acquired land within the five-year period, or of any such Crown development proposed by any other authority, of which the acquiring authority has received notice.

Where, in accordance with sections 18 and 19 as applied by this section, a government department as an acquiring authority has to notify persons, who have given an address for service, of any development initiated by that department within the five-year period, the Minister or Board in charge of the department may certify any extent beyond which it is necessary for reasons of national security not to disclose the nature of the development, and in that event the department in giving notice of the development need only give such particulars as are permitted by that certificate.

" date of completion ", *i.e.*, when the interest acquired or purchased is vested in the acquiring authority, see section 18 (8).

" compulsory acquisition . . . section 1 ", *i.e.*, an acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October 1958 (when the Bill of this Act was presented).

" sale . . . such an acquisition ", *i.e.*, a sale in the shadow of compulsory powers by contract made after the 29th October, 1958, see section 57 (8).

" initiated ". See section 57 (9). The meaning is summarised at the end of the first paragraph of the headnote.

" additional development ". For meaning, see section 18 (8).

" subsection (2) of the said section 19 ", Section 19 (2) requires acquiring authorities to serve any owner of acquired land who had given them an address for service, with notice of any planning decision granting permission for additional development made within five years of the completion of the acquisition or purchase. See subsection (3) of this section for the equivalent provision in cases covered by this section.

" the Crown ". The Crown includes government departments.

" Crown or Duchy interest ". See subsection (5).

Subsection (3). The effect is simply to apply section 20 (3) and (4) to cases covered by this section. The former subsection is summarised in the second paragraph of the headnote : the latter one provides in effect that an acquiring authority need not serve the original claimant if the authority has good reason for believing that he is dead or that someone else who has given his address for service has become entitled in his place under section 18 (5). For the prescribed form of notice, see the Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (S.I. 1959 No. 1287), Form 5, on page 447, *infra*.

" any particulars . . . in the certificate ". Whether or not the particulars given will be sufficient to support a claim for additional compensation and the necessary calculations will depend entirely on circumstances in each case. There is no provision for redress, if they do not.

PART II

ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND BY LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

22. Exercise of powers of acquisition by agreement.—(1) Where by any enactment—

(*a*) power is conferred on any authority to whom this Part of this Act applies, or on any class of such authorities, to acquire land by agreement, but

(*b*) that power is so conferred subject to a provision (in whatever terms the provision is expressed, and whether it is contained in the same or in any other enactment) that the power is not to be exercised except with the consent of a Minister specified in that provision, with or without a further provision enabling conditions to be imposed by such a Minister in respect of the exercise of the power,

the enactment shall have effect, in relation to acquisitions to which this section applies, as if it conferred that power free from any such provision as is mentioned in paragraph (*b*) of this subsection.

(2) This section applies to every acquisition of land by agreement by an authority to whom this Part of this Act applies, in pursuance of a contract made after the commencement of this Act, where either—

(*a*) the land is immediately required by the purchasing authority for the purpose for which it is to be acquired, or

(*b*) if the land is not so required, it is land within the area of the purchasing authority.

(3) Subsection (1) of section eighteen of the Mineral Workings Act, 1951 (which confers on local authorities a right of reimbursement in respect of certain expenditure incurred by them) shall have effect subject to the modification that paragraph (*c*) of that subsection (which relates to expenditure incurred in acquiring land) shall not apply to any expenditure incurred in acquiring land by agreement without the consent of the Minister of Housing and Local Government.

(4) In this Part of this Act " authority to whom this Part of this Act applies ", in relation to England and Wales, means a body of any of the descriptions specified in Part I of the Fourth Schedule to this Act, and, in relation to Scotland, means a body of any of the descriptions specified in Part II of that Schedule ; " land " includes any easement or servitude and any other interest in, or right over, land ; " Minister " means a Minister of the Crown

or a government department ; and " consent " includes approval, sanction and authorisation.

(5) In the application of this section to Scotland subsection (2) shall have effect with the omission of the words from " where either " to the end of the subsection, and subsection (3) shall be omitted.

NOTES TO SECTION 22

The section provides that, where any of the authorities listed in the Fourth Schedule of the Act acquire land by agreement by contract made on or after the 16th August, 1959, they are relieved from the necessity of obtaining any consent of a Minister or government department formerly required under statute, if

(*a*) the land so obtained is immediately required for the purpose for which it is acquired, or

(*b*) it is within the area of the acquiring authority, in a case where it is acquired in advance of immediate requirements.

Such consents are dispensed with, whether or not the relevant statute containing them used the word " consent," " approval," " sanction," or " authorisation," and whether or not the requirement of the consent is contained in the same statute as that empowering the authority concerned to acquire the land by agreement. Further, section 30 (2) of this Act provides that any enactment requiring a Minister or government department to be " satisfied " as to any specified matters before such an acquisition can take place is to be treated as a provision making Ministerial consent necessary and is therefore to be dispensed with. Moreover it does not matter whether the relevant statute made the consent necessary in all cases or only in specified circumstances : it is dispensed with in either event, see section 30 (1).

Where a Ministerial consent is so dispensed with, any power of the Minister concerned to impose conditions on the granting of his consent is removed as well.

In one special case where worked ironstone land is acquired by agreement by local authorities, under section 17 of the Minerals Working Act, 1951, but (by reason of this section) without the consent of the Minister of Housing and Local Government, such authorities are not entitled to a grant otherwise payable by the Minister under section 18 of that Act in respect of the expenditure so incurred in acquiring the land.

" enactment ". This is defined in section 119 (1) of the 1947 Act as including an enactment in any local or private Act of Parliament and an order, rule, regulation, bye-law or scheme made under any Act of Parliament. Such definitions in the 1947 Act are incorporated in this Act by virtue of section 57 (3).

" any authority . . . applies ". Subsection (2) of the section provides that this means any authority listed in Part I of the Fourth Schedule of the Act. These " listed authorities " are

(*a*) Councils of counties, county boroughs, county districts or metropolitan boroughs;

(*b*) the Common Council of the City of London ;
(*c*) the Council of the Scilly Isles ;
(*d*) Joint Education Boards ;
(*e*) Joint Planning Boards;
(*f*) Joint Boards set up under the Public Health Acts or Joint Sewerage Boards ;
(*g*) Coast Protection Boards ;
(*h*) Combined Police Authorities ;
(*i*) Fire Authorities under a combination scheme ;
(*j*) River Boards ;
(*k*) Drainage Authorities (other than River Boards) ;
(*l*) Statutory Water Undertakers (other than River Boards or Drainage Authorities) ;
(*m*) local Joint Boards for providing crematoria.

It should be noticed that, by virtue of section 30 (3), in the case of an enactment which confers a power of acquisition on persons described generally without reference to either local authorities or any of the listed authorities, the dispensation granted by this section does not operate even in favour of any of the listed authorities which are included in that general class. But this does not apply in the case of enactments conferring such powers on " local authorities " generally, or on any class of them which includes a class of listed authorities, or on any class of listed authorities together with any other class of local authorities.

" land ". By the definition in subsection (4), land includes easements and other interests in or rights over land. Section 30 (6) however provides that none of the provisions in Part II shall affect the acquisition, appropriation or disposal of " corporate land," or the application of capital monies after a disposal of corporate land, or the adjustment of accounts after an appropriation or disposal of corporate land. " Corporate land " is defined in section 305 of the Local Government Act, 1933 as " land belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corporation otherwise than for an express statutory purpose." This definition is incorporated in this Act, see section 57 (1). A municipal corporation is the body corporate of a borough.

" in whatever terms ". The effect of this, and the definition of " consent " in subsection (4) as including approval, sanction or authorisation, is that any form of statutory wording giving a Minister control over the transaction is dispensed with. See also section 30 (1) and (2) in relation to enactments which require Ministerial consent only in specified circumstances, or require a Minister to be " satisfied " as to specified matters.

" Minister ". Subsection (4) of the section defines this word as meaning a Minister of the Crown or a government department. It therefore includes those departments having no Minister in control of them.

" contract . . . commencement of this Act ", *i.e.*, a contract made on or after the 16th August, 1959. By section 57 (4) the definition of

" contract " contained in the 1954 Act is incorporated in this Act. That definition was : a contract in writing or attested by a memorandum or note thereof in writing signed by the parties thereto or other persons authorised by them to do so, or (where land is conveyed or assigned without a preliminary contract) such conveyance or assignment. The making of a contract for this purpose is the execution of it, and (where it was not in writing) the signing of the attesting note or memorandum.

" immediately required ". It should be noticed that land may be " immediately required " for the purpose for which it is acquired even though it may be temporarily used for another purpose pending its being used for that purpose ; cf. *Palmer* v. *Minister of Housing and Local Government* (1952) 3 P.C.R. 165, and see *Grice* v. *Dudley Corporation* [1957] Ch. 329 at 342. When land is immediately required, it does not matter for the purpose of this section whether it is within or outside the area of the purchasing authority.

" section 18 of the Mineral Workings Act 1951 ". Section 16 of that Act empowers local authorities whose areas are comprised in the ironstone district (see First Schedule of that Act) to carry out works for levelling worked ironstone land or rendering it suitable for agriculture, forestry or other purposes. Section 17 empowers local authorities to acquire land by agreement for the purposes of carrying out such works or providing permanent access to such land, with the consent of the Minister of Housing and Local Government. Under section 18 a grant is payable from the Minister in respect of the authority's expenditure in acquiring land under section 17 ; but when it now acquires such land without obtaining that consent (as permitted by virtue of this section) an authority cannot claim such a grant, though it may still qualify for the other grants provided for by section 18. It might however be possible for the authority to apply for and obtain such consent, though it is not now required, and thus qualify for a grant.

23. Exercise of powers of appropriation.—(1) Subject to the following provisions of this section, where by any enactment—

(*a*) power is conferred on any authority to whom this Part of this Act applies, or on any class of such authorities, to appropriate land for any purpose, whether the purpose is defined in the enactment specifically or by reference to some other power exercisable by the authority or class of authorities in question, but

(*b*) that power is so conferred subject to a provision (in whatever terms the provision is expressed, and whether it is contained in the same or in any other enactment) that the power is not to be exercised except with the consent of a Minister specified in that provision, or for a purpose approved by a Minister so specified, with or without a further provision enabling conditions to be imposed by such a Minister in respect of the exercise of the power,

the enactment shall have effect, in relation to any exercise of the power after the commencement of this Act by an authority to whom this Part of this Act applies, as if it conferred that power free from any such provision as is mentioned in paragraph (*b*) of this subsection.

(2) The exercise after the commencement of this Act, by any authority to whom this Part of this Act applies, of any power of appropriation in relation to which the preceding subsection has effect shall be subject to the following provisions, that is to say,—

(*a*) land which consists or forms part of an open space (not being land which consists or forms part of a common or of a fuel or field garden allotment) shall not be appropriated except with the consent of the Minister of Housing and Local Government ;

(*b*) land which has been acquired (whether before or after the commencement of this Act) by an authority to whom this Part of this Act applies, and has been so acquired by that authority in the exercise (directly or indirectly) of compulsory powers, and has not subsequently been appropriated by that authority for any purpose other than that for which it was so acquired, shall not be appropriated by that authority for any other purpose except with the consent of the Minister who, at the time of the appropriation, is the Minister concerned with the function for the purposes of which the land was acquired by the authority.

(3) Subsection (1) of this section shall not apply—

(*a*) to any appropriation of land in pursuance of an order under section forty-two of the Act of 1947 or under section twenty-eight of the Land Settlement (Facilities) Act, 1919, or

(*b*) to any appropriation of land which, immediately before the appropriation, is land which consists or forms part of a common, or formerly consisted or formed part of a common, and is held or managed by a local authority in accordance with a local Act ;

and shall not operate so as to dispense with any requirement for the consent of the Minister of Agriculture, Fisheries and Food—

(i) under subsection (7) of section two of the Small Holdings and Allotments Act, 1926, as applied by section twelve of the Agricultural Land (Utilisation) Act, 1931 (whereby the consent of that Minister is required in certain cases in respect of transactions relating to cottage holdings), or

(ii) in respect of any appropriation of land which, immediately before the appropriation, is land held for use as allotments ;

but, in relation to any appropriation of land by an authority to whom this Part of this Act applies, where the consent of that Minister is required under section eight of the Allotments Act, 1925, so much of that section as requires consultation with the Minister of Housing and Local Government shall not apply.

(4) Sub-paragraph (*b*) of paragraph (i) of the proviso to subsection (1) of section one hundred and sixty-three of the Local Government Act, 1933 (which prohibits a local authority from executing certain works on land appropriated by them, unless authorised to do so by the Minister of Housing and Local Government), shall cease to have effect.

(5) In the application of this section to Scotland, for subsections (2) and (3) there shall be substituted the following subsections, that is to say,—

" (2) The exercise after the commencement of this Act, by any authority to whom this Part of this Act applies, of any power of appropriation in relation to which subsection (1) of this section has effect shall be subject to the following provisions, that is to say,—

(*a*) land which consists or forms part of a common or open space, or is held for use as allotments, shall not be appropriated except with the consent of the Secretary of State ;

(*b*) land which has been acquired (whether before or after the commencement of this Act) by an authority to whom this Part of this Act applies, and has been so acquired by that authority in the exercise (directly or indirectly) of compulsory powers, and has not subsequently been appropriated by that authority for any purpose other than that for which it was so acquired, shall not be appropriated by that authority for any other purpose except with the consent of the Minister who, at the time of the appropriation, is the Minister concerned with the function for the purposes of which the land was acquired by the authority.

(3) Subsection (1) of this section shall not apply to any appropriation of land in pursuance of an order under section thirty-nine of the Scottish Act of 1947." ;

and subsection (4) shall be omitted.

Notes to Section 23

This section provides generally that, where any of the authorities listed in the Fourth Schedule appropriate land from one purpose to

another on or after the 16th August, 1959, they are relieved from the necessity of obtaining any consent or approval of a Minister or government department formerly required under statute.

Such consents are dispensed with, whether or not the relevant statute containing them used the word " consent," " approval," " sanction," or " authorisation," and whether or not the requirement of the consent is contained in the same statute as that empowering the authority concerned to appropriate the land. Further, section 30 (2) of this Act provides that any enactment requiring a Minister or government department to be " satisfied " as to any specified matters before such an appropriation can take place is to be treated as a provision making Ministerial consent necessary and is therefore to be dispensed with. Moreover it does not matter whether the relevant statute made the consent necessary in all cases or only in specified circumstances : it is dispensed with in either event, see section 30 (1).

Where a Ministerial consent is dispensed with by virtue of this section, any power granted by the same statute to the Minister concerned to impose conditions on the granting of his consent or approval is also removed.

There are however certain exceptions to the general dispensation. In the following cases, existing controls are preserved :—

(1) appropriations of land under section 42 of the 1947 Act ;

(2) appropriations of land under section 28 of the Land Settlement (Facilities) Act, 1919 ;

(3) appropriations of common land, or land which was formerly common land, which is held or managed by a local authority under a local Act ;

(4) appropriations of " cottage holdings " under the Agricultural Land (Utilisation) Act, 1931, where the Minister of Agriculture, Fisheries and Food has contributed towards any loss incurred in providing the cottage holdings ;

(5) appropriations of land held for use as allotments.

In the following cases, however, any existing controls are removed, but new controls are imposed :—

(1) appropriations of an " open space " other than common land or fuel or field garden. In this case the consent of the Minister of Housing and Local Government is now required in all cases.

(2) appropriations of land acquired in the exercise of compulsory powers, which has not previously been appropriated. In this case the consent is required of the Minister concerned with the function for which the land was acquired.

In one special case, where local authorities (other than parish councils) appropriate land under section 163 of the Local Government Act, 1933, with the object of carrying out certain works on the land, such as sinking wells for public water supply or constructing sewage farms or burial grounds, they formerly needed the authority of the appropriate Minister (generally the Minister of Housing and Local Government) before carrying out those works. Now this section provides that such authority

is no longer required for the carrying out of such works, but the prohibition contained in the same section against the creation of a nuisance by the carrying out of such works remains.

" subject to the . . . section ", *i.e.*, subject to (*a*) the cases in which former consents are *replaced* by new consents by virtue of subsection (2), and (*b*) the cases in which existing consents are *preserved* under subsection (3).

" enactment ". See note on page 251.

" any authority . . . applies ". See note on page 251.

" class of such authorities ". For cases where an enactment confers a power of appropriation on persons generally described therein but does not specifically refer to local authorities or any of the listed authorities, see section 30 (3).

" land ". See note on page 252.

" specifically . . . other power ". The difference is between a power to appropriate for some specified undertaking or (*e.g.*), for " any purpose for which the authority is authorised to acquire land " or " for the purpose of its functions ".

" in whatever terms ". See note on page 252.

" Minister ", *i.e.*, a Minister of the Crown or a government department, see note on page 252.

" exercise . . . commencement of this Act ", *i.e.*, an appropriation made on or after the 16th August, 1959.

Subsection (2). In cases dealt with by subsection (2) (open spaces and compulsorily acquired land), subsection (1) *removes* existing Ministerial consents and subsection (2) *imposes* new consents. These cases are therefore not strictly exceptions to the general rule. Indeed and in most cases, the same consent is in effect removed and then re-imposed. The reason for doing it this way is, no doubt, consistency.

" open space ", " common ", fuel or field garden allotment ". These are defined by the Acquisition of Land (Authorisation Procedure) Act, 1946, as follows : " *open space* " as any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground ; " *common* " as including any land subject to be enclosed under the Inclosure Acts 1885 to 1882, and any town or village green ; " *fuel or field garden allotment* " as any allotment set out as a fuel allotment or a field garden under an Inclosure Act. These meanings are incorporated from section 119 of the 1947 Act, see section 57 (3) of this Act.

" the consent . . . Housing and Local Government ". For the Minister's power to give such consent generally or specifically with or without conditions, see section 30 (4). For the effect of a failure to secure the consent of a Minister (whether it is required under this Act or other Acts), see section 29.

" in the exercise . . . compulsory powers ". See section 30 (5) and note thereto.

" Subsection (1) . . . shall not apply ", *i.e.*, in these cases, existing Ministerial consents and controls are preserved.

" section 42 of the Act of 1947 ". Section 42 empowers local authorities to appropriate for development plan purposes land held by them and forming all or part of a common, open space or fuel or field garden allotment. An order authorising them to do so has to be confirmed by the Minister of Housing and Local Government, and is subject to special parliamentary procedure except, broadly, where other suitable land is given in exchange for the land appropriated or is unnecessary and the appropriate Minister certifies accordingly.

" section 28 . . . Act of 1919 ". Section 28 (2) provides procedure for the giving of consent by the Minister of Agriculture, Fisheries and Food for the appropriation, for allotments, of part of a common. He has to have regard to the same considerations and hold the same inquiries as are directed by the Commons Act 1876, and his consent has to be laid before Parliament and will be cancelled if a motion is carried in either House dissenting from the appropriation. This procedure is not applicable to a metropolitan common or certain other open spaces, which cannot be appropriated under that Act for allotments at all.

" common . . . a local Act ". In these cases the local Act which is applicable provides that the consent of the Minister of Agriculture, Fisheries and Food be obtained for any appropriation of such land.

" Small Holdings and Allotments Act, 1926 . . . Agricultural Land (Utilisation) Act 1931 ". Section 2 (7) of the former Act (which was added by section 17 and the Second Schedule of the latter Act) provides that where a county council proposes to dispose of or appropriate for purposes other than small holdings land in respect of which the Minister of Agriculture, Fisheries and Food made a contribution towards any loss incurred by the council in providing small holdings on that land, it must obtain the consent of that Minister, subject to any conditions which he may impose on the grant of his consent. The 1926 Act was largely superseded by the Agriculture Act 1947, but this provision had been applied by section 12 of the 1931 Act to " cottage holdings ", and extended to county borough councils. The effect is that the Minister's consent must be obtained for appropriations or disposals of cottage holdings by county councils or county borough councils, if the Minister made a contribution towards any loss incurred in providing them. A " cottage holding " is a holding comprising a dwelling house, together with not less than 40 perches and not more than one acre of agricultural land which can be cultivated by the occupier of the dwelling house and his family.

" appropriation . . . land held for use as allotments ". The effect of this provision, when taken in conjunction with subsection (1), is to preserve any consent of the Minister of Agriculture, Fisheries and Food required for an appropriation of allotments, but to dispense with the consent of any other Minister. Thus section 22 of the Land Settlement (Facilities) Act 1919 which made the consents of the Ministers of Agriculture, Fisheries and Food and of Housing and Local Government necessary for an appropriation by the council of, *inter alia*, an urban

district, of land acquired as allotments, now operates in that case to make necessary the consent only of the former Minister.

" section 8 of the Allotments Act 1925 ". That section provides that when a local authority has purchased or appropriated land for use as allotments, it may not appropriate, use or dispose of the land for any purpose other than use as allotments without the consent of the Minister of Agriculture, Fisheries and Food given after consultation with the Minister of Housing and Local Government. This consent is preserved, but the consulting of the latter Minister is dispensed with now. The section goes on to provide that the consent is not to be given unless the former Minister is satisfied that adequate provision will be made for the displaced allotment holders, or that such provision is unnecessary or not reasonably practicable.

" subparagraph (b) . . . Local Government Act, 1933 ". The subparagraph prohibited a local authority (other than a parish council) which had appropriated land under section 163 of that Act from sinking, without authorisation from the " Minister," any well for public water supply on the land, or constructing any cemetery, burial ground, destructor, sewage farm, or hospital for infectious diseases. The Minister had to hold a local inquiry and consider the objections of persons affected before giving his authorisation, and he could impose conditions as he thought fit. For these purposes the Minister is, generally speaking, the Minister of Housing and Local Government. Subparagraph (*a*) of the same proviso prohibits the local authority from creating or permitting any nuisance on appropriated land, and this will still apply to any of the above works.

24. Adjustment of accounts on appropriation of land.—(1) On an appropriation of land for any purpose by an authority to whom this Part of this Act applies, other than an appropriation falling within the next following subsection, such adjustment shall be made in the accounts of the authority as may be requisite in the circumstances.

(2) Where land is appropriated for any purpose by an authority to whom this Part of this Act applies, and—

(*a*) either the land was immediately before the appropriation held by the authority for the purposes of a grant-aided function, or it is appropriated by the authority for the purposes of such a function, and

(*b*) apart from this section, a Minister would by virtue of any enactment have power to direct an adjustment to be made in the accounts of the authority in connection with that appropriation,

such adjustment shall be made in the accounts of the authority as the Minister of Housing and Local Government may direct.

(3) The preceding provisions of this section shall have effect in substitution for the provisions of any enactment in force immediately before the commencement of this Act whereby an adjustment is required to be made in the accounts of an authority to whom this Part of this Act applies on an appropriation of land by such an authority.

(4) In the application of this section to Scotland, for any reference to the Minister of Housing and Local Government there shall be substituted a reference to the Secretary of State.

Notes to Section 24

The section provides that, where any adjustment of accounts falls to be made on or after the 16th August, 1959, as a result of an appropriation of land by any of the authorities listed in the Fourth Schedule, the adjustment to be made is to be such adjustment " as may be requisite in the circumstances." This provision replaces any previous provisions in enactments relating to the adjustment of accounts after such appropriations of land, such as the usual provision that an adjustment be made " as the Minister shall direct."

But there is one exception to this general rule. Where either the function for which the authority held the land immediately before its appropriation, or the function for which land is appropriated, is a function for which a grant or contribution is payable to the appropriating authority from a government department out of monies provided by Parliament, any adjustment to be made in accounts over which any Minister previously had control shall now be such " as the Minister of Housing and Local Government may direct." But neither the general grants payable to local authorities under the Local Government Act, 1958, nor Exchequer subsidies in respect of housing payable under the Housing (Financial Provisions) Act, 1958, are such " grants or contributions " as make that Minister's direction necessary under the above (exceptional) rule.

" an appropriation ". It should be noted that this provision is not in any way limited to cases falling within the last section. Except in cases falling within subsection (2), all appropriations of land by any of the listed authorities are subject to the rule now introduced, that adjustments in accounts falling to be made on or after the 16th August, 1959, shall be such " as may be requisite in the circumstances."

" land ". See note on page 252.

" an authority . . . applies ". See note on page 251.

" grant-aided function ". Section 57 (1) defines functions as meaning " a power or a duty " ; and a " grant-aided function," in relation to any authority, as " a function in respect of which a grant or contribution (other than any grant under the Local Government Act 1958 or any Exchequer subsidy under the Housing (Financial Provisions) Act, 1958), is payable to that authority by a government department out of moneys provided by Parliament." See further notes thereto on page 356. Cf. the similar provision under section 27 (5).

" may direct ". See section 30 (4) for the Minister's power to give such directions generally or specifically, with or without conditions attached.

" in substitution . . . any enactment ". The effect is therefore (*a*) to remove any previous method of control in the " grant-aided " cases and to substitute the control of the Minister of Housing and Local Government, and (*b*) to remove all controls in any other cases. The change is effective from the commencement of the Act, *i.e.*, the 16th August, 1959. See note on page 251 for " enactment."

25. Amendment of section 21 of Land Settlement (Scotland) Act, 1919.—Section twenty-one of the Land Settlement (Scotland) Act, 1919 (which relates to the temporary use for allotments of land acquired by local authorities for other purposes) shall have effect with the omission of any reference to the consent of the Secretary of State.

26. Exercise of powers of disposing of land.—(1) Subject to the following provisions of this section, where by any enactment—

(*a*) power is conferred on any authority to whom this Part of this Act applies, or on any class of such authorities, to dispose of land, but

(*b*) that power is so conferred subject to a provision (in whatever terms the provision is expressed and whether it is contained in the same or in any other enactment) that the power is not to be exercised except with the consent of a Minister specified in that provision, with or without a further provision enabling conditions to be imposed by such a Minister in respect of the exercise of the power,

the enactment shall have effect, in relation to any exercise of the power after the commencement of this Act by an authority to whom this Part of this Act applies, as if it conferred that power free from any such provision as is mentioned in paragraph (*b*) of this subsection.

(2) A disposal by an authority to whom this Part of this Act applies—

(*a*) of land which consists or forms part of an open space (not being land which consists or forms part of a common or of a fuel or field garden allotment) or

(*b*) of land which has been acquired (whether before or after the commencement of this Act) by that authority in the exercise (directly or indirectly) of compulsory powers, and has not subsequently been appropriated by that authority for any purpose other than that for which it was so acquired,

if (in either case) it is a disposal which, apart from this section, could not be effected except with the consent of a Minister, shall not be effected except with such consent as is mentioned in the next following subsection.

(3) The said consent—

(*a*) in a case falling within paragraph (*a*) of the last preceding subsection, is the consent of the Minister of Housing and Local Government, and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the consent of the Minister who, at the time of the disposal, is the Minister concerned with the function for the purposes of which the land was acquired by the authority.

(4) Except with the consent of the Minister of Housing and Local Government, an authority to whom this Part of this Act applies shall not sell, exchange or let any land, in the exercise of a power in relation to which subsection (1) of this section has effect, for a price, consideration or rent less than the best price, best consideration or best rent (as the case may be) that can reasonably be obtained, having regard to any restrictions or conditions (including conditions as to payment or the giving of security for payment) subject to which the land is sold, exchanged or let.

(5) Subsection (1) of this section shall not apply—

(*a*) to section forty-seven of the Housing Act, 1957 (which relates to land in, surrounded by or adjoining a clearance area) ;

(*b*) to any exercise of the powers conferred by section one hundred and four of the Housing Act, 1957 (which confers powers of disposing of houses provided under Part V of that Act) in respect of any house, if in respect of that house any payment has been made (whether before or after the commencement of this Act) to a local authority under any of the enactments mentioned in subsection (2) of section fifty-eight of the Housing (Financial Provisions) Act, 1958, or under any enactment repealed by that Act or any earlier Act and re-enacted (with or without modifications) by any of the provisions mentioned in the said subsection (2) ;

(*c*) to any exercise of the powers conferred by section nineteen of the Town and Country Planning Act, 1944 (which, as amended by the Act of 1947, relates to the disposal or appropriation by local authorities of land held by them

for the purposes of Part IV of the Act of 1947) in respect of land falling within subsection (6) of the said section nineteen (which makes special provision as to land comprised in an area defined by a development plan as an area of comprehensive development and land contiguous or adjacent to any such area which is designated by the plan as subject to compulsory acquisiton) ;

(*d*) to any disposal of land which, immediately before the disposal, is land which consists or forms part of a common, or formerly consisted or formed part of a common, and is held or managed by a local authority in accordance with a local Act ;

(*e*) to any local enactment in so far as it provides (in whatsoever terms) that, except with the consent of a Minister specified therein, land shall not be disposed of thereunder for a price, consideration or rent of a value less than the current market value of the interest disposed of ;

and subsection (1) of this section shall not operate so as to dispense with any requirement for the consent of the Minister of Agriculture, Fisheries and Food—

(i) under subsection (7) of section two of the Small Holdings and Allotments Act, 1926, as applied by section twelve of the Agricultural Land (Utilisation) Act, 1931, or under subsection (1) of section six of the said Act of 1926, or

(ii) in respect of any disposal of land which, immediately before the disposal, is land held for use as allotments ;

but in relation to any disposal of land by an authority to whom this Part of this Act applies, where the consent of that Minister is required under section eight of the Allotments Act, 1925, so much of that section as requires consultation with the Minister of Housing and Local Government shall not apply.

(6) In determining, for the purposes of subsection (2) of this section, whether a disposal of land under a local enactment is a disposal which apart from this section could not be effected except with the consent of a Minister, any such provision as is mentioned in paragraph (*e*) of the last preceding subsection shall be disregarded.

(7) In the application of this section to Scotland,—

(*a*) for any reference to the Minister of Housing and Local Government there shall be substituted a reference to the Secretary of State ;

(*b*) for paragraph (*a*) of subsection (2) there shall be substituted the following paragraph, that is to say,—

"(*a*) of land which consists or forms part of a common or open space, or is held for use as allotments, or";

(*c*) for subsections (4) and (5) there shall be substituted the following subsections, that is to say,—

"(4) Subject to the provisions of this Act, section one hundred and sixty-eight of the Local Government (Scotland) Act, 1947 (which makes provision as to price and other matters relating to the disposal of land by local authorities) shall apply to any disposal of land by an authority to whom this Part of this Act applies in the exercise of a power in relation to which subsection (1) of this section has effect (not being a power under Part VIII of the said Act of 1947) as it applies to the like disposal of land by a local authority within the meaning of the said Act of 1947 in the exercise of any power under the said Part VIII.

(5) Subsection (1) of this section shall not apply—

(*a*) to any exercise of the powers conferred by paragraph (*d*) of subsection (1) of section sixty-five of the Housing (Scotland) Act, 1950 (which confers powers of disposing of houses provided under Part V of that Act), in respect of any house, if in respect of the provision of that house an Exchequer contribution has (whether before or after the commencement of this Act) been paid under any of the enactments specified in Part I of the Sixth Schedule to the said Act of 1950;

(*b*) to any exercise of the powers conferred by section eighteen of the Town and Country Planning (Scotland) Act, 1945 (which, as amended by the Scottish Act of 1947, relates to the disposal or appropriation by local authorities of land held by them for the purposes of Part III of the Scottish Act of 1947), in respect of land falling within subsection (5) of the said section eighteen (which makes special provision as to land comprised in an area defined by a development plan as an area of comprehensive development) and that subsection as extended by section seventeen of the Housing and Town Development (Scotland) Act, 1957;

(*c*) to any exercise of the powers conferred by subsection (2) of section one hundred and seventy-one of the Local Government (Scotland) Act, 1947 (which relates to the disposal in certain circumstances of land forming part of the common good of a burgh) ; or

(*d*) to any local enactment in so far as it provides (in whatsoever terms) that, except with the consent of a Minister specified therein, land shall not be disposed of thereunder for a rent, price, fue duty or other consideration of a value less than the current market value thereof."

and

(*d*) for any reference in subsection (6) to paragraph (*e*) of subsection (5) of this section there shall be substituted a reference to paragraph (*d*) of that subsection.

NOTES TO SECTION 26

The section provides generally that where any of the authorities listed in the Fourth Schedule dispose, on or after the 16th August, 1959, of land held by them, they are relieved from the necessity of obtaining any consent of a Minister or government department formerly required under statute. The kinds of disposals thus freed from Ministerial control are the sale or exchange of such land, the granting of a lease or the creation of any easement, right or privilege.

Such consents are dispensed with, whether or not the relevant statute containing them used the word " consent," " approval," " sanction," or " authorisation," and whether or not the requirement of the consent is contained in the same statute as that empowering the authority concerned to dispose of the land. Further section 30 (2) of this Act provides that any enactment requiring a Minister or government department to be " satisfied " as to any specified matters before such a disposal can take place is to be treated as a provision making Ministerial consent necessary and is therefore to be dispensed with. Moreover it does not matter whether the relevant statute made the consent necessary in all cases or only in specified circumstances : it is dispensed with in either event, see section 30 (1).

But there are a number of special cases in which consents for disposals of land by any of the listed authorities are still required.

In three cases, previous statutory requirements as to Ministerial consents are dispensed with under the general rule above, but new similar consents are imposed, in respect of such disposals taking place on or after the 16th August, 1959. These three cases are :—

(*a*) disposals of land forming all or part of an open space (other than common land or fuel or field garden allotments). In this case the consent of the Minister of Housing and Local Government is imposed.

(*b*) disposals of land which was acquired compulsorily or in the shadow of compulsory powers and has not since been appropriated for purposes other than those for which it was acquired. In this case there is imposed the consent of the Minister concerned with the function for which the land was acquired.

(*c*) the sale, exchange, or letting of land at a price consideration or rent lower than the best price reasonably obtainable. In this case the consent of the Minister of Housing and Local Government is imposed. But the imposition of consent in this kind of case does not extend to cases where an existing consent is preserved under (*e*) below.

Apart from the above three cases in which, in effect, new consents are imposed, there are seven cases in which existing consents are preserved and not abrogated under the general rule. These are :—

(*a*) disposals of land in, or surrounded by, or adjoining a clearance area, which is sold, exchanged or let under section 47 of the Housing Act, 1957, at a figure less than the best price, consideration or rent. In such cases the consent of the Minister of Housing and Local Government required by section 47 (2) of that Act (as amended by the Seventh Schedule of this Act) is retained.

(*b*) disposals of houses under section 104 of the Housing Act, 1957, where any payment has been made in respect of the provision of such houses under any of the enactments set out in section 58 (2) of the Housing (Financial Provisions) Act 1958 or any other enactment which was in effect superseded by those enactments. In such cases the consent of the Minister of Housing and Local Government is preserved.

(*c*) disposals, under section 19 of the Town and Country Planning Act 1944, of land which was acquired or appropriated to secure the development or redevelopment of a defined area of comprehensive development. In such cases the consent of the Minister of Housing and Local Government is preserved.

(*d*) disposals of land constituting all or part of a common, or formerly constituting all or part of a common, which is held or managed by a local authority under a local Act.

(*e*) disposals of land under any local Act at a price, consideration or rent less than current market value, where the local Act requires the consent of a specified Minister if current market value is not obtained. In such cases the existing requirement is retained.

(*f*) disposals of " cottage holdings " in respect of which the Minister of Agriculture, Fisheries and Food has made a contribution towards any loss incurred in their provision. In such cases the consent of that Minister is required ;

(*g*) sales of smallholdings, towards which the Minister of Agriculture, Fisheries and Food has made a contribution, where the county council or county borough council in question relaxes or dispenses with any of the conditions, laid down in section 6 (1) of the Smallholdings and Allotments Act, 1926, under which the land must be held. In that event the consent of that Minister is required ;

(*h*) disposals of land used as allotments. In such cases the consent of the Minister of Agriculture, Fisheries and Food is preserved, but it should be noticed that any other consents previously required are dispensed with under the general rule above.

Where a Ministerial consent is dispensed with under this section, then any power granted to the Minister concerned to impose conditions on the granting of his consent is also removed.

" enactment ". See note on page 251.

" any authority . . . applies ". See note on page 251.

" any class of such authorities ". For the effect where enactments confer a power on persons generally described therein but do not specifically refer to local authorities or any of the listed authorities, see section 30 (3).

" dispose ". Section 57 (1) of this Act defines this as " dispose by way of sale, exchange, lease, or by way of the creation of any easement, right or privilege, or in any other manner, except by way of appropriation, gift or mortgage." This wide sense of the word is different from its sense in the Lands Clauses Consolidation Act 1845, c.f. *Astley* v. *M.S.L. Railway Co.* (1858) 2 de G. and J. 453. It has been recommended by the Minister that local authorities in disposing of surplus land should consider carefully any request to purchase it back made by its previous owner, see M.H.L.G. Circular No. 48/59, paragraph 39.

" land ". See note on page 252.

" in whatever terms ". See section 30 (1) and (2) in relation to enactments requiring consent only in specified circumstances, or requiring a Minister to be " satisfied " as to specified matters. See section 22 (4) for the various alternative forms of wording covered by the term " consent."

" Minister ". See note on page 252.

" after the commencement of this Act ", *i.e.*, on or after the 16th August, 1959.

" open space ", " common ", " fuel or field garden allotment ". For definitions, see note on page 257.

" in the exercise . . . compulsory powers ", *i.e.*, a compulsory acquisition, or an acquisition by agreement, where the authority was authorised to acquire the land compulsorily, but not such acquisitions when made as a result of any purchase notice, under (*e.g.*) section 19 of the 1947 Act or Part IV of this Act, see section 30 (5).

" could not be effected . . . Minister ". See subsection (6) in the case of a disposal under a local enactment.

" The said consent ". For the Minister's power to give such consents generally or specifically and to attach conditions thereto, see section 30 (4). For the effect of a failure to secure the consent of a Minister (whether it is required under this Act or not) see section 29.

Subsection 4. It has been stated that where consent is required under this subsection and under another subsection (*e.g.*, (3) (*b*)), application for consent should be addressed to the Minister whose consent is required under the latter subsection (if he is not the Minister of Housing and Local Government).

" conditions as to payment ". The effect of this will be that the provisions as to " best price " cannot be evaded by (*e.g.*) long deferred payment at rates less than those ruling in the market. See further section 47 (2) of the Housing Act 1957, as now amended by the Seventh Schedule of this Act.

" Subsection (1) . . . shall not apply ", *i.e.*, in the following cases, existing consents are preserved.

" section 47 of the Housing Act 1957 ". Section 47 of the Housing Act 1957 provides that where a local authority has purchased land in, or surrounded by, or adjoining a clearance area, under Part III of that Act, it must deal with the land either by demolishing every building on the land and then selling, letting or appropriating the land, or by selling, letting and exchanging the land with the buildings still on it but subject to a condition requiring their demolition. Subsection (2) of that section as now amended by the Seventh Schedule of this Act, now requires the obtaining of the consent of the Minister of Housing and Local Government for such disposals of the land where the price, consideration or rent is less than the best. This consent is required for the future, but because subsection (1) of section 26 of the 1959 Act is excluded, subsection (4) is also excluded and therefore the consent imposed by that latter subsection does not apply, and there is no overlap.

" section 104 of the Housing Act 1947 ". Section 104 provides that where a local authority has acquired or appropriated land for the purpose of providing housing accommodation under Part V of that Act, it may sell or lease any houses on the land or erected by the authority on the land, subject to the consent of the Minister of Housing and Local Government. It should be noticed that, whereas such consent is preserved in respect of houses for which an Exchequer subsidy is paid, it is dispensed with—by virtue of the general rule—in respect of other houses disposed of under section 104.

" Housing (Financial Provisions) Act 1958 ". The Act (which is a consolidating Act) provides in Part I for the payment of Exchequer subsidies for " approved " dwelling houses to local authorities and development corporations. See generally M.H.L.G. Circulars No. 33/56, 48/57 and 57/57. Section 58 (2) of that Act lists the enactments under which " exchequer payments " for the purposes of that Act are made.

" section 19 . . . Planning Act 1944 ". Section 19 empowers local authorities, subject to the consent of the Minister of Housing and Local Government, to dispose of or appropriate land which was designated as subject to compulsory acquisition and has been acquired, purchased or appropriated either (*a*) to secure the development or redevelopment of an area defined as an area of comprehensive development, or (*b*) to secure the use of that land in the manner proposed for it by the development plan. This section 19 was amended by the 1947 Act and incorporated in the Eleventh Schedule of the latter Act. It should be noticed that the disposal of land acquired for purpose (*b*) above is *not* within the scope of this exception, and therefore in such a case the consent of the Minister of Housing and Local Government is dispensed with under the general rule.

Part IV of the 1947 Act related to the acquisition of land for planning purposes.

" subsection (6) of the said section 19 ". The subsection provided that the power to dispose of land which was acquired, purchased or appropriated to secure the development of an area of comprehensive development, and the Minister's power to consent thereto, should be so exercised as to enable so far as possible previous occupants of the land to be reaccommodated on the land, on terms settled with due regard to the price at which the land had been acquired from them. To this end the consent of the Minister is now preserved. But see also section 19 (7) of the 1944 Act.

" common . . . local Act ". See note on page 258.

" Small Holdings and Allotments Act 1926 . . . Agricultural Land (Utilisation) Act 1931 ". See note on page 258.

" Subsection (1) of section 6 of the said Act of 1926 ". The subsection provides that where the Minister of Agriculture, Fisheries and Food has made a contribution towards any loss incurred in the provision of smallholdings, and the county council or county borough council in question proposes to sell those smallholdings and to relax or dispense with any of the conditions laid down in that subsection under which the land is to be held, the consent of that Minister to such relaxation or dispensation is required. On giving his consent, the Minister may impose terms.

" section 8 of the Allotments Act 1925 ". See note on page 259.

27. Application of capital money on disposal of land.—(1) Where by any enactment—

(*a*) provision is made as to the application of capital money received by an authority to whom this Part of this Act applies, or by any class of such authorities, in respect of land disposed of by them, but

(*b*) it is provided (in whatsoever terms) that the application of capital money thereunder shall be effected only with the consent of a Minister specified therein or in a manner approved by a Minister so specified,

the enactment shall have effect, in relation to the application after the commencement of this Act of capital money by an authority to whom this Part of this Act applies, in cases fulfilling any one or more of the conditions specified in the next following subsection, as if it made the provision referred to in paragraph (*a*) of this subsection without any such provision as is referred to in paragraph (*b*) of this subsection.

(2) The said conditions, in relation to capital money received by an authority in respect of land disposed of by them, are the following, that is to say,—

(*a*) that the capital money received in respect of the disposal of that land does not exceed the relevant limit ;

(*b*) that the capital money is to be applied by the authority in or towards the repayment of a debt incurred by them wholly or in part for the purpose of acquiring or developing that land or otherwise in connection with that land ;

(*c*) that the capital money is to be applied by the authority in or towards the repayment of a debt of the authority which is repayable within a period of which, at the date of the application of the capital money, not less than fifteen years remain unexpired ;

(*d*) that the capital money is to be applied by the authority for a purpose for which they have obtained the consent of a Minister, or have been authorised by a local enactment, to borrow money on terms providing for repayment within a period of not less than fifteen years ;

(*e*) that the capital money is to be applied from a capital fund established under section one of the Local Government (Miscellaneous Provisions) Act, 1953, or established under a local enactment which includes a provision requiring moneys derived from the sale of land which are applied from the fund to be repaid to the fund from the account to which the moneys are advanced.

(3) For the purposes of paragraph (*a*) of the last preceding subsection the relevant limit shall be ascertained as follows, that is to say—

(*a*) in the case of capital money received by the council of a county, county borough or metropolitan borough, or by the Common Council of the City of London, the relevant limit shall be the sum of one thousand pounds ;

(*b*) in the case of capital money received by the council of a county district, or by the Council of the Isles of Scilly, the relevant limit shall be whichever is the lesser of the two following amounts, that is to say, the sum of one thousand pounds, and the amount estimated for the purposes of subsection (2) of section nine of the Rating and Valuation Act, 1925, to be the product, for the financial year in which the capital money is to be applied, of a rate of one penny in the pound for the rating area consisting of that county district, or of the Isles of Scilly, as the case may be ;

(*c*) in the case of capital money received by any other authority to whom this Part of this Act applies, the relevant limit shall be the sum of five hundred pounds.

(4) On any application, by an authority to whom this Part of this Act applies, of capital money received by them as mentioned in paragraph (*a*) of subsection (1) of this section, other than an application falling within the next following subsection, such adjustment shall be made in the accounts of the authority as may be requisite in the circumstances.

(5) Where after the commencement of this Act any capital money falls to be applied by an authority to whom this Part of this Act applies, in respect of the disposal by the authority of any land held by the authority for the purposes of any of their functions, and the capital money is applied for the purposes of some other function of the authority (including the purposes of the repayment of any debt incurred by the authority for the purposes of that other function), then, if either of those functions is a grant-aided function, such adjustment shall be made in the accounts of the authority as the Minister of Housing and Local Government may direct.

(6) Nothing in the preceding provisions of this section shall be construed as affecting the operation of subsection (3) of section two of the Local Government (Miscellaneous Provisions) Act, 1953 (which provides, with respect to the application of capital money from a capital fund established under that Act, that the amount to be applied in any one transaction shall not exceed such sum as the Minister of Housing and Local Government may determine), or of any corresponding provision of a local enactment relating to the application of money from a capital fund.

(7) The foregoing provisions of this section shall not apply to Scotland ; but section one hundred and sixty-eight of the Local Government (Scotland) Act, 1947 (which makes provision, among other things, for the adjustment in certain cases of the accounts of local authorities in respect of capital money received on the disposal of land), shall have effect as if for the proviso to subsection (1) of that section there were substituted the following proviso, that is to say—

" Provided that—

(*a*) on any application by a local authority of capital money received by them as mentioned in this subsection, other than an application falling within the next following paragraph, such adjustments shall be made in the accounts of the authority as may be requisite in the circumstances ;

(*b*) where any capital money received by a local authority as mentioned in this subsection in respect of land held by them for the purposes of any of their functions is applied

by them for the purposes of some other function of theirs (including the purposes of the repayment of any debt incurred by them for the purposes of that other function), then, if either of those functions is a grant-aided function, such adjustment shall be made in the accounts of the authority as the Secretary of State may direct."

NOTES TO SECTION 27

The section provides generally that where any of the authorities listed in the Fourth Schedule have disposed of land and, on or after the 16th August, 1959, have to apply capital moneys thereby obtained, they are relieved from the necessity of obtaining any Ministerial consent or approval previously required by statute, if :—

either

(1) the capital moneys do not exceed certain prescribed limits varying in relation to the local authority involved, being :

(i) £1,000, in relation to councils of counties, county boroughs or metropolitan boroughs, or the Common Council of the City of London ;

(ii) the lesser of (*a*) £1,000 or (*b*) the product of a rate of a penny in the pound, in relation to councils of county districts or the Council of the Scilly Isles ;

(iii) £500, in relation to any other of the listed authorities ;

or

(2) the moneys are applied by the authority :

(*a*) in repayment of a debt incurred in acquiring or developing that land, or in connection with the land, or

(*b*) in repayment of a debt repayable over a period, of which at least fifteen years still remains to go, or

(*c*) for a purpose for which the authority has Ministerial consent, or authorisation under a local Act, to borrow money on terms that it be repayable over a period of fifteen years or more, or

(*d*) from a capital fund established under the Local Government (Miscellaneous Provisions) Act, 1953, section 1, or under a local Act which requires money advanced from the fund to be repaid out of the account to which it is advanced. But the above dispensation does not apply to the power which the Minister of Housing and Local Government has to determine the amount to be applied out of such capital funds in any one transaction, under section 2 (3) of the 1953 Act or any corresponding provision in a local Act.

The section also provides that, where any adjustment of accounts falls to be made on or after the 16th August, 1959, as a result of an application of capital moneys obtained by a disposal of land by any of the listed authorities, the adjustment to be made in the authority's accounts is such "as may be requisite in the circumstances." This provision replaces any previous provisions in enactments relating to such adjust-

ments, such as the usual provision that an adjustment be made " as the Minister may direct."

But there is one exception to this general rule. Where either the function for which the authority held the land immediately before its disposal, or the function for which the capital money was applied, is a function for which a grant or compensation is payable to the authority from a government department out of moneys provided by Parliament, any adjustment to be made in the accounts of that authority, over which any Minister previously had control, must now be such " as the Minister of Housing and Local Government may direct." But neither the general grants payable to local authorities under the Local Government Act 1958, nor Exchequer subsidies in respect of housing payable under the Housing (Financial Provisions) Act 1958 are such grants as make that Minister's consent necessary under the above rule.

" enactment ". See note on page 251.

" authority . . . Act applies ". See note on page 251.

" land ". See note on page 252.

" disposed ". See note on page 267.

" it is provided ". It should be noted that under this section (as opposed to the sections relating to acquisitions by agreement, appropriations and disposals) there is no provision that Ministerial consent be dispensed with, if the requirement for it be contained in an enactment different from that giving to the authority concerned the power to apply the capital moneys obtained on disposal of the land.

" in whatsoever terms ". See section 30 (1) and (2) in relation to enactments requiring consent only in specified circumstances or requiring a Minister to be " satisfied " as to specified matters. See also section 22 (4) for the various forms of wording covered by the term " consent."

" obtained the consent of a Minister ", as (*e.g.*) under section 195 of the Local Government Act 1933, in the case of local authorities.

" Local Government (Miscellaneous Provisions) Act 1953 ". Section 1 of that Act enables a local authority to establish a capital fund to be used either for defraying expenditure of the authority for which capital can properly be applied (apart from expenditure on certain specified undertakings), or for repaying loans. Such a fund may be fed by, among other sums, the proceeds of the sale of property by the authority concerned. Section 2 (3) provides that when sums are applied out of such a fund, they shall not in any one transaction exceed such amount as the Minister of Housing and Local Government may determine from time to time : on this, see subsection (6) of this section. Section 2 (4) provides that all moneys derived from the sale of land which are applied out of such a capital fund shall be repaid from the account to which the moneys are advanced.

" local enactment ". This means a local private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure, see section 57 (1).

" a provision requiring moneys ". Compare the corresponding

provision in section 2 (4) of the Local Government (Miscellaneous Provisions) Act 1953, referred to in the note above.

" section 9 (2) of the Rating and Valuation Act 1925 ". Section 9 (2) makes provision as to precepts for rates issued by county councils to rating authorities. To enable county councils to issue precepts for appropriate amounts, each rating authority is to estimate the amount which would be produced in the next financial year by a rate of a penny in the pound and to transmit that estimate to any county council having power to issue a precept to that rating authority.

" on any application ". It should be noticed that this provision is not in any way limited to cases falling within the preceding provisions of the section.

" grant-aided function ". Compare the similar provisions under section 24 (2) and see note thereto on page 260.

" may direct ". See section 30 (4) for the Minister's power to give such directions generally or specifically, with or without conditions attached.

28. Appropriation of land by parish councils and parish meetings.—(1) Any land belonging to a parish council which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the council for any other purpose approved by the Minister of Housing and Local Government and the parish meeting.

(2) In the case of a rural parish not having a separate parish council, any land belonging to the parish meeting which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the parish meeting for any other purpose approved by the Minister of Housing and Local Government.

(3) A parish council or parish meeting shall not create or permit any nuisance on land appropriated by them under this section.

(4) The appropriation of land by a parish council or parish meeting under this section shall be without prejudice to any covenant or restriction affecting the use of the land in their hands.

(5) In the case of an appropriation under this section of land acquired under any enactment or order incorporating the Lands Clauses Acts, any work executed on the land after the appropriation has been effected shall, for the purposes of section sixty-eight of the Lands Clauses Consolidation Act, 1845, be deemed to have been authorised by the enactment or order under which the land was acquired.

(6) Where, by virtue of any enactment other than this section, a parish council have power, with or without the consent of a Minister, or may be authorised, to appropriate land for any purpose, the power conferred by subsection (1) of this section shall not be exercisable by the council for that purpose in relation to that land.

(7) The power conferred by subsection (2) of this section shall not be exercisable by a parish meeting in relation to any land for any purpose for which the parish meeting are or could be empowered (subject to the requisite consents) to appropriate that land under section twenty-two of the Land Settlement (Facilities) Act, 1919, or for which they may be authorised to appropriate that land under section forty-two of the Act of 1947.

(8) Subsections (1) and (2) of section twenty-four of this Act shall apply in relation to an appropriation of land by virtue of this section, as if parish councils and parish meetings were authorities to whom this Part of this Act applies.

(9) This section shall not apply to Scotland.

Notes to Section 28

The section empowers parish councils generally to appropriate land for purposes approved both by the Minister of Housing and Local Government and by the parish meeting. But this general power does not apply in those limited cases in which a parish council already has power to appropriate : in such cases, the council must act under and in accordance with its previously existing powers.

A similar power is conferred on parish meetings in those rural parishes in which there is no separate council. But the general power so conferred is not applicable in cases in which a parish meeting is, or could be, empowered to appropriate under section 22 of the Land Settlement (Facilities) Act 1919 or section 42 of the 1947 Act.

When land was originally acquired by a parish council or meeting under any enactment incorporating the Lands Clauses Acts and is now appropriated under the general power given by this section, any works carried out on the land after appropriation shall in effect (if the necessary conditions are otherwise fulfilled) give entitlement to compensation for injurious affection under section 68 of the Lands Clauses Consolidation Act 1845.

Adjustments of accounts, arising out of appropriations made under this general power, shall be made " as may be requisite in the circumstances " (without control by any Minister), unless the land was used immediately before or after the appropriation for a " grant-aided function " and any Minister previously had the power to direct the necessary adjustments. In the latter event, the Minister of Housing and Local Government must now direct the adjustment.

" may . . . be appropriated ". See the analogous power conferred on local authorities other than parish councils, by section 163 of the Local Government Act 1933.

" section 68 of the Lands Clauses Consolidation Act 1845 ". Section 68 is the section which awards compensation for " pure injurious affection " caused by a compulsory purchase, *i.e.*, injurious affection to land *not* held with any of the land compulsorily acquired. Such compensation is limited to the damage caused " by the execution of the works," and can only be recovered where the damage is done in the course of acts in the proper exercise of the statutory powers and where the damage would be actionable if done without statutory authority, see *Metropolitan Board of Works* v. *McCarthy* (1874) L.R. 7 H.L. 243. See further page 50.

" by virtue of any enactment ". See section 22 of the Land Settlement (Facilities) Act 1919, which relates to appropriations of allotments or for allotments ; or section 4 of the Parish Councils Act 1957, which relates to appropriations for bicycle parks ; or section 7 of the Open Spaces Act 1906 which relates to appropriations for an open space.

" are or could be empowered ", *i.e.*, under section 273 of the Local Government Act 1933 which enables county councils to confer on a parish meeting any of the functions of a parish council.

" section 22 of the Land Settlement (Facilities) Act 1919 ". Section 22 confers on (*inter alia*) parish councils the power to appropriate for other purposes land held for use as allotments, or to appropriate for allotments land acquired for other purposes. The requisite consents are those of the Ministers of Agriculture, Fisheries and Food, and of Housing and Local Government.

" section 42 of the Act of 1947 ". See note on page 258.

" subsection (1) and (2) of section 24 ". The subsections have the effect set out in the last paragraph of the headnote. It should be noticed that these provisions do not apply where an appropriation by a parish council or meeting takes place under previously existing powers and not under the general power conferred by this section.

29. Protection of persons deriving title under transactions requiring consent.—(1) Where after the commencement of this Act an authority to whom this Part of this Act applies purport to acquire, appropriate or dispose of land under an enactment whereby power to acquire, appropriate or dispose of land is conferred on that authority, or on a class of authorities to whom this Part of this Act applies, then—

(*a*) in favour of any person claiming under the authority, the acquisition, appropriation or disposal so purporting to be made shall not be invalid by reason that any consent of a Minister which (whether by virtue of this Part of this Act or otherwise) is required thereto has not been given, and

(*b*) a person dealing with the authority, or with a person claiming under the authority, shall not be concerned to see or inquire whether any such consent has been given.

(2) In relation to Scotland the preceding subsection shall have effect in substitution for the provisions of subsection (2) of section one hundred and sixty-eight of the Local Government (Scotland) Act, 1947, in so far as those provisions relate to the consent of a Minister, but without prejudice to the operation of those provisions in cases to which the preceding subsection does not apply.

NOTES TO SECTION 29

The section provides that any acquisition, appropriation or disposal of land carried out by any of the authorities listed in the Fourth Schedule of this Act on or after the 16th August, 1959, shall not be rendered invalid by reason of the fact that any required Ministerial consent was not obtained. This operates in favour only of persons claiming under the authority concerned.

The section also provides that anyone dealing with an authority listed in the Fourth Schedule or with any person claiming under such an authority in connection with an acquisition, appropriation or disposal of land by that authority shall not be concerned to see that any required consent has been obtained.

" after the commencement of this Act ", *i.e.*, on or after the 16th August, 1959.

" an authority . . . Act applies ". See note on page 251.

" land ". See note on page 252.

" dispose ". For meaning, see note on page 267.

" power " see section 30 (3) in relation to enactments conferring a power generally on classes of authorities. In cases dealt with by section 30 (3) (*b*), the protection given by this section is excluded.

" shall not be invalid ". Transactions carried out by authorities without a required consent were hitherto void as being *ultra vires*, c.f. *Rhyl U.D.C.* v. *Rhyl Amusements Ltd.* [1959] 1 All E.R. 257.

" by virtue of this Part of this Act ", *i.e.*, under section 23 (2) and section 26 (2)-(4).

" concerned to see or inquire ". C.f. an analogous clause as regards compliance with standing orders in relation to contracts made by local authorities, in section 266 of the Local Government Act, 1933.

30. General provisions relating to Part II.—(1) Any reference in this Part of this Act to a provision that a power is not to be exercised except with the consent of a Minister is a reference to a provision which either—

(*a*) requires such consent generally in respect of any exercise of the power, or

(*b*) requires such consent in respect of the exercise of the power in such circumstances as may be specified therein.

(2) For the purposes of this Part of this Act any provision whereby a power is to be exercised only if a Minister specified therein is satisfied as to any matters so specified shall be taken to be a provision that the power shall not be exercised except with the consent of that Minister.

(3) Any reference in this Part of this Act to an enactment whereby a power is conferred on an authority to whom this Part of this Act applies, or on a class of such authorities,—

(*a*) shall be taken to include any enactment whereby the power in question is conferred on local authorities generally, or on a class of local authorities which includes a class of authorities to whom this Part of this Act applies, or is conferred on a class of authorities to whom this Part of this Act applies together with any other class of local authorities, but

(*b*) shall not be taken to include any enactment whereby (without particular reference to local authorities, or to bodies of any description specified in the Fourth Schedule to this Act) a power is conferred generally on persons of a description specified in the enactment, notwithstanding that one or more authorities to whom this Part of this Act applies may fall within the description specified in the enactment.

(4) For the purposes of any provision of this Part of this Act whereby the consent of a Minister is required, or directions may be given by a Minister, for any purpose therein mentioned, the consent or directions may be given by that Minister either generally to all authorities to whom the provision relates, or to any class of such authorities, or may be given specifically in any particular case, and (whether given generally or otherwise) may be given either unconditionally or subject to such conditions as the Minister giving the consent or directions may consider appropriate.

(5) For the purposes of this Part of this Act land shall be taken to have been acquired by an authority in the exercise (directly or indirectly) of compulsory powers if it was acquired by them compulsorily or was acquired by them by agreement at a time when they were authorised by or under an enactment to acquire the land compulsorily :

Provided that land shall not be taken to have been acquired by an authority in the exercise (directly or indirectly) of compulsory powers if it was acquired by them (whether compulsorily or by agreement) in consequence of the service in pursuance of any enactment (including any enactment contained in this Act) of a notice requiring the authority to purchase the land.

(6) Notwithstanding anything in the preceding provisions of this Part of this Act, nothing in those provisions in their application to England and Wales—

(*a*) shall affect any acquisition of corporate land, or

(*b*) shall affect any appropriation of land which, immediately before the appropriation, is corporate land, or shall affect or require the making of any adjustment in the accounts of an authority to whom this Part of this Act applies in consequence of such an appropriation, or

(*c*) shall affect any disposal of land which, immediately before the disposal, is corporate land, or affect the application of any capital money received in respect of any corporate land disposed of by an authority to whom this Part of this Act applies, or affect or require any adjustment in the accounts of such an authority in consequence of any such disposal.

Notes to Section 30

The section makes consequential provisions for the purposes of Part II.

It makes it clear that provisions in Part II which dispense with Ministerial consents apply either where the relevant enactment made such consent essential in all cases or where it made consent essential only in circumstances specified in the enactment.

It also makes it clear that provisions in any enactment requiring a Minister to be satisfied as to matters specified therein, before a power to acquire by agreement, or to appropriate, or to dispose of land or to apply capital moneys can be exercised, are to be regarded as provisions requiring consent and are therefore to be dispensed with in accordance with Part II.

The dispensation under the above sections from Ministerial consents imposed by statute does not apply in the case of enactments which impose consents on such a class of persons generally, as includes (though without specifically naming them) an authority or authorities listed in the Fourth Schedule. In such cases, no person or authority falling within that class (whether listed or not) is freed from the requirement of consent. But this is not so in the case of an enactment which imposes consent on " local authorities " generally or on any class of local authority which includes any of the listed authorities, or any of the listed authorities together with any other class of local authorities : in these cases any listed authority to which the enactment applies is freed from the requirement of consent, but any non-listed authority remains bound.

The section further gives a Minister, in any case in which, by virtue of any provisions of Part II, he has to give his consent or make directions, the power to give such consent or directions generally to all listed authorities or to any class of them, or specifically in particular cases, with the further power to impose conditions as he thinks fit.

The section next defines the meaning of the phrase " acquire in the exercise (directly or indirectly) of compulsory powers" used in Part II, and makes it clear that the phrase does not cover an acquisition which takes place as a result of any " purchase notice."

Finally the section provides that the preceding sections of Part II shall not apply to cases where " corporate land " is acquired by agreement, appropriated, or disposed of ; or where adjustments in accounts fall to be made on an appropriation of " corporate land " or on the application of capital moneys obtained from a disposal of " corporate land " ; or where capital moneys obtained on a disposal of corporate land fall to be applied.

" Any reference in this Part ", *i.e.*, section 22 (1) (*b*), in relation to acquisitions of land by agreement ; section 23 (1) (*b*) in relation to appropriations of land ; section 26 (1) (*b*) in relation to disposals of land ; section 27 (1) (*b*) in relation to the application of capital moneys obtained on a disposal of land.

" authority . . . Act applies ". See note on page 251.

Subsection (3) (b). This paragraph relates principally to enactments dealing with charitable trusts, where (*e.g.*) consents are imposed on " trustees " which may happen to include one or more of the authorities listed in the Fourth Schedule.

" any provision . . . given by a Minister ", *i.e.*, section 23 (2) (*a*) and (*b*) and section 26 (2)–(4) in relation to such consents ; section 24 (2) and section 27 (5) in relation to such directions.

" in the exercise . . . compulsory powers ". This phrase is used in section 23 (2) (*b*) and section 26 (2) (*b*). It covers authorisations by confirmed compulsory purchase orders or special enactments. It should be noted that the definition excludes acquisitions made by authorities which *could have been* (but were not) authorised to acquire the land compulsorily—compare the definition of " public authority possessing compulsory powers " in section 69 (1) of the 1954 Act, which is incorporated in this Act, see section 57 (1) below.

" service . . . of a notice," *e.g.*, notices served under section 19 of the 1947 Act (as amended by section 35 of this Act), or under that section 19 as applied by sections 22 or 27 of that Act, or by section 59 of the 1954 Act, or under Part IV of this Act.

" corporate land ". See note on " land " on page 252.

" disposal ". See note on " dispose " on page 267.

PART III

ADMINISTRATIVE PROCEDURES AND RELATED PROCEEDINGS

31. Proceedings for challenging validity of certain orders and decisions.—(1) If any person—

(*a*) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers of the Act of 1947, or that any of the relevant requirements have not been complied with in relation to that order, or

(*b*) is aggrieved by any action on the part of the Minister to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of the Act of 1947, of the Act of 1954, or of this Act, as the case may be, or that any of the relevant requirements have not been complied with in relation to that action,

he may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.

(2) Without prejudice to the preceding subsection, if—

(*a*) the authority directly concerned with any order to which this section applies desire to question the validity of that order on any of the grounds mentioned in paragraph (*a*) of the preceding subsection, or

(*b*) the authority directly concerned with any action on the part of the Minister to which this section applies desire to question the validity of that action on any of the grounds mentioned in paragraph (*b*) of the preceding subsection,

the authority may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.

(3) This section applies to the following orders made after the commencement of this Act, that is to say—

(*a*) any order under section twenty-one of the Act of 1947 (which relates to the revocation or modification of planning permission) or under the provisions of that section as applied by or under any other provision of that Act ;

(*b*) any order under section twenty-six of that Act (which relates to orders requiring a use of land to be discontinued, or imposing conditions on the continuance of such a use) ;

(*c*) any order under section twenty-eight of that Act (which relates to the preservation of trees and woodlands) ;

(*d*) any order under section twenty-nine of that Act (which relates to the preservation of buildings of special architectural or historic interest) ;

(*e*) any order made in pursuance of subsection (4) of section thirty-one of that Act (which relates to the definition of areas of special control for the purposes of the control of advertisements).

(4) This section applies to action on the part of the Minister, taken after the commencement of this Act, of any of the following descriptions, that is to say—

(*a*) any decision of the Minister on an application for planning permission referred to him under section fifteen of the Act of 1947 ;

(*b*) any decision of the Minister on an appeal under section sixteen of that Act (which relates to appeals against planning decisions of local planning authorities) ;

(*c*) any decision of the Minister to confirm a notice under section nineteen of that Act (which relates to notices requiring the purchase of land by a local authority where permission to develop is refused) or under the provisions of that section as applied by or under any other provision of that Act or of the Act of 1954, and any decision of the Minister not to confirm such a notice (including any decision not to confirm such a notice in respect of part of the land to which it relates, and including any decision to grant any permission, or give any direction, in lieu of confirming such a notice, either wholly or in part) ;

(*d*) any decision of the Minister relating to an application for consent under an order made by virtue of section twenty-eight or section twenty-nine of the Act of 1947 or under any regulations made under that Act in accordance with section thirty-one of that Act, or relating to any certificate or direction under such an order or under any such regulations, being either a decision of the Minister on appeal or a decision on an application referred to him for determination in the first instance ;

(*e*) the giving by the Minister of any direction under section twenty-three of the Act of 1954 (which relates to the review of planning decisions where compensation is claimed) or under subsection (3) or subsection (4) of section forty-five of that Act (which relates to the review of past planning decisions and orders) ;

(*f*) any decision of the Minister on an appeal under section six of this Act.

(5) On any application under this section the High Court—

(*a*) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings ;

(*b*) if satisfied that the order or action in question is not within the powers of the Act of 1947, of the Act of 1954, or of this Act, as the case may be, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action :

Provided that paragraph (*a*) of this subsection shall not apply to applications questioning the validity of orders under section twenty-eight or section twenty-nine of the Act of 1947.

(6) In relation to any such order as is mentioned in paragraph (*c*) or paragraph (*e*) of subsection (3) of this section, the powers conferred on the High Court by the last preceding subsection shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.

(7) Subject to the preceding provisions of this section, the validity of an order to which this section applies, whether before or after it has been confirmed, and the validity of any action on the part of the Minister to which this section applies, shall not be questioned in any legal proceedings whatsoever.

(8) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Minister to take any action to which this section applies.

(9) In relation to any action which—

(*a*) apart from the provisions of the Fifth Schedule to the Act of 1947 (which contains special provisions relating to development by statutory undertakers) would fall to be taken by the Minister, and, if so taken, would be action to which this section applies, but

(*b*) by virtue of that Schedule is required to be taken by the Minister and the appropriate Minister,

the preceding provisions of this section shall have effect as if any reference in those provisions to the Minister were a reference to the Minister and the appropriate Minister :

Provided that where, by virtue of that Schedule, any such

action is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—

(i) if the order in which the action is embodied is confirmed by Act of Parliament under section six of the Statutory Orders (Special Procedure) Act, 1945, the preceding provisions of this section shall not apply ;

(ii) in any other case, subsections (1) and (2) of this section shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the date on which the order becomes operative under the said section six.

(10) References in this section to the confirmation of an order do not include the provisional confirmation of an order in pursuance of the proviso to subsection (4) of section twenty-eight or the proviso to subsection (4) of section twenty-nine of the Act of 1947, but (with that exception) include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.

(11) In this section " the relevant requirements ", in relation to any order or action to which this section applies, means any requirements of the Act of 1947, the Act of 1954, the Tribunals and Inquiries Act, 1958, or this Act, or of any order, regulations or rules made under any of those Acts, which are applicable to that order or action, and any reference to the authority directly concerned with any order or action to which this section applies—

(*a*) in relation to an order made by a local authority other than the local planning authority, and in relation to any decision of the Minister on appeal from a decision made by such a local authority, is a reference to that local authority ;

(*b*) in relation to any such decision as is mentioned in paragraph (*c*) of subsection (4) of this section, is a reference to the council on whom the notice in question was served, and, in a case where the Minister has modified such a notice, wholly or in part, by substituting another local authority or statutory undertakers for that council, includes a reference to that local authority or those statutory undertakers ;

(*c*) in any other case, is a reference to the local planning authority :

Provided that if, in a case falling within paragraph (*a*) of this subsection, the order or decision in question was made in the exercise of functions delegated to the other local authority by the

local planning authority, and it is agreed between the two authorities that the local planning authority shall act in the matter, the reference shall be construed as a reference to the local planning authority.

(12) In the application of this section to Scotland—

(*a*) for references to the Act of 1947 and to the following provisions of that Act, that is to say, sections fifteen, sixteen, nineteen, twenty-one, twenty-six, twenty-eight, twenty-nine and thirty-one, and subsection (4) of the said section twenty-eight, there shall be substituted references respectively to the Scottish Act of 1947 and to the following provisions of that Act, that is to say, sections thirteen, fourteen, seventeen, nineteen, twenty-four, twenty-six, twenty-seven and twenty-nine, and subsection (5) of the said section twenty-six ;

(*b*) for references to the Act of 1954 and to section forty-five of that Act there shall be substituted references respectively to the Scottish Act of 1954 and to section forty-seven of that Act ;

(*c*) for any reference to the High Court there shall be substituted a reference to the Court of Session ;

(*d*) in the proviso to subsection (9), in paragraph (i), the reference to section six of the Statutory Orders (Special Procedure) Act, 1945, shall be construed as including a reference to subsection (4) of section two of that Act ; and in paragraph (ii), for the words " the said section six " there shall be substituted the words " the said Act of 1945 ; " and

(*e*) notwithstanding anything in subsection (11) any reference to the authority directly concerned with any order or action to which this section applies shall be construed as a reference to the local planning authority, and in relation to any such decision as is mentioned in paragraph (*c*) of subsection (4) of this section, being a decision confirming the notice in question subject to the substitution of another local authority or statutory undertakers for the local planning authority, shall be construed as including a reference to that other local authority or those statutory undertakers.

NOTES TO SECTION 31

The section enables persons aggrieved by certain planning orders and Ministerial decisions to apply to the High Court to quash them on the grounds either (*a*) that they are outside the powers given by the Acts of

1947, 1954 and 1959, or (*b*) that the requirements of those Acts, or of the Tribunals and Inquiries Act, 1958, or of orders, regulations or rules made under any of the above Acts, have not been complied with and that the interests of the applicant have been substantially prejudiced thereby. The time for application is within six weeks of such orders being confirmed, or the decisions being given.

The section confers a precisely similar right on the authority directly concerned with the order or decision in question ; in most cases this is the local planning authority concerned. It is not however necessary for an authority to be " aggrieved " by the order or decision, before it can apply under the section.

The orders referred to are orders made under the 1947 Act on or after the 16th August, 1959, as follows :—

(*a*) under section 21, revoking or modifying planning permission, or under that section applied under other sections of the 1947 Act ;

(*b*) under section 26, requiring discontinuance of (authorised) users or the removal of (authorised) buildings ;

(*c*) under section 28 for the preservation of trees or woodlands ;

(*d*) under section 29 for the preservation of special buildings ;

(*e*) under section 31 (4) defining an area of special control for advertisements.

The Ministerial decisions against which this right of appeal is given are those made after :—

(*a*) under section 15 of the 1947 Act, on an application for planning permission called in by the Minister ;

(*b*) under section 16 of the 1947 Act, on an appeal against a planning decision of a local planning authority ;

(*c*) under section 19 of the 1947 Act, or under that section applied by any other section of that Act or by section 59 of the 1954 Act, confirming a purchase notice or taking other action in lieu of confirming it.

(*d*) under section 28, 29 or regulations under section 31 of the 1947 Act (see above), on an application for consent ;

(*e*) under sections 23, or 45 (3) or (4) of the 1954 Act, being decisions in effect substituted by Ministerial direction for planning decisions made by a local planning authority, under the Minister's review powers in Parts II and V of the 1954 Act ;

(*f*) under section 6 of the 1959 Act, on an appeal against a certificate for appropriate alternative development.

If satisfied on either of the grounds for such an application, the High Court may quash the order or decision complained of ; and pending such a final determination it may by interim order suspend the operation of the order or decision except in the case of tree preservation or building preservation orders.

In the case of a tree preservation order, and an order determining an area of special control for advertisements, the High Court's power to quash or suspend may be exercised either as to the whole or part of the order in question.

Apart from the special right given by the section to apply to the High Court on the specified grounds, the orders and decisions referred to are not to be open to challenge in any kind of judicial proceedings. But this will not prevent the Courts exercising any existing jurisdiction in respect of a failure or refusal on the part of the Minister to give any of the above decisions.

There are special provisions relating to decisions in respect of development by statutory undertakers, for which see note below on subsection (9).

" any person ". In *Ealing Borough Council* v. *Jones* [1959] 1 All E.R. 286, it was doubted whether a local planning authority, even if it were " aggrieved," could be a " person " within the similar phrase in section 23 (4) of the 1947 Act. And see the next note for a further reason why an independent right to apply is conferred by subsection (2) on the authority concerned with the order or decision in question.

" aggrieved ". Though used in many statutes, this term has never been precisely defined. It is clear however that to be " aggrieved " a person must have a particular grievance *of his own* beyond some inconvenience suffered by him in common with the rest of the public, see *R.* v. *Manchester Legal Aid Committee* [1952] 2 Q.B. 413. Further it is not sufficient that a person be merely disappointed or annoyed at the decision, see *R.* v. *London Quarter Sessions* [1951] 2 K.B. 508. As a result of *Ealing Borough Council* v. *Jones* [1959] 1 All E.R. 286, in which it was held that a local planning authority could not be " aggrieved " simply because it was frustrated in the performance of its public duty, subsection (2) confers a right on such authorities to apply to the High Court where they merely " desire to question the validity . . . etc."

" relevant requirements ", *i.e.*, the requirements of the Acts of 1947, 1954 or 1959, or the Tribunals and Inquiries Act 1958, or of any order, regulations or rules made under any of those Acts, see subsection (11) and notes below.

" six weeks ". This limit will apply even where it is *not* possible to discover the facts on which to base an application within the period, c.f. *Uttoxeter U.D.C.* v. *Clarke* [1952] 1 All E.R. 1318.

" confirmed ", *i.e.*, confirmed by the Minister with or without modifications, but not as *provisionally* confirmed in the case of tree preservation and building preservation orders, see subsection (10).

" authority directly concerned ". See subsection (11).

" section 21 ". Section 21 of the 1947 Act empowers local planning authorities to revoke or modify planning permissions previously granted under Part III of that Act, but only in so far as the development has not been completed. No order takes effect unless confirmed by the Minister, whether with or without modifications.

" section 26 ". Section 26 of the 1947 Act empowers local planning authorities to order the discontinuance of the use of any land or to impose conditions upon any use of land or to order the removal or alteration of any buildings or works, when it is expedient in the interests of proper planning in their areas. In theory this power can be used in respect of either authorised or unauthorised uses or buildings, and is additional to

the enforcement notice powers under section 23. No order takes effect without confirmation by the Minister.

" section 28 ". Section 28 of the 1947 Act empowers local planning authorities in the interests of amenity to make " tree preservation orders " prohibiting the cutting or destruction of trees without consent, or prescribing the replanting of a woodland area after forestry operations, and applying procedure for obtaining consent, and providing for compensation in respect of a refusal or conditional grant of consent. No order takes effect without confirmation by the Minister, but pending final confirmation the order may provisionally be confirmed (*e.g.*) to prevent destruction of the trees affected. There is no right of application to the High Court in respect of a provisional confirmation, see subsection (10). The Regulations dealing with such orders are the Town and Country Planning (Tree Preservation Order) Regulations 1950 (S.I. 1950 No. 534) and see Circular 27/53 and 60/51.

" section 29 ". Section 29 of the 1947 Act empowers local planning authorities to make " building preservation orders " restricting the demolition, alteration or extension of buildings of special architectural or historic interest. No order takes effect without confirmation by the Minister, but pending final confirmation the order may be provisionally confirmed (*e.g.*) to prevent destruction of the building concerned. There is no right of application to the High Court in respect of a provisional confirmation, see subsection (10). The regulations dealing with such orders are the Town and Country Planning (Building Preservation Order) Regulations 1948 (S.I. 1948 No. 1766).

" subsection (4) of section 31 ". Section 31 (4) of the 1947 Act enables areas of special control for advertisements to be defined either by provisions in development plans or by orders made or approved by the Minister in accordance with regulations. The relevant regulations are the Town and Country Planning (Control of Advertisements) Regulations 1948 (1948 S.I. No. 1613), as amended by the (Control of Advertisements) Amendment Regulations 1949 (S.I. 1949 No. 1473) and 1951 (S.I. 1951 No. 1038). Such areas are either rural areas, or other areas requiring special protection on grounds of amenity : see *Re Ellis and Ruislip-Northwood U.D.C.* [1920] 1 K.B. 343 for the meaning of " amenity."

" section 15 ". Section 15 of the 1947 Act empowers the Minister to direct that any application for planning permission or such applications of a specified class should be referred to him for decision instead of being dealt with by the local planning authority. The decision by the Minister on such applications was and is final, subject to this section. See sections 36 (5) and 37 (5) of this Act for procedural amendments on such applications.

" section 16 ". Section 16 of the 1947 Act gives a right of appeal to the Minister from a decision made by a local planning authority on an application for planning permission. See section 37 (5) of this Act for procedural amendments on such appeals.

" section 19 ". Section 19 of the 1947 Act enables owners of land, to whom planning permission has been refused or conditionally granted to

serve a purchase notice on the local authority if they claim that as a result their land is not, and cannot be rendered, capable of reasonably beneficial use. The purchase notice was formerly always subject to confirmation by the Minister.

The section was amended by section 70 of the 1954 Act and is further amended by section 35 and the Seventh Schedule of this Act, see particularly section 35 (4) and (5) for the effect of a quashing of the Minister's decision. See also the Ninth Schedule of this Act for the amended form of section 19.

" that section applied by . . . any other provision", *e.g.*, by sections 22 (4) or 27 (3) of the 1947 Act, by a Building Preservation Order, or by section 59 of the 1954 Act.

" grant any permission or give any direction ". On a purchase notice being referred to him for confirmation, the Minister can grant the permission originally asked for, or revoke conditions attached to a grant of such permission, or direct permission to be granted for alternative development, see section 19 (2) of the 1947 Act. See further section 35 of this Act.

" application for consent ". Under both sections 28 and 29 (see above) of the 1947 Act orders can provide for the consent of the local planning authority to be obtained before (*e.g.*) works of cutting down trees or alteration of buildings affected by such orders are carried out. For this purpose such orders can apply any of the preceding provisions of that Act for the making of applications for consent and appeals from decisions thereon : for the actual provisions applied, see the Building Preservation Order Regulations, 1948, model form of order. Where the Minister gives his decision on such matters arising from any appeal made to him or from any application referred to him, section 31 of this Act applies.

" regulations . . . section 31 ". See Part V of the Town and Country Planning (Control of Advertisements) Regulations 1948 (S.I. 1948 No. 1613), as modified by the (Control of Advertisements) Amendment Regulations 1949 (S.I. 1949 No. 1473) and 1951 (S.I. 1951 No. 1038).

" on appeal . . . in the first instance ", *i.e.*, on appeal under section 16 of that Act as applied by the order in question, or in the first instance under section 15 (see note above) as applied by the order.

" section 23 of the Act of 1954 ". Section 23 empowers the Minister to review any planning decision made on or after 1st January, 1955, which is the subject of a claim for compensation under Part II of the 1954 Act, and by direction he may, in appropriate cases, either substitute a decision more favourable to the claimant or in effect add a grant of, or an undertaking to grant, permission for alternative development.

" section 45 (3) or (4) ". Section 45 (3) and (4) of the 1954 Act give the Minister similar powers of review over any planning decision or any order modifying or revoking a planning permission, which was made before 1st January, 1955, when that decision or order is the subject of a claim for compensation under Part V of the 1954 Act.

" section 6 of this Act ". Section 6 gives a right of appeal to the Minister from a certificate issued under section 5 by a local planning

authority and stating what (if any) appropriate alternative development could reasonably have been expected to be permitted on the land proposed to be acquired.

" substantially prejudiced ". Thus, mere technical failures to comply with requirements, such as misprints in documents are unlikely to be regarded as justifying quashing unless, in such cases, the sense of the documents is changed adversely so far as the applicant is concerned or he had been misled thereby. Again, where an applicant had in fact received a statutory notice but not in strict accordance with the requirements as to the service of documents, it would be open to the Court to find that he had not been prejudiced substantially in the circumstances of the case.

" questioned . . . legal proceedings whatsoever ". The effect of this provision is that the jurisdiction of the Courts is ousted completely in respect of such orders, or actions (*i.e.*, decisions or directions), even where it is alleged that the order or action in question is a nullity, c.f. *Woollett* v. *Minister of Agriculture and Fisheries* [1954] 3 All E.R. 529, or was obtained on the grounds of fraud, c.f. *Smith* v. *East Elloe R.D.C.* [1956] A.C. 735 ; but in the latter event there might be a personal remedy for damages, see *Smith* v. *Pywell*, " The Times," 29th April, 1959.

" refusal or failure . . . to take any action ". The ouster of jurisdiction contained in subsection (7) applies when either an order is made or an action is taken, to which the section applies. But if the Minister *fails* or *refuses* to take any such action (*e.g.*, fails to give a decision on an appeal under section 16 of the 1947 Act), the Court's jurisdiction to compel him to carry out his duties, or to give other relief, is retained. In such cases Mandamus will lie ; and it will lie too when the Minister has given a decision in effect on an application not before him and has thus not given a decision on the real application before him, c.f. *R.* v. *Port of London Authority* [1919] 1 K.B. 176.

Subsection (9). The subsection provides in effect that application to the High Court will lie under the section where in relation to development of operational land by statutory undertakers any of the relevant decisions or directions fall to be given by " the Minister and the appropriate Minister " by virtue of the Fifth Schedule of the 1947 Act, instead of by the Minister alone.

But the Fifth Schedule requires some decisions in relation to such development to be embodied in orders subject to special parliamentary procedure (see paragraphs 1 (2), 3 (2) and 4 (2) of the Schedule), and where such an order is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945, there will be no right of application under this section. When such an order comes into operation *without* confirmation by Act of Parliament, there is a right of application under this section, and the time within which the right must be exercised is six weeks from the date when the order comes into operation.

" proviso to subsection (4) ". Subsection (4) of both sections 28 and section 29 of the 1947 Act (see notes above) enable the Minister to confirm

tree preservation orders and building preservation orders provisionally without complying with the requirements of the Town and Country Planning (Tree Preservation Order) Regulations 1950 (S.I. 1950 No. 534) or the Town and Country Planning (Building Preservation Orders) Regulations 1948 (S.I. 1948 No. 1766). Such orders provisionally confirmed in this way are effective for two months thereafter, but cease to be effective after that time unless finally confirmed.

" relevant requirements ". It is to be noted that if the relevant requirements have not been complied with " in relation to " one of the specified orders or decisions, there is a ground of appeal under the section, see the wording of subsection 1 (*a*) and (*b*) above. Since subsection (7) above ousts the jurisdiction of the Courts to question the validity of the specified orders or decisions other than under this section, it is thought that the words " in relation to " must include all steps leading up to the making of the relevant order or decision and are not restricted to the actual process of the making of the order or decision itself.

The principal requirements in relation to the specified orders and decisions are as follows :—

(*a*) in all cases where appropriate, rules governing the conduct of statutory inquiries held prior to and for the purpose of the making of such orders or decisions must have been observed. For such rules, see section 33 of the 1959 Act below, and see also section 290 (2)–(5) of the Local Government Act 1933 and text on page 159 above.

(*b*) requirements as to proper service of necessary notices must have been observed : see section 55 of the 1959 Act, and text on page 160 above, and section 105 of the 1947 Act.

(*c*) requirements in relation to orders and decisions under:–

Section 21/1947 :	See terms of that section.
Section 26/1947 :	See terms of that section.
Section 28/1947 :	See terms of that section ; Tree Preservation Order Regulations 1950 (S.I. 1950 No. 534).
Section 29/1947 :	See terms of that section and of the Order made under it ; see also the Building Preservation Order Regulations 1948 (S.I. 1948 No. 1766).
Section 31(4)/1947 :	See terms of that section ; Control of Advertisements Regulations 1948 (S.I. 1948 No. 1613) ; 1949 (S.I. 1949 No. 1473) and 1951 (S.I. 1951 No. 1038).
Section 15/1947 :	See terms of that section, and section 14 (1) and (2) of the 1947 Act ; sections 36 and 37 of the 1959 Act ; General Development Order 1950 (S.I. 1950 No. 728), Articles 5 and 10.
Section 16/1947 :	See terms of that section, and sections 15 and 14 (1) and (2) of 1947 Act ; section 37 of 1959 Act ; G.D.O. 1950 (S.I. 1950 No. 728), Article 11.
Section 19/1947 :	See terms of that section, and section 70 of 1954 Act as amended by section 35 and Seventh Schedule of 1959 Act. For special applications of section 19, see sections 22 (4) and 27 (3) of 1947 Act and section 59 of 1954 Act, or relevant Building Preservation Order.

Sections 28, 29, 31(4)/1947 :	See notes above.
Sections 23 and 45/1954 :	See terms of those sections ; section 24 of the 1954 Act and the Compensation Regulations 1954 (S.I. 1954 No. 1600).
Section 6/1959 :	See terms of that section ; section 5 and section 8 of the 1959 Act, and the General Development Order 1959 (S.I. 1959 No. 1286).

" statutory undertakers ". For the Minister's newly extended power to substitute statutory undertakers for the council on whom a purchase notice under section 19 of the 1947 Act is served, see the Seventh Schedule of this Act which amends section 19 of that Act.

32. Appeals from certain decisions under Town and Country Planning Acts.—(1) Subsection (1) of section nine of the Tribunals and Inquiries Act, 1958 (which relates to appeals from certain tribunals), shall have effect in relation to any decision of the Minister to which this section applies as it has effect in relation to a decision of any of the tribunals mentioned in that subsection, but with the substitution, for the reference to a party to proceedings before such a tribunal, of a reference to either of the following, that is to say, the person who made the application to which the Minister's decision relates and the local planning authority.

(2) This section applies to any decision of the Minister made after the commencement of this Act—

(*a*) on an application under section seventeen of the Act of 1947 (which relates to applications to determine whether proposed operations or changes of use involve development or require planning permission) which is referred to the Minister under the provisions of section fifteen of that Act as applied by that section ; or

(*b*) on an appeal from a decision of the local planning authority under the said section seventeen, being an appeal brought under the provisions of section sixteen of that Act as so applied.

(3) Where an application under section seventeen of the Act of 1947 is made as part of an application for planning permission, the preceding provisions of this section shall have effect in relation to that application in so far as it is an application under the said section seventeen, but not in so far as it is an application for planning permission.

(4) Subsection (3) of section nine of the said Act of 1958 (which relates to the power to make rules of court) shall have effect, in relation to proceedings brought by virtue of subsection (1) of that section as applied by this section, as if in the said subsection (3) any reference to the tribunal were a reference to the Minister.

(5) Without prejudice to the last preceding subsection, the power to make rules of court in relation to proceedings in the High Court or the Court of Appeal brought by virtue of the said subsection (1) as applied by this section shall include power to make rules providing for the Minister, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(6) In the application of this section to Scotland—

(*a*) for references to sections fifteen, sixteen and seventeen of the Act of 1947 there shall be substituted references respectively to sections thirteen, fourteen and fifteen of the Scottish Act of 1947 ; and

(*b*) for any reference to the High Court or the Court of Appeal there shall be substituted a reference to the Court of Session ;

and any reference to subsection (1) of section nine of the said Act of 1958 shall be construed as including a reference to subsection (6) of that section.

Notes to Section 32

The section provides for a right of appeal to the High Court from decisions made by the Minister on or after the 16th August, 1959, either

(*a*) on an application under section 17 of the 1947 Act to determine whether proposed operations or changes of use involve development or require planning permission, when the application is referred to the Minister under section 15 of that Act ; or

(*b*) on an appeal from a decision made by a local planning authority on an application under section 17 of the 1947 Act.

This right of appeal is given both to the applicant and the local planning authority concerned.

The section effects this by applying section 9 (1) of the Tribunals and Inquiries Act 1958 to such decisions of the Minister. Rules of Court made under section 9 (2) of that Act may also under section 9 (3) prescribe the powers of the High Court and the Court of Appeal in relation to (*a*) the giving of any decision which might have been given by the Minister, or (*b*) the remitting of the matter to the Minister with the opinion or direction of the Court for rehearing and determination, or (*c*) the giving of directions to the Minister. Such rules may also provide for the Minister to be treated as a party to such proceedings and to be entitled to appear and be heard in them.

" subsection (1) . . . Tribunals and Inquiries Act 1958 ". Section 9 (1) of the Tribunals and Inquiries Act 1958 provides that any party to proceedings before certain specified Tribunals may appeal from decisions of those Tribunals made after the appointed day to the High Court or may require such Tribunals to state a case for the opinion of the High

Court. Decisions of the High Court on such cases stated shall be judgments of the High Court for the purpose of appeal therefrom to the Court of Appeal, see section 27 of the Supreme Court of Judicature (Consolidation) Act 1925. The Tribunals and Inquiries Act 1958 (Commencement) Order 1959 (S.I. 1959 No. 451) appointed the 1st April, 1959 to be the appointed day for the purpose of section 9 of that Act.

" section 17 of the Act of 1947 ". Section 17 enables persons proposing to carry out operations or to change a use of land to apply to the local planning authority to determine whether the operations or change of use constitute development, and if so whether planning permission is required having regard to the Development Order (1950). The earlier provisions of that Act relating to the granting of permissions apply to such applications, including *inter alia* those relating to (*a*) the considerations to which the local planning authority must have regard in determining the application, (*b*) the reference of applications to the Minister, (*c*) appeals to the Minister. It should be noticed that if an application under section 17 of the 1947 Act is not merely for a determination of the question whether proposed operations or change of use constitutes development but is made as part of an application for planning permission, the right of appeal given by this section does not extend to the latter issue, which is a matter of planning merit only, see subsection (3).

" section 16 of that Act ". Section 16 of the Act, as applied by section 17, gives a right of appeal to the Minister from a decision made by the local planning authority on an application under section 17. Section 17 did not however oust the jurisdiction of the Courts to make a declaration as to whether proposed operations or change of use constitute development, see *Pyx Granite Co.* v. *Minister of Housing and Local Government*, [1959] 3 W.L.R. 346, H.L. But the jurisdiction was not called upon, until recently.

" subsection (3) of section 9 ". Section 9 (3) of the Tribunals and Inquiries 1958 Act provides that the power to make rules of court in relation to proceedings in the High Court or in the Court of Appeal under that section shall include power to make such rules prescribing the powers of those Courts in respect of (*a*) the giving of any decision which might have been given by the Tribunal (in this case the Minister), (*b*) the remitting of the matter with the opinion or direction of the court for rehearing and determination by the Tribunal and (*c*) the giving of directions to the Tribunal.

33. Procedure in connection with statutory inquiries.—In the Tribunals and Inquiries Act, 1958, the following section shall be inserted after section seven :—

> " 7A.—(1) The Lord Chancellor, after consultation with the Council, may make rules for regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of Ministers ; and different provision may be made by any such rules in relation to different classes of such inquiries.

(2) Any rules made by the Lord Chancellor under this section shall have effect, in relation to any statutory inquiry, subject to the provisions of the enactment under which the inquiry is held, and of any rules or regulations made under that enactment.

(3) Subject to the last foregoing subsection, rules made under this section may regulate procedure in connection with matters preparatory to such statutory inquiries as are mentioned in subsection (1) of this section, and in connection with matters subsequent to such inquiries, as well as in connection with the conduct of proceedings at such inquiries.

(4) The power to make rules under this section shall be exercisable by statutory instrument ; and any instrument containing any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In the application of this section to inquiries held in Scotland, for any reference to the Lord Chancellor there shall be substituted a reference to the Lord President of the Court of Session, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules made by the Lord President of the Court of Session under this section in like manner as if the Lord President of the Court of Session were a Minister of the Crown ; and the Council, in exercising their functions under this section in relation to rules to be made by the Lord President of the Court of Session, shall consult with the Scottish Committee."

Notes to Section 33

The section adds a new section to the Tribunal and Inquiries Act 1958, providing for the making of rules by the Lord Chancellor to regulate procedure in connection with statutory inquiries held by or on behalf of any Minister. Such rules, which are to have effect subject to the enactments under which such inquiries are held or to any rules or regulations made thereunder, may provide for procedure before, after or during the inquiries : and different rules may be made for different classes of such inquiries.

" the Council ". The Tribunals and Inquiries Act 1958 provides for the appointment of a Council on Tribunals, to keep under review and report on specified Tribunals, to consider and report on matters with regard to any Tribunals referred to it, and to consider and report on administrative procedures which involve the holding of statutory inquiries by any Minister. The Council was appointed in December, 1958.

" statutory inquiries ". It will be noted that this provision is not limited to inquiries for the purpose of this Act, nor even to planning

inquiries. Section 55 (1) of this Act applies section 104 of the 1947 Act for the purpose of this Act and thus empowers the Minister to hold local inquiries for the purpose of exercising any of his functions under the 1959 Act.

34. Inquiries as to compulsory purchase of land for parish councils.—Subsection (5) of section one hundred and sixty-eight of the Local Government Act, 1933 (which restricts the hearing of counsel and of expert witnesses at inquiries relating to compulsory purchases under that section) shall not have effect in relation to any inquiry begun after the commencement of this Act.

NOTES TO SECTION 34

The section provides that section 168 (5) of the Local Government Act 1933 shall not have effect in relation to any inquiry begun on or after the 16th August, 1959, and thus removes the prohibition contained in that subsection against representation by counsel or expert witnesses at inquiries held by a county council on behalf of a parish council prior to a compulsory purchase under that section.

" section 168 ". Section 168 of the Local Government Act 1933 enables parish councils to secure the compulsory purchase of land, which they cannot purchase by agreement on reasonable terms, through the county council for the area. The county council, if satisfied that they would be justified in acting under the section, must hold a local inquiry and may make a compulsory purchase order for confirmation by the Minister. Subsection (5) prevented representation by counsel or expert witnesses at such inquiries, unless the Minister directed otherwise.

" after the commencement of this Act ", *i.e.*, on or after the 16th August, 1959.

35. Provisions as to purchase notices.—(1) Section nineteen of the Act of 1947 (which relates to purchase notices) shall have effect, in relation to any purchase notice served after the commencement of this Act, as if the following subsections were inserted after subsection (1) of that section :—

" (1A) The Council on whom a purchase notice is served under this section shall, before the end of the period of three months beginning with the date of service of that notice, serve on the owner by whom the purchase notice was served a notice stating either—

(*a*) that the council are willing to comply with the purchase notice ; or

(*b*) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place ; or

(*c*) that, for reasons specified in the notice under this subsection, the council are not willing to comply

with the purchase notice, and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have transmitted a copy of the purchase notice to the Minister, on a date specified in the notice under this subsection, together with a statement of the reasons so specified.

(1B) Where the council upon whom a purchase notice is served under this section have served on the owner by whom the purchase notice was served a notice in accordance with paragraph (*a*) or paragraph (*b*) of the last foregoing subsection, the council, or the other local authority or statutory undertakers specified in the notice, as the case may be, shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served a notice to treat in respect thereof on the date of service of the notice under the last foregoing subsection."

(2) In relation to any purchase notice served after the commencement of this Act, section nineteen of the Act of 1947 shall have effect with the substitution, for subsection (2A) of that section, of the following subsection :—

" (2A) Where, for the purpose of determining whether the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are fulfilled in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any prospective use of that land which would involve the carrying out of development of any class not specified in the Third Schedule to this Act."

(3) In its application to purchase notices served after the commencement of this Act, the said section nineteen shall have effect as if, after subsection (5) of that section, there were added the following subsections :—

" (6) In the last foregoing subsection, any reference to the taking of action in lieu of confirming a purchase notice includes a reference to the taking of a decision not to confirm the notice on the grounds that any of the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are not fulfilled.

(7) Where the Minister has given notice under subsection (5) of this section of his proposed action, and any of the persons,

authorities and statutory undertakers concerned have appeared before and been heard by a person appointed by the Minister for the purpose, and it then appears to the Minister to be expedient to take action under this section otherwise than in accordance with the notice given by him, the Minister may take that action accordingly."

(4) Where the Minister has notified the owner by whom a purchase notice has been served of any such decision on his part as is mentioned in paragraph (*c*) of subsection (4) of section thirty-one of this Act, and that decision of the Minister is quashed under that section, the purchase notice shall be treated as cancelled, but the owner may serve a further purchase notice in its place.

(5) For the purposes of any regulations made under the Act of 1947 as to the time within which a purchase notice may be served, the service of a purchase notice under the last preceding subsection shall not be treated as out of time if the notice is served within the period which would be applicable in accordance with those regulations if the planning decision, in consequence of which the notice is served, had been made on the date on which the decision of the Minister was quashed as mentioned in the last preceding subsection.

(6) In the application of this section to Scotland, for references to the Act of 1947 and section nineteen of that Act there shall be substituted references respectively to the Scottish Act of 1947 and section seventeen of that Act ; subsection (1) of this section shall have effect as if, in the subsections (1A) and (1B) inserted thereby, for any reference to the council there were substituted a reference to the local planning authority, as if, in the said subsection (1A), for any reference to the Minister there were substituted a reference to the Secretary of State and as if, in the said subsection (1B), for the words " Part IV " there were substituted the words " Part III " ; and subsection (2) of this section shall be omitted ; and subsection (3) of this section shall have effect as if, in the subsection (7) inserted thereby, for any reference to the Minister there were substituted a reference to the Secretary of State.

Notes to Section 35

The section amends the procedure in relation to purchase notices served on or after the 16th August, 1959, under section 19 of the 1947 Act by persons who claim that, as a result of a refusal of planning permission or conditions imposed on a grant of permission, their land is not, and cannot be rendered, capable of reasonably beneficial use. The section should be read in conjunction with the amendments to section 19 contained in the Seventh Schedule of this Act.

The amendments :—

(*a*) enable the councils of county boroughs or county districts to comply with purchase notices without the notices having to be confirmed by the Minister under the former procedure, and for this purpose require the council on whom a purchase notice is served to serve a counter-notice within three months stating either that they or another local authority or statutory undertakers are willing to comply with the purchase notice, *or* that they are not willing to do so for reasons given in the counter-notice and have transmitted the purchase notice to the Minister.

(*b*) prevent the Minister from taking into account any development other than Third Schedule development in considering what would be a reasonably beneficial use of land for the purpose of deciding whether the conditions set out in section 19 (1) of the 1947 Act are fulfilled in relation to that land, but enables him once again to direct under section 19 (2) (*b*) the grant of permission for development other than Third Schedule development if he considers that thereby the land could be rendered capable of reasonably beneficial use.

(*c*) require the Minister, when he proposes not to confirm a purchase notice on the grounds that any of the conditions specified in section 19 (1) of the 1947 Act are not fulfilled, to notify the interested parties of his proposed action and to afford any of them a hearing if they require it.

(*d*) enable the Minister to substitute any statutory undertakers (or, as before, any other local authority) in place of the council on whom the notice was served (see Seventh Schedule).

(*e*) enable the Minister, after hearing representatives by the interested parties, to take action under the section *other than* the proposed action of which he had previously notified the interested parties, without having to repeat the process of notifying and hearing the parties.

The section further provides that if the council on whom the purchase notice is served or another local authority or any statutory undertakers are willing to comply with it, the council or local authority or statutory undertakers are deemed to be authorised to acquire the land compulsorily under Part IV of the 1947 Act, and to have served a notice to treat on the date on which the counter-notice was served.

The section also deals with the position where a Minister's decision under section 19 is quashed by the High Court under section 31 of this Act. In that event, the purchase notice is cancelled, but the owner may serve a new one, in effect, within 6 months of the date of the quashing.

See Ninth Schedule for the new form of section 19 of the 1947 Act as amended, and see M.H.L.G. Circular No. 49/59 for the practice in relation to purchase notices.

" section 19 of the Act of 1947 ". Section 19 enables owners of land to whom planning permission has been refused, or granted only subject to conditions, to serve a purchase notice on councils of county boroughs

or county districts in which the land is situated, if they claim that the land is not, and cannot be rendered, capable of reasonably beneficial use. The section was amended by section 70 of the 1954 Act, but that amendment is itself amended by subsection (2) of this section. Section 19 was applied by section 22 and section 27 of the 1947 Act, by section 59 of the 1954 Act, and can be applied by a Building Preservation Order.

" after the commencement of this Act ", *i.e.*, on or after the 16th August, 1959.

" subsection (1) ". Subsection (1) of section 19 provides the right to serve a purchase notice. When such a notice was served, the former procedure required (under subsection (2)) the council to transmit the notice to the Minister forthwith, and the Minister had to confirm it or not in accordance with the section, even if that authority or any local authority was already prepared to comply with the notice.

" the owner . . . was served ", As to persons entitled to serve purchase notices, see *Borthwick Norton* v. *Collier*, (1950), 1 P.C.R. 147 and *London Corporation* v. *Cusack Smith*, [1955] A.C. 337, and section 119 (1) of the 1947 Act.

" for reasons specified ". The Minister has stated that the reasons given should be full and clear, and that paragraphs 7 and 8 of M.H.L.G. Circular No. 9/58 should be complied with. The statement of reasons should be sufficient for the purposes of any hearing under section 19 (5) of the 1947 Act ; see M.H.L.G. Circular No. 49/59.

Subsection (2). This subsection amends the additional subsection which was inserted into section 19 of the 1947 Act by section 70 of the 1954 Act. The amendment arises out of the decision in *R.* v. *Minister of Housing and Local Government, ex. p. Rank Organisation* [1958] 1 W.L.R. 1093 which was to the effect that that additional subsection to section 19, as originally drafted, prevented the Minister from directing under section 19 (2) (*b*) the grant of permission for alternative development other than Third Schedule development. The new subsection, now substituted, makes it clear that the limitation applies only where the question is whether the conditions in section 19 (1) are fulfilled or not.

" subsection (5) of that section ". Subsection (5) of section 19 required the Minister, before confirming a purchase notice or taking any other action in lieu thereof (*e.g.*, granting the permission originally asked for ; or revoking or amending the conditions imposed ; or directing the grant of alternative permission ; or substituting another local authority), to give notice of his proposed action to the person serving the purchase notice, the council served with the notice, the local planning authority and any other local authority whom the Minister proposes to substitute for the council. Then the Minister must hear representatives from such persons if they so require, before confirming the notice or taking such other actions in lieu.

" decision not to confirm ". Subsection (5) of section 19 of the 1947 Act before this amendment did not require the Minister to notify parties of any proposal on his part not to confirm the purchase notice, before actually making his decision.

" otherwise than in accordance with the notice ". Subsection (5), before this amendment, did not entitle the Minister to take other action as a result of hearing representatives from the interested parties, without resorting to the process of notifying parties again of such a proposed action and affording fresh hearings to them ; see *Ealing Borough Council* v. *Minister of Housing and Local Government* [1952] Ch. 856.

" decision . . . paragraph (c) of section 31 (4) ", *i.e.*, a decision to confirm or not to confirm, or to take other action in lieu of confirming.

" quashed under that section ". Section 31 gives the High Court power to quash such a decision on application made to it, on the grounds either that the decision was not within the powers of the Act of 1947, 1954 or 1959, or that the relevant requirements have not been carried out in relation to such decision and that the applicant's interests have been substantially prejudiced thereby.

" cancelled ". There is no power given to the Minister to decide afresh on the notice. The purchase notice has to be cancelled, since subsection (3) of section 19 provides that after a period of six months the notice is deemed to be confirmed if the Minister has not confirmed the notice or taken action in lieu or notified the owner of his decision not to confirm. This six-month period now runs (by virtue of an amendment in the Seventh Schedule) from either the end of the three-month period given to the council in question to decide whether or not to comply with the notice, or the date when the notice is transmitted to the Minister, whichever is the earlier. Formerly the six-month period ran from the date of the service of the notice.

" regulations . . . Act of 1947 ". The Town and Country Planning (General) Regulations 1948 (S.I. 1948 No. 1380), Article 4, provides that purchase notices shall be served within six months of the planning decision in question, or such extended period as the Minister may allow. The Minister proposes to extend this period to 12 months, see M.H.L.G. Circular 49/59.

36. Publication of notice of applications for planning permission.—(1) An application made after the commencement of this Act for planning permission for development of any class to which this section applies—

(*a*) shall not be entertained by the local planning authority unless it is accompanied by a copy of a notice of the application, in such form as may be prescribed by a development order, and by such evidence as may be so prescribed that the notice has been published in a local newspaper circulating in the locality in which the land to which the application relates is situated ; and

(*b*) shall not be determined by the local planning authority before the end of the period of twenty-one days beginning with the date appearing from the evidence accompanying

the application to be the date on which the notice was published as mentioned in the preceding paragraph.

(2) Any such notice as is mentioned in paragraph (*a*) of the preceding subsection shall (in addition to any other matters required to be contained therein) name a place within the locality where a copy of the application, and of all plans and other documents submitted therewith, will be open to inspection by the public at all reasonable hours during such period (not being less than twenty-one days, beginning with the date of publication of the notice) as may be specified in the notice.

(3) Provision may be made by a development order for designating the classes of development to which this section applies, and this section shall apply accordingly to any class of development which is for the time being so designated.

(4) In determining any such application for planning permission as is mentioned in subsection (1) of this section, the local planning authority shall take into account any representations relating to that application which are received by them before the end of the period of twenty-one days mentioned in paragraph (*b*) of subsection (1) of this section.

(5) Subsection (1) of this section and the last preceding subsection shall apply, with the necessary modifications, in relation to applications referred to the Minister under section fifteen of the Act of 1947, or made to the Minister in pursuance of regulations made under subsection (3) of section thirty-five of that Act (which relates to applications for planning permission by local planning authorities), as they apply in relation to applications for planning permission which fall to be determined by the local planning authority.

(6) Any reference in this section to the local planning authority includes a reference to any local authority to whom any of the functions of the local planning authority under Part III of the Act of 1947 have been delegated.

(7) In the application of this section to Scotland, for references to sections fifteen and thirty-five of the Act of 1947 there shall be substituted references respectively to sections thirteen and thirty-two of the Scottish Act of 1947, and subsection (6) shall be omitted.

Notes to Section 36

The section provides that where an application is made on or after the 16th August, 1959, for planning permission for certain classes of development specified in the Town and Country Planning General Development Order 1959 (S.I. 1286), Article 7, it must be accompanied

by a copy of a notice of the application which has been published in a local newspaper, and that copy must be certified by or on behalf of the applicant that it was so published. The notice so published must name a place in the locality where the application and accompanying plans and documents can be inspected at all reasonable hours. The specified classes of development are set out below in the notes.

When such an application is made to the local planning authority (or an authority to whom planning functions have been delegated), that authority must not determine the application until after twenty-one days from the date shown to have been the date of publication of the notice ; and when so deciding upon the application, that authority must take into account any representations received by them before the twenty-one days are expired.

The same principles apply when the application is called in by the Minister under section 15 of the 1947 Act, or under the Town and Country Planning (Development by Local Planning Authorities) Regulations 1948 (S.I. 1948 No. 2302).

" An application ". It should be observed that the requirements of this section are additional to the requirements of the next section. In cases therefore falling within this section, *both* a notice and the prescribed evidence under this section *and* a certificate under the next section have to accompany the application. An application for permission may be made by an owner or by any other person who genuinely hopes to acquire the land in question, see *Hanily* v. *Minister of Local Government and Power* [1952] 2 Q.B. 444.

" development . . . to which the section applied ", *i.e.*, development specified in the General Development Order 1959 (S.I. No. 1286), Article 7. The classes specified for the time being are :—

(*a*) construction of buildings for use as a public convenience ;

(*b*) construction of buildings or other operations, or use of land, for the disposal of refuse or waste material ;

(*c*) construction of buildings or other operations (other than the laying of sewers, the construction of septic tanks serving single dwelling-houses, and works ancillary thereto) or use of land, for the purpose of sewage disposal ;

(*d*) construction of buildings or use of land for the purposes of a slaughterhouse or knacker's yard ;

(*e*) construction of buildings and use of buildings for any of the following purposes, namely as a theatre, a cinema, a music hall, a dance hall, a skating rink, a swimming bath, a Turkish oro ther vapour or foam-bath, a gymnasium or a building for indoor games.

" prescribed by development order ", see the General Development Order, 1959, First Schedule, see page 437 below.

" evidence . . . prescribed ". Article 7 (2) of the General Development Order 1959 provides that the copy of the notice shall be certified by or on behalf of the applicant, as having been published in a named newspaper on a date specified in the certificate, see page 437 below.

" any representations ". No limitation is imposed on the class of

persons whose representations can be received and taken into account by the planning authority. Persons therefore whose interests are not directly affected (*e.g.*, persons who are not "neighbours" to the development) may make representations with regard to the development.

"section 15 of the Act of 1947". Section 15 empowers the Minister to direct that any application for planning permission, or such applications of a specified class, should be referred to him for decision instead of being determined by the local planning authority.

"regulations made under section 35 (3)". Section 35 (3) of the 1947 Act provides in effect for regulations to modify the procedure for the granting of planning permission, where a local authority wishes to develop land for which it is also the local planning authority. The Town and Country (Development by Local Planning Authorities) Regulations 1951 (S.I. 1951 No. 2069) require a local authority in such a case to notify the Minister of its proposal to develop the land. If he thinks fit, the Minister may then, within a month, direct that a formal application for permission be made, and that application is then deemed to be referred to the Minister under section 15 of the 1947 Act (see note above), and that section then applies. In such cases notice is required under section 37. But the Minister has asked local planning authorities to give similar notice in cases where a permission is deemed to be given under the above Regulations, see M.H.L.G. Circular No. 48/59.

"functions . . . have been delegated". Delegation from local planning authorities to councils of county districts, may take place under section 34 of the 1947 Act and the Town and Country Planning (Authorisation of Delegation) Regulations 1947 (S.I. 1947 No. 2499) and to the Common Council of the City of London under section 114 (10) of the 1947 Act and the Town and Country Planning Delegation (London) Regulations 1948 (S.I. 1948 No. 1459).

37. Notification of applications for planning permission to owners and agricultural tenants.—(1) Without prejudice to the last preceding section, a local planning authority shall not entertain any application for planning permission made after the commencement of this Act unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say—

(*a*) a certificate stating that, in respect of every part of the land to which the application relates, the applicant is either the estate owner in respect of the fee simple or is entitled to a tenancy thereof ;

(*b*) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to

them respectively, and the date of service of each such notice ;

(*c*) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in the last preceding paragraph as are specified in the certificate (setting out their names, the addresses at which the notice of the application was given to them respectively, and the date of the service of each such notice) and that he does not know the names and addresses of the remainder of those persons ;

(*d*) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (*a*) of this subsection, and that he does not know the names and addresses of any of the persons mentioned in paragraph (*b*) of this subsection.

(2) Any such certificate as is mentioned in paragraph (*c*) or paragraph (*d*) of the preceding subsection shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period mentioned in paragraph (*b*) of the preceding subsection) been published in a local newspaper circulating in the locality in which the land in question is situated.

(3) In addition to any other matters required to be contained in a certificate issued for the purposes of this section, every such certificate shall contain one or other of the following statements, that is to say,—

(*a*) a statement that none of the land to which the application relates constitutes or forms part of an agricultural holding ;

(*b*) a statement that the applicant has given the requisite notice of the application to every person who, at the beginning of the period of twenty-one days ending with the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, and setting out the name of each such person, the address at which notice of the application was given to him, and the date of service of that notice.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in paragraph (*b*), paragraph (*c*) or paragraph (*d*) of subsection (1) of this section,

or by a certificate containing a statement in accordance with paragraph (*b*) of the last preceding subsection,—

(*a*) the local planning authority shall not determine the application before the end of the period of twenty-one days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later ;

(*b*) the local planning authority, in determining the application, shall take into account any representations relating thereto which are made to them, before the end of the period specified in the preceding paragraph, by any person who satisfies them that he is an owner of any of the land to which the application relates or that he is the enant of an agricultural holding any part of which is comprised in that land ;

(*c*) the local planning authority shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with the last preceding paragraph.

(5) The preceding provisions of this section shall apply, with the necessary modifications,—

(*a*) in relation to an application for planning permission which is referred to the Minister under section fifteen of the Act of 1947 or is made to the Minister in pursuance of regulations made under subsection (3) of section thirty-five of that Act, and

(*b*) in relation to an appeal to the Minister under section sixteen of that Act from a decision of the local planning authority,

as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.

(6) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.

(7) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by a development order ;

and any reference in any provision of this section to the requisite notice, where a form of notice is prescribed by a development order for the purposes of that provision, is a reference to a notice in that form.

(8) In this section " owner " in relation to any land means a person who is for the time being the estate owner in respect of the fee simple thereof or is entitled to a tenancy thereof granted or extended for a term of years certain of which not less than ten years remain unexpired, and " agricultural holding " has the same meaning as in the Agricultural Holdings Act, 1948 ; and any reference to the local planning authority includes a reference to any local authority to whom any of the functions of the local planning authority under Part III of the Act of 1947 have been delegated.

(9) In the application of this section to Scotland for references to sections fifteen, sixteen and thirty-five of the Act of 1947 there shall be substituted references respectively to sections thirteen, fourteen and thirty-two of the Scottish Act of 1947 ; for paragraph (*a*) of subsection (1) there shall be substituted the following paragraph, that is to say—

" (*a*) a certificate stating that in respect of every part of the land to which the application relates the applicant is the proprietor of the dominium utile or is the lessee under a lease thereof ; "

and for subsection (8) there shall be substituted the following subsection, that is to say,—

" (8) In this section " owner " in relation to any land, means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than ten years, and " agricultural holding " has the same meaning as in the Agricultural Holdings (Scotland) Act, 1949."

NOTES TO SECTION 37

This section provides that :—

(*a*) applications for planning permission made to local planning authorities (or to other authorities to whom their planning functions are delegated) and decided by them, or referred to the Minister for determination ; and

(*b*) appeals to the Minister from decisions made by local planning authorities on such applications

must, on or after the 16th August, 1959, be accompanied by a certificate stating either that the applicant is the freeholder or a tenant of the whole land in question, or that in one or both of two ways he has given notice of

his application to those persons who were either " owners " of interests in any part of the land 21 days before the application or who were tenants of " agricultural holdings " in any part of the land at that time. An " owner " for this purpose is a freeholder or a tenant for a term of years certain with at least 10 years of his tenancy to run. The notice required to be given to such owners must be served on each individually or, if any of them are not known, must be published in a local newspaper. But in the case of a tenant of an agricultural holding, notice must be served on him whatever the length of his tenancy, and can only be served individually.

Such applications and appeals must not be determined until twenty-one days have elapsed since (and including) the last date of giving an individual notice to any owner or to any tenant of an agricultural holding or the date of publication of the notice, whichever is the later ; and then in determining the application or appeals the planning authority, or the Minister as the case may be, must take into account any representations made to them by such " owners " or by tenants of agricultural holdings before the twenty-one days have elapsed. Such " owners " and tenants of agricultural holdings as are entitled to have their representations taken into account are given the right to receive notice of the decision made on the application or appeal, as the case may be.

It is made an offence to issue a certificate knowing that it contains a false or misleading statement or recklessly to issue a certificate containing such a statement. The penalty is a fine not exceeding £50.

The form of the certificate and notices required under this section are prescribed by the Town and Country Planning General Development Order 1959 (S.I. No. 1286), Second Schedule, see pages 438–42 below.

" Without prejudice . . . preceding section ". In cases to which section 36 of this Act applies the notice required under that section must be served in addition to the certificate required under this section.

" any application ". An application may be made by an owner or by any other person who genuinely hopes to acquire the land in question, see *Hanily* v. *Minister of Local Government and Power* [1952] 2 Q.B. 444. This does not extend to an application for consent to the display of advertisements under the advertisement regulations, as under those regulations, the permission of the owner of land and other persons able to give permission is required as a condition of the granting of consent for the display of advertisements on that land, see Control of Advertisements Regulations 1948 (S.I. 1948 No. 1613), Regulation 5 (4), and Regulation 3 of the 1949 Regulations (S.I. 1949, No. 1473).

" certificate ", *i.e.*, as prescribed by the General Development Order 1959 (page 438 below), see subsection (7). It should be noticed that, each certificate must, under subsection (3), state either that there is no tenant of an agricultural holding in respect of any of the land, or that any such tenant has been served individually with notice of the application.

" requisite notice ", *i.e.*, notice in the form prescribed by the General Development Order 1959 (page 440 below), see subsection (7).

" owner ". See subsection (8) for definition.

" agricultural holding ", *i.e.*, the aggregate of the agricultural land comprised in a contract of tenancy, not being a contract under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord, see subsection (8), and section 1 of the Agricultural Holdings Act 1948..

" any part of which ". To be an agricultural holding to which the section applies, the holding need overlap the area of the application in part only ; see the words " none of the land " and " constitutes or forms part " in subsection (3) (*a*). If the holding is wholly within the area of the application, *a fortiori* the section applies.

" person who satisfies them ". It follows that an owner who could not satisfy the local planning authority or Minister, as the case may be, that he is an owner would not be entitled to have his representations taken into account.

" section 15 of the Act of 1947 ". Section 15 empowers the Minister to direct that any application for planning permission, or any specified class of such applications, should be referred to him for decision instead of being determined by the local planning authority.

" regulations made under section 35 (3) ". See note on page 304.

" section 16 of that Act ". Section 16 gives a right of appeal to the Minister from a decision given by a local planning authority on an application made to it for planning permission. For the form of notice required by the section on such appeals, see the General Development Order 1959 on page 441 below.

" issues any certificate ". Subsection (1) enables certificates to be signed " by or on behalf of " owners. To sign and send a certificate would, it is thought, certainly be to " issue " a certificate. To do so on behalf of an owner without requiring some reliable evidence of the statements contained in the certificate could amount to reckless issuing.

" development order ", *i.e.*, the Town and Country Planning General Development Order 1959 (S.I. No. 1286) see pages 435–42 below.

" functions . . . have been delegated ". See note on page 304.

38. Enforcement of limitations imposed by development orders.—(1) Where by a development order (whether made before or after the commencement of this Act) permission is granted for any development subject to limitations specified in the order, sections twenty-three and twenty-four of the Act of 1947 (which relate to the enforcement of planning control) shall, subject to the provisions of this section, have effect in relation to any non-compliance with those limitations as they have effect in relation to non-compliance with any conditions subject to which permission is granted for any development.

(2) For the purposes of this section and of the Act of 1947, any provision of a development order (whether made before or after the commencement of this Act) whereby permission is granted for the use of land for any purpose on a limited number of days

in a period specified in that provision shall (without prejudice to the generality of references to limitations in this section or in that Act) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that permission on more than that number of days in that period.

(3) The validity of a notice purporting to be an enforcement notice under the said section twenty-three (whether served before or after the commencement of this Act) shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both ; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.

(4) In the application of this section to Scotland, for references to the Act of 1947 and to sections twenty-three and twenty-four of that Act there shall be substituted references respectively to the Scottish Act of 1947 and sections twenty-one and twenty-two of that Act.

Notes to Section 38

The section provides in effect that where a Development Order grants planning permission subject to any limitation (including any limitation of the permission to a specified number of days) that limitation may be enforced by the Enforcement Notice procedure under sections 23 and 24 of the 1947 Act in the same way as a condition imposed on a permission may be enforced by that procedure.

It is also provided that it does not matter whether an Enforcement Notice, whether served before or after the commencement of this Act, alleges a non-compliance with a limitation, or with a condition, or with both : it will take effect in whichever is the appropriate way.

For the appropriate amendments of section 23 and 24 of the 1947 Act, see the Seventh Schedule.

" A development order ". For planning permissions granted subject to limitations by a development order, see the Town and Country Planning General Development Order 1950 (S.I. 1950 No. 728) First Schedule. The precise terms of the classes in that Schedule constitute the kind of limitations referred to here. It should be noticed that the section does not apply to limitations imposed by planning decision. It has been suggested by the Minister to local authorities that future planning decisions should impose conditions rather than limitations, so that they can be enforced under section 23.

" before or after the commencement of this Act ", *i.e.*, before or on or after the 16th August, 1959.

" sections 23 and 24 ". Sections 23 and 24 of the 1947 Act enable local planning authorities to serve enforcement notices, where development has been carried out after the 1st July, 1948, without planning permission or where a condition imposed on the grant of permission has not been complied with. The sections provide also for the making of appeals from enforcement notices, and for the taking of appropriate steps by the authority when the notice has not been complied with. For amendments thereof, see the Seventh Schedule of this Act. Section 2 of the Town and Country Planning (Amendment) Act 1951 added a clause to section 23 (1) of the 1947 Act, providing that an enforcement notice which alleges a non-compliance with a condition must be served within four years after the alleged date of the failure to comply with it. This clause, as now applied to limitations, will now prevent action being taken where the four years has already elapsed.

" shall . . . have effect ". The result is that authorities will no longer have to try and rely on the bad allegation that the development was carried out without permission, where the development was a change of use : c.f. *Cater* v. *Essex County Council* [1951] 2 W.L.R. 739 and Class IV 2 in the First Schedule of the General Development Order 1950.

" on a limited number of days ". Class IV in the First Schedule and Article 3 of the General Development Order 1950 (S.I. 1950 No. 728) provided that the use of land for any purpose on not more than 28 days in total in any calendar year is permitted development.

Subsection (4). The effect will be to preserve such Enforcement Notices from technical inaccuracy in those cases where the distinction between a " condition " and a " limitation " is blurred. It should be noticed that it also applies to Notices served before the commencement of this Act.

PART IV

OBLIGATION TO PURCHASE INTERESTS OF OWNER-OCCUPIERS AFFECTED BY PLANNING PROPOSALS

39. Notice requiring purchase of owner-occupier's interest.—(1) The provisions of this Part of this Act shall have effect in relation to land which—

(*a*) is land designated by a development plan as subject to compulsory acquisition, or

(*b*) is land allocated by a development plan for the purposes of any functions of a government department, local authority or statutory undertakers, or of the National Coal Board, or is land defined in such a plan as the site of proposed development for the purposes of any such functions, or

(*c*) is land indicated in a development plan (otherwise than by being allocated or defined as mentioned in the last preceding paragraph) as land on which a highway is proposed to be constructed or land to be included in a highway as proposed to be improved or altered, or

(*d*) is land authorised by a special enactment to be compulsorily acquired, or land falling within the limits of deviation within which powers of compulsory acquisition conferred by a special enactment are exercisable, or

(*e*) is land on or adjacent to the line of a highway proposed to be constructed, improved or altered, as indicated in an order or scheme which has come into operation under the provisions of Part II of the Highways Act, 1959, relating to trunk roads or special roads, being land in relation to which a power of compulsory acquisition conferred by any of the provisions of Part X of that Act may become exercisable, as being land required for purposes of construction, improvement or alteration as indicated in the order or scheme, or

(*f*) is land shown on plans approved by a resolution of a local highway authority as land comprised in the site of a highway as proposed to be constructed, improved or altered by that authority.

(2) Where the whole or part of a hereditament or agricultural unit is comprised in land of any of the specified descriptions, and a person claims that—

(*a*) he is entitled to an interest in that hereditament or unit, and

(*b*) the interest is one which qualifies for protection under this Part of this Act, and

(*c*) since the relevant date he has made reasonable endeavours to sell that interest, and

(*d*) he has been unable to sell it except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were comprised in land of any of the specified descriptions,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the following provisions of this Part of this Act.

(3) The last preceding subsection shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the entirety of a hereditament or agricultural unit :

Provided that this subsection shall not enable any person—

(*a*) if he is entitled to an interest in the entirety of a hereditament or agricultural unit, to make any claim or serve any notice under the last preceding subsection in respect of his interest in part of the hereditament or unit, or

(*b*) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the entirety of that part.

(4) An interest in the whole or part of a hereditament shall be taken to be an interest qualifying for protection under this Part of this Act if, on the date of service of a notice under this section in respect thereof, either—

(*a*) the annual value of the hereditament does not exceed the prescribed limit, and the interest in question is the interest of an owner-occupier of the hereditament, or

(*b*) in a case not falling within the preceding paragraph, the interest in question is the interest of a resident owner-occupier of the hereditament.

(5) An interest in the whole or part of an agricultural unit shall be taken to be an interest qualifying for protection under this Part of this Act if, on the date of service of a notice under this section in respect thereof, it is the interest of an owner-occupier of the unit.

(6) In the following provisions of this Part of this Act " the claimant ", in relation to a notice served under this section, means the person who served that notice, and any reference to the interest

of the claimant, in relation to such a notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in subsection (2) of this section.

(7) In the application of this section to Scotland—

(*a*) for any reference to the provisions of Part II of the Highways Act, 1959, relating to trunk roads or special roads, there shall be substituted a reference to the provisions of the Trunk Roads Act, 1946, or the Special Roads Act, 1949 ;

(*b*) for any reference to any of the provisions of Part X of the said Act of 1959, there shall be substituted a reference to section thirteen of the Restriction of Ribbon Development Act, 1935, as read with any of the following enactments, that is to say section four of the Trunk Roads Act, 1936, section five of the Trunk Roads Act, 1946, and sections nine, ten and fourteen of the Special Roads Act, 1949 ; and

(*c*) for any reference to a highway there shall be substituted a reference to a road.

NOTES TO SECTION 39

The section defines the categories of land affected by planning proposals in respect of which certain " owner-occupiers " can serve notices under Part IV requiring their interests to be acquired. See section 44 for a further category.

Interests qualifying for protection under the Act are the interests of (*a*) an " owner-occupier " of the whole or part of any hereditament having an annual value of £250 (as at present prescribed) or less, and falling (in whole or in part) within any of the defined categories of land, (*b*) the resident owner-occupier of the whole or part of any such hereditament, whatever its annual value and (*c*) an owner-occupier of any " agricultural unit " falling (in whole or in part) within any of the defined categories of land. These terms are defined in section 43.

The section defines in subsection (2) the conditions in which a person can serve a notice on the appropriate authority requiring his interest to be acquired.

For objections which the appropriate authority can raise to such a notice, see section 40. For references to the Lands Tribunal, see section 41 ; and for the effect of a valid notice, see section 42. Section 43 contains definitions for Part IV. The Fifth Schedule contains consequential provisions, see note on page 401. For the prescribed annual value see the Town and Country Planning (Limit of Annual Value) Order 1959 (S.I. 1959 No. 1318) on page 450. For compensation, see pages 141 and 398.

" land ". It should be realised that these provisions relate solely to land falling within the following descriptions and not to any adjoining land which may be indirectly affected by the planning proposals : but

in the case of a hereditament, the whole is protected if any part is directly affected.

" land designated ". The general power to designate in a development plan is contained in section 5 (2) (*b*) and (*c*) of the 1947 Act. Section 5 (2) (*b*) relates to the designation of land allocated by the plan for the purposes of the functions of a Minister, local authority or statutory undertakers ; and section 5 (2) (*c*) relates to the designation of land which is either comprised in an area defined as an area of comprehensive development or required to secure conformity with the development plan. See section 43 (6) of this Act for the relevant form of the development plan. If an obsolete indication under subsection (1) (*a*) (*b*) or (*c*) of this section is left in the development plan, it may still cause blight sufficient to bring Part IV into operation.

" land allocated " " land defined ". Section 5 (2) (*a*) of the 1947 Act provides for the allocation in a development plan of land for use for agricultural, residential, industrial or other purposes specified in the plan, and for the definition of the sites of proposed developments such as proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces.

" special enactment ". This means a local Act or a provision in a public general Act, authorising the acquisition of identified land, see section 57 (1) of this Act. For a public general Act authorising such acquisition, see *e.g.* the Public Offices (Site) Act 1947.

" limits of deviation ". Special Acts which authorise the acquisition of identified land sometimes provide (as *e.g.* in the case of railways or roads) for certain limits within which the centre line of the undertaking may deviate. These limits do not define the area within which the promoters may purchase or acquire lands, but are designed to allow latitude in the construction of the centre line, see *Finck* v. *L. & S.W. Railway* (1890) 44 Ch. D. 330. The permitted deviations have to be shown on the plans deposited under the special Act. For a public general Act dealing with such deviations, see *e.g.*, the Water Act, 1945, Third Schedule, section 2.

" order or scheme . . . relating to trunk roads or special roads ". The Trunk Roads Act 1946 provides for the making of orders by the Minister of Transport and Civil Aviation that existing or proposed roads should become trunk roads, when he is satisfied that this is expedient for the purpose of extending, improving or reorganising the national system of routes for through traffic. When a road becomes a trunk road by this procedure, then all functions relating (*inter alia*) to improvement are exerciseable by the Minister.

The Special Roads Act 1949 provides that any highway authority (which includes the Minister of Transport and Civil Aviation) may be authorised by means of schemes or orders made under the Act to provide special roads (or " motorways ") for the use of prescribed classes of traffic. The necessary scheme for such a road is to be made by the Minister when the road is to be provided by him ; and by the appropriate local authority when the road is to be provided by that authority. In the

latter case the Minister has to confirm the scheme made by the local authority.

The Highways Act 1959 was passed on the 30th April 1959 and comes into force on the 1st January, 1960. Part II of that Act consolidates with some amendments all the provisions of the Trunk Roads Act 1946 and the Special Roads Act 1949, see particularly sections 7, 9, 11 and 13 of the Highways Act 1959. References to the Highways Act 1959 in this Act include references to the corresponding provisions of the Acts repealed by it, see section 57 (10) of this Act.

It follows therefore that orders and schemes made under the Trunk Roads Act 1946 and the Special Roads Act 1949 constitute planning proposals which entitle owner-occupiers to serve a notice requiring the purchase of land which is blighted thereby, in addition of course to schemes and orders made under the above provisions of the Highways Act 1959 after the 1st January 1960.

" any of the provisions of Part X of that Act ". Part X of the Highways Act 1959 now contains the consolidated powers of acquisition in respect of all highways. This is effective as from 1st January 1960, and until then the " corresponding provisions " of earlier Acts are referred to by this phrase, see section 57 (10) *post*. These corresponding provisions are basically sections 13 and 14 of the Restriction of Ribbon Development Act 1935, as modified or extended by section 4 of the Trunk Roads Act, 1936, section 5 of the Trunk Roads Act, 1946, and sections 9, 10 and 14 (2) of the Special Roads Act, 1949. The main powers of acquisition in relation to trunk roads and special roads, contained in the Highways Act 1959 are to be found in sections 214 and 215 of that Act.

" hereditament . . . the specified descriptions ". See section 43 (5) for the definitions of hereditament and agricultural unit. For the position where a hereditament is on the boundary of two rating areas, see paragraph 3 (2) of the Fifth Schedule : and see paragraph 3 (3) in relation to land over which shooting, fishing or other sporting rights or advertisement rights are exerciseable. It can be seen that it is only necessary that part of the hereditament or unit be within the blighted area : but where this is so, while the whole of a hereditament (*i.e.* including land not within the blighted area) may be required to be purchased, only the affected part of an agricultural unit can be so required to be purchased, see section 42 (1). The above is true of a hereditament only where the claimant's interest subsists in the whole of the hereditament : where his interest subsists in only part, his notice and therefore the acquisition will relate only to that part, see sub-section (3).

" relevant date " *i.e.*, in effect, the date when the threat of future acquisition arose, see definition in subsection (7) of section 43.

" reasonable endeavours ". This must always be a question of fact, depending on the relevant circumstances. In most cases public advertisement would be required in addition to private circulation of details relating to the property. Regard should be had to the type of property

concerned and the steps which a reasonable seller would take in order to sell that property.

" substantially lower ". Although results will not be consistent, it is thought that a difference of less than 10 per cent. would probably not be substantial, and a difference of 20 per cent. or more would be substantial : c.f. *Palser* v. *Grinling* [1948] A.C. 291.

" if no part . . . were comprised ". There is some doubt as to whether the land must be valued for this purpose on the basis that the relevant planning proposals continue to apply to surrounding or adjoining land, or not. It is thought that the better view is that the planning proposals should not be regarded as continuing to apply to the adjoining lands, see pages 134–6.

" appropriate authority ", *i.e.*, the authority by whom the land is liable to be acquired or is indicated as being proposed to be acquired, see section 43 (5). For the procedure for deciding which of a number of highway or local authorities is the appropriate authority, see paragraph 1 of the Fifth Schedule.

" in the prescribed form ". The Town and Country Planning (Prescribed Forms of Notices) Regulations 1959 (S.I. 1959 No. 1287) prescribe the form of the notice, see Schedule, Form 6, of those regulations, on page 448 below. When such a notice has been served it may be withdrawn at any time up to six weeks after the Lands Tribunal has assessed compensation, provided that the authority has not duly entered upon and taken possession of the land, see paragraphs 8 and 9 of the Fifth Schedule.

" annual value . . . prescribed limit ", *i.e.*, the rateable value of the hereditament or (where the rateable value differs from the net annual value) the net annual value, as shown in the valuation list, see section 43 (5). The prescribed limit is at present £250, as laid down by the Town and Country Planning (Limit of Annual Value) Order 1959 (S.I. 1959 No.1318), see page 450 below. See Fifth Schedule, paragraph 4, for the position where a hereditament lies on the boundary of two or more rating areas.

" owner-occupier of the hereditament " " resident owner-occupier " and **" owner-occupier of the agricultural unit ".** See definitions in section 43 (5).

" person who served that notice ". This includes any legal " person " and therefore any body of persons corporate of incorporate, see paragraph 5 (2) of the Fifth Schedule. A firm can " occupy " for the purposes of Part IV, see paragraph 5 (1) of that Schedule, and can serve notices. When a person dies after serving a notice under this section, his personal representatives can continue the proceedings, see paragraph 13 of that Schedule.

40. Objection to notice requiring purchase of claimant's interest.— (1) Where a notice has been served under the last preceding section in respect of a hereditament or agricultural unit, the appropriate authority at any time before the end of the period of two months

beginning with the date of service of that notice, may serve on the claimant a counter-notice in the prescribed form objecting to the notice.

(2) The grounds on which objection may be made in a counter-notice to a notice served under the last preceding section are :—

(*a*) that no part of the hereditament or agricultural unit to which the notice relates is comprised in land of any of the the specified descriptions ;

(*b*) that the appropriate authority (unless compelled to do so by virtue of this Part of this Act) do not propose to acquire any part of the hereditament, or (in the case of an agricultural unit) any part of the affected area, in the exercise of any relevant powers ;

(*c*) that (in the case of an agricultural unit) the appropriate authority propose in the exercise of relevant powers to acquire a part of the affected area specified in the counter-notice, but (unless compelled to do so by virtue of this Part of this Act) do not propose to acquire any other part of that area in the exercise of any such powers ;

(*d*) that, on the date of service of the notice under the last preceding section, the claimant was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates ;

(*e*) that (for reasons specified in the counter-notice) the interest of the claimant is not an interest qualifying for protection under this Part of this Act ;

(*f*) that the conditions specified in paragraphs (*c*) and (*d*) of subsection (2) of the last preceding section are not fulfilled.

(3) Any counter-notice served under this section in respect of a notice under the last preceding section shall specify the grounds (being one or more of the grounds mentioned in the last preceding subsection) on which the appropriate authority object to the notice.

(4) In this section " relevant powers", in relation to any land falling within any of the specified descriptions, means any powers under which the appropriate authority are or could be authorised—

(*a*) to acquire that land compulsorily as being land falling within that description, or

(*b*) to acquire that land compulsorily for any of the relevant purposes ;

and " the relevant purposes ", in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the description in question,

it is liable to be acquired or is indicated as being proposed to be acquired.

NOTES TO SECTION 40

The section specifies the grounds on which the authority on whom a notice under section 39 has been served may object to the notice. The ground or grounds must be set out in a counter notice served within two months of the authority being served with the notice.

The section also defines " relevant powers " for the purpose of grounds (*b*) and (*c*) in subsection (2), which enable the appropriate authority to object that it does not propose to acquire under its relevant powers any part of the relevant hereditament or any part of the affected area of the relevant agricultural unit, or that it proposes to acquire under its relevant powers a part of the affected area of the relevant agricultural unit but not the remainder.

" under the last preceding section ", *i.e.*, a notice requiring the purchase of the claimant's interest in a hereditament or the affected area of an agricultural unit.

" the appropriate authority," see section 43 (5) for definition. See paragraph 1 of the Fifth Schedule for procedure for ascertaining which is the appropriate authority.

" claimant ", *i.e.*, the person serving a notice under section 39, see section 39 (6).

" in the prescribed form ". The Town and Country Planning (Prescribed forms of Notices) Regulations, 1959 (S.I. 1959 No. 1287), Schedule, Form 7, is the prescribed form, see page 449 below.

" of the specified descriptions ", *i.e.*, land directly affected by any of the planning proposals set out in section 39 (1), see section 43 (5).

" do not propose to acquire ", *i.e.*, because there has been a change of policy or because the original proposals (*e.g.* highway proposals) were diagrammatic and have been more closely defined so as to exclude the relevant hereditament or agricultural unit. In this case the onus before the Lands Tribunal is on the authority to show in effect that there has been such a change, see section 41 (3). See paragraph 11 of the Fifth Schedule for the effect on compulsory powers, when this ground is relied on.

" affected area ". See section 43 (5). This means that part of the agricultural unit which falls within the area liable to be acquired in accordance with the proposals.

" relevant powers ". See subsection (4).

" a part of the affected area ". When the authority relies on this hybrid ground, the claimant may, instead of referring the matter to the Lands Tribunal, accept the authority's proposal to acquire part, see section 42 (3) (*a*). See paragraph 12 of the Fifth Schedule for the effect on compulsory powers, when this ground is relied on.

" interest qualifying for protection ". See section 39 (4) and (5). This ground will cover four alternative or cumulative propositions : (*a*) that the hereditament (in an appropriate case) exceeds the prescribed

limit in its annual value ; (*b*) that the interest of the claimant is not a freehold interest or a term of years certain with at least three years to run ; (*c*) that the claimant has not satisfied the occupation qualifications (see section 43 (5)), and (*d*) that he has not occupied the land in right of such an interest. The relevant reason or reasons must be stated.

" paragraphs (c) and (d) . . . preceding section ". These paragraphs contain the " reasonable endeavours to sell " and " a price substantially lower " conditions.

41. Reference of objection to Lands Tribunal.—(1) Where a counter-notice has been served under the last preceding section, objecting to a notice served under section thirty-nine of this Act, the claimant, at any time before the end of the period of two months beginning with the date of service of the counter-notice, may require the objection to be referred to the Lands Tribunal.

(2) On any such reference, if the objection is not withdrawn, the Lands Tribunal shall consider the matters set out in the notice served by the claimant and the grounds of the objection specified in the counter-notice ; and, subject to the next following subsection, unless it is shown to the satisfaction of the Tribunal that the objection is not well-founded, the Tribunal shall uphold the objection.

(3) An objection on the grounds mentioned in paragraph (*b*) or paragraph (*c*) of subsection (2) of the last preceding section shall not be upheld by the Tribunal unless it is shown to the satisfaction of the Tribunal that the objection is well-founded.

(4) If the Tribunal determines not to uphold the objection, the Tribunal shall declare that the notice to which the counter-notice relates is a valid notice.

(5) If the Tribunal upholds the objection, but only on the grounds mentioned in paragraph (*c*) of subsection (2) of the last preceding section, the Tribunal shall declare that the notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned, but not in relation to any other part of the affected area.

(6) In any case falling within subsection (4) or subsection (5) of this section, the Tribunal shall give directions specifying the date on which notice to treat (as mentioned in the next following section) is to be deemed to have been served.

NOTES TO SECTION 41

The section provides for the reference to the Lands Tribunal of objections contained in a counter-notice served by the appropriate

authority under the preceding section. Such reference must take place within two months after the service of the counter-notice.

Except in those cases in which the authority disclaims an intention to acquire any part of the hereditament or of the affected area of an agricultural unit, or a part of the affected area of an agricultural unit (*i.e.* grounds (*b*) and (*c*) of section 40 (2)), the onus is on the claimant to show that the grounds of objection are not well-founded.

If the Tribunal does not uphold any of the objections, it must declare the claimant's notice to be a valid notice.

If the Tribunal upholds the authority's disclaimer under section 40 (2) (*c*) of any intention to acquire part of the affected area of an agricultural unit, the Tribunal must declare the claimant's notice as valid as regards that part which the authority states that it does propose to acquire.

Where the Tribunal declares a notice to be valid as to the whole of the relevant land, or as to part of it, the Tribunal must direct a date on which the notice to treat provided for by the next section is to be deemed to be served.

" counter notice . . . preceding section ", *i.e.*, a counter-notice containing the ground or grounds as set out in section 40 (2) on which the appropriate authority objects to the notice under section 39.

" unless it is shown . . . uphold the objection ". This puts the onus in these cases on the claimant to prove the relevant facts which support the claim and in effect disprove the objections : c.f. the different onus arising under subsection (3).

" paragraph (b) and paragraph (c) ". These paragraphs contain the " disclaimer " grounds, by which the authority may disclaim an intention to acquire any part of the hereditament or affected area of an agricultural unit (paragraph (*b*)), or a definable part of the affected area of an agricultural unit (paragraph (*c*)).

" as mentioned in the next following section ". See sections 42 (2) (*a*) (in relation to a notice valid in whole) and 42 (4) (*b*) (in relation to a notice declared to be valid in part).

42. Effect of valid notice requiring purchase of claimant's interest.—(1) Where a notice has been served under section thirty-nine of this Act and either—

(*a*) no counter-notice objecting to that notice is served in accordance with the preceding provisions of this Part of this Act, or

(*b*) where such a counter-notice has been served, the objection is withdrawn, or, on a reference to the Lands Tribunal, is not upheld by the Tribunal,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in the hereditament, or (in the case of an agricultural unit) the interest of the claimant in so far as it subsists

in the affected area, and to have served a notice to treat in respect thereof on the date mentioned in the next following subsection.

(2) The said date—

(*a*) in a case where, on a reference to the Lands Tribunal, the Tribunal determines not to uphold the objection, is the date specified in directions given by the Tribunal in accordance with subsection (6) of the last preceding section ;

(*b*) in any other case, is the date on which the period of two months beginning with the date of service of the notice under section thirty-nine of this Act comes to an end.

(3) Where the notice under section thirty-nine of this Act relates to an agricultural unit, and the appropriate authority have served a counter-notice objecting to that notice on the grounds mentioned in paragraph (*c*) of subsection (2) of section forty of this Act, then if either—

(*a*) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired, gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and withdraws his claim as to the remainder of that area, or

(*b*) on a reference to the Lands Tribunal, the Tribunal makes a declaration in accordance with subsection (5) of the last preceding section in respect of that part of the affected area,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area) and to have served a notice to treat in respect thereof on the date mentioned in the next following subsection.

(4) The said date—

(*a*) in a case falling within paragraph (*a*) of the last preceding subsection, is the date on which notice is given in accordance with that paragraph, and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the date specified in directions given by the Lands Tribunal in accordance with subsection (6) of the last preceding section.

NOTES TO SECTION 42

The section provides that if no counter-notice is served by the authority under section 40 in answer to a claimant's notice served under section 39, then the appropriate authority is deemed to be authorised to acquire compulsorily, under the appropriate enactment, the claimant's interest in the hereditament, or the affected part of the agricultural unit, and to have served a notice to treat at the expiration of two months from the service of the claimant's notice. The same result occurs, if an objection by counter-notice is made and is not upheld by the Lands Tribunal under section 41, but in this case the date for the deemed service of a notice to treat is such date as the Lands Tribunal directs.

Where, in the case of an agricultural unit, the authority has stated in its counter-notice that it proposes to acquire part of the affected area of the agricultural unit but not any other part (section 40 (2) (*c*)), then if the claimant accepts that proposal to acquire and withdraws his claim as to the rest of that area, the authority is deemed to be authorised to acquire that part compulsorily under the appropriate enactment and to have served a notice to treat at the date when the claimant has given notice of acceptance of the proposal. The same result occurs if the objection is referred to the Lands Tribunal and the Tribunal makes a declaration that the claimant's notice is valid as to the part which the authority proposes to acquire, but the date for the deemed service of the notice to treat is such date as the Lands Tribunal directs.

" on a reference to the Lands Tribunal ", *i.e.*, by the claimant, under section 41.

" the appropriate authority ". See section 43 (5) and the Fifth Schedule, paragraph 1.

" the appropriate enactment ". See section 43 (5) and the Fifth Schedule, paragraph 2.

" hereditament ". See section 43 (5) and the Fifth Schedule, paragraph 3.

" agricultural unit " " affected area ". See section 43 (5).

" in any other case ", *i.e.*, if a counter-notice is not served under section 40 or, being served, is withdrawn.

" paragraph (c) of the section 40 (2) ". This paragraph contains the hybrid ground, which provides for disclaiming an intention to acquire part of the affected area of an agricultural unit.

" declaration ", *i.e.*, a declaration that the notice is valid as regards that part of the land which the authority states that it proposes to acquire.

43. Supplementary provisions relating to Part IV.—(1) The provisions of the Fifth Schedule to this Act shall have effect for the purposes of this Part of this Act.

(2) Subject to the provisions of that Schedule, in this Part of this Act " owner-occupier ", in relation to a hereditament, means a person who—

(*a*) occupies the whole or part of the hereditament in right

of an owner's interest therein, and has so occupied the hereditament or that part thereof during the whole of the period of six months ending with the date of service, or

(*b*) occupied, in right of an owner's interest, the whole or part of the hereditament during the whole of a period of six months ending not more than six months before the date of service, the hereditament, or that part thereof, as the case may be, having been unoccupied since the end of that period.

(3) Subject to the provisions of the said Schedule, in this Part of this Act " owner-occupier ", in relation to an agricultural unit, means a person who—

(*a*) occupies the whole of that unit, and has occupied it during the whole of the period of six months ending with the date of service, or

(*b*) occupied the whole of that unit during the whole of a period of six months ending not more than six months before the date of service,

and, at all times material for the purposes of paragraph (*a*) or paragraph (*b*) of this subsection, as the case may be, has been entitled to an owner's interest in the whole or part of that unit.

(4) In this Part of this Act " resident owner-occupier ", in relation to a hereditament, means an individual who—

(*a*) occupies the whole or part of the hereditament as a private dwelling in right of an owner's interest therein, and has so occupied the hereditament or that part thereof, as the case may be, during the whole of the period of six months ending with the date of service, or

(*b*) occupied, in right of an owner's interest, the whole or part of the hereditament as a private dwelling during the whole of a period of six months ending not more than six months before the date of service, the hereditament, or that part thereof, as the case may be, having been unoccupied since the end of that period.

(5) Subject to the provisions of the said Schedule, in this Part of this Act the following expressions have the meanings hereby assigned to them respectively, that is to say :—

" the affected area ", in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any of the specified descriptions ;

" agricultural unit " means land which is occupied as a unit for agricultural purposes, including any dwelling-house

or other building occupied by the same person for the purpose of farming the land ;

" annual value ", in relation to a hereditament, means the value which, on the date of service, is shown in the valuation list as the rateable value of that hereditament, except that, where the rateable value differs from the net annual value, it means the value which on that date is shown in the valuation list as the net annual value thereof ;

" the appropriate authority ", in relation to any land, means the government department, local authority or other body by whom, in accordance with the circumstances by virtue of which the land falls within any of the specified descriptions, the land is liable to be acquired or is indicated as being proposed to be acquired ;

" the appropriate enactment ", in relation to land falling within any of the specified descriptions, means the enactment which provides for the compulsory acquisition of land as being land falling within that description ;

" hereditament " means the aggregate of the land which forms the subject of a single entry in the valuation list for the time being in force for a rating area ;

" the prescribed limit " means such amount as may be prescribed for the purposes of paragraph (*a*) of subsection (4) of section thirty-nine of this Act by an order made by the Minister ;

" the relevant date "—

(*a*) in relation to land designated, allocated, defined or indicated as mentioned in any of paragraphs (*a*) to (*c*) of subsection (1) of section thirty-nine of this Act, means the date (whether before or after the commencement of this Act) on which the development plan, or the amendment of the development plan, by virtue of which the land was first so designated, allocated, defined or indicated came into operation ;

(*b*) in relation to any such land as is mentioned in paragraph (*d*) of that subsection, means the date (whether before or after the commencement of this Act) on which the special enactment in question came into operation ;

(*c*) in relation to land falling within paragraph (*e*) of that subsection, means the date (whether before or after the commencement of this Act) of the coming into operation of the order or scheme by virtue of which it falls within that paragraph ;

(*d*) in relation to land falling within paragraph (*f*) of that subsection, means the date (whether before or after the commencement of this Act) of the passing of the resolution by virtue of which it falls within that paragraph ;

" the specified descriptions " means the descriptions contained in paragraphs (*a*) to (*f*) of subsection (1) of section thirty-nine of this Act.

(6) Any reference in this Part of this Act to a development plan is a reference to such a plan in the form in which (whether as originally made or approved by the Minister or as subsequently amended) that plan is for the time being in force.

(7) In this section " date of service ", in relation to a hereditament or agricultural unit, means the date of service of a notice in respect thereof under section thirty-nine of this Act, and " owner's interest ", in relation to a hereditament or agricultural unit or part thereof, means a freehold interest therein or a tenancy thereof granted or extended for a term of years certain of which, on the date of service, not less than three years remain unexpired.

(8) In the application of this section to Scotland, for any reference to a rating area there shall be substituted a reference to a valuation area, and, in relation to a valuation area, for any reference to the valuation list there shall be substituted a reference to the valuation roll ; and for the definitions of " hereditament " and " owner's interest " in subsections (5) and (7) respectively there shall be substituted the following definitions, that is to say,—

"hereditament" means the aggregate of the lands and heritages (not being agricultural lands and heritages within the meaning of section seven of the Valuation and Rating (Scotland) Act, 1956) which form the subject of a single entry in the valuation roll for the time being in force for a valuation area ; and

" owner's interest " in relation to a hereditament or agricultural unit or part thereof includes the interest of the lessee under a lease thereof, being a lease the unexpired period of which on the date of service is not less than three years.

NOTES TO SECTION 43.

The section defines the various terms used in Part IV being :—

(1) " owner-occupier " in relation to any hereditament not having an annual value of more than £250, (the sum at present prescribed by the regulations) ;

(2) " owner-occupier " in relation to an agricultural unit ;

(3) " resident owner-occupier " in relation to hereditaments having any annual value ;

(4) " the affected area " ; " agricultural unit " ; " annual value " ; " the appropriate authority " ; " the appropriate enactment " ; " hereditament " ; " the prescribed limit " ; " the relevant date " ; " the specified descriptions " ; and references to development plans.

It further defines two phrases used in this section itself, namely " date of service " and " owner's interest."

" Fifth Schedule ". The Fifth Schedule makes provision :—

(*a*) for ascertaining which highway authority or local authority is the " appropriate authority " for Part IV purposes ;

(*b*) for ascertaining which enactment is the " appropriate enactment " *i.e.*, the one under which the authority is deemed to be authorised to acquire, in cases where the land falls within section 39 (1) (*b*) or is proposed to be acquired for highway purposes, or where there are two or more enactments which would be appropriate in the circumstances of the case ;

(*c*) in relation to land which lies on the boundary of two or more rating areas, for the purpose of the meaning of " hereditament " : and also in relation to land over which shooting, fishing, and other sporting rights or advertisement rights are exercisable ;

(*d*) for cases where land qualifying for protection is occupied for the purposes of a partnership firm ;

(*e*) in relation to compensation for severance and disturbance in cases of acquisition under Part IV ;

(*f*) as regards withdrawal by a claimant or the authority from an acquisition arising under Part IV ;

(*g*) for the cessation of compulsory powers of acquisition, where an authority relies on " disclaimer " grounds under section 40 (2) (*b*) or (*c*) ;

(*h*) for the survival of claims for the acquisition of land under Part IV, where the claimant dies after serving a notice under section 39.

" subject to the provisions of that Schedule ". See paragraph 5 of the Fifth Schedule, in relation to occupation by a partnership firm.

" whole or part of the hereditament ". Compare the difference between the owner-occupier of a hereditament and the owner-occupier of an agricultural unit in this respect, see subsection (3). It is to be noted that the part of the hereditament which is occupied need not be a part to which the planning proposals in question relate, c.f. section 39 (2).

" owner's interest ". See subsection (7) for meaning.

" date of service ", *i.e.*, the date of service of a notice under section 39, see section 43 (7).

" agricultural purposes ". For this purpose, the meaning given to " agriculture " by section 119 of the 1947 Act is relevant (see section 57 (3) of this Act), *viz.*, that agriculture includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock

(including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes; and that " agricultural " shall be construed accordingly.

" annual value " "hereditament ". For the position where the land lies on the boundary of two or more rating areas, see paragraphs 3 and 4 of the Fifth Schedule.

" the appropriate authority " " the appropriate enactment ". See note above on the Fifth Schedule, and paragraphs 1 and 2 respectively of that Schedule.

" the prescribed limit ". The limit prescribed at present is an annual value of £250 laid down by the Town and Country Planning (Limit of Annual Value) Order 1959 (S.I. 1959 No. 1318), see page 450.

" designated " " allocated " " defined ". See notes on page 315.

" development plan as originally made etc.". See note on page 196.

" tenancy ". This has the same meaning as in the Landlord and Tenant Act 1954, see section 57 (1). This definition is given on page 357.

PART V

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

44. Land declared (otherwise than by development plan) to be subject to compulsory purchase.—(1) Where by virtue of paragraph17 of the Tenth Schedule to the Act of 1947 (which relates to land declared by an order under section one of the Town and Country Planning Act, 1944, to be subject to compulsory purchase) the provisions of Part IV of the Act of 1947 apply in relation to any land as mentioned in that paragraph,—

(*a*) the provisions of Part IV of, and the Fifth Schedule to, this Act, and

(*b*) subject to the following provisions of this section, subsection (3) of section six of the Act of 1947 (which empowers the Minister to amend development plans) and subsection (1) of section nine of that Act (which relates to land which has for a long period been designated by a development plan as subject to compulsory acquisition),

shall have effect in relation to that land as if it were land designated by a development plan as subject to compulsory acquisition.

(2) For the purposes of the application to any land, by virtue of the preceding subsection, of subsection (1) of section nine of the Act of 1947, the reference in the said subsection (1) to the date therein mentioned shall be construed as a reference to the date of the coming into operation of the order under section one of the Town and Country Planning Act, 1944, whereby the land was declared to be subject to compulsory purchase.

(3) Notwithstanding anything in subsection (1) of this section, no notice shall be served under subsection (1) of the said section nine as applied by that subsection before the end of the period of twelve months beginning with the commencement of this Act.

(4) In relation to any land to which subsection (1) of this section applies, subsections (2) and (3) of section nine of the Act of 1947 shall have effect with the substitution, in subsection (2) of that section, for the words " the development plan shall have effect, after the expiration of the said six months, as if the land were not designated as subject to compulsory acquisition ", of the words " on the expiration of the said six months paragraph 17 of the Tenth Schedule to this Act shall cease to apply to the land ".

(5) Any reference in this section to subsection (1) of section nine of the Act of 1947 shall be construed as including a reference to that subsection as modified by subsection (5) of that section (which,

in the case of agricultural land, substitutes a period of eight years for the period of twelve years mentioned in subsection (1)).

(6) In the application of this section to Scotland, for any reference to the Town and Country Planning Act, 1944, there shall be substituted a reference to the Town and Country Planning (Scotland) Act, 1945 ; and for references to the Act of 1947, section six of that Act, section nine of that Act and Part IV of that Act there shall be substituted references respectively to the Scottish Act of 1947, section four of that Act, section seven of that Act and Part III of that Act.

NOTES TO SECTION 44

The section specifies a further category of blighted land in respect of which a purchase notice under section 39 may be served. This further category is land which is the subject of a declaratory order, made under section 1 of the 1944 Act, declaring land in an area of extensive war damage, or land needed for re-location of population or industry or for replacement of open space in the course of redevelopment of part of such an area, to be subject to compulsory acquisition.

The section makes provision whereby such declaratory orders can now be amended in the same way as development plans can be amended, under section 6 (3) of the 1947 Act. It further provides that the procedure under section 9 (1) of the 1947 Act shall apply on and after the 16th August, 1960, to land which is the subject of a declaratory order made under section 1 of the 1944 Act, so that where such land has not been acquired within 12 years of the order coming into operation, the owner may by notice require his land to be acquired, and if a notice to treat or an offer to purchase is not then made within six months, the land ceases to be treated as designated for compulsory acquisition. As indicated above, an owner cannot initiate this procedure by serving a notice, until a year after the commencement of this Act, namely, until the 16th August, 1960,

" paragraph 17 of the Tenth Schedule ". The paragraph broadly provides that the provisions of Part IV of the 1947 Act should apply to land which was the subject of a declaratory order made under section 1 of the 1944 Act, as though it were land comprised in an area defined in a development plan under Part 11 of the 1947 Act as an area of comprehensive development and were designated as subject to compulsory acquisition by the appropriate local authority. The effect is to treat such land as though it were designated land under the 1947 Act.

" section 1 of the Town and Country Planning Act 1944 ". The section provided that where the Minister of Town and Country Planning was satisfied, on application being made to him, that any part of an area of extensive war damage should be laid out afresh and redeveloped as a whole, he could make an order declaring any land in that part of such an area, or any land required for re-locating population or industry or for replacing open space in the course of redevelopment of any part of such an area, to be subject to compulsory purchase. The section was

repealed by the 1947 Act as from the 1st July 1948, but orders for which application had by that time been made could be completed after that date in proper cases, by virtue of paragraph 16 of the Tenth Schedule of the 1947 Act. Land which was declared to be subject to compulsory purchase by any such declaratory order was dealt with by paragraph 17 of that Schedule, see note above.

"the provisions of Part IV". Part IV of this Act enables owner-occupiers of land directly affected by certain planning proposals to compel the authority which is liable to acquire the land in accordance with the proposals to acquire it forthwith, if the result of the proposals is to prevent the sale of the land except at a substantially depressed price. One of the relevant categories of planning proposals is the designation of land in a development plan as land subject to compulsory acquisition (see section 39 (1) (*a*)), and declaratory orders under section 1 of the 1944 Act are now equated with such designations for these purposes.

" subsection (6) of section 3 of the Act of 1947 ". The subsection provides that where proposals for alterations or additions to a development plan are submitted to the Minister, he may amend the plan as he thinks fit, having regard to such proposals and other material considerations, and in particular any amendment may provide for freeing from designation any land which was previously designated by the plan.

" subsection (1) of section 9 of that Act ". Section 9 (1) of the 1947 Act provides that where land is designated by a development plan as subject to compulsory acquisition, then if at the end of 12 years from the date of the coming into operation of that provision in the plan the land has not been acquired, the owner can serve a notice (in accordance with the Town and Country Planning (General) Regulations 1948 (S.I. 1948, No. 1380)) on the local planning authority requiring his interest to be acquired.

" coming into operation . . . order under section 1 ". Section 1 (11) of the 1944 Act required the authority, on whose application a declaratory order under that section was made, to publish by gazette and local advertisement a notice stating that the order had been made, and section 16 (2) of that Act provides that the order should come into operation on the date on which such notice was first published in this way.

" subsections (2) and (3) of section 9 ". Subsection (2) provides that if within six months of the service of a notice under subsection (1) (see above), no notice to treat has been served and no offer to purchase on like terms has been made, then the development plan shall have effect after that period as if the land were not designated as subject to compulsory acquisition. Subsection (3) provides that if a notice to treat is served within six months of a notice being served under subsection (1), that notice to treat cannot be withdrawn under section 5 (2) of the Acquisition of Land (Assessment of Compensation) Act 1919.

" subsection (5) of that section ". Section 9 (5) of the 1947 Act provides that the provisions of subsection (1) shall apply to agricultural land with the substitution of 8 years for 12 years. Agricultural land, for this purpose, means agricultural land as defined by section 2 of the Rating and Valuation (Apportionment) Act 1928.

45. Compensation for damage to requisitioned land.—(1) In relation to compensation accruing due after the twenty-ninth day of October, nineteen hundred and fifty-eight, by virtue of paragraph (*b*) of subsection (1) of section two of the Compensation (Defence) Act, 1939 (which relates to compensation payable in respect of damage occurring to requisitioned land during the lieriod of requisition), section fifty-three of the Act of 1954 (which pmits the amount of that compensation) shall have effect as if any reference to the price which, at the relevant time and in the relevant circumstances, would be the compulsory purchase price of the land were a reference to the value which, at that time and in those circumstances, would be the value of such an interest in the land as is mentioned in paragraph (*a*) of subsection (2) of the said section fifty-three (that is to say, a freehold interest free from incumbrances but subject to any easement or other restriction affecting the land at the relevant time).

(2) In this section " the relevant time " means the time when the compensation accrues due, and " in the relevant circumstances " means if the land were at the relevant time in the state in which it was when possession of the land was taken in the exercise of emergency powers.

(3) In the application of this section to Scotland, for any reference to section fifty-three of the Act of 1954 there shall be substituted a reference to section fifty-five of the Scottish Act of 1954 ; and for the words from " a freehold interest " to the end of subsection (1) there shall be substituted the words " the dominium utile in the land, subject to any feu duty, any ground annual and any servitude or other restriction affecting the land at the relevant time, but otherwise free from burdens ".

NOTES TO SECTION 45

This section alters the " ceiling " set up by the 1954 Act for compensation payable for damage done to requisitioned land. It will be recalled that section 53 of the 1954 Act itself substituted a new " ceiling " for such compensation where the compensation accrued due on or after 1st January, 1955. That " ceiling " was the amount by which the compulsory purchase price of the land in its pre-requisitioned state (as calculated under Part V of the 1947 Act and Part III of the 1954 Act) exceeded the market value of a freehold interest in the land in its existing state on de-requisition. In conformity with the main purpose of the Act, this section now provides that the " ceiling " for compensation accruing due after 29th October 1958 shall be the amount by which the market value of a freehold interest in the land in its pre-requisition state exceeds the market value of a freehold interest in the land in its existing state on de-requisition. The calculation of compensation remains the same as

it was under the Compensation (Defence) Act 1939, *viz.*, the cost of making good the damage, but if that amount exceeds the new " ceiling," then only the " ceiling " is payable. The other provisions of section 53 of the 1954 Act remain unchanged, save that by the Eighth Schedule of this Act the last subsection is repealed, this being a subsection merely defining compulsory purchase price.

" accruing due ". Section 2 (3) of the Compensation (Defence) Act 1939 provides that the compensation shall accrue due " at the end of the period for which possession of the land is retained in the exercise of emergency powers."

" 29th October 1958 ", *i,e.*, the date of the presentation of the Bill of this Act.

" paragraph (b) . . . (Defence Act) 1939 ". That paragraph provides that the amount of compensation payable in respect of the requisitioned land shall be " a sum equal to the cost of making good any damage which may have occurred during the period for which possession thereof is so retained (except in so far as the damage has been made good during that period by a person acting on behalf of Her Majesty), no account being taken of fair wear and tear or of damage caused by war operations."

" requisitioned land ". Requisitioned houses are due to be de-requisitioned by the local authorities now in possession of them by the 31st March 1960, see Requisitioned Houses and Housing (Amendment) Act 1955 ; and see further Ministry of Housing Circular 18/59. See also the Land Powers (Defence) Act 1958, section 1 in relation to other requisitioning and page 145 above.

" section 53 of the Act of 1954 ". The section provided :—

(*a*) that compensation accruing due on or after 1st January 1955 should be limited to the excess of the compulsory purchase price of the land, if it had been in the state in which it was before requisitioning, over the market value of a freehold interest in the land in its actual state on de-requisition—such a freehold interest to be valued as being free from incumbrances but subject to any easement or other restriction affecting the land at the time of de-requisition ;

(*b*) that in respect of such compensation (*i.e.*, that accruing due after 1st January 1955) the former limits or ceilings set up by (i) the Compensation (Defence) Act 1939, and (ii) the Requisitioned Land and War Works Act 1948 should be removed ;

(*c*) that (by applying section 10 (3) of the 1948 Act) in calculating the value of the freehold interest in the land in its de-requisition state, regard should be had to all work and damage done to the land during the period of requisition, except (i) war damage, and (ii) certain war works carried out in effect at the expense of owners, the value of which would have been reflected in compensation payable on a compulsory acquisition of the land. The effect is to prevent the " ceiling " being lowered by the presence of such war works on the land ;

(*d*) that (by applying section 10 (4) of the 1948 Act) certain increases should be allowed on the " ceiling " for such compensation,

where damage (other than war damage) is done to the works carried out at owners' expense and referred to in the previous paragraph. The extent of the increase in each case will be so much " as may be just," having regard to the cost or contribution incurred by the owner or to the terms of any agreement with the owner under which the works were carried out.

" **relevant time** ", *i.e.*, the time of de-requisitioning, when the compensation accrues due, see sub-section (2).

" **relevant circumstances** ", *i.e.*, if the land were in its pre-requisition state, see subsection (2).

" **incumbrances** ". An incumbrance is defined for the purposes of the Law of Property Act 1925 as " including a legal or equitable mortgage, and a trust for securing money, and a lien, and a charge of a portion, annuity or other capital or annual sum."

46. Acquisition of land in connection with town development in England and Wales.—(1) Any power of the Minister under section six of the Town Development Act, 1952, to authorise the compulsory acquisition of land for purposes connected with town development shall, subject to the provisions of this section, be exercisable notwithstanding that the land is not immediately required for those purposes.

(2) The compulsory acquisition of land shall not be authorised by virtue of the preceding subsection unless the Minister is satisfied that the land is likely to be required for the purposes therein mentioned within ten years from the date on which he confirms the compulsory purchase order.

(3) In this section " town development " has the same meaning as in the said Act of 1952.

(4) This section shall not apply to Scotland.

Notes to Section 46

The section extends the powers which the Minister has under section 6 of the Town Development Act 1952 to authorise councils of receiving districts to acquire land for purposes connected with town development, so as to enable him to authorise such acquisitions in advance of immediate requirements. But he can only do so where he is satisfied that the land so acquired is likely to be required for such purposes within ten years from the date when he confirms the compulsory purchase order.

" **section 6 of the Town Development Act 1952** ". Section 6 (1) of the 1952 Act empowers the Minister, where there is a development plan in operation in relation to an area, to authorise the council of a receiving district to acquire land compulsorily in that area which is not already designated by the development plan as subject to compulsory acquisition, if he is satisfied (*a*) that the land is required for a purpose connected with town development and (*b*) that it is necessary in the public interest that

the land should be acquired although it is not designated as subject to compulsory acquisition.

In subsection (2) of that section there is a parallel power given to the Minister to authorise the compulsory acquisition of land for a purpose connected with town development where there is no development plan in operation in relation to the land.

Under subsection (3) of that section the Minister, when exercising his powers under the previous subsections, may after consultation with the council of the relevant receiving district and the county council substitute, for the council of the receiving district, any other local authority as the acquiring authority.

" not immediately required ". The Town Development Act 1952 contains no special power to acquire land, or to authorise the acquisition of land, in advance of immediate requirements. Under the general law therefore such acquisitions, not being authorised by statute, are *ultra vires*, c.f. *Palmer* v. *Minister of Housing and Local Government* (1952) 3 P.C.R. 165.

" date . . . compulsory purchase order ". Section 4 (6) of the Town Development Act 1952 provides that the Acquisition of Land (Authorisation Procedure) Act 1946 shall apply to compulsory acquisitions under that section. Accordingly the standard procedure contained in the First Schedule of the 1946 Act will apply for the confirmation of the compulsory purchase orders under the section.

" town development ", *i.e.*, development in a county district (or partly in one such district and partly in another) which will have the effect and is undertaken primarily for the purpose of providing accommodation for residential purposes (with or without accommodation for the carrying on of industrial or other activities, and with all appropriate public services, facilities for public worship, recreation and amenity, and other requirements) the provision whereof will relieve congestion of over population elsewhere ; see subsection (3), and section 1 (1) of the Town Development Act 1952. A receiving district, in relation to any town development, is the county district in which the development is carried out, or, in the case of town development partly in one county district and partly in another, a county district in which part of it is carried out ; see section 1 (1) of the Town Development Act 1952.

47. Acquisition of land in connection with town development schemes in Scotland.—(1) The power of the Minister under subsection (1) of section thirteen of the Housing and Town Development (Scotland) Act, 1957, to authorise a receiving authority to acquire land compulsorily for purposes connected with a town development scheme under Part II of that Act shall, subject to the provisions of this section, be exercisable notwithstanding that it is not immediately necessary for the proper execution of the town development scheme that the land should be so acquired.

(2) The compulsory acquisition of land shall not be authorised by virtue of the preceding subsection unless the Minister is satisfied

that it is likely to become, within ten years from the date on which he confirms the compulsory purchase order, necessary for the purpose mentioned in subsection (1) of this section that the land should be acquired as therein mentioned.

(3) In this section " town development scheme " and " receiving authority " have the same meanings respectively as in the said Act of 1957.

(4) This section shall apply to Scotland only.

48. Acquisition of land for highways.—(1) Any power of the Minister of Transport and Civil Aviation under any enactment contained in Part X of the Highways Act, 1959, to acquire by agreement land required for a purpose mentioned in that enactment shall be exercisable in respect of any land which, in the opinion of that Minister, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

(2) In the application of this section to Scotland, for any reference to the Minister of Transport and Civil Aviation there shall be substituted a reference to the Minister and for any reference to any enactment contained in Part X of the Highways Act, 1959, there shall be substituted a reference to section thirteen of the Restriction of Ribbon Development Act, 1935, as read with any of the following enactments, that is to say, section four of the Trunk Roads Act, 1936, section five of the Trunk Roads Act, 1946, and sections nine, ten and fourteen of the Special Roads Act, 1949.

NOTES ON SECTION 48

The section extends any power which the Minister of Transport and Civil Aviation has under Part X of the Highways Act 1959 (or any corresponding enactment repealed by that Act) to acquire land by agreement for any purpose mentioned in Part X of that Act, so as to enable him to acquire land which in his opinion may be required for such a purpose even when it is not immediately required for that purpose.

" Part X of the Highways Act 1959 ". As from the 1st January 1960, the powers of acquisition of land for highway purposes, set out in Part X of the Highways Act 1959, become effective. Until that time, this reference is to be treated as a reference to " the corresponding enactments " repealed by that Act, see section 57 (10) of this Act. The principal powers of acquisition by agreement in Part X of the Highways Act 1959 are those in sections 214 (1), (2), (5), (6) and (8) and 215 (1) and (2). The " corresponding enactments " are very confused : principally they are section 13 of the Restriction of Ribbon Development Act 1935, as modified by section 4 of the Trunk Road Act 1936 and section 5 of the Trunk Road Act 1946, and sections 9, 10 and 14 (2) of the Special Roads Act 1949.

" required for a purpose ". For example :—for the construction of a trunk road (section 214 (1) of the Highways Act 1959) ; for the improvement of any highway for which the Minister is highway authority (section 214 (2)) ; for preventing the erection of buildings detrimental to the view from the highway (section 214 (5) and (6)) ; for preserving the amenities of a locality in which a highway is, or is to be, situated (section 214 (6)) ; for the improvement or development of frontages (section 214 (8)) ; for carrying out works in connection with a highway which crosses or enters a trunk road (section 215 (1)) ; for providing buildings or facilities necessary in connection with constructing or maintaining a trunk road (section 215 (1)) ; for carrying out works in connection with a highway which enters or crosses a special road, or for providing service stations on a special road (section 215 (2)) ; for providing, altering or improving a cattle grid or by-pass (section 219) ; for providing or improving a road-ferry (section 220).

49. Advances to highway authorities in respect of land acquired for highways.—(1) The power of the Minister of Transport and Civil Aviation under section two hundred and thirty-five of the Highways Act, 1959, to make advances to highway authorities shall include power to make such advances in respect of the acquisition of land by a highway authority, where that Minister is satisfied that the land has been or is to be acquired by that authority with a view to the construction of a new highway or the improvement of an existing highway.

(2) Where any land is acquired by a highway authority, and the Minister of Transport and Civil Aviation is satisfied as mentioned in the preceding subsection, the power of that Minister to make advances under the said section two hundred and thirty-five shall also include power to make such advances in respect of either or both of the following, that is to say,—

(*a*) any amount by which the annual expenditure incurred by the authority in maintaining the land, during the period between its acquisition and the construction or improvement of the highway in question, and in the payment of loan charges accruing due during that period in respect of any debt incurred by the authority for the purpose of acquiring the land, exceeds the annual income accruing to the authority from the land during that period ; and

(*b*) any loan charges accruing due after the end of that period in respect of any money borrowed by the authority for the purpose of acquiring the land.

(3) In this section " loan charges ", in relation to any borrowed money, means the sums required for the payment of interest on that money and for the repayment thereof either by instalments or by means of a sinking fund.

(4) In the application of this section to Scotland, for any reference to the Minister of Transport and Civil Aviation there shall be substituted a reference to the Minister ; for any reference to section two hundred and thirty-five of the Highways Act, 1959, there shall be substituted a reference to section eight of the Development and Road Improvement Funds Act, 1909 ; for any reference to a highway (except in the expression " highway authority ") there shall be substituted a reference to a road ; and expressions used in this section and in the said section eight shall have the same meanings in this section as in that section.

NOTES TO SECTION 49

The section extends the power which the Minister of Transport and Civil Aviation has under section 235 of the Highways Act 1959 (or any corresponding enactment repealed by that Act) to make advances to highway authorities, so as to enable him to make advances in respect of the acquisition of land where he is satisfied that the land was or will be acquired with a view to the construction of a new highway or the improvement of an existing highway.

The section also extends the powers of that Minister so as to enable him to make advances :—

(*a*) towards the cost of maintaining land, which is acquired with a view to the construction or improvement of roads, between the time of its acquisition and the time when the actual construction or improvement takes place. This cost is measured by the amount by which the income derived from the land in that period is exceeded by the expense of maintenance and any charges falling due *during* that period on loans incurred in the acquisition of the land ; and

(*b*) towards any such loan charges falling due *after* that period.

" section 235 of the Highways Act 1959 ". As from the 1st January 1960 the powers of the Minister of Transport to make advances to highway authorities will stem from section 235 of the Highways Act 1959. Until that time this reference is to be treated as a reference to the " corresponding enactments " repealed by the Act, see section 57 (10) of this Act. The main powers in section 235 are powers to make advances for the construction of highways which are to be maintainable at public expense, the maintenance or improvement of highways, and the provision, maintenance and improvement of road-ferries. The " corresponding enactment " is section 8 of the Development and Road Improvement Funds Act 1909 which empowers the Minister to make such advances for the construction of new roads or the maintenance or improvement of existing roads.

" that Minister is satisfied ". These words make the Minister the sole judge (within the limits of good faith) whether the acquisition falls within the defined purpose, see *Robinson* v. *Minister of Town and Country Planning*, [1947] K.B. 702 ; *Franklin* v. *Minister of Town and Country Planning* [1948] A.C. 87 ; *Thorneloe and Clarkson* v. *Board of Trade* [1950] 2 All E.R. 245.

" has been or is to be acquired ". It is to be noted that there is no time limit placed on this provision, so far as it relates either to the past or the future. In theory such an acquisition ten years ago would qualify for an advance, even if the land had not yet been used for road purposes, provided that the Minister could be " satisfied " as required.

" loan charges accruing due ". It is to be noted that it is only such charges accruing due during the period between the acquisition of the land and the road construction or improvement which have to be taken into account in determining the cost of maintaining the land during that period. Loan charges falling due after that period are not brought into the calculation, and form a separate item in respect of which an advance may be made. See subsection (3) for meaning of loan charges.

50. Amendment of section 81 of Lands Clauses Consolidation (Scotland) Act, 1845.—(1) Section eighty-one of the Lands Clauses Consolidation (Scotland) Act, 1845 (which relates to expenses of conveyances) shall, in relation to any conveyance of lands granted after the commencement of this Act, have effect as if any reference therein to the charges and expenses of establishing the title to the lands included a reference to any expenses necessarily incurred by the seller in taking any action he may be requested by the promoters of the undertaking to take in connection with the conveyance in question.

(2) In this section " conveyance ", " seller " and " promoters of the undertaking " have the same meanings as in the said section eighty-one.

51. Recovery of certain sums from acquiring authorities.—(1) Section fifty-two of the Act of 1954 (which relates to the recovery from acquiring authorities of certain sums payable under Part I of that Act in respect of land acquired under compulsory powers) shall have effect, and shall be deemed always to have had effect, with the substitution, in subsection (2) of that section (which specifies cases in which no sum is to be recoverable thereunder), of the following paragraph for paragraph (*b*) (which relates to interests in land acquired for the purposes of the development or re-development of an area as a whole) :—

> " (*b*) the interest was acquired under Part I of the Town and Country Planning Act, 1944, or under Part IV of the principal Act, or in accordance with the provisions of the said Part IV as applied by section nineteen of the principal Act, and was so acquired in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, for the purposes of the development or re-development of any

area as a whole, or was acquired in pursuance of such a notice to treat or contract under powers conferred by a local Act, and for purposes, which are certified by the Minister to have been powers and purposes similar respectively to those mentioned in the preceding provisions of this paragraph ; or "

(2) Section fifty-two of the Act of 1954 shall also have effect, and shall be deemed always to have had effect, as if the following subsection were inserted after subsection (2) of that section :—

" (2A) Without prejudice to the last preceding subsection, where the interest was acquired in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, and on the date of service of the notice to treat, or on the date on which the contract was made, as the case may be, the land in which the interest subsisted was used wholly or mainly for agricultural purposes, subsection (1) of this section shall not apply to so much of any payment referred to in that subsection as is attributable to any part of the land in respect of which it is certified by the Minister that he is satisfied that the acquiring authority have no intention—

(*a*) of using it (otherwise than temporarily) for purposes other than agricultural purposes, or

(*b*) of disposing of it by way of sale, exchange or letting with a view to its being so used ".

(3) In relation to compulsory acquisitions to which section one of this Act applies, and in relation to any sale of an interest in land by agreement in circumstances corresponding to such an acquisition, section fifty-two of the Act of 1954 shall have effect with the substitution, for subsection (6) of that section, of the following subsections :—

" (6) Where, in the case of a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies, or of a sale of an interest in land which (within the meaning of that Act) is a sale thereof by agreement in circumstances corresponding to such an acquisition, any of the land comprised in the acquisition or sale is land in respect of which a notice under subsection (5) of section twenty-eight of this Act, or under the provisions of that subsection as applied by section thirty-nine or section forty-six of this Act, is registered (whether before or after the completion of the acquisition or sale) in respect of a planning decision or order made before the service of the notice to treat, or the making

of the contract, in pursuance of which the acquisition or sale is effected, the Minister shall be entitled to recover from the acquiring authority a sum equal to so much of the amount of the compensation specified in the notice as (in accordance with subsection (6) of section twenty-eight of this Act) is to be treated as attributable to that land :

Provided that—

(*a*) if, immediately after the completion of the acquisition or sale, there is outstanding some interest in that land to which a person other than the acquiring authority is entitled, the said sum shall not accrue due until that interest either ceases to exist or becomes vested in the acquiring authority ;

(*b*) no sum shall be recoverable under this subsection in the case of a compulsory acquisition or sale where the Minister is satisfied that the interest in question is being acquired for the purposes of the use of the land as a public open space.

(6A) Where by virtue of the last preceding subsection the Minister recovers a sum in respect of any land, by reason that it is land in respect of which a notice is registered under subsection (5) of section twenty-eight of this Act as applied by section thirty-nine of this Act, subsections (2) and (3) of section forty-one of this Act shall have effect in relation to that sum as if it were a sum recovered as mentioned in subsection (2) of the said section forty-one."

(4) In subsection (4) of section sixty-four of the Act of 1954 (which provides for the payment into the Exchequer of certain sums received by the Minister or the Central Land Board under that Act) the references to subsections (1) to (5) of section fifty-two of that Act, and to subsection (6) of that section, shall be construed as including references respectively to subsections (1) to (5) and to subsection (6) of that section as amended by the preceding provisions of this section.

(5) In the application of this section to Scotland—

(*a*) for references to the Act of 1954 and to sections fifty-two and sixty-four of that Act there shall be substituted references respectively to the Scottish Act of 1954 and to sections fifty-four and sixty-four of that Act; and

(*b*) subsection (1) of this section shall have effect as if for the paragraph (*b*) set out therein there were substituted the following paragraph, that is to say—

" (*b*) the interest was acquired under Part I of the Town and Country Planning (Scotland) Act, 1945, or

under Part III of the principal Act, or in accordance with the provisions of the said Part III as applied by section seventeen of the principal Act, and was so acquired in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, for the purposes of the development or re-development of any area as a whole, or was acquired in pursuance of such a notice to treat or contract under powers conferred by a local Act, and for purposes, which are certified by the Secretary of State to have been powers and purposes similar respectively to those mentioned in the preceding provisions of this paragraph ; or " ; and

(*c*) subsection (2) of this section shall have effect as if, in the subsection (2A) set out therein, for the words " the Minister ", there were substituted the words " the Secretary of State " ; and

(*d*) subsection (3) of this section shall have effect as if for the subsections (6) and (6A) set out therein there were substituted the following subsections, that is to say—

" (6) Where in the case of a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies, or of a sale of an interest in land which (within the meaning of that Act) is a sale thereof by agreement in circumstances corresponding to such an acquisition, any of the land comprised in the acquisition or sale is land in respect of which a notice under subsection (1) of section twenty-nine, or subsection (4) of section forty-one, of this Act or under the provisions of the said subsection (1) as applied by section forty-eight of this Act is recorded (whether before or after the completion of the acquisition or sale) in respect of a planning decision or order made before the service of the notice to treat, or the making of the contract, in pursuance of which the acquisition or sale is effected, the Secretary of State shall be entitled to recover from the acquiring authority a sum equal to so much of the amount of the compensation specified in the notice as (in accordance with subsection (2) of section twenty-nine of this Act) is to be treated as attributable to that land :

Provided that—

(*a*) if, immediately after the completion of the acquisition or sale, there is outstanding some interest in that land to which a person other than the

acquiring authority is entitled, the said sum shall not accrue due until that interest either ceases to exist or becomes vested in the acquiring authority ;

(*b*) no sum shall be recoverable under this subsection in the case of a compulsory acquisition or sale where the Secretary of State is satisfied that the interest in question is being acquired for the purposes of the use of the land as a public open space.

(6A) Where by virtue of the last preceding subsection the Secretary of State recovers a sum in respect of any land, by reason that it is land in respect of which a notice is recorded under subsection (4) of section forty-one of this Act, subsections (2) and (3) of section forty-three of this Act shall have effect in relation to that sum as if it were a sum recovered as mentioned in subsection (2) of the said section forty-three."

NOTES TO SECTION 51

This section makes three amendments to section 52 of the 1954 Act which provided for the recovery of certain sums from acquiring authorities by the Central Land Board and the Minister of Housing and Local Government. It should be noticed that the Central Land Board has now been dissolved as from the 1st April 1959 and its functions assumed by the Minister. The rights and duties referred to below as having previously existed in the Central Land Board are now transferred to the Minister.

1. Under Part I of the 1954 Act the Central Land Board had to make payments to owners of land which had been acquired compulsorily, at existing use value, between the passing of the 1947 Act and 1st January 1955 ; and save in some exceptional situations the Board could, under section 52 of the 1954 Act, recover sums so paid from the acquiring authority. One of the exceptional situations was where the land had been acquired (or purchased in the shadow of compulsory powers) before 18th November 1952 for " the development or redevelopment of any area as a whole."

The first amendment restates this exception, so as to make it clear that the exception is limited to acquisitions made either under Planning Act powers for the purposes of comprehensive development, or under local Act powers for the same purposes if the Minister certifies that those powers and purposes are similar to those arising under the Planning Acts. In respect therefore of an acquisition for the purposes of comprehensive development under *other* Acts the Minister (formerly the Central Land Board) can recover the appropriate sum from the acquiring authority, and the amendment is in effect backdated to the commencement of the 1954 Act, *i.e.*, 1st January 1955.

2. Secondly, the section adds a further exception to the rule that the Central Land Board should recover sums in respect of payments made by the Board under Part 1 of the 1954 Act. This new exceptional case is a case where agricultural land was acquired compulsorily in pursuance of a notice to treat served before the 18th November 1952, or purchased in the shadow of compulsory powers by contract made before that date, and the Minister of Housing and Local Government certifies that he is satisfied that the acquiring authority have no intention of using or disposing of the land for any purpose other than agricultural purposes. In such cases the Minister (formerly the Central Land Board) cannot recover, and the amendment is backdated to the commencement of the 1954 Act.

3. When a compulsory acquisition (or a purchase in the shadow of compulsory powers) which was initiated after 29th October 1958 takes place, the Minister is to retain (in an altered form) the right given by section 52 of the 1954 Act to recover from the acquiring authority, in cases where he has previously paid compensation under Part II or V, or a local planning authority has paid compensation by virtue of Part IV of that Act in respect of planning decisions or orders relating to the land. But this section now removes the corresponding right given to the Central Land Board to recover from an acquiring authority, when the amount payable by that authority under the 1954 Act in respect of the acquisition was reduced by reason of a reduction in the 1947 Part VI claim brought about by a pledge of that claim against the payment of a development charge relating to other land.

But in a case where immediately after the completion of the acquisition or purchase there is any interest in the land which is not owned by the acquiring authority the Minister's right to recover, as above, is postponed until such time as all such interests either cease to exist or become vested in the acquiring authority. Moreover no sum is to be recoverable by the Minister in this way, if he is satisfied that the acquisition was made for the purposes of an open space.

In cases where the Minister, under his above right, recovers a sum in respect of compensation paid by a local planning authority by virtue of Part IV of the 1954 Act, he must now pay the sum recovered to the local planning authority, less the amount of any grant or contribution paid by the Minister to that authority towards that compensation.

" deemed always to have had effect ". By this provision the substituted paragraph takes effect from the commencement of the 1954 Act, *viz.*, 1st January, 1955.

" paragraph (b) ". Paragraph (*b*) in its original form provided that there should be no recovery by the Central Land Board from the acquiring authority if " the interest was acquired in pursuance of a notice to treat, or a contract made, before the 18th November 1952, for the purposes of the development or redevelopment of any area as a whole." But the subsection in which the paragraph occurs (subsection (2)) goes on to provide that the exclusion of recovery will not apply in such cases if the interest was acquired (*a*) under the New Towns Act 1946, or (*b*) for the

purposes of the development or redevelopment of an area as an industrial estate. For the dissolution of the Central Land Board, see below.

" 18th November, 1952 ", *i.e.*, the date of the presentation of the Bill of the 1953 Act.

" Part 1 of the 1944 Act ". Part 1 of the 1944 Act broadly empowered local planning authorities to acquire land (*a*) for redevelopment of areas of extensive war damage, or (*b*) needed for relocation of population and industries, or for replacement of open space in the course of redevelopment of such areas, or (*c*) for dealing with conditions of bad layout and obsolete development, and for other allied purposes, see sections 2, 3, 4, 9, 10, of that Act.

" Part IV of the principal Act ". Part IV of the 1947 Act is the part relating to the powers given by that Act to acquire land for planning purposes.

" section 19 of the principal Act ". Section 19 of the 1947 Act enables the owner of land to compel the council of a county borough or county district by means of a " purchase notice", to purchase his land where a planning decision has rendered the land incapable of reasonably beneficial use. Where the purchase notice is confirmed by the Minister, the local authority must acquire in accordance with Part IV of that Act. The section was amended by section 70 of the 1954 Act, and has been re-amended in the same respect by section 35 of this Act. See the Ninth Schedule of this Act where section 19 is set out in its amended form.

" for the purposes . . . as a whole ", *e.g.*, where it is an area defined as an area of comprehensive development, under section 5 of the 1947 Act.

" powers and purposes . . . paragraph ", *i.e.*, powers to acquire for the purposes of development or redevelopment of an area as a whole.

" compulsory acquisitions . . . section 1 of this Act ", *i.e.*, compulsory acquisitions in pursuance of a notice to treat served or deemed to be served after 29th October 1958.

" sale of an interest . . . corresponding to such an acquisition ", *i.e.*, a sale to a public authority having compulsory purchase powers, in pursuance of a contract made after 29th October 1958, see section 52 (8).

" subsection (6) of that section ". In so far as it related to the Minister, subsection (6) empowered the Minister to recover the amount by which the price paid by the acquiring authority was reduced by reason of the prior payment of a sum or sums under Part II, IV or V of the 1954 Act. The amount recoverable is the actual amount of the sum or sums so paid by the Minister or (in the case of compensation under Part IV) the local planning authority. The subsection also empowered the Central Land Board to recover from the acquiring authority the amount by which the compensation was reduced by reason of the fact that a claim holding was reduced or extinguished under the Second Schedule of that Act because it had been pledged against a development charge relating to other land. This latter right to recover is now removed.

" subsection (5) of section 28 ". Part II of the 1954 Act provides for the payment of compensation in respect of planning decisions made *on or after* 1st January 1955. When so paid, such compensation is

registered under section 28 (5) in the register of local land charges against the land affected by the planning decision, and under section 29 of that Act any person carrying out new development on the land after such a registration has to pay, broadly, the amount so registered to the Minister.

" section 39 ". Part IV of the 1954 Act provides for the payment by local planning authorities of additional compensation in respect of orders made *on or after* 1st January 1955 under section 21 of the 1947 Act revoking or modifying planning permission previously given. When such additional compensation is paid, it has to be registered in the same way as Part II compensation (see previous note) and is recoverable from subsequent developers. Section 39 of the 1954 Act effects this by applying the Part II registration provisions to Part IV compensation. Subsection (3) of this section of the 1959 Act provides that sums recovered by the Minister in respect of such compensation are repayable to the local planning authority in question, less any grant or contribution paid by the Minister towards such compensation.

" section 46 ". Part V of the 1954 Act provided for the payment of compensation in respect of planning restrictions and orders under section 21 of the 1947 Act which were made *before* 1st January 1955. Such compensation is registered in the same way as Part II compensation under the 1954 Act (see note above) and is recoverable from subsequent developers. Section 46 of that Act effects this by applying the Part II registration provisions to Part V compensation.

" a sum . . . amount of the compensation ". See note above on " *subsection* (6) *of that section.*"

" subsection (6) of the section 28 ". Section 28 (6) of the 1954 Act provides in effect that compensation registered against land under that section shall be rateably distributed by area over the whole land, unless it was specifically apportioned to different parts of the land in the registered notice.

" subsections (2) and (3) of section 41 ". Section 41 (2) and (3) of the 1954 Act provide in effect that where compensation paid by a local planning authority by virtue of Part IV of that Act (*i.e.*, in respect of an order revoking or modifying planning permission previously granted, when made on or after the 1st January 1955) is recovered by the Minister from a person who subsequently carries out new development on the land, the sum so recovered is to be paid by the Minister to the local planning authority, less the amount of any contribution paid by the Minister under section 40 of that Act or of any grant paid by him under Part IX of the 1947 Act, towards that compensation. Sums recovered by the Minister from acquiring authorities in respect of such compensation are also to be paid back to local planning authorities in the same way.

Subsection (4). This subsection ensures that the financial provisions of the 1954 Act which require the Minister and the Central Land Board to pay sums recovered under section 52 of that Act into the Exchequer still continue to apply to sums recovered under section 52 in its now amended form, apart from sums recovered by the Minister in respect of compensation paid under Part IV of that Act which are dealt with by

the new subsection (6A) of section 52 of that Act, added by subsection (3) above.

" subsection (4) of section 64 ". This subsection provided (*inter alia*) that sums recovered by the Minister or Central Land Board under subsections (1)–(6) of section 52 of the 1954 Act should be paid by them into the Exchequer.

" Central Land Board ". By the Central Land Board (Dissolution and Transfer of Functions) Order 1959 (1959 No. 530) the Board was dissolved from the 1st April 1959, and its functions assumed by the Minister of Housing and Local Government. For the Board's main functions, see 1958 J.P.L. 809.

52. Application of Act to Crown.—(1) The provisions of Part I of this Act, and of the First, Second, Third and Sixth Schedules thereto, apply in relation to the acquisition of interests in land (whether compulsorily or by agreement) by government departments, being public authorities possessing compulsory purchase powers, as they apply in relation to the acquisition of interests in land by such authorities which are not government departments ; and any reference in this Act to a compulsory acquisition to which section one of this Act applies, or to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition, shall be construed accordingly.

(2) The provisions of sections thirty-six and thirty-seven of this Act shall apply in relation to any application for planning permission relating to Crown land as they apply in relation to applications for planning permission relating to any other land.

(3) The rights conferred by Part IV of this Act shall be exercisable by a person who (within the meaning of that Part of this Act) is an owner-occupier of a hereditament or agricultural unit which is Crown land, or is a resident owner-occupier of a hereditament which is Crown land, in the same way as they are exercisable in respect of a hereditament or agricultural unit which is not Crown land, and the provisions of Part IV of this Act, and of the Fifth Schedule to this Act, shall apply accordingly.

(4) In so far as any power conferred by section six of the Town Development Act, 1952, is exercisable in respect of Crown land, that power as extended by section forty-six of this Act shall be exercisable in respect of Crown land to the like extent.

(5) Paragraph 2 of the Sixth Schedule to this Act shall apply in relation to an interest in land which is a Duchy interest as it applies in relation to an interest in land which is a private interest.

(6) In this section " Crown land " has the same meaning as in section eighty-seven of the Act of 1947, and " Duchy interest " and

" private interest " have the same meanings as in section sixty-one of the Act of 1954.

(7) In the application of this section to Scotland, for any reference to section six of the Town Development Act, 1952, there shall be substituted a reference to section thirteen of the Housing and Town Development (Scotland) Act, 1957, for any reference to section forty-six of this Act there shall be substituted a reference to section forty-seven of this Act, for any reference to section eighty-seven of the Act of 1947 there shall be substituted a reference to section eighty-three of the Scottish Act of 1947, and for any reference to the Act of 1954 there shall be substituted a reference to the Scottish Act of 1954.

NOTES TO SECTION 52

This section applies the Act to the Crown in the following ways. It applies :—

(i) the provisions of Part 1 and its associated Schedules to compulsory acquisitions and purchases in the shadow of compulsory powers initiated after the 29th October 1958 by government departments ;

(ii) the provisions of sections 36 and 37 to planning applications in respect of Crown land ;

(iii) the provisions of Part IV (purchase notices) and the Fifth Schedule to Crown land ;

(iv) the powers under section 6 of the Town Development Act 1952 as extended by section 41 of this Act, to Crown land to the same extent as those powers applied before they were so extended.

(v) the provisions of paragraph 2 of the Sixth Schedule for the reduction of the unexpended balance of land in which a Duchy interest exists. For this purpose the Duchy interest is treated like any private interest.

" Crown land ", *i.e.*, any land an interest in which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department ; as defined in section 87 (1) of the 1947 Act.

" section 6 of the Town Development Act 1952 ". See section 46 of the 1959 Act and note on page 334.

" Duchy interest ", *i.e.*, an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall ; as defined in section 61 (1) of the 1954 Act.

" private interest ", *i.e.*, an interest other than a Crown interest and a Duchy interest ; as defined in section 61 (1) of the 1954 Act.

53. Special provision as to ecclesiastical property in England.— (1) Where the fee simple of any ecclesiastical property, not being property in Wales or Monmouthshire, is in abeyance, it shall be

treated for the purposes of this Act as being vested in the Church Commissioners.

(2) In this section " ecclesiastical property " means land belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

(3) This section shall not apply to Scotland.

NOTES TO SECTION 53

The section deals with ecclesiastical property when the fee simple of such property is at any time in abeyance. In such cases, the fee simple of the property is treated for the purposes of this Act as being vested in the Church Commissioners, who can then deal with the land as owners under the Act. This does not apply to Wales or Monmouthshire, where ecclesiastical property is permanently vested, see page 165.

" in abeyance ", *i.e.*, because the fee simple is vested in the incumbent of a benefice, and the benefice is vacant at the relevant time.

" Church Commissioners ". The Church Commissioners were appointed by the Church Commissioners Measure 1947 to replace the former Ecclesiastical Commissioners and governors of Queen Anne's Bounty, and to perform those bodies' functions in relation to church property and finance.

54. Adjustment of unexpended balances of established development value.—The provisions of the Sixth Schedule to this Act shall have effect as to the reduction or extinguishment of unexpended balances of established development value (within the meaning of the Act of 1954 or the Scottish Act of 1954, as the case may be) in consequence of compulsory acquisitions to which section one of this Act applies, and of sales of interests in land by agreement in circumstances corresponding to such acquisitions.

NOTES TO SECTION 54

This section provides that when a compulsory acquisition or purchase in the shadow of compulsory powers takes place in pursuance of a notice to treat served or contract made after 29th October 1958, the acquired land's unexpended balance of established development value for the purpose of the 1954 Act be appropriately reduced or extinguished. Since Part III of the 1954 Act relating to compensation for compulsory acquisition on or after 1st January 1955 is repealed by this Act in respect of acquisitions after the 29th October 1958, the " unexpended balance " is now no longer relevant for future acquisitions, but it still forms the basis of compensation for planning decisions or orders under Parts II and IV of the 1954 Act. Therefore it has to suffer extinction or reduction whenever an acquisition takes place on the new basis of market value.

The Sixth Schedule provides the necessary machinery. Part III of the 1954 Act still continues to apply to compulsory acquisitions and purchases in the shadow of compulsory powers made in pursuance of a notice to treat served or deemed to be served or contract made on or before 29th October 1958.

" The Sixth Schedule ". The Schedule, broadly, provides for :—

(*a*) the extinction of the acquired land's " unexpended balance " when after the acquisition there is no substantial interest remaining in the land of which the authority is not owner ;

(*b*) the apportionment of the " unexpended balance " between the interest(s) acquired and any other substantial interest(s) not acquired, and the corresponding reduction of the " unexpended balance " by the amount attributable to the acquired interest(s) ;

(*c*) the reduction of the " unexpended balance " of land other than the acquired land, when compensation is paid in respect of severance from or injurious affection to that other land.

" compulsory acquisitions . . . section 1 ", *i.e.*, compulsory acquisitions in pursuance of notices to treat served or deemed to be served after 29th October, 1958.

" sales . . . corresponding to such acquisitions ", *i.e.*, sales to a public authority possessing compulsory powers in pursuance of a contract made after 29th October, 1958, see section 57 (8).

55. Provisions as to inquiries, notices, regulations and orders.— (1) Section one hundred and four of the Act of 1947 (which authorises the Minister to hold local inquiries for the purposes of that Act) and section one hundred and five of that Act (which relates to the service of notices) shall apply for the purposes of this Act.

(2) The Minister may make regulations under this Act for any purpose for which regulations are authorised or required to be made under this Act.

(3) Any power conferred by this Act to make an order shall include power to vary or revoke the order by a subsequent order.

(4) Any power conferred by this Act to make regulations or orders shall be exercisable by statutory instrument.

(5) Any statutory instrument containing regulations or an order made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In the application of this section to Scotland, for references to sections one hundred and four and one hundred and five of the Act of 1947 there shall be substituted references respectively to sections one hundred and one hundred and one of the Scottish Act of 1947.

NOTES TO SECTION 55

This section applies certain provisions of the 1947 Act relating to the holding of local inquiries and the service of notices, and provides for the making of regulations and orders under this Act. For a full account of these provisions, see page 159.

" section 104 of the Act of 1947 ". The section empowers the Minister to hold local inquiries for the purpose of the exercise of any of his functions under the 1947 Act. That section was applied by section 67 of the 1954 Act for the purpose also of that Act. Such inquiries may now be held for the same purpose under this Act. Section 290 (2)–(5) of the Local Government Act 1933, which deals with evidence at local inquiries and the defraying of their costs, has effect in relation to such inquiries held by the Minister : see *Re Wood's Application*, (1952) C.P.L. 724 in relation to costs at inquiries. As to the control of procedure at any form of statutory inquiry, see section 33 of this Act.

" section 105 of that Act ". The section provides for the method of service of notices under the 1947 Act, broadly, upon (*a*) named persons, or (*b*) a person, named or unnamed, in respect of his interest in premises, or (*c*) any person in respect of unoccupied land.

" authorised or required ", *e.g.*, under sections 14 (2), 16 (2), 19 (2), 39 (2), 40 (1) of this Act.

" subject to annulment ". See section 5 (1) of the Statutory Instruments Act 1946, and see further page 161 above.

56. Financial provisions.—There shall be paid out of moneys provided by Parliament—

(*a*) any administrative expenses incurred by the Minister in consequence of the passing of this Act ;

(*b*) any sums necessary to enable any government department to make payments in pursuance of section thirteen of this Act ;

(*c*) any sums necessary to enable any government department to pay any compensation or additional consideration becoming payable by them under the provisions of section eighteen of this Act, or under those provisions as extended by section twenty-one of this Act ;

(*d*) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

NOTES TO SECTION 56

This section makes the financial provisions necessary for the purposes of the Act.

" section 13 ". This section empowers acquiring authorities to make payments to persons displaced by a compulsory acquisition or a purchase in the shadow of compulsory powers initiated after 29th October 1958.

Such payments are to cover removal expenses and loss arising from disturbances of a trade or business.

" section 18 ". This section broadly provides that the owner of land which is compulsorily acquired or purchased in the shadow of compulsory powers after 29th October 1958 may receive additional compensation or consideration, if permission for additional development on the land is granted within five years of the compulsory purchase. The following section provides the machinery for bringing such subsequent permissions to the notice of the ex-owner.

" section 21 ". This section applies the provisions of section 18 (see previous note) to land on which additional development is initiated by the Crown or in right of a Crown or Duchy interest within five years of the compulsory purchase. Such development would not require planning permission, but the principle that the ex-owner should receive the additional compensation is the same as it is where such permission is required and granted.

57. Interpretation.—(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

" acquiring authority ", in relation to the acquisition of an interest in land (whether compulsorily or by agreement) or to a proposal so to acquire such an interest, means the government department, local authority or other body by whom the interest is, or is proposed to be, acquired ;

" the Act of 1919 " means the Acquisition of Land (Assessment of Compensation) Act, 1919 ;

" the Act of 1947 " means the Town and Country Planning Act, 1947 ;

" the Act of 1954 " means the Town and Country Planning Act, 1954 ;

" authority to whom the Act of 1919 applies " means a government department or local or public authority within the meaning of that Act, or a person or body of persons to whom that Act applies as it applies to such a department or authority ;

" compulsory acquisition " and " public authority possessing compulsory purchase powers ", in relation to England and Wales, have the same meanings as in the Act of 1954, and, in relation to Scotland, have the same meanings as in the Scottish Act of 1954 ;

" corporate land " has the same meaning as in the Local Government Act, 1933 ;

" disposal " means disposal by way of sale, exchange, excambion or lease, or by way of the creation of any

easement, servitude, right or privilege, or in any other manner, except by way of appropriation, gift, mortgage or the creation of a heritable security, and " dispose of " shall be construed accordingly ;

" function " means a power or a duty, and " grant-aided function ", in relation to a body, means a function in respect of which a grant or contribution (other than any grant under the Local Government Act, 1958, or the Local Government and Miscellaneous Financial Provisions (Scotland) Act, 1958, and any Exchequer subsidy under the Housing (Financial Provisions) Act, 1958, or any of the enactments specified in Part I of the Sixth Schedule to the Housing (Scotland) Act, 1950) is payable to that body by a government department out of moneys provided by Parliament ;

" government department " includes a Minister of the Crown ;

" highway " has the same meaning as in the Highways Act, 1959 ;

" local enactment " means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure ;

" the Minister ", except in Part II of this Act, in relation to England and Wales means the Minister of Housing and Local Government and in relation to Scotland means the Secretary of State ;

" outline application " means an application for planning permission subject to subsequent approval on any matters ;

" planning decision ", in relation to England and Wales, means a decision made on an application under Part III of the Act of 1947, and, in relation to Scotland, means a decision made on an application under Part II of the Scottish Act of 1947 ;

" planning permission ", in relation to England and Wales, means permission under Part III of the Act of 1947 and, in relation to Scotland, means permission under Part II of the Scottish Act of 1947 ;

" prescribed " (except in relation to matters required or authorised by this Act to be prescribed by an order) means prescribed by regulations under this Act ;

" the Scottish Act of 1947 " means the Town and Country Planning (Scotland) Act, 1947 ;

" the Scottish Act of 1954 " means the Town and Country Planning (Scotland) Act, 1954 ;

" special enactment " means a local enactment, or a provision

contained in an Act other than a local or private Act, being a local enactment or provision authorising the compulsory acquisition of land specifically identified therein ;

" tenancy ", in relation to England and Wales, has the same meaning as in the Landlord and Tenant Act, 1954.

(2) In this Act, in relation to a compulsory acquisition in pursuance of a notice to treat, " the relevant interest " means the interest acquired in pursuance of that notice, " the relevant land " means the land in which the relevant interest subsists, and " the notice to treat " means the notice to treat in pursuance of which the relevant interest is acquired.

(3) Subject to the preceding subsections, and except in so far as the context otherwise requires,—

(*a*) in relation to England and Wales, expressions used in this Act and in the Act of 1947 have the same meanings in this Act as in that Act ;

(*b*) in relation to Scotland, expressions used in this Act and in the Scottish Act of 1947 have the same meanings in this Act as in that Act.

(4) Subsections (3), (6) and (7) of section sixty-nine of the Act of 1954 (which relates to the interpretation of that Act) shall apply for the purposes of this Act in relation to England and Wales as they apply for the purposes of that Act ; and in relation to Scotland subsections (3), (4), (6), (7) and (9) of section sixty-nine of the Scottish Act of 1954 (which relates to the interpretation of that Act) shall apply for the purposes of this Act as they apply for the purposes of that Act.

(5) Subsections (2) and (3) of section one hundred and twelve of the Act of 1947, and subsections (2) and (3) of section one hundred and eight of the Scottish Act of 1947, shall apply respectively for the purposes of the construction of references in this Act to the Third Schedule to the Act of 1947 and to the Third Schedule to the Scottish Act of 1947.

(6) For the purposes of this Act a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—

(*a*) to both of them beneficially, or

(*b*) to both of them as trustee of one particular trust, or

(*c*) to both of them as personal representative of one particular person ;

and in this subsection " trustee ", as respects Scotland, has the same meaning as in the Trusts (Scotland) Act, 1921.

(7) In this Act, in relation to Scotland, any reference to a sale or purchase includes a reference to a sale or purchase by way of feu, and any reference to the price in relation to a sale or purchase includes a reference to grassum, feu-duty and ground annual.

(8) Any reference in this Act to a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition to which section one of this Act applies is a reference to a sale thereof to a public authority possessing compulsory purchase powers, being a sale in pursuance of a contract made after the twenty-ninth day of October, nineteen hundred and fifty-eight.

(9) For the purposes of this Act development of land shall be taken to be initiated—

(*a*) if the development consists of the carrying out of operations, at the time when those operations are begun ;

(*b*) if the development consists of a change in use, at the time when the new use is instituted ;

(*c*) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in the preceding paragraphs.

(10) Any reference in this Act to any provisions of the Highways Act, 1959, shall be construed as including a reference to any corresponding enactment repealed by that Act.

(11) In the application of this Act to London—

(*a*) without prejudice to the operation of the last preceding subsection, any reference in this Act to provisions of the Highways Act, 1959, which extend to London subject to modifications shall be construed as a reference to those provisions as so modified ;

(*b*) any reference in this Act to provisions of the Highways Act, 1959, which do not extend to London shall be construed as mentioned in the last preceding subsection notwithstanding that the repeal of the corresponding enactment by that Act does not extend to London ; and

(*c*) any reference to a highway authority or a local highway authority includes a reference to the London County Council.

In this subsection " London " means the administrative county of London.

(12) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act.

NOTES TO SECTION 57

This is the general interpretation section for the Act. It should be noticed that subsection (3) in effect incorporates meanings from the 1947 Act.

" authority to whom the Act of 1919 applies ". That Act originally applied only to government departments, local authorities and public authorities see section 1 (1). Section 12 (2) defined public authorities for this purpose as " any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking "—and see generally *Metropolitan Water Board* v. *Berton* [1921] 1 Ch. 299. " Local authority " is not defined in the Act, but this phrase usually means any authority which receives and expends a local rate.

Section 4 (7) of the New Towns Act 1946 applied the 1919 Act to development corporations and section 103 (3) of the National Parks and Access to the Countryside Act 1949 applied it to the Nature Conservancy.

Section 57 (1) of the 1947 Act applied the 1919 Act to statutory undertakers ; and to the Central Land Board, but the power of the Board to acquire land was removed by section 3 (4) of the 1953 Act, and the Board is now dissolved (see the Central Land Board (Dissolution and Transfer of Functions) Order 1959 (S.I. 1959 No. 530)).

Although the strict application of the 1919 Act has not been changed by this Act, it is in fact applied universally by virtue of section 1 of this Act.

" compulsory acquisition ". Section 69 (1) of the 1954 Act provides that " compulsory acquisition " does not include the vesting in a person by an Act of Parliament of property previously vested in some other person.

" public authority . . . purchase powers ". Section 69 (1) of the 1954 Act provides that " ' public authority possessing compulsory purchase powers,' in relation to the compulsory acquisition of an interest in land, means the person or body of persons effecting the transaction and in relation to any other transaction relating to an interest in land, means any person or body of persons who would be or have been authorised to acquire that interest compulsorily for the purposes for which the transaction is or was effected, or a parish council or parish meeting on whose behalf a county council could be or have been authorised as aforesaid."

" corporate land ", *i.e.*, land belonging to or held in trust for, or to be acquired or held in trust for, a municipal corporation other than for an express statutory purpose, see section 305 of the Local Government Act 1933. This would cover, for example, land given to the corporation or acquired before express duties or functions were imposed upon it by statute.

" Local Government Act 1958 ". The Local Government Act 1958 provides for the making of general grants by the Minister to councils of counties and county boroughs in 1959–60 and subsequent years, in place of the special grants payable under separate enactments in respect of

expenditure incurred by them for the purposes of specified functions, *e.g.*, education, National Health Scheme, Fire Services etc. There are still, however, some specific grants made under certain enactments (*e.g.* grants for civil defence under the Civil Defence Act 1948), and such grants, not being grants under the Local Government Act 1958, are for " grant-aided functions " for the purpose of this definition.

" Housing (Financial Provisions) Act 1958 ". The Act (which is a consolidating Act) provides in Part I for the payment of Exchequer subsidies for " approved " dwelling houses to local authorities and development corporations.

" highway ". By section 294 of the Highway Act 1959, a " highway " means the whole or part of a highway other than a ferry or waterway, and where a highway passes over a bridge or through a tunnel, that bridge or tunnel is to be regarded as part of the highway for the purposes of the Act.

" special parliamentary procedure ". Special parliamentary procedure is governed by the Statutory Orders (Special Procedure) Act 1945. Section 1 of that Act provides that where by any Act passed after that Act, power to make or confirm orders is conferred on any authority and orders so made are to be subject to special parliamentary procedure, the provisions of the 1945 Act are to apply to such order and the order is to be of no effect until it has been brought into operation in accordance with the provisions of that Act. The Act contains stringent provisions for the order to be laid before Parliament and for the scrutiny of the order by Parliament, including powers to receive petitions against the order, to annul it, to refuse to approve it, or to amend it. See section 8 of that Act for the application of the Act to orders made under certain previous Acts.

" Part III of the Act of 1947 ". Part III is that part of the Act which places the planning control of all development in the hands of local planning authorities and the Minister. The most familiar planning decisions arising thereunder are under sections 14, 15, 16 and 17.

" Act other than a local or private Act ", *i.e.*, a public general Act, but one authorising the acquisition of identified land, *e.g.*, the Public Offices (Site) Act 1947.

" tenancy ", *i.e.*, " a tenancy created either immediately or derivatively out of a freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement, or in pursuance of any enactment (including this Act, *i.e.*, the Landlord and Tenant Act 1954), but does not include a mortgage term of any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee," Landlord and Tenant Act 1954, section 69 (1).

" Subsections (3), (6) and (7) of section 69 ". Subsection (3) provides that references to a planning decision are references :—

(*a*) where it is altered on appeal, to the decision as so altered ;

(*b*) where it is upheld on appeal, to the original decision of the local planning authority ;

(*c*) where it is given by the Minister in default of a decision of the local planning authority, to his decision ;

and provides that the time of a planning decision be the time when it is originally given, whether or not it is subsequently altered, except where it is given by the Minister in default when its time is the end of the period prescribed or agreed for the giving of it by the local planning authority.

Subsection (6) provides : " Reference in this Act to a contract are references to a contract in writing, or a contract attested by a memorandum or note thereof in writing signed by the parties thereto or by some other person or persons authorised by them in that behalf, and in relation to an interest in land conveyed or assigned without a preliminary contract are references to an option in writing or attested as aforesaid ; and references to the making of a contract or to the grant of an option are references to the execution thereof or (if it was not in writing) to the signature of the memorandum or note by which it was attested."

Subsection (7) provides : " References in this Act :—

(*a*) to a person from whom title is derived by another person include references to any predecessor in title of that other person ;

(*b*) to a person deriving title from another person include references to any successor in title of that other person ;

(*c*) to deriving title are references to deriving title either directly or indirectly."

" Section 112 (2) and (3) of the Act of 1947 ". Section 112 (2) provides that, for the purposes of paragraph 3 of the Third Schedule of the 1947 Act, the erection of additional buildings within the curtilage of a building for use in connection with that original building shall be treated as an enlargement of that building. It also provides that where two or more buildings in the same curtilage are used as one unit for the purposes of an institution or undertaking, they are to be treated as one building for the purpose of cubic content. Section 112 (3) requires the cubic content of any building for the purposes of the Third Schedule of the 1947 Act to be ascertained by external measurement. See the 1954 Act, Seventh Schedule.

Subsection (8). This subsection defines the phrase used in Parts I, III, and IV of the Act for a purchase in the shadow of compulsory powers. For the phrase, however, used for the purposes of Part II, see section 30(5).

" 29th October 1958 ", *i.e.*, the date of the presentation of the Bill of the Act.

" Any reference . . . Highways Act 1959 ", *i.e.*, in sections 39 (1) (*e*), 48 (1), 49 (1) and First Schedule, paragraph 1 (*c*).

" London ". For modifications of the provisions of the Highways Act 1959 in relation to London, see the Twentieth Schedule of that Act.

58. Minor and consequential amendments and repeals.— (1) Subject to the following provisions of this section, and without prejudice to any amendments having effect by virtue of the preceding provisions of this Act,—

(*a*) the enactments specified in the Seventh Schedule to this Act shall have effect subject to the amendments specified in

that Schedule ; and

(*b*) the enactments specified in the Eighth Schedule to this Act are hereby repealed to the extent specified in relation thereto in the third column of that Schedule.

(2) The amendments of section nineteen of the Act of 1947 and of section seventeen of the Scottish Act of 1947 specified in the Seventh Schedule to this Act shall not have effect in relation to any purchase notice served before the commencement of this Act; but those amendments, and the amendments made by section thirty-five of this Act, shall have effect in relation to any purchase notice served after the commencement of this Act—

(*a*) under the provisions of the said section nineteen or section seventeen as applied by any other provision of either of those Acts or of the Act of 1954 or the Scottish Act of 1954, or

(*b*) under any order made (whether before or after the commencement of this Act) under any other provision of the Act of 1947 or the Scottish Act of 1947, except in so far as a contrary intention is expressed in any such order made after the commencement of this Act.

(3) The amendments of, and repeals in, section fifty-three of the Act of 1954 and section fifty-five of the Scottish Act of 1954 specified in the Seventh and Eighth Schedules to this Act shall not have effect in relation to any compensation accruing due on or before the twenty-ninth day of October, nineteen hundred and fifty-eight.

(4) The amendment of the Second Schedule to the Housing Act, 1957, specified in the Seventh Schedule to this Act shall not have effect in relation to compulsory acquisitions to which section one of this Act does not apply.

(5) The repeals specified in the Eighth Schedule to this Act shall not affect the operation of any enactment in relation to compulsory acquisitions to which section one of this Act does not apply, or in relation to sales of interests in land by agreement, not being sales in circumstances corresponding to compulsory acquisitions to which section one of this Act applies.

(6) In accordance with subsections (1) to (3) of section thirty-five of this Act, and with the preceding provisions of this section, section nineteen of the Act of 1947 shall have effect, in relation to purchase notices served after the commencement of this Act, as set out in the Ninth Schedule to this Act.

(7) In accordance with subsections (1), (3) and (6) of section thirty-five of this Act, and with the preceding provisions of this

section, section seventeen of the Scottish Act of 1947 shall have effect, in relation to purchase notices served after the commencement of this Act, as set out in the Tenth Schedule to this Act.

NOTES TO SECTION 58

This section deals with general amendments and repeals of previous statutory provisions.

Other amendments are effected by (*e.g.*) section 33 (Tribunals and Inquiries Act 1958) ; section 35 (the 1947 Act, section 19, relating to purchase notices), section 45 (section 53 of the 1954 Act, relating to compensation for requisitioned land), section 51, (section 52 of the 1954 Act, relating to recovery of sums from acquiring authorities).

The provisions which are amended by the Seventh Schedule are :—

(*a*) section 58 (7) (*b*) of the Agriculture Act 1947.

(*b*) sections 18, 19, 20 (3) aad (4), 23, 24, 27 and 54 of the Town and Country Planning Act 1947.

(*c*) sections 29 (*b*) and 53 (1) and (2) of the 1954 Act.

(*d*) section 47 (2) and Second Schedule of the Housing Act 1957.

The amendments to section 19 of the 1947 Act (relating to purchase notices) do not apply to purchase notices served on or before the 29th October 1958, but as regards purchases notices served after that date the amendments to the section made by the Seventh Schedule and section 35 of this Act have effect whether the notices were served under section 19 itself or under that section as applied by any other enactment.

The amendments to section 53 of the 1954 Act (relating to requisitioned land) do not apply to compensation accruing due before the 30th October, 1958, and the amendment to the Second Schedule of the Housing Act 1957 (relating to " well-maintained " payments for houses acquired under that Act) does not apply to acquisitions in pursuance of a notice to treat served on or before the 29th October 1958.

The repeals apply only to compulsory acquisitions in pursuance of notices to treat served, or deemed to be served, or purchases in the shadow of compulsory powers by contracts made, after the 29th October 1958.

" section 19 of the Act of 1947 ", *i.e.*, the section enabling an owner of land to serve a " purchase notice " after a refusal or conditional grant of planning permission when he claims that the land is thereby rendered incapable of beneficial use. See the Ninth Schedule for the amended form of section 19.

" applied by any other provision ", *i.e.*, by sections 22 (4) and 27 (3) of the 1947 Act, and section 59 of the 1954 Act.

" under any order ", *e.g.*, a Building Preservation Order made under section 29 of the 1947 Act, which in accordance with the Town and Country Planning (Building Preservation Orders) Regulations 1948 (S.I. 1948 No. 1766) may apply the section 19 procedure for use where consent is refused in respect of the building in question under the terms of the order.

" section 53 of the Act of 1954 ", *i.e.*, the section providing a fresh

ceiling for compensation under the Compensation (Defence) Act 1939 for damage to requisitioned land, when that compensation accrued due on or after 1st January 1955.

" section 1 of this Act does not apply ", *i.e.*, compulsory acquisitions in pursuance of notices to treat served or deemed to be served on or before the 29th October 1958.

" Second Schedule to the Housing Act 1957 ". The effect of the amendment to the Second Schedule is that the amount of a " well maintained " payment under sections 30 or 60 of that Act shall not be greater than the amount by which the full market value of the unfit house exceeds the site value thereof.

59. Short title, citation, commencement and extent.—(1) This Act may be cited as the Town and Country Planning Act, 1959 ; and the Town and Country Planning Acts, 1947 to 1954, and this Act, except Part II thereof, may be cited together as the Town and Country Planning Acts, 1947 to 1959, and the Town and Country Planning (Scotland) Acts, 1947 to 1954, and this Act, except Part II thereof, may be cited together as the Town and Country Planning (Scotland) Acts, 1947 to 1959.

(2) This Act shall come into operation at the end of the period of one month beginning with the day on which it is passed.

(3) This Act shall not extend to Northern Ireland.

NOTES TO SECTION 59

This section deals with the short title and citation of the Act, its commencement and extent. The Act comes into force on the 16th August, 1959, being one month after the 16th July, 1959.

It does not apply to Northern Ireland.

FIRST SCHEDULE

(*Sections* 9, 52.)

SPECIAL PROVISIONS RELATING TO SECTION NINE

PART I

Provisions for taking account of increases in value of contiguous or adjacent land

1. Subsection (4) of section nine of this Act shall not apply to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any of the following enactments (which contain provisions for taking account in certain cases of increases in the value of contiguous or adjacent land), that is to say,—

(*a*) section thirteen of the Light Railways Act, 1896 ;
(*b*) sub-paragraph (*C*) of paragraph (2) of the Schedule to the Development and Road Improvement Funds Act, 1909 ;
(*c*) subsection (6) of section two hundred and twenty-two of the Highways Act, 1959 ;
(*d*) paragraph 4 of Part III of the Third Schedule to the Housing Act, 1957.

2. Subsection (4) of section nine of this Act shall also not apply to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any local enactment which provides (in whatsoever terms) that, in assessing compensation in respect of a compulsory acquisition thereunder, account shall be taken of any increase in the value of an interest in contiguous or adjacent land which is attributable to any of the works authorised by that enactment.

3. Where any such local enactment as is mentioned in the last preceding paragraph includes a provision restricting the assessment of the increase in value thereunder by reference to existing use (that is to say, by providing, in whatsoever terms, that the increase in value shall be assessed on the assumption that planning permission in respect of the contiguous or adjacent land in question would be granted for development of any class specified in the Third Schedule to the Act of 1947, but would not be granted for any other development thereof), the enactment shall have effect, in relation to compulsory acquisitions to which section one of this Act applies, as if it included no such provision restricting the assessment of the increase in value.

4.—(1) Where, for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land, an increase in the value of an interest in other land has, in any of the cases mentioned in the table, been taken into account by virtue of subsection (4) of section nine of this Act or any corresponding enactment, then, in connection with any subsequent acquisition to which this paragraph applies, that increase shall not be left out of account by virtue of subsection (2) of section nine of this Act, or taken into account by virtue of subsection (4) of that section or any corresponding enactment, in so far as it was taken into account in connection with the previous acquisition.

(2) Where, in connection with a compulsory acquisition of an interest in land, a diminution in the value of an interest in other land has, in any of the cases mentioned in the table, been taken into account in assessing compensation for injurious affection, then, in connection with any subsequent acquisition to which this paragraph applies, that diminution shall not be left out of account, by virtue of subsection (2) of section nine of this Act, in so far as it was taken into account in connection with the previous acquisition.

(3) This paragraph applies to any subsequent acquisition where either—

(*a*) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole of the land in which that interest previously subsisted or only to part of that land), or

(*b*) the person entitled to the interest acquired is, or derives title to that interest from, the person who at the time of the previous acquisition was entitled to the interest previously taken into account ;

and in this sub-paragraph any reference to the interest previously taken into account is a reference to the interest the increased or diminished value whereof was taken into account as mentioned in sub-paragraph (1) or sub-paragraph (2) of this paragraph.

(4) Where, in connection with a sale of an interest in land by agreement, the circumstances were such that, if it had been a compulsory acquisition, an increase or diminution of value would have fallen to be taken into account as mentioned in sub-paragraph (1) or sub-paragraph (2) of this paragraph, the preceding provisions of this paragraph shall apply, with the necessary modifications, as if that sale had been a compulsory acquisition and

that increase or diminution of value had been taken into account accordingly.

(5) In this paragraph " corresponding enactment " means any such enactment as is mentioned in paragraph 1 or paragraph 2 of of this Schedule, and any reference to a case mentioned in the table is a reference to a case mentioned in the first column of the table set out in subsection (2) of section nine of this Act.

5. In the application of this Schedule to Scotland, for any reference to the Act of 1947 there shall be substituted a reference to the Scottish Act of 1947, for any reference to paragraph 4 of Part III of the Third Schedule to the Housing Act, 1957, there shall be substituted a reference to paragraph 5 of the Fourth Schedule to the Housing (Scotland) Act, 1950, and for sub-paragraph (*c*) of paragraph 1 there shall be substituted the following sub-paragraph, that is to say—

" (*c*) paragraph (*a*) of the proviso to subsection (1) of section thirteen of the Restriction of Ribbon Development Act, 1935."

PART II

Special provisions as to new towns

6.—(1) The provisions of this Part of this Schedule shall have effect with respect to paragraph 3 of the table set out in subsection (2) of section nine of this Act.

(2) In this Part of this Schedule " the transfer date ", in relation to a new town, means the date on which, by virtue of any enactment contained in any Act relating to new towns, whether passed before or after this Act, the development corporation established for the purposes of that new town ceases to act, except for purposes of or incidental to the winding up of its affairs.

7. Land shall not be treated as falling within the case described in the said paragraph 3 by reason that it forms part of an area which has been designated as therein mentioned, if the notice to treat is served on or after the transfer date.

8. In determining whether the relevant land forms part of such an area as is mentioned in the said paragraph 3,—

(*a*) in the case of an area designated as the site of a new town by an order which became operative on or before the twenty-ninth day of October, nineteen hundred and fifty-eight, regard shall be had to that order in the form in which, whether as originally made or as subsequently

varied, it was in force on that day, and any variation becoming operative after that day shall be disregarded ;

(*b*) in the case of an area designated as the site of a new town by an order which became operative after the said twenty-ninth day of October, whether before or after the passing of this Act, regard shall be had to the order in its original form, and any variation of the order shall be disregarded.

9. For the purpose of determining whether any development, of which there is a prospect on the date of service of the notice to treat, would be such development as is described in the said paragraph 3, it is immaterial whether the time when that development will or may take place is a time before, on or after the transfer date.

10. This Part of this Schedule, except paragraph 8 thereof, shall not apply to Scotland.

NOTES TO FIRST SCHEDULE

Part 1 of the Schedule provides :—

(*a*) that the set-off provisions (relating to enhancement in the value of contiguous or adjacent land) contained in section 9 (4) shall not apply to cases for which there are already set-off provisions applicable (i) under any of the enactments set out in paragraph 1, or (ii) under any local enactment ;

(*b*) that any provision in a local enactment which restricts a set-off which is to be made by reason of the enhancement of contiguous or adjacent land, to the amount of the enhancement in the *existing use* value of that land shall not apply to an acquisition in pursuance of a notice to treat served after the 29th October, 1958 ;

(*c*) that any enhancement in the value of contiguous or adjacent land, which is taken into account by set-off against the compensation payable for a compulsory acquisition or purchase in the shadow of compulsory powers, shall not :—

(i) be disregarded, under the provisions of section 9 (2), in a case where the relevant interest in that contiguous or adjacent land (either in whole or in part) is itself compulsorily acquired or purchased in the shadow of compulsory powers, or

(ii) be taken into account a second time by being set-off against compensation payable, in a case where other land in the same ownership (or land owned by a successor in title to the person who owned the original contiguous or adjacent land) is compulsorily acquired or purchased in the shadow of compulsory powers.

(*d*) that any diminution in the value of land, which is taken into account in assessing compensation for injurious affection caused by a compulsory acquisition or a purchase in the shadow of compulsory powers, shall not be disregarded, under the provisions of section 9 (2),

in a case where subsequently the relevant interest in that land (either in whole or in part) is itself compulsorily acquired or purchased in the shadow of compulsory powers.

Part II of the Schedule provides :—

(*a*) that where, in respect of land forming part of the site of a new town, a notice to treat is served *after* the date when the development corporation for that new town ceases to act, that land shall be excluded from the case set out in paragraph 3 of the Table in section 9 (2).

(*b*) that in considering whether any acquired land forms part of an area designated by order as the site of a new town (for the purpose of the same paragraph), regard shall be had (i) to the order in the form in which it was in force on the 29th October, 1958, if the order came into operation *on or before* that day, or (ii) to the order *in its original form* on the day when it came into operation, if it came into operation *after* the 29th October, 1958. Variations of the order after these dates shall be ignored.

(*c*) that in considering whether any prospective development is development of the kind described in the same paragraph 3, the fact that the development will or may take place after the date when the development corporation for the new town in question ceases to act is to be ignored.

" subsection 4 of section 9 ". Section 9 (4) provides that where, on a compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958, an interest in contiguous or adjacent land retained by the owner is enhanced by the scheme of development for which the acquisition is made (see Table in section 9 (2)) then the compensation for the acquisition shall be reduced by the amount of that enhancement.

" contiguous or adjacent land ". See note on page 216.

" section 13 of the Light Railways Act 1896 ". The section provides that in assessing compensation for land acquired compulsorily for the purposes of a light railway under that Act, account should be taken of the extent to which the " remaining and contiguous lands " retained by the owner benefited by the proposed light railway.

" sub-paragraph (c) . . . Road Improvement Funds Act 1909 ". The sub-paragraph provided that in assessing compensation for land acquired compulsorily under that Act, account should be taken of the extent to which " the remaining and contiguous lands " retained by the owner were benefited by the proposed work or road for which the acquisition was made. The whole paragraph was repealed by the Acquisition of Land (Authorisation Procedure) Act, 1946, section 6 and Fourth Schedule as from the 18th April, 1946.

" subsection (6) . . . Highways Act 1959 ". The subsection provides that, in assessing compensation for the acquisition of land for highway purposes under sections 214 and 215 of that Act, account shall be taken (*a*) of the extent to which " contiguous lands " retained by the owner are benefited by the purpose for which the acquisition is made, and (*b*) in

particular in the case of road-widening, of the enhancement of " other land " retained by the owner which is caused by the creation of a frontage to the road as widened. That Act only comes into force on the 1st January, 1960, and until that time this reference to it is to be treated as a reference to the corresponding provisions of Acts superseded by that (principally consolidating) Act, see section 57 (10) of this Act. The only corresponding provision in this case is the Restriction of Ribbon Development Act, 1935, section 13 (1), proviso, paragraph (*a*).

" paragraph 4 . . . the Housing Act 1957 ". The paragraph provides that in assessing compensation *otherwise than* at site value for land purchased by a local authority as comprised in a clearance area or for purposes of redevelopment under section 57 of the 1957 Act, account shall be taken of any increase in the value of " other premises " retained by the owner caused either by the proposed redevelopment of the area (under sections 55 and 56) or the demolition of any buildings by the local authority. The provision is not limited to contiguous or adjacent land.

" development . . . Third Schedule to the Act of 1947 ". The Schedule describes the classes of development included in its " existing use " for the purpose of the 1947 Act. The Schedule was amended by the Seventh Schedule of the 1954 Act so that (*a*) its tolerances are extended to cover the state of the land, not merely as it existed on 1st July, 1948, but also as it exists on any date by reference to which the Third Schedule falls to be applied, and (*b*) in any case where development has been carried out since 1st July, 1948, under a permission which limits the time for the retention of that development, the Third Schedule tolerances will apply to such development only for the limited period.

Paragraph 4. It should be noticed that these provisions apply, whatever time the first compulsory acquisition or purchase took place.

" subsection (2) of section 9 ". Section 9 (2) provides that in calculating compensation on a market value basis no account is to be taken of any increase or decrease in the value of the acquired land caused by the scheme of development for which the interest is acquired, as set out in the Table of that section. This includes the particular scheme for which the acquisition is made, or the development (or the prospect of development) of an area of comprehensive development, or an area designated as the site of a new town, or an area of town development, where the acquired interest is within such an area.

" in so far . . . the previous acquisition ". If the increase, or diminution as the case may be, in the value of the land in question is different by the time the subsequent acquisition takes place, that *difference* will be disregarded under section 9 (2) or taken into account by set-off under section 9 (4).

" paragraph 3 . . . section 9 of this Act." The paragraph in effect provides that where acquired land forms part of an area designated as the site of a new town, any increase or decrease in the value of the acquired land which is attributable to development, or the prospect of development, of any of the rest of that area as a new town shall be ignored. The

effect of exclusion from this case would therefore be that such increase or decrease could be taken into account.

" any Act relating to new towns ". Section 15 of the New Towns Act 1946 provided for the winding up of development corporations under orders made by the Minister and for the transfer of any of their undertakings to local authorities, but this has been superseded by section 6 of the New Towns Act 1959 which provides for orders to be made by the Minister vesting the property of a development corporation in the " Commission for the New Towns " set up under that Act, and directing the development corporation to cease to act (except for the purpose of winding up) and appointing a day for its dissolution.

" designated . . . by an order ", *i.e.*, by an order under section 1 of the New Towns Act 1946.

" the 29th October 1958 ", *i.e.*, the date of the presentation of the Bill of this Act.

SECOND SCHEDULE

(*Sections* 10, 52.)

ACQUISITION OF HOUSES AS BEING UNFIT FOR HUMAN HABITATION

PART I

Provisions for England and Wales

1.—(1) Where, in the case of a compulsory acquisition to which section one of this Act applies,—

(*a*) the acquisition is under the Housing Act, 1957 (in this Part of this Schedule referred to as " the Act of 1957 ") in such circumstances that, apart from section one of this Act, any of the provisions of that Act as to compulsory purchase at site value would have effect in relation to the acquisition, or

(*b*) it is an acquisition in relation to which, by virtue of an order made and confirmed under the next following paragraph, any of those provisions would so have effect,

nothing in section one of this Act shall be construed as excluding the operation of those provisions of the Act of 1957, but those provisions shall apply in addition to the provisions of Part I of this Act.

(2) Subject to the provisions of paragraph 3 of this Part of this Schedule, the compensation payable in respect of a compulsory acquisition falling within the preceding sub-paragraph shall not in any event exceed the amount of the compensation which would have been payable in respect thereof if—

(*a*) none of the provisions of the Act of 1957 as to compulsory purchase at site value had applied to the acquisition, and

(*b*) in a case where any of the relevant land is in an area which has been declared under Part III of that Act to be a clearance area, or which constitutes a re-development area within the meaning of that Part of that Act, that area had not been declared to be a clearance area or did not constitute such a re-development area, as the case may be,

but in all other respects the acquisition had been effected in the circumstances in which it actually is effected.

2.—(1) The provisions of this paragraph shall have effect in relation to any compulsory acquisition being—

(*a*) an acquisition under Part IV of the Act of 1947, or

(*b*) an acquisition under section six of the Town Development Act, 1952, or

(*c*) an acquisition in pursuance of Part IV of this Act, or

(*d*) an acquisition of land within the area designated by an order under section one of the New Towns Act, 1946, as the site of a new town, or

(*e*) an acquisition by a development corporation or a local highway authority or the Minister of Transport and Civil Aviation under the New Towns Act, 1946, or under any enactment as applied by any provision of that Act,

and being (in any such case) an acquisition where the land in question comprises a house which, in the opinion of an appropriate local authority, is unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation.

(2) The local authority may make and submit to the Minister an order, in such form as may be prescribed by regulations made under section one hundred and seventy-eight of the Act of 1957, declaring the house to be in the state referred to in the preceding sub-paragraph ; and if—

(*a*) that order is confirmed by the Minister, either before or concurrently with the confirmation of a compulsory purchase order for the acquisition of the land, or

(*b*) in a case where the acquisition is in pursuance of a notice to treat deemed to have been served in consequence of the service of a notice under section nineteen of the Act of 1947 or the provisions of that section as applied by or under any other enactment, or in consequence of the service of a notice under subsection (4) of section six of the New Towns Act, 1946, or under Part IV of this Act, the order is made before the date on which the notice to

treat is deemed to have been served and, having been so made, is subsequently confirmed by the Minister,

the provisions of subsections (2) and (3) of section fifty-nine of the Act of 1957, and the provisions of sections sixty and sixty-one of that Act and the Second Schedule thereto (which relate to certain payments in respect of houses purchased or demolished under that Act) shall apply as if the house had been purchased under section fifty-seven of that Act as being in the state referred to in the preceding sub-paragraph, and as if any reference in those sections or in that Schedule to the local authority were a reference to the acquiring authority.

(3) Before submitting to the Minister an order under this paragraph, the local authority by whom the order was made shall serve on every owner, and (so far as it is reasonably practicable to ascertain such persons) on every mortgagee, of the land or any part thereof, a notice in such form as may be prescribed as mentioned in the last preceding sub-paragraph, stating the effect of the order and that it is about to be submitted to the Minister for confirmation, and specifying the time within which, and the manner in which, objection thereto can be made.

(4) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the Minister may, if he thinks fit, confirm the order ; but in any other case he shall, before confirming the order, consider any objection not withdrawn, and shall, if either the person by whom the objection was made or the local authority so desires, afford to that person and the authority an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(5) Section four of the Act of 1957 (which specifies matters to be taken into account in determining whether a house is unfit) and sections one hundred and fifty-nine and one hundred and sixty of that Act (which relate to entry on land for the purposes of that Act) shall apply for the purposes of this paragraph as they apply for the purposes of that Act.

(6) In this paragraph " appropriate local authority " means a local authority who, in relation to the area in which the land in question is situated, are a local authority for the purposes of the provisions of Part III of the Act of 1957 relating to clearance areas.

3.—(1) The provisions of this paragraph shall have effect in relation to any compulsory acquisition to which section one of this Act applies where—

(*a*) the relevant land consists of or includes the whole or part of a house (in this paragraph referred to as " the relevant house ") and, on the date of the making of the compulsory purchase order in pursuance of which the acquisition is effected, the person then entitled to the relevant interest was, in right of that interest, in occupation of the relevant house or part thereof as a private dwelling, and

(*b*) that person either continues, on the date of service of the notice to treat, to be entitled to the relevant interest, or, if he has died before that date, continued to be entitled to that interest immediately before his death, and

(*c*) the acquisition is under the Act of 1957, in such circumstances that any of the provisions of that Act as to compulsory purchase at site value have effect in relation to the acquisition, or is an acquisition in connection with which an order is made and confirmed under the last preceding paragraph in respect of the relevant house.

In the following provisions of this paragraph any reference to " the dwelling " is a reference to so much of the relevant house as the person referred to in head (*a*) of this sub-paragraph occupied as therein mentioned.

(2) Subject to the next following sub-paragraph, if the amount of the compensation payable in respect of the acquisition of the relevant interest would, apart from this paragraph, be less than the gross value of the dwelling, the amount of the compensation payable in respect of the acquisition of that interest shall be an amount equal to the gross value of the dwelling.

(3) Where any payment to which this sub-paragraph applies is payable, any reference in the last preceding sub-paragraph to the amount of the compensation payable in respect of the acquisition of the relevant interest shall be construed as a reference to the aggregate of that amount and of the amount of the payment (or, if more than one, of the amounts of the payments) to which this sub-paragraph applies.

(4) The last preceding sub-paragraph applies—

(*a*) to any payment under section thirty or section sixty of the Act of 1957, in so far as it falls to be made to the person entitled to the relevant interest and is attributable to the relevant house ;

(*b*) to any payment which falls to be made in respect of the relevant interest under Part II of the Second Schedule to the Act of 1957.

(5) For the purposes of this paragraph the gross value of the dwelling shall be determined as follows :—

(*a*) if the dwelling constitutes the whole of the relevant house, the gross value of the dwelling shall be taken to be the value which, on the date of service of the notice to treat, is shown in the valuation list then in force as the gross value of that house for rating purposes ;

(*b*) if the dwelling is only part of the relevant house, an apportionment shall be made by the valuation officer of the gross value of the relevant house for rating purposes, as shown in the valuation list in force on the date of service of the notice to treat, and the gross value of the dwelling shall be taken to be the amount certified by the valuation officer as being the amount which, on such an apportionment, is properly attributable to the dwelling.

(6) Any reference in this paragraph to the compensation payable in respect of the acquisition of the relevant interest shall be construed as excluding so much (if any) of that compensation as is attributable to disturbance or to severance or injurious affection.

(7) In this paragraph " the valuation officer " has the same meaning as in Part III of the Local Government Act, 1948.

4. The following provisions of the Act of 1957, that is to say, paragraph 2 of Part III of the Third Schedule and sub-paragraph (3) of paragraph 2 of the Seventh Schedule (which makes special provision as to the assessment of compensation in the case of premises which are purchased under that Act otherwise than at site value, but are in a state of defective sanitation or not in reasonably good repair) shall cease to have effect, except for the purpose of assessing compensation (where applicable) in respect of compulsory acquisitions to which section one of this Act does not apply.

5.—(1) Where, in the case of a compulsory acquisition to which section one of this Act applies,—

(*a*) the acquisition is under the Act of 1957, in such circumstances that any of the provisions of that Act as to compulsory purchase at site value have effect in relation to the acquisition, or is an acquisition in connection with which an order is made and confirmed under paragraph 2 of this Part of this Schedule, and

(*b*) the relevant land consists of or includes a hereditament, or part of a hereditament, which has sustained war damage, and any of that damage has not been made good at the date of service of the notice to treat,

there shall be added to the compensation which, apart from this paragraph, would be payable in respect of the acquisition an amount calculated in accordance with the next following sub-paragraph.

(2) The said amount shall be an amount equal to the value, as at the date of service of the notice to treat, of the prospective right to receive such payment (if any) under the War Damage Act, 1943, in respect of that hereditament, or part of a hereditament, as might reasonably have been expected to become payable if the relevant land had not been compulsorily acquired.

6.—(1) Where a local authority have before the commencement of this Act made and submitted to the Minister an order under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944 (which contains provisions similar to those of paragraph 2 of this Part of this Schedule), but the Minister has not confirmed that order before the commencement of this Act, sub-paragraphs (2), (4) and (5) of paragraph 2 of this Part of this Schedule shall apply in relation to that order as if—

(*a*) the order had been made under paragraph 2 of this Part of this Schedule, and

(*b*) the reference in sub-paragraph (4) of paragraph 2 of this Part of this Schedule to persons on whom notices are required to be served were a reference to persons on whom notices are required to be served under sub-paragraph (2) of the said paragraph 9.

(2) Any reference in paragraph 1, paragraph 3 or paragraph 5 of this Part of this Schedule to an order made and confirmed under paragraph 2 of this Part of this Schedule shall be construed as including a reference to an order—

(*a*) made and confirmed under the said paragraph 9, or

(*b*) made under the said paragraph 9 and confirmed under the provisions of paragraph 2 of this Part of this Schedule applied by the preceding sub-paragraph.

(3) In this paragraph any reference to the said paragraph 9 includes a reference to the provisions of that paragraph as extended or applied by or under any other enactment.

7. In this Part of this Schedule "house" has the meaning assigned to it by section one hundred and eighty-nine of the Act of 1957, and any reference to the provisions of the Act of 1957 as to compulsory purchase at site value is a reference to the following provisions of that Act, that is to say,—

(*a*) subsection (4) of section twelve (which relates to the

purchase of houses found on appeal not to be capable of repair at a reasonable expense) ;

(*b*) subsection (2) of section twenty-nine (which relates to the purchase of condemned houses) ; and

(*c*) subsections (2) and (3) of section fifty-nine (which relate respectively to the purchase of land comprised in a clearance area and to the purchase, in connection with re-development plans, of houses as being unfit for human habitation).

8. This Part of this Schedule shall not apply to Scotland.

PART II

Provisions for Scotland

1.—(1) The provisions of this paragraph shall have effect in relation to any compulsory acquisition, being—

(*a*) an acquisition under Part III of the Scottish Act of 1947, or

(*b*) an acquisition under section thirteen of the Housing and Town Development (Scotland) Act, 1957, or

(*c*) an acquisition in pursuance of Part IV of this Act, or

(*d*) an acquisition of land within the area designated by an order under section one of the New Towns Act, 1946, as the site of a new town, or

(*e*) an acquisition by a development corporation or a local highway authority or the Secretary of State under the New Towns Act, 1946, or under any enactment as applied by any provision of that Act,

and being (in any such case) an acquisition where the land in question comprises a house which, in the opinion of an appropriate local authority, is unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation.

(2) The local authority may make and submit to the Minister an order, in such form as may be prescribed by regulations made under section one hundred and seventy-two of the Act of 1950, declaring the house to be in the state referred to in the preceding sub-paragraph ; and if—

(*a*) that order is confirmed by the Minister, either before or concurrently with the confirmation of a compulsory purchase order for the acquisition of the land, or

(*b*) in a case where the acquisition is in pursuance of a notice to treat deemed to have been served in consequence of the service of a notice under section seventeen of the Scottish Act of 1947 or the provisions of that section as applied

by or under any other enactment, or in consequence of the service of a notice under subsection (4) of section six of the New Towns Act, 1946, or under Part IV of this Act, the order is made before the date on which the notice to treat is deemed to have been served and is subsequently confirmed by the Minister,

the provisions of subsection (2) of section thirty-six of the Act of 1950, and the provisions of section forty of that Act as read with section twenty of the Housing and Town Development (Scotland) Act, 1957 (which relate to certain payments in respect of houses purchased or demolished under the Act of 1950) shall apply as if the house had been purchased under Part III of the Act of 1950 as being in the state referred to in the preceding sub-paragraph, and as if any reference in those sections to the local authority were a reference to the acquiring authority.

(3) Before submitting to the Minister an order under this paragraph, the local authority by whom the order was made shall serve on every owner, and (so far as it is reasonably practicable to ascertain such persons) on the superior of, and the holder of every heritable security over, the land or any part thereof, a notice in such form as may be prescribed as mentioned in the last preceding sub-paragraph, stating the effect of the order and that it is about to be submitted to the Minister for confirmation, and specifying the time within which, and the manner in which, objection thereto can be made.

(4) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the Minister may, if he thinks fit, confirm the order ; but in any other case he shall, before confirming the order, consider any objection not withdrawn, and shall, if either the person by whom the objection was made or the local authority so desires, afford to that person and the authority an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(5) Subsection (2) of section one hundred and eighty-four of the Act of 1950 shall have effect in determining for the purposes of this paragraph whether a house is fit for human habitation as it has effect in so determining for the purposes of that Act.

(6) In this paragraph " appropriate local authority " means a local authority who, in relation to the area in which the land in question is situated, are a local authority for the purposes of the provisions of Part III of the Act of 1950 relating to clearance areas.

2.—(1) The provisions of this paragraph shall have effect in

relation to any compulsory acquisition to which section one of this Act applies where—

(*a*) the relevant land consists of or includes the whole or part of a house (in this paragraph referred to as " the relevant house ") and, on the date of the making of the compulsory purchase order in pursuance of which the acquisition is effected, the person then entitled to the relevant interest was, in right of that interest, in occupation of the relevant house or part thereof as a private dwelling, and

(*b*) that person either continues, on the date of service of the notice to treat, to be entitled to the relevant interest, or, if he has died before that date, continued to be entitled to that interest immediately before his death, and

(*c*) the acquisition is under the Act of 1950, in such circumstances that any of the following provisions of that Act, that is to say, subsection (2) of section twelve, subsection (4) of section seventeen, and subsection (2) of section thirty-six (which relate to compensation at site value) have effect in relation to the acquisition, or is an acquisition in connection with which an order is made and confirmed under the last preceding paragraph in respect of the relevant house.

In the following provisions of this paragraph any reference to " the dwelling " is a reference to so much of the relevant house as the person referred to in head (*a*) of this sub-paragraph occupied as therein mentioned.

(2) Subject to the next following sub-paragraph, if the amount of the compensation payable in respect of the acquisition of the relevant interest would, apart from this paragraph, be less than the gross annual value of the dwelling, the amount of the compensation payable in respect of the acquisition of that interest shall be an amount equal to the gross annual value of the dwelling.

(3) Where a payment falls to be made under section forty of the Act of 1950 to the person entitled to the relevant interest, and that payment is attributable to the relevant house, any reference in the last preceding sub-paragraph to the amount of the compensation payable in respect of the acquisition of the relevant interest shall be construed as a reference to the aggregate of that amount and of the amount of the payment.

(4) For the purposes of this paragraph the gross annual value of the dwelling shall be determined as follows :—

(*a*) if the dwelling constitutes the whole of the relevant house, the gross annual value of the dwelling shall be taken to be

the value which, on the date of service of the notice to treat, is shown in the valuation roll then in force as the gross annual value of that house for rating purposes ;

(*b*) if the dwelling is only part of the relevant house, an apportionment shall be made of the gross annual value of the relevant house for rating purposes, as shown in the valuation roll in force on the date of service of the notice to treat, and the gross annual value of the dwelling shall be taken to be the amount which, on such an apportionment, is properly attributable to the dwelling.

(5) Any reference in this paragraph to the compensation payable in respect of the acquisition of the relevant interest shall be construed as excluding so much (if any) of that compensation as is attributable to disturbance or to severance or injurious affection.

(6) Nothing in this paragraph shall affect the amount which is to be taken for the purposes of section sixty-two of the Scottish Act of 1954 (which relates to the consideration payable for the discharge of land from feu-duty and other incumbrances) as the amount of the compensation payable in respect of the acquisition of the relevant interest.

3. Paragraph 3 of the Fourth Schedule to the Act of 1950 (which makes special provision as to the assessment of compensation in the case of premises which are purchased under that Act otherwise than at site value, but are in a state of defective sanitation or not in reasonably good repair) shall cease to have effect, except for the purpose of assessing compensation (where applicable) in respect of compulsory acquisitions to which section one of this Act does not apply.

4.—(1) Where, in the case of a compulsory acquisition to which section one of this Act applies,—

(*a*) the acquisition is under the Act of 1950, in such circumstances that any of the following provisions of that Act, that is to say, subsection (2) of section twelve, subsection (4) of section seventeen, and subsection (2) of section thirty-six (which relate to compensation at site value) have effect in relation to the acquisition, or is an acquisition in connection with which an order is made and confirmed under paragraph 1 of this Part of this Schedule, and

(*b*) the relevant land consists of or includes a hereditament, or part of a hereditament, which has sustained war damage, and any of that damage has not been made good at the date of service of the notice to treat,

there shall be added to the compensation which, apart from this

paragraph, would be payable in respect of the acquisition an amount calculated in accordance with the next following sub-paragraph.

(2) The said amount shall be an amount equal to the value, as at the date of service of the notice to treat, of the prospective right to receive such payment (if any) under the War Damage Act, 1943, in respect of that hereditament or part of a hereditament, as might reasonably have been expected to become payable if the relevant land had not been compulsorily acquired.

(3) In this paragraph " hereditament " has the same meaning as in the War Damage Act, 1943.

5.—(1) Where a local authority have before the commencement of this Act made and submitted to the Minister an order under paragraph 8 of the Fifth Schedule to the Town and Country Planning (Scotland) Act, 1945 (which contains provisions similar to those of paragraph 1 of this Part of this Schedule), but the Minister has not confirmed that order before the commencement of this Act, sub-paragraphs (2), (4) and (5) of paragraph 1 of this Part of this Schedule shall apply in relation to that order as if—

(*a*) the order had been made under paragraph 1 of this Part of this Schedule, and

(*b*) the reference in sub-paragraph (4) of paragraph 1 of this Part of this Schedule to persons on whom notices are required to be served were a reference to persons on whom notices are required to be served under sub-paragraph (2) of the said paragraph 8.

(2) Any reference in paragraph 2 or paragraph 4 of this Part of this Schedule to an order made and confirmed under paragraph 1 of this Part of this Schedule shall be construed as including a reference to an order—

(*a*) made and confirmed under the said paragraph 8, or

(*b*) made under the said paragraph 8 and confirmed under the provisions of paragraph 1 of this Part of this Schedule applied by the preceding sub-paragraph.

(3) In this paragraph any reference to the said paragraph 8 includes a reference to the provisions of that paragraph as extended or applied by or under any other enactment.

6. In this Part of this Schedule " Act of 1950 " means the Housing (Scotland) Act, 1950, and " house " has the meaning assigned to it by section one hundred and eighty-four of that Act.

7. This Part of this Schedule shall apply to Scotland only.

NOTES TO THE SECOND SCHEDULE

Part 1 of the Schedule relates principally to the acquisition under the Housing Act 1957 of houses (*a*) found on appeal not to be capable of repair at reasonable cost, or (*b*) subject to a demolition or closing order, or (*c*) comprised in a clearance area or being unfit for human habitation. These are all houses for which compensation is assessed *at site value* (Part 11 of the Schedule relates only to Scotland).

Firstly the Schedule provides that where houses are compulsorily acquired under the Housing Act, 1957, in pursuance of a notice to treat served after the 29th October, 1958, or under an order made and confirmed under paragraph 2 of this Schedule, in such circumstances that compensation *at site value* would be payable under the provisions of the Housing Act 1957, the compensation is not in any case to exceed the full market value of the land with the house on it.

Secondly the Schedule replaces the procedure which was laid down in paragraph 9 of the Fifth Schedule of the 1944 Act (reproduced in the Eleventh Schedule of the 1947 Act and now repealed by the Eighth Schedule of this Act) for the making of unfitness orders in relation to houses acquired under Part IV of the 1947 Act, with a new procedure set out in paragraph 2. The new procedure (*a*) applies to houses acquired either under any of the various powers set out in paragraph 2 (1) of the Schedule in pursuance of a notice to treat served after the 29th October, 1958, and (*b*) ensures that compensation at site value will only be payable if the unfitness order is confirmed before or at the same time as the compulsory purchase order.

The same procedure shall be applied also to orders made under paragraph 9 of the Fifth Schedule of the 1944 Act and already submitted to the Minister before the 16th August, 1959 but not then confirmed by him.

Thirdly the Schedule provides a minimum amount for compensation when assessed at site value for houses acquired under the Housing Act 1957 or made the subject of an unfitness order under the previous provision of this Schedule. If the owner of an acquired interest in such a house is living in the house, or part of it, as a dwelling house at the time both of the compulsory purchase order and of the service of the notice to treat (or, if he dies between these two dates, was living there until the time of his death), the minimum amount of compensation payable (including any " well-maintained " payment or payment under Part 11 of the Second Schedule of the 1957 Act but excluding compensation for disturbance, severance or injurious affection) is to be the gross value of the dwelling-house for rating purposes at the service of the notice to treat.

Fourthly the Schedule provides that in respect of compulsory acquisitions under the Housing Act 1957 in pursuance of a notice to treat served after the 29th October 1958 where the compensation is to be assessed *otherwise than* at site value, the provisions of that Act which require the compensation—if the relevant house is in a state of defective sanitation or not in reasonably good repair—to be assessed on the basis that the house were in a sanitary condition or reasonably good repair,

less the estimated cost of putting it into that condition or repair, shall no longer apply. The market value is now payable, which will reflect the condition of the house.

Fifthly the Schedule provides that where war-damaged houses are acquired under the Housing Act 1957, in pursuance of a notice to treat served after 29th October, 1958, in such circumstances that compensation would be payable at site value under the provisions of that Act, the value of any prospective right (valued as at the service of the notice to treat) to receive a payment under the War Damage Act 1943 shall be added to the compensation.

" section 1 of this Act ". Section 1 provides for the assessment of compensation in accordance with the rules contained in the 1919 Act.

" any of the provisions . . . site value ". See paragraph 7 and notes thereto.

" an order . . . next following paragraph ". In the case of such an order, the site value provisions in section 59 (2) and (3) of the Housing Act 1957 apply, see paragraph 2 (2). See paragraph 6 (2) for the full meaning of this phrase.

" subject to the provisions of paragraph 3 ". The amount is not in any event to be less than the gross value of the house, as provided by paragraph 3.

Paragraph 1 (2) (b). The result of this sub-clause is to exclude the effect which the clearance area or redevelopment area would have upon the market value of the land with the house on it.

" redevelopment area ". For meaning, see sections 55 and 56 of the Housing Act, 1957.

Paragraph 2. The Eighth Schedule repeals the Fifth Schedule of the 1944 Act which this paragraph replaces. The Housing (Prescribed Forms) (Amendment) Regulations 1959 (S.I. 1959, No, 1400) make necessary amendments of the regulations made under section 178 of the Housing Act 1957, see note below, and page 451 for the form of the new Regulations. For the " appropriate local authority," see sections 1 and 189 (2) of the Housing Act 1957.

" Part IV of the Act of 1947 ". Part IV of the 1947 Act provides principally for the acquisition of (*a*) land designated as subject to compulsory acquisition in a development plan, and (*b*) land required for planning purposes before a development plan becomes operative in relation to it.

" section 6 of the Town Development Act 1952 ". The section empowers the Minister to authorise the acquisition by the council of a receiving district of land within the area of a development plan but not designated as subject to compulsory acquisition, where the Minister is satisfied that the land is required for a purpose connected with town development and that it is necessary in the public interest to acquire the land although it is not so designated. The section also empowers the Minister to authorise the acquisition of land not within the area of a development plan where it is expedient for a purpose connected with town development.

" Part IV of this Act ". Part IV enables certain owner-occupiers of land which is substantially depreciated by the threat of compulsory acquisition contained in certain specified planning proposals to serve a purchase notice on the authority concerned requiring them to acquire the land.

" acquisition by a development corporation . . . New Towns Act 1946 ". The powers of a development corporation to acquire land are contained in section 4 : they are, to acquire (*a*) land within the area designated as the site of a new town, or (*b*) land adjacent to such an area which is required for purposes connected with the development of the new town, or (*c*) land, whether adjacent to such an area or not, which is required for the provision of services for the purposes of the new town. The powers of local highway authorities and the Minister of Transport and Civil Aviation to acquire land under that Act are contained in section 7.

" unfit for human habitation ". For the relevant considerations, see section 4 of the Housing Act 1957, and see further 1958 J.P.L. 699 and *c.f.* 1954 J.P.L. 833. The standard to be applied in deciding unfitness is that of the reasonable man, see *Hall* v. *Manchester Corporation* (1915) 84 L.J. Ch. 732. For the Housing Act 1957, section 4, see note below.

" regulations . . . section 178 of the Act of 1957 ". For the form of such an order, see the Housing (Prescribed Forms) Regulations 1957 S.I. 1957 No. 1842) Schedule 2, Form 37, as amended by the Housing (Prescribed Forms) (Amendment) Regulations, 1959 (S.I. 1959 No.1400), see page 451.

" section 19 of the Act of 1947 ". Section 19 enables an owner of land to whom planning permission has been refused, or granted subject to onerous conditions, to serve a purchase notice on the council of the county borough or county district in which the land is situated, if he claims that the land is not, and cannot be rendered, capable of reasonably beneficial use. The section is applied by other sections of that Act, *e.g.*, sections 22 (4) and 27 (3), and by section 59 of the 1954 Act, or can be applied by a Building Preservation Order. See section 70 of the 1954 Act and section 35 of this Act for amendments of the section, and the Ninth Schedule of this Act for the Form of section 19 with all its amendments.

" section 6 (4) of the New Towns Act 1946 ". The section provides that where land designated as part of the site of a new town under section 1 of that Act is not acquired within seven years of the operation of the designation order, the owner may serve a purchase notice on the development corporation, and the corporation is at that date deemed to have served a notice to treat.

" subsections (2) and (3) of section 59 ". The subsections provide broadly that the compensation to be paid for a house purchased (*a*) as land comprised in a clearance area or (*b*) as an unfit house in a redevelopment area shall be the value of the site as a cleared site available for development in accordance with building bye-laws in force in the district.

" sections 60 and 61 of that Act ". Section 60 provides that where

houses are, under that Act, subject to (*a*) a clearance order or (*b*) a compulsory purchase order as being unfit for human habitation, a payment may be made by the local authority on the direction of the Minister of Housing and Local Government to the owner or person responsible for the repair on the grounds that the house has been " well-maintained " by him. The Second Schedule (Part I) provides for the assessment of the amount of a " well-maintained " payment : see amendment thereto in the Seventh Schedule of this Act. Section 61 and Part II of the Second Schedule of that Act provide for payments (*a*) to owner-occupiers of houses which are purchased by local authorities under Part II or III of that Act or vacated as a result of a demolition order or clearance order or closing order or (*b*) to persons having an interest in and carrying on a business in any such house.

" section 57 of that Act ". Section 57 of the 1957 Act enables local authorities to purchase by agreement or compulsorily land within an area in respect of which a redevelopment plan under section 56 has been approved, or land outside that area for purposes connected with the area.

" in the state referred to ", *i.e.*, unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation.

" section 4 of the Act of 1957 ". Section 4 provides that, in determining whether a house is unfit for human habitation, regard shall be had to its condition in respect of repairs, stability, freedom from damp, natural lighting, ventilation, water supply, drainage and sanitary conveniences, and facilities for storage, preparation and cooking of food and for the disposal of waste water.

" sections 159 and 160 of that Act ". Section 159 enables a person authorised in writing by a local authority or the Minister to enter any premises, on giving 24 hours notice, for the purpose of survey or valuation or measurement in connection with a purpose of that Act. Section 160 makes it an offence to obstruct the medical officer of health, or any officer of a local authority or the Minister, or any person authorised under that Act to enter premises, punishable on summary conviction by a fine not exceeding £20.

" an order . . . preceding paragraph ", *i.e.*, an unfitness order made in respect of a house compulsorily acquired under Part IV of the 1947 Act, or section 6 of the Town Development Act, 1952, or Part IV of this Act, or the New Towns Act 1946. It includes however orders made and confirmed under paragraph 9 of the Fifth Schedule of the 1944 Act, or made under that paragraph and confirmed under this Schedule, see paragraph 6 (2).

" section 30 or section 60 ". For section 60, see note above on " *sections* 60 *and* 61 *of that Act* ". Section 30 provides that where houses are vacated, under that Act, in pursuance of (*a*) a demolition order, or (*b*) a closing order, a payment may be made by the local authority to the person responsible for the " well-maintained " condition of the house. The Second Schedule (Part I) of that Act again provides for the assessment of the " well-maintained " payment.

" Part II of the Second Schedule ". See note above on " *sections* 60 *and* 61 *of that Act* ".

" valuation officer ". Section 33 (3) of the Local Government Act 1948 provides that the words " valuation officer " for the purposes of Part III of that Act in relation to a valuation list means such officer of the Commissioners of Inland Revenue as may for the time being be authorised by the Commissioners to act (either generally or for the particular purpose in question) as the valuation officer in relation to that list.

" paragraph 2 of Part III of the Third Schedule ". This paragraph provides that, in the case of land which is acquired under Part III of the Housing Act 1957 otherwise than at site value, if any premises are in a state of defective sanitation or are not in reasonably good repair, compensation shall be the estimated value of the premises if put into a sanitary condition or reasonably good repair, less the estimated expense of putting them into such condition or repair.

" subparagraph (3) . . . Seventh Schedule ". This paragraph makes similar provision as in the last note, in respect of premises acquired under Part V of the 1957 Act.

" prospective right . . . such payment ". The " present " value of the right to receive any future payment under the War Damage Act 1943 has to be assessed.

" house ". House includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith and any part of a building which is occupied or intended to be occupied as a separate dwelling, see section 189 (1) of the 1947 Act.

" subsection (4) of section 12 ". The section provides that where a local authority has served a notice requiring the repair of an unfit house and, on appeal against the notice, the house has been found not to be capable of repair at reasonable cost, the local authority may purchase it by agreement or be authorised by the Minister to acquire it compulsorily ; and subsection (4) provides that the compensation shall be the value of the site as a cleared site available for development in accordance with building byelaws in force in the district.

" subsection (2) of section 29 ". The section provides that where a local authority has given notice of its determination to purchase a house in lieu of making a demolition or closing order in respect of it, it may purchase the house by agreement or be authorised by the Minister to acquire it compulsorily ; and subsection (2) provides that the compensation shall be the value of the site as a cleared site available for development in accordance with building bye-laws in force in the district.

THIRD SCHEDULE

(*Sections* 18, 52.)

Application of Section Eighteen to Special Cases

Disturbance, severance and injurious affection

1. The provisions of the next following paragraph shall have effect for the purposes of the application of section eighteen of this

Act to cases where the compensation or purchase price in respect of the interest acquired or purchased—

(*a*) included an amount attributable to disturbance, or attributable to damage sustained in respect of an interest in land held with the land comprised in the acquisition or sale (in this Schedule referred to as " the interest affected ") by reason that the land so held was severed from the land comprised in the acquisition or sale, or was injuriously affected, or

(*b*) would have included such an amount if the planning decision referred to in subsection (1) of that section had been made before the relevant date, and the planning permission thereby granted had been in force on that date.

2.—(1) Subject to the next following sub-paragraph,—

(*a*) any reference in subsection (2) of that section to the principal amount of the compensation which was payable in respect of the compulsory acquisition, or, in the case of a sale by agreement, the amount of the purchase price, shall be construed as including any amount which was included therein as mentioned in sub-paragraph (*a*) of the preceding paragraph ; and

(*b*) any reference in subsection (2) of that section to the principal amount of the compensation which would have been payable as therein mentioned shall be construed as including any amount which would have been included therein as mentioned in sub-paragraph (*b*) of the preceding paragraph.

(2) If, at the time of the planning decision in question, the person entitled to the compensation under section eighteen of this Act is not entitled to the interest affected, either in respect of the whole of the land in which that interest subsisted at the time of the acquisition or sale or in respect of part of that land, any such reference as is mentioned in the preceding sub-paragraph shall be construed as excluding so much of the compensation or purchase price in question as was or would have been attributable to severance or injurious affection of the land in which the interest affected subsisted, or of the part thereof in respect of which that person is not entitled to the interest affected, as the case may be.

Increase in value of contiguous or adjacent land

3. The provisions of the next following paragraph shall have effect for the purposes of the application of section eighteen of this

Act to cases where the compensation or purchase price in respect of the interest acquired or purchased—

(*a*) was reduced (whether by virtue of subsection (4) of section nine of this Act or otherwise) by reason of an increase in the value of an interest in contiguous or adjacent land (in this Schedule referred to as " the interest in adjacent land ") being an interest belonging to the person who on the relevant date was entitled to the interest acquired or purchased, or

(*b*) would have been so reduced if the planning decision referred to in subsection (1) of the said section eighteen had been made before the relevant date, and the planning permission thereby granted had been in force on that date.

4.—(1) Subject to the following provisions of this paragraph—

(*a*) any reference in subsection (2) of section eighteen of this Act to the principal amount of the compensation which was payable in respect of the compulsory acquisition, or, in the case of a sale by agreement, the amount of the purchase price, shall be construed as a reference to that amount as reduced as mentioned in sub-paragraph (*a*) of the last preceding paragraph ; and

(*b*) any reference in subsection (2) of that section to the principal amount of the compensation which would have been payable as therein mentioned shall be construed as a reference to that amount as it would have been reduced in the circumstances mentioned in sub-paragraph (*b*) of the last preceding paragraph.

(2) If, at the time of the planning decision in question, the person entitled to the compensation under section eighteen of this Act is not entitled to the interest in adjacent land, any such reference as is mentioned in the preceding sub-paragraph shall be construed as a reference to the amount which would have been the principal amount of the compensation or the amount of the purchase price, as mentioned in subsection (2) of the said section eighteen, if the circumstances, by reason of which the compensation or purchase price was or would have been reduced, had not existed.

(3) If, at the time of the planning decision in question, the person entitled to the compensation under section eighteen of this Act is entitled to the interest in adjacent land, but only in respect of part of the land in which that interest subsisted at the time of the acquisition or sale, any such reference shall be construed as a reference to the amount which would have been the principal amount of the compensation or the amount of the purchase price,

as mentioned in subsection (2) of the said section eighteen, if the interest in adjacent land had subsisted only in that part of that land.

Mortgaged land

5. Subject to the provisions of this Schedule relating to settled land, where, in a case falling within subsection (1) of section eighteen or subsection (1) of section twenty-one of this Act, the interest in land which was acquired or sold was subject to a mortgage, any reference in section eighteen of this Act to the person to whom the compensation or purchase price was payable, or to the person referred to in subsection (2) of the said section eighteen, and any reference in section nineteen of this Act to the person entitled to receive the compensation or purchase price, shall be construed as a reference to the person who, subject to the mortgage, was entitled to that interest, and not as a reference to the mortgagee.

6. For the purposes of the application of section eighteen or section twenty-one of this Act, and of the provisions of this Schedule other than this paragraph, to a case falling within the last preceding paragraph, any reference to the principal amount of the compensation which was payable in respect of the compulsory acquisition shall be construed as a reference to the principal amount of the compensation which would have been payable in respect thereof if the interest in question had not been subject to a mortgage ; and any reference to the principal amount of the compensation which would in any particular circumstances have been payable in respect of a compulsory acquisition shall be construed as a reference to the principal amount of the compensation which would in those circumstances have been payable in respect of such a compulsory acquisition if the interest in question had not been subject to a mortgage.

7. No compensation shall be payable by virtue of section eighteen of this Act, or by virtue of the provisions of that section as extended by section twenty-one of this Act, in respect of a compulsory acquisition or sale by agreement, where the interest acquired or sold was the interest of a mortgagee (as distinct from an interest subject to a mortgage).

Settled land

8.—(1) Where, in a case falling within subsection (1) of section eighteen or subsection (1) of section twenty-one of this Act, the interest in land which was acquired or sold was subject to a settlement, and accordingly the compensation or purchase price was

payable to the trustees of that settlement, any reference in section eighteen of this Act to the person to whom the compensation or purchase price was payable, and any reference in section nineteen of this Act to the person entitled to receive the compensation or purchase price, shall be construed as a reference to the trustees for the time being of the settlement.

(2) Where the preceding sub-paragraph applies, subsection (5) of section eighteen of this Act shall not apply.

(3) Any compensation paid to the trustees of a settlement by virtue of section eighteen of this Act, or by virtue of the provisions of that section as extended by section twenty-one of this Act, in respect of a compulsory acquisition or sale by agreement, shall be applicable by the trustees as if it were proceeds of the sale of the interest acquired or sold.

(4) In this paragraph " settlement " means a settlement within the meaning of the Settled Land Act, 1925, or a trust for sale within the meaning of the Law of Property Act, 1925.

General provisions

9. In any case where the conditions mentioned both in paragraph 1 and in paragraph 3 of this Schedule are fulfilled in respect of the same interest in land, other than the interest acquired or purchased (whether by reason that the case falls within sub-paragraph (*a*) of paragraph 1 of this Schedule and within sub-paragraph (*b*) of paragraph 3 thereof, or falls within sub-paragraph (*b*) of paragraph 1 and within sub-paragraph (*a*) of paragraph 3), the provisions of paragraphs 2 and 4 of this Schedule, so far as applicable, shall apply with the necessary modifications.

10.—(1) The provisions of this Schedule shall have effect, in relation to any planning permission which, in accordance with any direction or provision given or made by or under an enactment, is deemed to have been granted, as if a planning decision granting that permission had been made at the time when, by virtue of that direction or provision, the permission is deemed to have been granted.

(2) Subsection (1) of section twenty-one of this Act shall apply for the purposes of this Schedule as it applies for the purposes of section eighteen of this Act.

11. In this Schedule " the relevant date " has the same meaning as in section eighteen of this Act.

Application to Scotland

12. In the application of the foregoing provisions of this Schedule to Scotland—

(*a*) for any reference to a mortgage there shall be substituted a reference to a heritable security, and for any reference, in relation to such a security, to the mortgagee there shall be substituted a reference to the heritable creditor ;

(*b*) any reference to a settlement shall, notwithstanding anything in the foregoing provisions of this Schedule, be construed as a reference to a trust within the meaning of the Trusts (Scotland) Act, 1921 ; and

(*c*) any reference to settled land shall be construed as a reference to land subject to such a trust.

13.—(1) Where in a case falling within paragraph (*c*) of subsection (9) of section eighteen of this Act, or that paragraph as extended by subsection (1) of section twenty-one of this Act, the consideration under section one hundred and eight of the Lands Clauses Consolidation (Scotland) Act, 1845 (as read with section sixty-two of the Scottish Act of 1954) was paid to the trustees of a trust within the meaning of the Trusts (Scotland) Act, 1921, any reference in the said paragraph (*c*) or in subsection (7) of section nineteen of this Act to the person who has received the consideration shall be construed as a reference to the trustees for the time being of the trust.

(2) Where the preceding sub-paragraph applies, paragraph (*d*) of subsection (9) of section eighteen of this Act shall not apply.

(3) Any additional consideration paid to the trustees of a trust by virtue of section eighteen of this Act, or by virtue of the provisions of that section as extended by section twenty-one of this Act, in respect of a compulsory acquisition or sale by agreement, shall be applicable by the trustees as if it were consideration received by them under section one hundred and eight of the Lands Clauses Consolidation (Scotland) Act, 1845, as read with section sixty-two of the Scottish Act of 1954.

(4) This paragraph shall apply to Scotland only.

NOTES TO THE THIRD SCHEDULE

The Schedule provides that in calculating the amount of additional compensation payable under section 18, where a permission has been granted for " additional development " within five years after a compulsory acquisition or purchase in the shadow of compulsory powers, regard shall be had :—

(*a*) to any amount which was *actually* included in the total compensation (or price) paid or payable in respect of the acquisition

(or purchase), for disturbance or for severance from or injurious affection to land retained by the owner ;

(*b*) to any amount which *would have been* included in the total compensation (or price), for disturbance, severance or injurious affection, if the new planning permission had existed at the time of the acquisition (or purchase) ;

(*c*) to any amount by which the compensation (or price) *was actually* reduced by reason of enhancement in the value of contiguous or adjacent land retained by the owner which was caused by the scheme of development for which the acquisition (or purchase) was made :

(*d*) to any amount by which the compensation (or price) *would have been* reduced by reason of such enhancement in value if the new planning permission had existed at the time of the acquisition (or purchase).

But where the person entitled to additional compensation under section 18 does not at the time of the new planning permission own the whole or part of the interest in other land which gave rise, or would have given rise, to an increase (by reason of severance or injurious affection) or decrease (by reason of enhancement in value) in the compensation or price, then in effect so much of that increase or decrease as is attributable to that part which he has *not* got at that time is to be disregarded.

The Schedule also provides that, as regards mortgaged land, any additional compensation payable under sections 18 or 21 shall in effect be payable to the mortgagor and not to the mortgagee, and further that no additional compensation under either of those sections is to be payable where the original acquisition was simply an acquisition of a mortgagee's interest.

As regards land which was subject to a strict settlement or to a trust for sale when it was acquired, the persons to whom the compensation or price was payable were the trustees : the Third Schedule now provides that additional compensation payable subsequently under sections 18 and 21 shall also be payable to the trustees *for the time being*, and further provides that, in the case of such land, the right to additional compensation under either of those sections cannot pass to any other person, such as assignees, or trustees in bankruptcy (see the provision in section 18 (5)). Such additional compensation is to be applied by the trustees of the settlement or trust for sale as though it were the proceeds of sale, *i.e.*, it is to be applied under the trusts on which the land was held.

" section 18 ". Section 18 provides for additional compensation to be paid where, within five years after the completion of a compulsory acquisition in pursuance of a notice to treat served after the 29th October, 1958 (or purchase in the shadow of compulsory powers by contract made after that date), planning permission is granted for development other than development for which permission actually existed or was assumed under this Act at the time of the acquisition or purchase.

" subsection (2) of that section". Section 18 (2) provides that the

amount of additional compensation shall be the amount by which the compensation (or price) which *would have been* payable if the new permission had existed at the time of the acquisition (or price) exceeds the compensation (or price) *which was in fact* payable.

" disturbance " " severed " " injuriously affected ". For the general principles of compensation under these heads, see pages 50 and 74. For cases on disturbance, see page 186.

" subsection (4) of section 9, or otherwise". Section 9 (4) provides for a set-off against compensation payable by virtue of this Act of the amount by which other contiguous or adjacent land retained by the owner of the acquired interest is enhanced by the scheme of development for which the acquisition was made. The words " or otherwise " include other set-off provisions in different Acts, such as those set out in paragraph 1 of the First Schedule.

" the person entitled . . . section 18 ". The person entitled to the additional compensation payable under section 18 is (*a*) the person to whom the original compensation (or price) was payable, (and in the case of mortgaged land or " settled land " which was compulsorily acquired or bought, this means the mortgagor, or the trustees of the settlement for the time being, see Third Schedule, paragraphs 5 and 8), or (*b*) a person claiming through him under section 18 (5) *e.g.*, a personal representative, trustee in bankruptcy, or an assignee of the right to additional compensation.

Paragraphs 2 (2) and 4 (2) and (3) of the Schedule will apply (*a*) where the owner has disposed of all or part of the other land since the acquisition or purchase, or (*b*) where any person claiming the additional compensation as an assignee from the owner has not acquired the whole or part of the other land.

" settlement ". Broadly land is subject to a settlement for the purposes of the Settled Land Act 1925 (see section 1 (1)) if, by deed, will, agreement, Act of Parliament or other instrument, it stands :—

(i) limited in trust for persons by way of succession, or

(ii) limited in trust for any person in possession for an entailed interest, or for an estate subject to an executory limitation or disposition over on any event, or for a base or determinable fee, or for any estate if that person is an infant, or

(iii) limited in trust for any person contingently on the happening of any event, or

(iv) charged with the payment of any rent charge for the life of any person or of any sums for the benefit of any person.

" trust for sale ". A trust for sale for the purposes of the Law of Property Act 1925 is any trust by which trustees hold any land under an " immediate binding trust for sale, whether or not it is exercisable at the request or with the consent of any person and with or without a power at discretion to postpone the sale," see section 205 of the Law of Property Act 1925.

" proceeds of sale ". But for this provision, the compensation would

count as capital but not as proceeds of sale, see *Re Meux's Will Trusts* [1958] 1 Ch. 154.

Paragraph 9. The paragraph deals with the cases :—

(*a*) where the compensation (or price) actually payable included an amount in respect of disturbance, severance or injurious affection but would have been reduced by reason of enhancement in the value of contiguous or adjacent land if the new permission had existed at the time of the acquisition (or purchase), or

(*b*) the compensation (or price) actually payable was reduced by reason of enhancement in the value of contiguous or adjacent land, but would have included an amount in respect of disturbance severance or injurious affection if the new permission had existed at the time of the acquisition (or purchase).

" subsection (1) of section 21 ". Section 21 (1) extends the right to additional compensation under section 18 to cases where additional development is initiated by or on behalf of the Crown or in right of a Crown or Duchy interest within five years of a compulsory acquisition (or purchase) to which section 1 applies. In such cases a permission is deemed to have been granted for that development at the time when it is initiated.

" the relevant date ", *i.e.*, the date of the service of notice to treat, or the making of a contract, see section 18 (8).

FOURTH SCHEDULE

(*Section* 22.)

AUTHORITIES TO WHOM PART II APPLIES

PART I

Authorities in England and Wales

1. The council of a county, county borough or county district, or of a metropolitan borough.

2. The Common Council of the City of London.

3. The Council of the Isles of Scilly.

4. A joint education board constituted under Part I of the First Schedule to the Education Act, 1944.

5. A joint planning board constituted under subsection (2) of section four of the Act of 1947.

6. A joint board constituted under any of the provisions of the Public Health Act, 1936, or under sections two hundred and seventy-nine and two hundred and eighty of the Public Health Act, 1875, or under any enactment (not contained in either of those Acts) relating to the drainage of any locality by means of sewers or the disposal of sewage.

7. A coast protection board constituted under section two of the Coast Protection Act, 1949.

8. A combined police authority within the meaning of the Police Act, 1946.

9. A fire authority constituted by a combination scheme under section six of the Fire Services Act, 1947.

10. A river board established under the River Boards Act, 1948.

11. A drainage authority (other than a river board) within the meaning of the Land Drainage Act, 1930.

12. Any body of persons (not falling within any of the preceding paragraphs) being statutory water undertakers within the meaning of the Water Act, 1945.

13. Any joint board established by or under a local enactment for the provision of crematoria.

PART II

Authorities in Scotland

1. A local authority within the meaning of the Local Government (Scotland) Act, 1947.

2. A joint board or joint committee constituted for the purpose of performing all or any of the functions of two or more local authorities within the meaning of the said Act of 1947 under that Act or any of the following enactments, that is to say—

the Burial Ground (Scotland) Act, 1855 ;
the Cremation Act, 1902 ;
the Fire Services Act, 1947 ;
the Scottish Act of 1947 ;
the National Health Service (Scotland) Act, 1947 ;
the Children Act, 1948 ;
the Civil Defence Act, 1948 ;
the Police (Scotland) Act, 1956.

3. A local water authority within the meaning of the Water (Scotland) Act, 1946.

4. A river purification board established under the Rivers (Prevention of Pollution) (Scotland) Act, 1951.

5. Any authority constituted under a local enactment.

Notes to the Fourth Schedule

The Schedule lists the authorities to whom Part 11 applies. Under Part 11 these authorities are freed from the necessity of obtaining Ministerial consent for acquisitions of land by agreement, appropriations of land, disposals of land and applications of capital money arising from disposals of land. These authorities consist principally of local authorities, and certain joint authorities whose transactions have hitherto been subject to Ministerial control.

" county ". For the administrative counties of England and Wales

(apart from London), see Local Government Act 1933, sections 1 (2) (*a*) and First Schedule, Part 1. See sections 18 and 23 of the Local Government Act, 1958, for the power of the Minister of Housing and Local Government to give effect to proposals of the Local Government Commission for the creation of new counties.

" county borough ". For the county boroughs, see Local Government Act 1933, section 1 (2) (*b*), and First Schedule, Part 11. See sections 18 and 23 of the Local Government Act, 1958, in relation to the creation of new county boroughs.

" county district ". This means a non-county borough, urban district or rural district, see section 305 of the Local Government Act 1933. For these areas, see section 1 (2) (*c*) (*d*) and (*e*) and First Schedule Part III of that Act.

" metropolitan borough ". For the metropolitan boroughs, see the London Government Act, 1939, section 1 and First Schedule.

" joint education board . . . Education Act 1944 ". Part 1 of the First Schedule of the Education Act 1944 enables the Minister of Education, after holding a local inquiry and obtaining the consents of the councils concerned, to set up a " joint education board " as the local education authority for two or more areas, where it appears to the Minister that the establishment of such a board would diminish expense or increase efficiency or otherwise be of public advantage. In such cases the Minister may, by virtue of section 293 of the Local Government Act 1933, make provision, in the order setting up the joint board, for applying any of the provisions of the 1933 Act to the joint board. Such provisions may include those relating to land transactions subject to Ministerial consent.

" joint planning Board . . . Act of 1947 ". Section 4 (2) of the 1947 Act empowers the Minister of Housing and Local Government to establish joint planning boards for the areas, or parts of the areas, of two or more county councils or county borough councils, after holding a local inquiry (unless this is dispensed with by the consent of all councils involved). Such a joint planning board acts as the local planning authority of the united areas.

" joint board . . . Public Health Act, 1936 ". Section 6 of the 1936 Act empowers the Minister of Health to constitute joint districts for any of the purposes of the Public Health Acts 1875–1936, with joint boards in charge. Sections 279 and 280 of the 1875 Act made similar provision for such united districts to be provisionally constituted for water, sewerage and other purposes under that Act, under the governance of joint boards. Those two sections were repealed by the Third Schedule of the 1936 Act, but without prejudice to districts and boards constituted under them, see section 346 of the 1936 Act. Section 343 of the 1936 Act defines " joint board " as including such a board acting as a public health authority. See section 90 of the Public Health Act 1936 for the definition of " joint sewerage board " for the purposes of that Act.

" coast protection board . . . Coast Protection Act 1949 ". Section 2 of the Coast Protection Act 1949 empowers the Minister of Health to

establish "coast protection boards," in place of "coast protection authorities" which are normally the councils of maritime county boroughs and county districts. A board established by order under the section becomes the coast protection authority for the area concerned and must perform the duty of carrying out all coast protection work in that area, unless its functions are limited by the order establishing it. A coast protection authority can acquire land by agreement without Ministerial consent, but as regards appropriation and disposal, the provisions of the Local Government Act 1933 relating to local authorities' powers in that respect (see pages 87 and 93) apply to coast protection authorities.

"combined police authority . . . Police Act 1946". A combined police authority created under the Police Act 1946 is an authority constituted by means of a voluntary amalgamation scheme under section 3 of that Act or an amalgamation scheme made by the Home Secretary under section 4 of that Act, in cases where it is expedient that the areas of two or more police authorities (being counties or county boroughs) be amalgamated for police purposes. Where there is an amalgamation, one combined police force is established for the combined area and is maintained by the combined police authority. A combined police authority has the same powers of acquisition of land for police purposes as a council of a county or county borough, and is made subject to the provisions of the Local Government Act 1933 as regards the acquisition, appropriation and disposal of land (see above pages 85, 87 and 93), as though it were such a council, see section 5 (3) of the Police Act 1946.

"fire authority . . . Fire Services Act 1947". Section 6 of the Fire Services Act 1947 empowers the Home Secretary to initiate combination schemes in relation to the areas of two or more fire authorities, where he considers that a scheme is necessary in the interests of efficiency and no voluntary scheme has been submitted to him by the fire authorities concerned under section 5 of the Act. Under such a scheme, one fire authority and one fire brigade has to be established for the combined areas. Under section 4 of the Act the councils of counties and county boroughs are made fire authorities for their respective areas. A fire authority under a combination scheme is subject to the Acquisition of Land (Authorisation) Procedure Act 1946 and the Local Government Act 1933 with respect to the acquisition of land by agreement and the appropriation and disposal of land, see section 8 of the Fire Services Act 1947.

"river board . . . River Board Act 1948". Section 1 of the River Boards Act 1948 requires the Ministers of Health and of Agriculture, Fisheries and Food to define "river board areas" and to establish boards for such areas to exercise the functions conferred by the Act. Such functions are the functions previously exercised by catchment boards, fishery boards, and by local authorities in relation to river pollution; and navigation functions may also be transferred to river boards. Section 13 (1) and (4) of the Act empowers river boards to acquire land by agreement or to sell, let or exchange it, subject to the approval of the Ministers.

" drainage authority . . . Land Drainage Act 1930 ". This means any drainage board constituted, or to be treated as constituted, under the Land Drainage Act 1930, or any other body of persons having power to make or maintain works for the drainage of land, see section 81 of that Act. Section 1 of that Act provides for the establishment of drainage districts, consisting of (*a*) catchment areas constituted under the Act, and (*b*) other drainage districts constituted under the Act, and (*c*) drainage districts constituted under previous Acts relating to the drainage of land and deemed to be constituted under that Act. A drainage board exercises supervision of drainage matters in its district, and under section 45 of that Act may acquire land by agreement for drainage purposes or may sell or exchange land, subject in each case to the approval of the Minister of Agriculture, Fisheries and Food.

" statutory water undertakers . . . Water Act 1945 ". Statutory water undertaker is defined in section 59 (1) of the Water Act 1945 (as amended in this respect by section 1 of the Water Act 1948) as any company, local authority board, committee or other person authorised by a local enactment to supply water, and any local authority or board supplying water under the Public Health Act 1936, including any local authority authorised to supply water by the said Act of 1936 but not actually supplying water under that Act. But it does not include a railway company or navigation authority having statutory power to sell surplus water or any body or person supplying water solely for the purpose of producing motive power by hydraulic pressure.

FIFTH SCHEDULE

(*Sections* 43, 44.)

Supplementary Provisions as to Purchase of Owner-Occupier's Interest

Interpretation of Part IV of Act

1.—(1) If any question arises—

(*a*) whether the appropriate authority in relation to any land for the purposes of Part IV of this Act is the Minister of Transport and Civil Aviation or a local highway authority, or

(*b*) which of two or more local highway authorities is the appropriate authority in relation to any land for those purposes,

that question shall be referred to the Minister of Transport and Civil Aviation, whose decision shall be final.

(2) Subject to the preceding sub-paragraph, if any question arises as to which of two or more local authorities is the appropriate

authority in relation to any land for the purposes of Part IV of this Act, that question shall be referred to the Minister, whose decision shall be final.

2.—(1) The definition of "the appropriate enactment" in Part IV of this Act shall have effect subject to the following provisions of this paragraph.

(2) In relation to land falling within the description contained in paragraph (*b*) of subsection (1) of section thirty-nine of this Act, an enactment shall, for the purposes of that definition, be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that description if—

(*a*) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed, or

(*b*) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.

(3) Where, in accordance with the circumstances by virtue of which any land falls within any of the specified descriptions, it is indicated that the land is proposed to be acquired for highway purposes, any enactment under which a highway authority are or (subject to the fulfilment of the relevant conditions) could be authorised to acquire that land compulsorily for highway purposes shall, for the purposes of the said definition, be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within the description in question.

(4) In the last preceding sub-paragraph the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question, that is to say,—

(*a*) the coming into operation of any requisite order under the provisions of Part II of the Highways Act, 1959, relating to trunk roads ;

(*b*) the coming into operation of any requisite scheme or order under the provisions of the said Part II relating to special roads ;

(*c*) the making or approval of any requisite plans.

(5) If, apart from this sub-paragraph, two or more enactments would be the appropriate enactment in relation to any land for the purposes of Part IV of this Act, the appropriate enactment for those purposes shall be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that (apart from the provisions of Part IV of this Act) the land would have been acquired by the appropriate authority.

(6) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of Part IV of this Act, that question shall be referred—

(*a*) where the appropriate authority are a government department, to the Minister or Board in charge of that department ;

(*b*) where the appropriate authority are a local highway authority, to the Minister of Transport and Civil Aviation ;

(*c*) where the appropriate authority are statutory undertakers, to the appropriate Minister ; and

(*d*) in any other case, to the Minister,

and the decision of the Minister or Board to whom a question is referred under this sub-paragraph shall be final.

3.—(1) The provisions of this paragraph shall have effect in relation to the definition of " hereditament " in Part IV of this Act.

(2) Where any land is on the boundary between two or more rating areas, and accordingly—

(*a*) different parts of that land form the subject of single entries in the valuation lists for the time being in force for those areas respectively, but

(*b*) if the whole of that land had been in one of those areas, it would have formed the subject of a single entry in the valuation list for that area,

the whole of that land shall be treated, for the purposes of that definition, as if it formed the subject of a single entry in the valuation list for a rating area.

(3) Land which forms the subject of an entry in the valuation list by reason only that it is land over which any shooting, fishing or other sporting rights are exercisable, or that it is land over which a right of exhibiting advertisements is let out or reserved, shall not be taken to be a hereditament within the said definition.

4. Where, in accordance with the last preceding paragraph, land whereof different parts form the subject of single entries in the

valuation lists for the time being in force for two or more rating areas is treated as if it formed the subject of a single entry in the valuation list for a rating area, the definition of " annual value " in Part IV of this Act shall apply as if any reference therein to a value shown in the valuation list were a reference to the aggregate of the values shown (as rateable values or as net annual values, as the case may be) in those valuation lists in relation to the different parts of that land.

5.—(1) For the purposes of the application of Part IV of this Act to a hereditament or agricultural unit occupied for the purposes of a partnership firm—

(*a*) occupation for the purposes of the firm shall be treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the definitions of " owner-occupier " in Part IV of this Act shall apply in relation to the firm accordingly ; and

(*b*) if, after the service by the firm of a notice under section thirty-nine of this Act, any change occurs (whether by death or otherwise) in the constitution of the firm, any proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or (as the case may be) shall be incumbent upon, the partners for the time being constituting the firm.

(2) Nothing in Part IV of this Act or in this paragraph shall be construed as indicating an intention to exclude the operation of section nineteen of the Interpretation Act, 1889 (whereby, unless the contrary intention appears, " person " includes any body of persons corporate or unincorporate) in relation to any of the provisions of Part IV of this Act or this Schedule.

(3) Sub-paragraph (1) of this paragraph shall not affect the definition of " resident owner-occupier " in Part IV of this Act.

Compensation for compulsory acquisition in pursuance of notice under Part IV of Act

6. The compensation payable in respect of a compulsory acquisition in pursuance of a notice served under section thirty-nine of this Act in respect of a hereditament—

(*a*) shall not include any amount attributable to damage sustained by reason that the hereditament is severed from other land held therewith, and

(*b*) shall not include any amount attributable to disturbance :

Provided that sub-paragraph (*a*) of this paragraph shall not apply

to an amount attributable to damage sustained by reason that the hereditament is severed from agricultural land held therewith.

7. The compensation payable in respect of a compulsory acquisition in pursuance of a notice served under section thirty-nine of this Act in respect of an agricultural unit shall not include any amount attributable to disturbance.

Withdrawal of notice under Part IV of Act

8. Subject to the next following paragraph, the person by whom a notice has been served under section thirty-nine of this Act 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 at any time before the end of the period of six weeks beginning with the date on which the compensation is so determined ; and, where such a notice is withdrawn by virtue of this paragraph, any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.

9. A person shall not be entitled by virtue of the last preceding paragraph to withdraw a notice after the appropriate authority have exercised a right of entering upon and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.

10. 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 paragraph 8 of this Schedule.

Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire

11.—(1) The provisions of this paragraph shall have effect where the grounds of objection specified in a counter-notice served under section forty of this Act consist of or include the grounds mentioned in paragraph (*b*) of subsection (2) of that section, and either—

(*a*) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or

(*b*) the time for referring that objection to the Lands Tribunal expires without its having been so referred.

(2) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or

includes the whole or part of the hereditament or agricultural unit to which the counter-notice relates, or if the land in question falls within paragraph (*d*) of subsection (1) of section thirty-nine of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part thereof shall cease to have effect.

(3) If the land in question falls within paragraph (*a*) of subsection (1) of section thirty-nine of this Act, then (without prejudice to the effect of any subsequent designation) the development plan shall have effect as if no part of the hereditament, or (in the case of an agricultural unit) no part of the affected area, were designated therein as land subject to compulsory acquisition.

12.—(1) The provisions of this paragraph shall have effect where the grounds of objection specified in a counter-notice under section forty of this Act consist of or include the grounds mentioned in paragraph (*c*) of subsection (2) of that section, and either—

(*a*) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or

(*b*) the time for referring that objection to the Lands Tribunal expires without its having been so referred.

In the following provisions of this paragraph any reference to " the part of the affected area not required " is a reference to the whole of that area except the part specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned.

(2) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any of the part of the affected area not required, or if the land in question falls within paragraph (*d*) of subsection (1) of section thirty-nine of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the affected area not required shall cease to have effect.

(3) If the land in question falls within paragraph (*a*) of subsection (1) of section thirty-nine of this Act, then (without prejudice to the effect of any subsequent designation) the development plan shall have effect as if no land comprised in the part of the affected area not required were designated therein as land subject to compulsory acquisition.

Supplementary and general provisions

13.—(1) In relation to any time after the death of a person who has served a notice under section thirty-nine of this Act, subsection (1) of section forty, subsection (1) of section forty-one and subsection (3) of section forty-two of this Act shall apply subject to the following provisions of this paragraph.

(2) In the application of those subsections to England and Wales, any reference to the claimant shall be construed as a reference to the claimant's personal representatives.

(3) In the application of those subsections to Scotland, any reference to the claimant shall be construed as a reference to the person who, on the claimant's death, has succeeded to his interest in the hereditament or agricultural unit in question.

14. Without prejudice to the provisions of paragraph 8 of this Schedule, the power conferred by subsection (2) of section five of the Act of 1919 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of Part IV of this Act.

15. Expressions used in this Schedule and in Part IV of this Act have the same meanings in this Schedule as in that Part of this Act.

16. Where by any provision of this Schedule power is conferred to determine any question for the purposes of Part IV of this Act, any exercise of that power shall have effect for the purposes of this Schedule as well as for the purposes of that Part of this Act.

17. In the application of this Schedule to Scotland, for any reference to the Minister of Transport and Civil Aviation there shall be substituted a reference to the Minister ; for any reference to a highway (except in the expression " highway authority ") there shall be substituted a reference to a road ; for any reference to a rating area there shall be substituted a reference to a valuation area, and, in relation to a valuation area, for any reference to the valuation list there shall be substituted a reference to the valuation roll ; and for references to the provisions of Part II of the Highways Act, 1959, relating to trunk roads and special roads there shall be substituted references respectively to the Trunk Roads Act, 1946, and the Special Roads Act, 1949.

NOTES TO FIFTH SCHEDULE

The Schedule makes provision for supplementary matters in relation to Part IV of the Act, which deals with the purchase of owner-occupiers' interests in land falling within the scope of certain defined planning proposals. Each paragraph is dealt with below separately. For compensation, see paragraphs 6 and 7, and page 141.

Paragraph 1. The paragraph provides for ascertaining which is the " appropriate authority " for the purposes of Part IV (*i.e.*, the authority liable to acquire the land in question), where there is doubt whether :—

(*a*) it is the Minister of Transport and Civil Aviation or a local highway authority, or

(*b*) it is one or other of two (or more) local highway authorities, or

(*c*) it is one or other of two (or more) local authorities.

The question is to be submitted to the Minister of Transport and Civil Aviation (in the first two cases)and the Minister of Housing and Local Government (in the last case), and their decisions are final. An appropriate authority is defined in section 43 (5).

Paragraph 2. The paragraph provides for ascertaining the " appropriate enactment", under which an acquisition in accordance with Part IV of the Act is to take place, in cases where :—

(*a*) the relevant land is land " allocated " or " defined " in the development plan (*i.e.* as specified in section 39 (1) (*b*) ; or

(*b*) the relevant land is, according to any of the proposals set out in section 39 (1), proposed to be acquired for highway purposes ; or

(*c*) there are two or more " appropriate enactments," as defined in section 43 (5) and this paragraph.

Where doubt arises as to which enactment is appropriate, the question is to be referred to the Ministers or Boards referred to in subparagraph (6), and their decision is final.

" paragraph (b) of section 39 (1) ". This relates to land allocated by a development plan for the purposes of any functions of a government department, a local authority, a statutory undertaker or the National Coal Board, or is defined in such a plan as the site of proposed development for the purposes of such functions. See, further notes to that section. In such cases if, broadly speaking, the development plan indicates the functions for which the land is allocated or defined, the appropriate enactment is the enactment empowering the authority to acquire for those functions. If there is no such indication, it is the enactment which provides for the acquisition of land by the authority for any of its functions. If there is more than one such enactment, the appropriate enactment is that one under which it is most likely that the land would have ultimately been acquired (sub-paragraph (5)).

" of the specified descriptions ", *i.e.*, land subject to the defined planning proposals, see sections 43 (5) and 39 (1).

" highway purposes ". Any of the planning proposals set out in section 39 (1) may relate to acquisition for highway purposes.

" highway authority ". For the meaning of this phrase see Part 1 of the Highways Act 1959, and particularly section 1, for the period after the 1st January 1960. The principal highway authorities consist of the Minister of Transport and Civil Aviation, councils of boroughs and urban district and county councils, and other authorities appointed by or under that Act.

" Part II of the Highways Act 1959 ". See note on page 316.

" the Minister ", *i.e.*, the Minister of Housing and Local Government, see section 57 (1).

Paragraph 3. The paragraph provides in effect that where land lies on the boundary of two or more rating areas and, for that reason only, forms the subject of single entries in more than one rating valuation list, it is to have the protection of Part IV of the Act as one " hereditament." The paragraph also excludes from the protection of Part IV any land, which forms the subject of a single entry in a valuation list for the reason only that shooting, fishing or other sporting rights are exerciseable over it or that a right of exhibiting advertisements is let or reserved over it. See section 43 (5) for the meaning of " hereditament."

Paragraph 4. The paragraph provides that, in the kind of case referred to in the first sentence of the preceding paragraph the " annual value " of the land is to be taken to be the aggregate of the separate single entries. See section 43 (5) for the meaning of " annual value."

Paragraph 5. The paragraph in effect provides that occupation of a hereditament or an agricultural unit for the purposes of a partnership firm is to be treated as occupation by the firm and not by any of the partners, but that if any change occurs (by death or otherwise) in the constitution of the firm after the firm has served a notice under section 39, all rights and obligations under Part IV survive for and against the partners for the time being. Rights under Part IV are available to all legal " persons," including any bodies corporate or incorporate, if they qualify appropriately.

Paragraphs 6 and 7. The paragraphs provide that no compensation for disturbance shall be payable where an acquisition under Part IV takes place : and that, in the case of a hereditament, no compensation for severance is payable, except where a hereditament is severed from agricultural land held therewith. No exclusion of compensation for severance is made in the case of an agricultural unit, because only the affected area of an agricultural unit can be acquired under Part IV, so that where the whole unit is not affected, there must inevitably be damage by severance.

Paragraphs 8, 9 and 10. The paragraphs provide that where an acquisition takes place under Part IV, the claimant may withdraw at any time up to six weeks after the compensation has been assessed by the Lands Tribunal, provided that the authority have not duly entered upon and taken possession of the land. When a claimant does withdraw, no compensation shall be payable in respect of the withdrawal of the notice to treat which is deemed to take place when the claimant withdraws. The authority cannot however withdraw a notice to treat, see paragraph 14.

Paragraph 11. The paragraph provides for the cessation of existing compulsory powers where the authority served with a notice under section 39 disclaims under section 40 (2) (*b*) any intention to acquire the relevant land, and that objection is not referred to the Lands Tribunal under section 41 or is upheld by the Tribunal. Where a compulsory purchase order or a special enactment authorises the acquisition, the power so conferred shall cease to have effect, and if the land is land designated in the development plan as subject to compulsory acquisition,

that designation shall cease to have effect : but there is nothing to stop the land being re-designated later. In cases to which this paragraph and the next one apply, the appropriate authority has been asked to inform the local planning authority, so that any necessary amendment of the development plan can be made, see M.H.L.G. Circular No. 48/59.

Paragraph 12. The paragraph makes similar provisions as the preceding one, in relation to the residue of the affected area of an agricultural unit, where the authority relies on the hybrid ground of objection under section 40 (2) (*c*), namely, that it proposes to acquire part of that area but not the residue, and that objection is not referred to the Lands Tribunal under section 41, or, on being referred, is upheld by the Tribunal.

Paragraph 13. The paragraph enables the personal representatives of a claimant who dies after serving a notice under section 39 to continue proceedings under Part IV in all respects as if they were the claimant.

Paragraph 14. The paragraph prevents an authority withdrawing under section 5 (2) of the 1919 Act notice to treat deemed to have been served under section 42. For section 5 (2), see note on page 228. For the claimant's right to withdraw from an acquisition under Part IV, see paragraph 8 above.

SIXTH SCHEDULE

(*Sections* 52, 54.)

Reduction or Extinguishment of Unexpended Balance of Established Development Value

PART I

General Provisions

1.—(1) Where in the case of—

(*a*) a compulsory acquisition to which section one of this Act applies, or

(*b*) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,

any of the land in which the interest acquired or sold subsisted had an unexpended balance of established development value immediately before the relevant date (in this paragraph referred to as " the relevant balance "), the following provisions of this paragraph shall have effect for the purpose of determining whether that land or any part thereof has an unexpended balance of established development value at any subsequent time.

(2) Unless, immediately after the acquisition or sale, there is outstanding some interest (other than an excepted interest) in that

land to which some person other than the acquiring authority is entitled, the original unexpended balance of established development value of that land shall be treated for the purposes of the Act of 1954 as having been extinguished immediately before that subsequent time.

(3) If, immediately after the acquisition or sale, there is such an outstanding interest (other than an excepted interest) as is mentioned in the last preceding sub-paragraph, there shall be deducted from the said original balance an amount equal to any part of the relevant balance which is not attributable to any such outstanding interest, and the original balance of established development value of that land or that part thereof shall be treated for the purposes of the Act of 1954 as having been reduced or extinguished accordingly immediately before that subsequent time.

(4) For the purposes of this paragraph any question as to the portion of the relevant balance which is attributable to an interest in land—

(*a*) in relation to a compulsory acquisition to which section one of this Act applies, shall be determined in accordance with the provisions of Part II of this Schedule, and

(*b*) in relation to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition, shall be determined in accordance with the provisions of Part II of this Schedule as those provisions would apply if the sale had been a compulsory acquisition in pursuance of a notice to treat served on the relevant date.

2.—(1) Where, in connection with a compulsory acquisition to which section one of this Act applies, compensation is payable in respect of an interest in land other than the relevant land, for damage sustained by reason that the relevant land is severed from other land held therewith, or that any other land (whether held with the relevant land or not) is injuriously affected, then, for the purpose of determining whether that other land or any part thereof has an unexpended balance of established development value at any subsequent time, there shall be deducted from the original unexpended balance of established development value (if any) of that other land an amount calculated in accordance with the next following sub-paragraph, and the original balance of that land, or of the part thereof in question, as the case may be, shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.

(2) The amount referred to in the preceding sub-paragraph is the amount (if any) by which the compensation payable as

mentioned in that sub-paragraph exceeds the compensation which would have been so payable if the extent of the damage sustained in respect of the other land in question had fallen to be ascertained on the assumption that planning permission would be granted for development of any class specified in the Third Schedule to the Act of 1947, but would not be granted for any other development of that land.

3. The last preceding paragraph shall have effect in relation to a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition to which section one of this Act applies as that paragraph has effect in relation to such an acquisition, but subject to the modification that—

(*a*) any reference to the relevant land shall be construed as a reference to the land sold, and

(*b*) any reference to compensation payable in respect of an interest in land shall be construed as a reference to an amount included in the purchase price in respect of that interest.

4. In this Schedule " interest in land ", " unexpended balance of established development value " and " original unexpended balance of established development value " have the same meanings as in the Act of 1954 ; " excepted interest " means the interest of any such person as is mentioned in section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845 (which relates to persons having no greater interest than as tenant for a year or from year to year) ; and " the relevant date " means the date of service of the notice to treat or the date of the contract in pursuance of which the interest was sold, as the case may be.

5. In the application of this Part of this Schedule to Scotland—

(*a*) for any reference to the Act of 1954 there shall be substituted a reference to the Scottish Act of 1954 ;

(*b*) for any reference to the Act of 1947 there shall be substituted a reference to the Scottish Act of 1947 ;

(*c*) for any reference to section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to section one hundred and fourteen of the Lands Clauses Consolidation (Scotland) Act, 1845 ; and

(*d*) for any reference to Part II of this Schedule there shall be substituted a reference to Part III of this Schedule.

PART II

SPECIAL PROVISIONS FOR APPORTIONMENT IN ENGLAND AND WALES

Determination of relevant area

6.—(1) Where, in the case of a compulsory acquisition to which section one of this Act applies, any area of the relevant land which, immediately before the service of the notice to treat, has an unexpended balance of established development value does not satisfy the conditions set out in the next following sub-paragraph, that area shall be treated as divided into as many separate areas as may be requisite to ensure that each of those separate areas satisfies those conditions.

(2) The conditions referred to in the preceding sub-paragraph are—

(*a*) that all the interests (other than excepted interests) subsisting in the area in question subsist in the whole thereof ; and

(*b*) that any rentcharge charged on the area in question is charged on the whole thereof.

(3) Any area of the relevant land which has an unexpended balance of established development value and which complies with the conditions set out in the last preceding sub-paragraph is in this Part of this Schedule referred to, in relation to the interests subsisting therein, as " the relevant area ", and the subsequent provisions of this Part of this Schedule shall have effect separately in relation to each relevant area.

Preliminary calculations

7. There shall be calculated the amount referable to the relevant area of the rent which might reasonably be expected to be reserved if the relevant land were to be let on terms prohibiting the carrying out of any new development but permitting the carrying out of any other development ; and the amount so calculated is in this Part of this Schedule referred to as " the existing use rent ".

8.—(1) If in the case of an interest in fee simple which is subject to a rentcharge, or in the case of a tenancy, so much of the rent reserved under the rentcharge or tenancy as is referable to the relevant area exceeds the existing use rent, there shall be calculated the capital value of the right to receive, for the period of the remainder of the term of the rentcharge or tenancy, an annual payment equal to the excess ; and any amount so calculated in the

case of any interest is in this Part of this Schedule referred to as " the rental liability " of that interest.

(2) Where the interest in fee simple is subject to more than one rentcharge, then, for the purposes of the preceding sub-paragraph, as respects any period included in the term of two or more of those rentcharges, those two or more rentcharges shall be treated as a single rentcharge charged on the relevant area for the duration of that period with a rent reserved thereunder of an amount equal to the aggregate of so much of their respective rents as is referable to the relevant area.

9. In the case of any interest in reversion—

(*a*) there shall be calculated the capital value, as at the time immediately before the service of the notice to treat, of the right to receive a sum equal to the unexpended balance of established development value of the relevant area at that time, but payable at the end of the tenancy upon the termination of which the interest in question is immediately expectant ; and the amount so calculated in the case of any interest is in this Part of this Schedule referred to as " the reversionary development value " of that interest ;

(*b*) if so much of the rent reserved under the said tenancy as is referable to the relevant area exceeds the existing use rent, there shall also be calculated the capital value as at the said time of the right to receive, for the period of the remainder of the term of that tenancy, an annual payment equal to the excess ; and any amount so determined in the case of any interest is in this Part of this Schedule referred to as " the rental increment " of that interest.

Apportionment of unexpended balance between interests

10. Where two or more interests (other than excepted interests) subsist in the relevant area, the portion of the unexpended balance of established development value of the relevant area attributable to each respectively of those interests shall be taken to be the following, that is to say—

(*a*) in the case of the interest in fee simple, an amount equal to the reversionary development value of that interest, less the amount (if any) by which any rental liability of that interest exceeds any rental increment thereof ;

(*b*) in the case of a tenancy in reversion, an amount equal to the reversionary development value of that tenancy, less the aggregate of—

(i) the reversionary development value of the interest in reversion immediately expectant upon the termination of that tenancy, and

(ii) the amount (if any) by which any rental liability of that tenancy exceeds any rental increment thereof ;

(*c*) in the case of a tenancy other than a tenancy in reversion, the remainder (if any) of the said balance after the deduction of the aggregate of—

(i) the reversionary development value of the interest in reversion immediately expectant upon the termination of that tenancy, and

(ii) any rental liability of that tenancy.

Interpretation

11. In this Part of this Schedule—

(*a*) " tenancy " does not include an excepted interest ;

(*b*) any reference to an interest or tenancy in reversion does not include an interest or tenancy in reversion immediately expectant upon the termination of an excepted interest ;

(*c*) " new development " means any development other than development of a class specified in the Third Schedule to the Act of 1947.

12. This Part of this Schedule shall not apply to Scotland.

PART III

Special Provisions for Apportionment in Scotland

Determination of relevant area

13.—(1) Where, in the case of a compulsory acquisition to which section one of this Act applies, any area of the relevant land which, immediately before the service of the notice to treat, had an unexpended balance of established development value does not satisfy the condition set out in the next following sub-paragraph, that area shall be treated as divided into as many separate areas as may be requisite to ensure that each of those separate areas satisfies that condition.

(2) The condition referred to in the preceding sub-paragraph is that all the interests (other than excepted interests) subsisting in the area in question subsist in the whole thereof.

(3) Any area of the relevant land which has an unexpended balance of established development value and which complies with

the condition set out in the last preceding sub-paragraph is in this Part of this Schedule referred to in relation to the interests subsisting therein as " the relevant area ", and the subsequent provisions of this Part of this Schedule shall have effect separately in relation to each relevant area.

Preliminary calculations

14. In the case of the interest of the lessor under any lease there shall be calculated the capital value as at the time immediately before the service of the notice to treat of the right to receive a sum equal to the unexpended balance of established development value of the relevant area at that time, but payable at the expiration of the lease ; and the amount so calculated in the case of any such interest is in this Part of this Schedule referred to as " the reversionary development value " of that interest.

Apportionment of unexpended balance between interests

15. Where two or more interests other than excepted interests, subsist in the relevant area, the portion of the unexpended balance of established development value of the relevant area attributable to each respectively of those interests shall be taken to be the following, that is to say—

(*a*) in the case of the interest of the lessor under any lease, so much, if any, of the reversionary development value of that interest, as remains after the deduction therefrom of the aggregate of—

(i) the reversionary development value of the interest of the person, if any, to whom that lessor stands in the relationship of lessee ; and

(ii) in a case where the restricted value of the first-mentioned interest is a minus quantity, an amount equal to that minus quantity ;

(*b*) in the case of the interest of the lessee under any lease which is not subject to a sub-lease, so much, if any, of the said balance as remains after the deduction therefrom of the aggregate of—

(i) the reversionary development value of the interest of the lessor under the lease, and

(ii) in a case where the restricted value of the first-mentioned interest is a minus quantity, an amount equal to that minus quantity.

Interpretation

16. In this Part of this Schedule the expression " lease " does not include any lease in the case of which the interest of the lessee is an excepted interest.

17. This Part of this Schedule shall apply to Scotland only.

NOTES TO SIXTH SCHEDULE

PART I

Part I of the Schedule provides that, where compulsory acquisitions or purchases in the shadow of compulsory powers take place in pursuance of a notice to treat served or contract made after 29th October 1958, any " unexpended balance of established development value " which the acquired land may have for the purposes of the 1954 Act shall be :—

(*a*) extinguished, if after the acquisition the acquiring authority owns *every* interest in the land (other than any tenancy for a year, or from year to year, or less) ;

(*b*) reduced by the appropriate amount if after the acquisition there is any interest in the land greater than a tenancy for a year or from year to year which the acquiring authority does *not* own. The appropriate amount for the reduction is that amount attributable to the acquired interest(s) as determined by the apportionment provisions contained in Part II of the Schedule.

The Schedule also provides for an appropriate reduction in any " unexpended balance " of land *other than* the acquired land, when on an acquisition or purchase in the shadow of compulsory powers in pursuance of a notice to treat served or contract made after 29th October 1958 the compensation paid includes an amount in respect of severance from or injurious affection to that *other* land. The amount of the reduction is the amount of the compensation or price which, in effect, reflects the damage so done to the " development value " of the land in question, calculated at current prices.

" compulsory acquisition . . . section 1 ", *i.e.*, a compulsory acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October 1958.

" sale . . . corresponding to such an acquisition ", *i.e.*, a sale to a public authority possessing compulsory powers, being a sale in pursuance of a contract made after the 29th October 1958, see section 57 (8).

" unexpended balance of established development value ". For the calculation of any unexpended balance which a given area of land may have, see sections 17 and 18 of the 1954 Act. These sections provide, broadly, that land shall have an unexpended balance if there are still any " claim holdings " (as calculated under section 2 of that Act) relating to the land after payments out of them have been made under Part I of the Act. Section 2 in its turn provides that claim holdings are, in effect, claims established in accordance with section 1 in respect of the relevant land under Part VI of the 1947 Act (*i.e.*, claims against the

£300,000,000 compensation fund). Such unexpended balance may affect compensation on compulsory acquisition, since the market will take account of the right to compensation (up to the limit of the unexpended balance) under Part II of the 1954 Act in respect of any adverse planning decision. Information may still be obtained as to the amount of the unexpended balance attached to any land, under section 48 of the 1954 Act : for this purpose the Central Land Board (dissolved since 1st April, 1959) is replaced by the Minister.

" relevant date ", *i.e.*, the date of the service or deemed service of the notice to treat or the contract for purchase, as the case may be, see paragraph 4.

" at any subsequent time ", *e.g.*, when it becomes necessary to assess the unexpended balance, in order to determine compensation for subsequent planning restrictions under Part II or section 22 of the 1947 Act as amended by section 38 of the 1954 Act.

" excepted interest ", *i.e.*, a tenancy for a year, or from year to year, or less, see paragraph 4.

" original unexpended balance ", *i.e.*, the unexpended balance immediately after the commencement of the 1954 Act (1st January 1955), see section 17 (2) of the 1954 Act. The amount of the original unexpended balance was the aggregate of surviving claim holdings relating to the land in question, plus one-seventh representing interest.

Paragraph 2. The paragraph provides for the reduction of the unexpended balance of other land where compensation is paid for severance from or injurious affection to that other land, and the amount of the reduction is the amount of that compensation attributable to the damage done to that land's development value by the severance or injurious affection. Section 36 of the 1954 Act (now repealed) provided for the payment of compensation which included a sum for damage so done to the development value of land, and the new " market value " basis of compensation under this Act will also reflect such damage. It is to be noted that this compensation, assessed at current prices, is thus used to reduce an unexpended balance assessed at 1947 prices.

" Third Schedule to the Act of 1947 ". The Third Schedule defines the classes of development included in " existing use " for the purposes of that Act. The assumption in question is therefore that the land be restricted to existing use development. The Third Schedule was amended by paragraph 7 of the Seventh Schedule of the 1954 Act, so that (*a*) its existing use tolerances are extended to cover the state of the land not merely as it existed on 1st July 1948 (the appointed day for the 1947 Act) but also as it exists on any date by reference to which the Third Schedule falls to be applied (as for example under this paragraph), and (b) in any case where development has been carried out since 1st July 1948, under a permission which limits the time for the retention of that development, the Third Schedule existing use tolerances (as now modified) will apply to such development only for the limited period. See also section 112 of the Act of 1947, and note thereon on page 358.

" section 121 . . . Act 1845 ". Section 121 of the 1845 Act provides,

' If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year. . . .

Where an unexpired residue of a long term is less than one year, the tenant comes within this definition, *R.* v. *Great Northern Rail Co.* (1876) 2 Q.B.D. 151, but see also *Re King's Leasehold Estates* (1873) L.R. 16 Eq. 521.

PART II

Part II of the Schedule provides for the method of apportioning the unexpended balance of land between two or more interests for the purpose of reducing the balance by the appropriate amount in accordance with paragraph 1 (3) and (4) of the Schedule. In the simple case where there is only a tenancy at an " existing use rent", and a freehold interest, there is attributed to the latter the " present " value of the right to receive the whole unexpended balance at the expiration of the tenancy, and to the former the residue of the unexpended balance after deducting the amount attributed to the freehold interest. But this Part of the Schedule also provides for complex cases where there are more than two interests in the land, or where the rent paid by a tenant, or by a freeholder under a rentcharge, exceeds the rent which might reasonably be reserved if the land were let on terms permitting only development within the Third Schedule of the 1947 Act (as amended by the 1954 Act, Seventh Schedule), *i.e.*, the existing use rent. For this process, see the notes below.

Paragraph 6. This Part of the Schedule only applies if all interests in the land which is being considered subsist in the *whole* of it, and if any rentcharge is charged on the *whole* land. Therefore the land acquired must, if necessary, be divided up so as to ensure that each part satisfies these conditions, and then to each such part, provided that it has an unexpended balance, this Part of the Schedule is applied.

" compulsory acquisition . . . section 1 ", *i.e.*, a compulsory acquisition in pursuance of a notice to treat served or deemed to be served after the 29th October 1958.

" unexpended balance ", *i.e.*, as calculated under section 17 and 18 of the 1954 Act, see note above on " unexpended balance " under Part I of this Schedule.

" excepted interests ", *i.e.*, tenancies for a year, or from year to year, or less, see paragraph 4 above.

Paragraph 7. The " existing use rent " of the land, referred to in the headnote, must be calculated.

" new development ", see paragraph 11.

Paragraph 8. If the rent under a tenancy or a rentcharge exceeds the " existing use rent," this excess is capitalised and is called the " rental liability " of the tenancy or freehold interest, as the case may be.

Paragraph 9. In the case of a reversionary interest, two calculations have to be made :—

(*a*) the present value of the right to receive a sum equal to the unexpended balance on the expiry of the tenancy on which the

reversion is expectant is first calculated and is called " the reversionary development value " ;

(*b*) if the rent reserved under that tenancy exceeds the existing use rent, the right to receive that excess is capitalised over the term of the tenancy and is called " the rental increment " of that interest.

Paragraph 10. The paragraph provides for the apportionment of the unexpended balance between a freehold interest, tenancies in reversion and other tenancies, having regard to the values calculated in accordance with preceding paragraphs. Since the owner of an acquired interest is being relieved of any " rental liability " for the future, that amount is in effect deducted from the amount of the unexpended balance otherwise attributable to the interest. And *vice versa* with any " rental increment."

The apportionment proceeds as follows :—

(i) *The Freeholder*

The freeholder receives the reversionary development value of his interest, less the amount by which any rental liability of his interest exceeds any rental increment thereof.

(ii) *A Tenancy in Reversion*

The tenant in reversion receives the reversionary development value of his interest, less the aggregate of :—

(*a*) the reversionary development value of the interest in reversion immediately expectant on the determination of his tenancy and

(*b*) the amount, if any, by which any rental liability of his tenancy exceeds any rental increment thereof.

(iii) *A Tenancy in Occupation*

The tenant in occupation receives the remainder of the unexpended balance (if any) after the deduction of the aggregate of :—

(*a*) the reversionary development value of the interest in reversion immediately expectant on the termination of his tenancy, and

(*b*) any rental liability of his tenancy.

SEVENTH SCHEDULE

(*Section* 58.)

Enactments Amended

The Agriculture Act, 1947

In section fifty-eight, in paragraph (*b*) of subsection (7), for the words from " as a condition of consenting " to the end of the paragraph, there shall be substituted the words " where any of the land to which estimates submitted under this section relate is subsequently sold, exchanged, let or appropriated otherwise than

in accordance with the proposals on which the estimates were based, to require the smallholdings authority to furnish the Minister with such particulars of the sale, exchange, letting or appropriation as may be determined by or under the regulations, and may empower the Minister to adjust contributions as he may think fit having regard to those particulars ".

The Town and Country Planning Act, 1947

In section eighteen, after subsection (5), there shall be inserted the following subsection :—

" (6) Where permission to develop land is granted by a development order subject to limitations, nothing in this Part of this Act shall be construed as requiring permission to be obtained thereunder for the use of that land which (apart from its use in accordance with that permission) is the normal use of that land, unless the last-mentioned use was begun in contravention of the provisions of this Part of this Act or was begun before the appointed day in contravention of previous planning control within the meaning of section seventy-five of this Act ".

In section nineteen, in subsection (2), for the words " that council shall forthwith transmit a copy of the notice to the Minister " there shall be substituted the words "and that council propose to serve on the owner a notice in accordance with paragraph (*c*) of subsection (1A) of this section, they shall transmit a copy of the purchase notice to the Minister, together with a statement of their reasons ", for the words " the foregoing subsection " there shall be substituted the words " subsection (1) of this section ", and in paragraph (*c*) of the proviso to that subsection, after the word " authority " there shall be inserted the words " or statutory undertakers " ; in subsection (3), for the words " the date on which a purchase notice is served under this section ", there shall be substituted the words " the end of the period specified in subsection (1A) of this section, or the date on which a copy of the purchase notice is transmitted to the Minister, whichever is the earlier ", and for the words " last foregoing subsection " there shall be substituted the words " proviso to subsection (2) of this section " ; and in subsection (5), after the word " authority " in paragraph (*d*), there shall be inserted the words " or statutory undertakers ", for the words " or authority " there shall be substituted the words " authority or statutory undertakers ", and for the words " and authorities " there shall be substituted the words " authorities and undertakers ".

In section twenty, in subsections (3) and (4), for the words " compulsory purchase value ", in each place where they occur, there shall be substituted the words " existing use value " ; and at the end of subsection (4) there shall be added the words " and the purchase were not a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies ".

In section twenty-three, in subsections (1), (2) and (4), after the word " conditions ", in each place where that word occurs, there shall be inserted the words " or limitations ", and in subsection (1), after the words " non-compliance with a condition ", there shall be inserted the words " or limitation ".

In section twenty-four, in subsection (3), after the word " conditions " there shall be inserted the words " or limitations ".

In section twenty-seven, in paragraph (*a*) of subsection (3), for the words " the foregoing subsection " there shall be substituted the words " subsection (1) of this section ".

In section fifty-four, after subsection (2), there shall be inserted the following subsection :—

" (2A) Where, in the case of a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies,—

(*a*) Part VIII of the Requisitioned Land and War Works Act, 1945, applies to the acquisition, and

(*b*) the land is requisitioned land and the period of requisition had begun before the appointed day,

subsections (3) and (4) of section three of the said Act of 1959 shall have effect as if for any reference to the appointed day in the Third Schedule to this Act there were substituted a reference to the beginning of the period of requisition " ;

and in subsection (3), after the words " paragraph (*a*) ", there shall be inserted the words " of subsection (2) of this section or by virtue ".

The Town and Country Planning (Scotland) Act, 1947

In section sixteen, after subsection (5), there shall be inserted the following subsection :—

" (6) Where permission to develop land is granted by a development order subject to limitations, nothing in this Part

of this Act shall be construed as requiring permission to be obtained thereunder for the use of that land which (apart from its use in accordance with that permission) is the normal use of that land, unless the last-mentioned use was begun in contravention of the provisions of this Part of this Act or was begun before the appointed day in contravention of previous planning control within the meaning of section seventy-two of this Act."

In section seventeen, in subsection (2), for the words " that authority shall forthwith transmit a copy of the notice to the Secretary of State " there shall be substituted the words " and that authority propose to serve on the owner a notice in accordance with paragraph (*c*) of subsection (1A) of this section, they shall transmit a copy of the purchase notice to the Secretary of State, together with a statement of their reasons " ; for the words " the foregoing subsection " there shall be substituted the words " subsection (1) of this section ; " and in paragraph (*c*) of the proviso to that subsection, after the word " authority ", in the first place where it occurs, there shall be inserted the words " or statutory undertakers " and after the word " authority " in the second place where it occurs, there shall be inserted the words " or, as the case may be, those statutory undertakers " ; in subsection (3), for the words " the date on which a purchase notice is served under this section ", there shall be substituted the words " the end of the period specified in subsection (1A) of this section, or the date on which a copy of the purchase notice is transmitted to the Secretary of State, whichever is the earlier ", and in subsection (5), after the word " authority " in paragraph (*c*), there shall be inserted the words " or statutory undertakers ", for the words " or authority " there shall be substituted the words " authority or statutory undertakers ", and for the words " and authorities " there shall be substituted the words " authorities and undertakers ".

In section eighteen, in subsections (3) and (4) for the words " compulsory purchase value ", in each place where they occur, there shall be substituted the words " existing use value " ; and at the end of subsection (4) there shall be added the words " and the purchase were not a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies ".

In section twenty-one, in subsections (1), (2) and (4), after the word " conditions ", in each place where that word occurs, there shall be inserted the words " or limitations ".

In section twenty-two, in subsection (3), after the word " conditions " there shall be inserted the words " or limitations ".

In section twenty-five, in paragraph (*a*) of subsection (3), for the words " the foregoing subsection " there shall be substituted the words " subsection (1) of this section ".

In section fifty-one, after subsection (2), there shall be inserted the following subsection :—

" (2A) Where, in the case of a compulsory acquisition to which section one of the Town and Country Planning Act, 1959, applies,—

(*a*) Part VIII of the Requisitioned Land and War Works Act, 1945, applies to the acquisition, and

(*b*) the land is requisitioned land and the period of requisition had begun before the appointed day,

subsections (3) and (4) of section three of the said Act of 1959 shall have effect as if for any reference to the appointed day in the Third Schedule to this Act there were substituted a reference to the beginning of the period of requisition " ;

and in subsection (3), after the words " paragraph (*a*) " there shall be inserted the words " of subsection (2) of this section or by virtue ".

The Town and Country Planning Act, 1954

In section twenty-nine, in subsection (6), after the words " section fifty-two of this Act " there shall be inserted the words " (either as originally enacted or as amended by section fifty-one of the Town and Country Planning Act, 1959) ", and for the words " that section " there shall be substituted the words " the said section fifty-two ".

In section fifty-three, in subsection (1), for the word " price " there shall be substituted the word " value " ; and in subsection (2), for the words " value and price " there shall be substituted the word " values ", and for paragraph (*b*) there shall be substituted the following paragraph :—

" (*b*) the value which such a freehold interest (free from incumbrances but subject as mentioned in the preceding paragraph) would have at that time if the land were then in the state in which it was when possession thereof was taken in the exercise of emergency powers ".

The Town and Country Planning (*Scotland*) *Act*, 1954

In section thirty, in subsection (6), after the words " section fifty-four of this Act " there shall be inserted the words " (either as originally enacted or as amended by section fifty-one of the Town

and Country Planning Act, 1959) ", and for the words " that section " there shall be substituted the words " the said section fifty-four ".

In section fifty-five, in subsection (1), for the word " price " there shall be substituted the word " value " ; and in subsection (2) for the words " value and price " there shall be substituted the word " values ", and for paragraph (*b*) there shall be substituted the following paragraph :—

" (*b*) the value which such dominium utile (subject as mentioned in the preceding paragraph but otherwise free from burdens) would have at that time if the land were then in the state in which it was when possession thereof was taken in the exercise of emergency powers."

In section sixty-two, in subsection (8), at the end, there shall be inserted the following proviso, that is to say,—

" Provided that, where the acquisition in question is a transaction in relation to which the repeal of the said subsection (4) by section fifty-eight of the Town and Country Planning Act, 1959, has effect, this subsection shall have effect as if for the words from ' the dominium utile in question ' to the word ' applied ' (in the second place where that word occurs) there were substituted the words ' the said Rule (5) had not applied '."

The Housing Act, 1957

In section forty-seven, for subsection (2) there shall be substituted the following subsection :—

" (2) Land shall not, except with the consent of the Minister, be sold, exchanged or leased under this section for a price, consideration or rent less than the best price, best consideration or best rent (as the case may be) that can reasonably be obtained, having regard to any restrictions or conditions (including conditions as to payment or the giving of security for payment) subject to which it is sold, exchanged or let."

In the Second Schedule, in the proviso to sub-paragraph (1) of paragraph 2, for the words " the difference between " there shall be substituted the words " the amount (if any) by which ", and for the word " and ", where it occurs immediately before the words " the site value ", there shall be substituted the word " exceeds ".

NOTES TO THE SEVENTH SCHEDULE

The Agriculture Act 1947, section 58 (7) (b). The subparagraph provided for the making of regulations to empower the Minister of Agriculture,

Fisheries and Food, as a condition of consenting to the sale letting or appropriation of land used for the provision of small holdings towards which he has made a contribution, to require revised estimates to be submitted to him in place of those originally submitted to him (on which his contribution was based), and such regulations could provide for the adjustment of his contribution on the basis of the revised estimates. For the effect of the amendment, see page 163.

The Town and Country Planning Act 1947.

Section 18. The effect of the new subsection is that when a planning permission is granted by Development Order subject to limitations, the normal use of the land (apart from its use in accordance with that permission) can be resumed without any further permission, unless that normal use was begun in contravention of planning control whether before or after the appointed day for the 1947 Act. This matches the similar provision in subsection (5) of the section as regards permissions granted for a limited period only. Normal use is a question of fact. As regards enforcement of such permissions, see section 38, and note on section 23 of the 1947 Act below.

Section 19. Apart from amendments which are purely consequential on amendments made by section 35 above, the effect is (*a*) to enable the Minister to substitute statutory undertakers, in place of a council on whom a purchase notice is served, to comply with the notice, and (*b*) to alter the time from which the six-months period runs in which the Minister should reach a decision on a purchase notice, and (*c*) to require the Minister to serve notice of any action proposed by him in respect of a purchase notice on statutory undertakers whom he intends to substitute in place of the council on whom the notice was served. These amendments are incorporated in the Narrative on pages 123–7. See section 58 (2) for the application of the amendments.

Section 20 (3) and (4). These subsections provide for compensation in cases in which the Minister has "avoided" a purchase notice by directing the grant of permission for alternative development which gives a value to the land falling short of its existing use value. The compensation in such cases is the amount of the difference between these two values. The amendment is consequential on the change to "market value" as the basis of compensation for compulsory acquisition, and preserves the same measure of compensation under these subsections as before.

Sections 23 and 24. The effect of the amendments is to enable the enforcement procedure under these sections to be applied in cases where development exceeds the limitations placed upon a permission (*e.g.*, by the General Development Order 1950) in the same way as when conditions imposed on a permission are not complied with. See further section 38 and the notes thereto.

Section 27. Section 27 (3) enables the purchase notice procedure under section 19 of the 1947 Act to be adopted in cases where an order made under section 26 requiring the cessation of (authorised) uses or works renders the land incapable of reasonably beneficial use. The amendment

is purely consequential on the amendments made to section 19 by section 35 of this Act.

Section 54 (2A). The effect of this new subsection is that in a case where land which was requisitioned before the 1st July 1948 is compulsorily acquired in pursuance of a notice to treat served after the 29th October 1958, any assumption to be made under section 3 (3) of this Act (*i.e.*, of permission for Third Schedule development) is to be made by reference to the state of the land at the beginning of its period of requisitioning.

The Town and Country Planning Act 1954.

Section 29 (6). The subsection provides that the Minister is not to recover compensation paid by him under Part II of that Act from subsequent developers, in cases in which he recovers any sum under section 52 (6) of that Act from an acquiring authority. The amendment ensures that this reference to subsection (6) of section 52 is a reference to the *new* subsection (6) substituted by section 51 of the 1959 Act, in relation to compulsory acquisitions or purchases initiated after the 29th October 1958.

Section 53 (1) and (2). These amendments reproduce the effect of the amendments made by section 45 of the 1959 Act ; see that section on page 332. See section 58 (3) for the application of the amendment.

The Housing Act 1957.

Section 47 (2). Section 47 (2) provided that where a local authority has purchased land comprised in or near a clearance area, under Part III of that Act, any sale, exchange or letting of that land by the local authority had to be effected for the best price, consideration or rent that could reasonably be obtained having regard to any restriction or condition imposed. The new subsection brings the procedure into line with that provided by section 26 (4) ; see pages 94–95.

Second Schedule. The Schedule (Part I) provides for the assessment of a " well-maintained " payment payable under sections 30 or 60 of the Act to the owner or person responsible for the repair of a house acquired under that Act, on the grounds that the house has been well maintained by him. The proviso in question created a ceiling for such a payment, being the difference between the full value and the (then existing use) site value. A new ceiling is now created, being the amount by which the full market value exceeds the (now full open market) site value. See section 58 (4) of this Act for the application of the amendment.

EIGHTH SCHEDULE

(*Section* 58.)

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
23 & 24 Geo. 5. c. 51.	The Local Government Act, 1933.	In section one hundred and sixty-three, in subsection (1), in the proviso, sub-paragraph (*b*) of paragraph (i). In section one hundred and sixty-eight, subsection (5), except in relation to any inquiry begun before the commencement of this Act.
6 & 7 Geo. 6. c. 21.	The War Damage Act, 1943.	Section fourteen.
7 & 8 Geo. 6. c. 47.	The Town and Country Planning Act, 1944.	The Fifth Schedule.
8 & 9 Geo. 6. c. 33.	The Town and Country Planning (Scotland) Act, 1945.	The Fifth Schedule.
10 & 11 Geo. 6. c. 51.	The Town and Country Planning Act, 1947.	In section forty-four, subsection (4). Sections fifty-one to fifty-three. In section fifty-four, in subsection (1), the words "in accordance with the foregoing provisions of this Part of this Act" and the words from "and in particular" to the end of the subsection. Section fifty-five. In section fifty-six, in subsection (2), the words from "and the right to receive any value payment" to the end of the subsection, and subsections (3) and (4). In section eighty-two, subsection (5). In section eighty-four, subsection (4).

Session and Chapter	Short Title	Extent of Repeal
		In section eighty-five, subsection (4).
		In section one hundred and ten, subsections (2) and (3).
		The Fifth Schedule to the Town and Country Planning Act, 1944, as reprinted in the Eleventh Schedule.
10 & 11 Geo. 6. c. 53.	The Town and Country Planning (Scotland) Act, 1947.	In section forty-one, subsection (3).
		Sections forty-eight to fifty.
		In section fifty-one, in subsection (1), the words "in accordance with the foregoing provisions of this Part of this Act" and the words from "and in particular" to the end of the subsection.
		Section fifty-two.
		In section fifty-three, in subsection (2), the words from "and the right to receive any value payment" to the end of the subsection, and subsections (3) and (4).
		In section seventy-nine, subsection (5).
		In section eighty-one, subsection (4).
		In section eighty-two, subsection (4).
		In section one hundred and five, subsections (2) and (3).
		The Fifth Schedule to the Town and Country Planning (Scotland) Act, 1945, as reprinted in the Eleventh Schedule.
14 Geo. 6. c. 34.	The Housing (Scotland) Act, 1950.	In the Fourth Schedule, paragraph 3.
15 & 16 Geo. 6. and 1 Eliz. 2. c. 54.	The Town Development Act, 1952	In section six, in subsection (6), the words from "and the reference to subsection (2)" to the end of the subsection.

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Eliz. 2. c. 72.	The Town and Country Planning Act, 1954.	Part III. In section forty-eight, in subsection (2), the words from " being such a department " to "section thirty of this Act". In section fifty-two, paragraph (*c*) of subsection (8). In section fifty-three, subsection (5). In section sixty-one, subsection (3). In section sixty-seven, subsection (4). The Fifth and Sixth Schedules.
2 & 3 Eliz. 2. c. 73.	The Town and Country Planning (Scotland) Act, 1954.	In section thirty-one, subsection (2). Sections thirty-two to thirty-eight. In section thirty-nine, in subsection (2), the words " otherwise than by virtue of section thirty-two of this Act and". In section fifty-four, paragraph (*c*) of subsection (8). In section fifty-five, subsection (5). In section sixty-one, subsection (3). In section sixty-seven, subsection (4). The Fifth and Sixth Schedules.
4 & 5 Eliz. 2. c. 57.	The Slum Clearance (Compensation) Act, 1956.	The whole Act.
5 & 6 Eliz. 2. c. 38.	The Housing and Town Development (Scotland) Act, 1957.	In section thirteen, in subsection (3), the words from " and the reference to subsection (2) " to the end of the subsection.
5 & 6 Eliz. 2. c. 56.	The Housing Act, 1957.	In section one hundred and five, subsection (3). In the Third Schedule, in Part III, paragraph 2. In the Seventh Schedule, subparagraph (3) of paragraph 2.

NINTH SCHEDULE

(*Section* 58.)

SECTION NINETEEN OF THE TOWN AND COUNTRY PLANNING ACT, 1947, AS AMENDED

19. Obligation to purchase land on refusal of permission in certain cases.—(1) Where permission to develop any land is refused, whether by the local planning authority or by the Minister, on an application in that behalf made under this Part of this Act, or is granted by that authority or by the Minister subject to conditions, then if any owner of the land claims—

(*a*) that the land has become incapable of reasonably beneficial use in its existing state ; and

(*b*) in a case where permission to develop the land was granted as aforesaid subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions ;

(*c*) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been or is deemed to be granted under this Part of this Act, or for which the local planning authority or the Minister have undertaken to grant such permission,

he may, within the time and in the manner prescribed by regulations made under this Act, serve on the council of the county borough or county district in which the land is situated a notice (hereinafter referred to as a " purchase notice ") requiring that council to purchase his interest in the land in accordance with the provisions of this section.

(1A) The Council on whom a purchase notice is served under this section shall, before the end of the period of three months beginning with the date of service of that notice, serve on the owner by whom the purchase notice was served a notice stating either—

(*a*) that the council are willing to comply with the purchase notice ; or

(*b*) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place ; or

(*c*) that, for reasons specified in the notice under this sub-section, the council are not willing to comply with the

purchase notice, and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have transmitted a copy of the purchase notice to the Minister, on a date specified in the notice under this subsection, together with a statement of the reasons so specified.

(1B) Where the council upon whom a purchase notice is served under this section have served on the owner by whom the purchase notice was served a notice in accordance with paragraph (*a*) or paragraph (*b*) of the last foregoing subsection, the council, or the other local authority or statutory undertakers specified in the notice, as the case may be, shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served a notice to treat in respect thereof on the date of service of the notice under the last foregoing subsection.

(2) Where a purchase notice is served on any council under this section and that council propose to serve on the owner a notice in accordance with paragraph (*c*) of subsection (1A) of this section, they shall transmit a copy of the purchase notice to the Minister, together with a statement of their reasons ; and subject to the following provisions of this section the Minister shall, if he is satisfied that the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are fulfilled, confirm the notice, and thereupon the council shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served a notice to treat in respect thereof on such date as the Minister may direct :

Provided that—

(*a*) if it appears to the Minister to be expedient so to do, he may, in lieu of confirming the purchase notice, grant permission for the development in respect of which the application was made or, where permission for that development was granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development ;

(*b*) if it appears to the Minister that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which permission ought to

be granted, he may, in lieu of confirming the notice, or in lieu of confirming it so far as it relates to that part of the land, as the case may be, direct that such permission shall be so granted in the event of an application being made in that behalf ;

(*c*) if it appears to the Minister, having regard to the probable ultimate use of the land, that it is expedient so to do, he may, if he confirms the notice, modify it, either in relation to the whole or in relation to any part of the land to which it relates, by substituting any other local authority or statutory undertakers for the council on whom the notice is served, and in any such case the foregoing provisions of this subsection shall have effect accordingly.

(2A) Where, for the purpose of determining whether the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are fulfilled in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any prospective use of that land which would involve the carrying out of development of any class not specified in the Third Schedule to this Act.

(3) If within the period of six months from the end of the period specified in subsection (1A) of this section, or the date on which a copy of the purchase notice is transmitted to the Minister, whichever is the earlier, the Minister has neither confirmed the notice nor taken any such other action as is mentioned in paragraph (*a*) or paragraph (*b*) of the proviso to subsection (2) of this section, nor notified the owner by whom the notice was served that he does not propose to confirm the notice, the notice shall be deemed to be confirmed at the expiration of that period, and the council on whom the notice was served shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served notice to treat in respect thereof at the expiration of the said period.

(4) The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.

(5) Before confirming a purchase notice, or taking any other action in lieu thereof, under this section, the Minister shall give notice of his proposed action—

(*a*) to the person by whom the notice was served ;

(*b*) to the council on whom the notice was served ;

(*c*) to the local planning authority for the area in which the land is situated ; and

(*d*) to any other local authority or statutory undertakers whom the Minister proposes, under the foregoing provisions of this section, to substitute for the said council ;

and if within the period prescribed by the notice under this subsection (not being less than twenty-eight days from the service thereof) any person, authority or statutory undertakers on whom that notice is served so require, the Minister shall, before confirming the purchase notice or taking any such other action as aforesaid, afford to those persons, authorities and undertakers an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(6) In the last foregoing subsection, any reference to the taking of action in lieu of confirming a purchase notice includes a reference to the taking of a decision not to confirm the notice on the grounds that any of the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are not fulfilled.

(7) Where the Minister has given notice under subsection (5) of this section of his proposed action, and any of the persons, authorities and statutory undertakers concerned have appeared before and been heard by a person appointed by the Minister for the purpose, and it then appears to the Minister to be expedient to take action under this section otherwise than in accordance with the notice given by him, the Minister may take that action accordingly.

Notes to the Ninth Schedule

The Schedule reproduces the form of section 19 of the 1947 Act as amended by section 35 and the Seventh Schedule of this Act. In this form it takes effect in respect of purchase notices served on or after the 16th August, 1959. See further section 35 and Seventh Schedule of this Act. The source of the various amendments in the text is as follows :—

Subsections (1A) and (1B) ...	Section 35 (1) of this Act
Subsection (2)	Seventh Schedule of this Act.
Subsection (2A)	Section 35 (2) of this Act.
Subsection (3)	Seventh Schedule of this Act.
Subsection (5)	Seventh Schedule of this Act.
Subsections (6) and (7)	Section 35 (3) of this Act.

For the practice relating to purchase notices under section 19 of the 1947 Act, see M.H.L.G. Circular No. 49/59.

TENTH SCHEDULE

(*Section* 58.)

SECTION SEVENTEEN OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1947, AS AMENDED

17. Obligation to purchase land on refusal of planning permission in certain cases.—(1) Where planning permission is refused, whether by the local planning authority or by the Secretary of State, or is granted by that authority or by the Secretary of State subject to conditions, then if any owner or lessee of the land concerned claims—

(*a*) that the land has become incapable of reasonably beneficial use in its existing state ; and

(*b*) in a case where planning permission was granted as aforesaid subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions ;

(*c*) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been or is deemed to be granted or for which the local planning authority or the Secretary of State have undertaken to grant such permission,

he may, within the time and in the manner prescribed by regulations made under this Act, serve on the local planning authority in whose district the land is situated a notice (hereinafter referred to as a " purchase notice ") requiring that authority to purchase his interest in the land in accordance with the provisions of this section.

(1A) The local planning authority on whom a purchase notice is served under this section shall, before the end of the period of three months beginning with the date of service of that notice, serve on the owner by whom the purchase notice was served a notice stating either—

(*a*) that the local planning authority are willing to comply with the purchase notice ; or

(*b*) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place ; or

(*c*) that, for reasons specified in the notice under this subsection, the local planning authority are not willing to comply with the purchase notice and have not found any

other local authority or statutory undertakers who will agree to comply with it in their place, and that they have transmitted a copy of the purchase notice to the Secretary of State, on a date specified in the notice under this subsection, together with a statement of the reasons so specified.

(1B) Where the local planning authority upon whom a purchase notice is served under this section have served on the owner by whom the purchase notice was served a notice in accordance with paragraph (*a*) or paragraph (*b*) of the last foregoing subsection, the local planning authority, or the other local authority or statutory undertakers specified in the notice, as the case may be, shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part III of this Act, and to have served a notice to treat in respect thereof on the date of service of the notice under the last foregoing subsection.

(2) Where a purchase notice is served on any local planning authority under this section and that authority propose to serve on the owner a notice in accordance with paragraph (*c*) of subsection (1A) of this section, they shall transmit a copy of the purchase notice to the Secretary of State, together with a statement of their reasons ; and subject to the following provisions of this section the Secretary of State shall, if he is satisfied that the conditions specified in subsection (1) of this section are fulfilled, confirm the notice, and thereupon the authority shall be deemed to be authorised to acquire the interest of that person compulsorily in accordance with the provisions of Part III of this Act, and to have served a notice to treat in respect thereof on such date as the Secretary of State may direct :

Provided that—

(*a*) if it appears to the Secretary of State to be expedient so to do, he may, in lieu of confirming the purchase notice, grant planning permission for the development in respect of which the application was made or, where planning permission for that development was granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development ;

(*b*) if it appears to the Secretary of State that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which permission ought

to be granted, he may, in lieu of confirming the notice, or in lieu of confirming it so far as it relates to that part of the land, as the case may be, direct that such permission shall be so granted in the event of an application being made in that behalf ;

(*c*) if it appears to the Secretary of State to be expedient that another local authority or statutory undertakers should acquire the interest for the purpose of any of their functions, he may, if he confirms the notice, modify it either in relation to the whole or in relation to any part of the land to which it relates by substituting that other authority or, as the case may be, those statutory undertakers for the local planning authority on whom the notice is served, and in any such case the foregoing provisions of this subsection shall have effect accordingly.

(3) If within the period of six months from the end of the period specified in subsection (1A) of this section, or the date on which a copy of the purchase notice is transmitted to the Secretary of State, whichever is the earlier, the Secretary of State has neither confirmed the notice nor taken any such other action as is mentioned in paragraph (*a*) or paragraph (*b*) of the proviso to the last foregoing subsection, nor notified the owner or lessee, as the case may be, by whom the notice was served that he does not propose to confirm the notice, the notice shall be deemed to be confirmed at the expiration of that period, and the authority on whom the notice was served shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the provisions of Part III of this Act, and to have served notice to treat in respect thereof at the expiration of the said period.

(4) The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.

(5) Before confirming a purchase notice, or taking any other action in lieu thereof, under this section, the Secretary of State shall give notice of his proposed action—

(*a*) to the person by whom the notice was served ;
(*b*) to the local planning authority on which the notice was served ; and
(*c*) to any other local authority or statutory undertakers whom the Secretary of State proposes, under subsection (2) of

this section, to substitute for the said local planning authority ;

and if within the period prescribed by the notice under this subsection (not being less than twenty-eight days from the service thereof) any person authority or statutory undertakers on whom that notice is served so require, the Secretary of State shall, before confirming the purchase notice or taking any such other action as aforesaid, afford to those persons authorities and undertakers an opportunity of appearing before and being heard by a person appointed by him for the purpose.

(6) In the last foregoing subsection, any reference to the taking of action in lieu of confirming a purchase notice includes a reference to the taking of a decision not to confirm the notice on the grounds that any of the conditions specified in paragraphs (*a*) to (*c*) of subsection (1) of this section are not fulfilled.

(7) Where the Secretary of State has given notice under sub section (5) of this section of his proposed action, and any of the persons, authorities and statutory undertakers concerned have appeared before and been heard by a person appointed by the Secretary of State for the purpose, and it then appears to the Secretary of State to be expedient to take action under this section otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

APPENDIX I

Third Schedule to the Town and Country Planning Act, 1947 (*as amended*)

EXCEPTED CLASSES OF DEVELOPMENT

PART I

DEVELOPMENT INCLUDED IN EXISTING USE FOR PURPOSES OTHER THAN COMPENSATION UNDER SECTION 20

1. The rebuilding, as often as occasion may require, of any building which was in existence on the appointed day and of any building which was in existence before that day but has been destroyed or demolished since the seventh day of January, nineteen hundred and thirty-seven (including the making good of war damage which has been sustained by any such building) and of any other building in existence at a material date, being a building erected after the appointed day, so long as the cubic content of the original building is not exceeded in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

[Paragraph (*a*) of the proviso to subsection (2) of section twelve of the Town and Country Planning Act, 1947, . . . shall not apply to any works for making good war damage which, apart from this provision, would fall within that paragraph. The principal Act shall have effect as if such works as aforesaid had been specified in paragraph 1 of the Third Schedule to that Act . . . : Provided that this subsection shall not apply to any such works as aforesaid which do not satisfy the conditions of that paragraph as to the cubic content of buildings.]*

2. The use as two or more separate dwelling-houses of any building which at a material date was used as a single dwelling-house.

PART II

DEVELOPMENT INCLUDED IN EXISTING USE FOR ALL PURPOSES

3. The enlargement, improvement or other alteration, as often as occasion may require, of any such building as is mentioned in paragraph 1 of this Schedule, or any building substituted therefor by the carrying out of any such operations as are mentioned in that paragraph, so long as the cubic content of the original building is not increased or exceeded, in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet,

*provided by s. 1 (2) of the Town and Country Planning (Amendment) Act, 1951.

whichever is the greater, and in any other case by more than one-tenth.

4. The carrying out, on land which was used for the purposes of agriculture or forestry at a material date, of any building or other operations required for the purposes of that use, other than operations for the erection, enlargement, improvement or alteration of dwelling-houses or of buildings used for the purposes of market gardens, nursery grounds or timber yards or for other purposes not connected with general farming operations or with the cultivation or felling of trees.

5. The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid.

6. In the case of a building or other land which, at a material date, was used for a purpose falling within any general class specified in an order made by the Minister for the purposes of this paragraph, or which, being unoccupied on and at all times since the appointed day, was last used (otherwise than before the seventh day of January, nineteen hundred and thirty-seven) for any such purpose, the use of that building or land for any other purpose falling within the same general class.

7. In the case of any building or other land which, at a material date, was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the appointed day, or on the day thereafter when the buildings began to be so used, or, as the case may be, one-tenth of the area of the land so used on that day.

8. The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which, at a material date, was being used for that purpose, so far as may be reasonably required in connection with the working of those minerals.

9. In this Schedule, the expression " at a material date " means at either of the following dates, that is to say

(*a*) the appointed day ; or

(*b*) the date by reference to which this Schedule falls to be applied in the particular case in question :

Provided that sub-paragraph (*b*) of this paragraph shall not apply in relation to any building, works or use of land in respect of which,

whether before or after the date mentioned in that sub-paragraph, an enforcement notice served before that date has become or becomes effective.

10. Where, after the appointed day, any buildings or works have been erected or constructed, or any use of land has been instituted, and any condition imposed under Part III of this Act limiting the period for which those buildings or works may be retained or that use may be continued is of effect in relation thereto, this Schedule shall not operate except as respects the period specified in that condition.

APPENDIX II

S.I. 1959, No. 1286

The Town and Country Planning General Development Order, 1959

Made - - - -	27*th July*, 1959
Laid before Parliament	29*th July*, 1959
Coming into Operation	16*th August*, 1959

The Minister of Housing and Local Government, in exercise of the powers conferred on him by section 13 of the Town and Country Planning Act, 1947, and sections 8, 36 and 37 of the Town and Country Planning Act, 1959, and of all other powers enabling him in that behalf, hereby makes the following order :—

Application, citation and commencement

1.—(1) This order shall apply to all land in England and Wales : Provided that if a special development order is made as to any such land this order shall apply thereto to such extent only and subject to such modifications as may be specified in the special order.

(2) This Order may be cited as the Town and Country Planning General Development Order, 1959, and the Town and Country Planning General Development Order, 1950, the Town and Country Planning General Development (Amendment) Order, 1958, and this order may be cited together as the Town and Country Planning General Development Orders, 1950 to 1959.

(3) This order shall come into operation on the 16th day of August, 1959.

Interpretation

2.—(1) In this order, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them, namely :—" the Act of 1959 " means the Town and Country Planning Act, 1959, and " the parties directly concerned " has the meaning assigned to that expression by subsection (10) of section 5, and a section referred to by number is the section so numbered in the Act of 1959.

(2) The Interpretation Act, 1889, shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament.

Application for and issue of certificates

3.—(1) An application to a local planning authority for a certificate under section 5 shall be in writing and shall (as well as complying with the requirements of subsection (3) of section 5) include a plan or map sufficient to identify the land to which the application relates.

(2) The time within which a certificate is to be issued by a local planning authority shall, subject to the provisions of subsection (4) of section 5, be two months of the receipt of such an application by them.

(3) If a local planning authority issue a certificate otherwise than for the class or classes of development specified in the application made to them, or contrary to representations in writing made to them by a party directly concerned, they shall in that certificate include a statement in writing of their reasons for so doing and of the rights of appeal to the Minister given by section 6 and this order.

(4) The local planning authority shall send a copy of every certificate issued by them to the council of every county district, or metropolitan borough, in which is situated any part of the land to which the certificate relates and, where any part of that land is situated within the City of London, to the Common Council.

Appeals

4.—(1) The time for giving notice of an appeal under section 6 shall be within one month of the receipt of the certificate or of the expiry of the time or extended period mentioned in subsection (3) of that section, as the case may be.

(2) Notice of appeal shall be given in writing to the Minister, and a copy of such notice shall be sent by the appellant (*a*) to the local planning authority, and (*b*) to the other of the parties directly concerned.

(3) The appellant shall within one month of giving notice of appeal, or such longer period as the Minister may in any particular case allow, furnish to the Minister one copy of the application to the local planning authority, and of the certificate (if any) issued by the local planning authority, together with a statement of the grounds of appeal.

(4) If an appellant does not within the time limited under the last preceding paragraph furnish to the Minister the copies of the documents thereby required, the appeal shall be treated as withdrawn.

Information as to certificates, etc.

5.—A local planning authority shall, on a request in writing by any person appearing to them to have an interest in land which is the subject of a certificate under section 5 or of an application for such a certificate, furnish to such person (*a*) the name and address of the applicant for the certificate and the date of the application, and (*b*) a copy of the certificate, if any.

Publication of general requirements

6.—If a local planning authority on issuing a certificate specify conditions by reference to general requirements formulated by them under

subsection (6) of section 5, the authority shall supply with such certificate and every copy thereof a copy of those requirements (or of so much thereof as is relevant to the certificate) unless, before the certificate is issued, the requirements in question have been made available to the public by depositing them for public inspection at all reasonable hours at the offices of the local planning authority and either at the offices of every council of a county district within the area of that authority or, in the case of London, at the offices of each metropolitan borough council and of the Common Council of the City of London.

Notices under section 36

7.—(1) The following classes of development are designated for the purposes of section 36 :—

(*a*) construction of buildings for use as a public convenience ;

(*b*) construction of buildings or other operations, or use of land, for the disposal of refuse or waste materials ;

(*c*) construction of buildings or other operations (other than the laying of sewers, the construction of septic tanks serving single dwelling houses, and works ancillary thereto) or use of land, for the purpose of sewage disposal ;

(*d*) construction of buildings or use of land for the purposes of a slaughterhouse or knacker's yard ;

(*e*) construction of buildings and use of buildings for any of the following purposes, namely, as a theatre, a cinema, a music hall, a dance hall, a skating rink, a swimming bath, a Turkish or other vapour or foam-bath, a gymnasium, or a building for indoor games.

(2) The form of notice required to be published under section 36 shall be that set out in the first schedule hereto, and the copy of the notice accompanying the application shall be certified by or on behalf of the applicant as having been published in a named newspaper on a date specified in the certificate.

Certificates and notices under section 37

8.—(1) A certificate issued for the purposes of section 37 shall be in the form set out in Part I of the second schedule thereto.

(2) The requisite notices for the purposes of the provisions of the said section 37 in relation to applications shall be in the forms set out in Part II of the second schedule hereto.

(3) The requisite notices for the purposes of the provisions of the said section 37 in relation to appeals shall be in the forms set out in Part III of the second schedule hereto.

FIRST SCHEDULE

TOWN AND COUNTRY PLANNING ACT, 1959

Notice under section 36

Proposed development at (*a*).....

Notice is hereby given that application is being made to the (*b*) ..... Council by (*c*).....for planning permission in respect of (*d*) .....

(*a*) Insert address or location of proposed development.
(*b*) Insert name of Council.
(*c*) Insert name of applicant.
(*d*) Insert description and address or location of proposed development

(*e*) Insert address within locality in which land proposed to be developed is situated.

A copy of the application and of the plans and other documents submitted with it may be inspected at all reasonable hours at (*e*) ..... during the 21 days following the date of publication of this notice.

Any person who wishes to make representations to the above-mentioned Council about the application should do so by writing within that period to the *Town Clerk / Clerk of the Council at (*f*).....

(*f*) Insert address of Council.

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

SECOND SCHEDULE

PART I

TOWN AND COUNTRY PLANNING ACT, 1959

Certificate under section 37

Certificate A*

I hereby certify that :

1. *The I am / applicant is / appellant *the estate owner in respect of the fee simple on / entitled to a tenancy

every part of the land to which the accompanying *application / appeal

dated.....relates ;

or :—

Certificate B*

I hereby certify that :

1. *The I have / applicant has / appellant given the requisite notice to all the persons who,

21 days before the date of the accompanying *application, / appeal were

owners of any of the land to which the *application / appeal relates, viz. :—

Name of owner	*Address*	*Date of service of notice*

or :—

Certificate C*

I hereby certify that :

1.—(i) *The I am / applicant is / appellant unable to issue a certificate in accordance

with either paragraph (*a*) or paragraph (*b*) of section 37 (1) of the Town and Country Planning Act, 1959, in respect of the

accompanying *application / appeal dated.....

(ii) *The I have / applicant / appellant has given the requisite notice to the following persons who, 21 days before the date of the *application / appeal were owners of the land, or part thereof, to which the *application / appeal relates, viz. :—

Name of owner	*Address*	*Date of service of notice*

(iii) *The I do not / applicant / appellant does not know the names and addresses of the other owners of the land or part thereof ;

(iv) Notice of the *application / appeal as set out below has been published in the (*a*).....on (*b*).....

Copy of notice as published

(*a*) Insert name of local newspaper circulating in the locality in which the land is situated.

(*b*) Insert date of publication (which must not be earlier than 21 days before the application or appeal).

Certificate D*

or :—

I hereby certify that :

1.—(i) *The I am / applicant / appellant is unable to issue a certificate in accordance with paragraph (*a*) of section 37 (1) of the Town and Country Planning Act, 1959, in respect of the accompanying *application / appeal dated..... and *I do not / he does not know the names and addresses of any of the owners of any of the land to which the *application / appeal relates ;

(ii) Notice of the *application / appeal as set out below has been published in the (*a*)..... on (*b*).....

Copy of notice as published

(*a*) Insert name of local newspaper circulating in the locality in which the land is situated.

(*b*) Insert date of publication (which must not be earlier than 21 days before the application or appeal).

[Whichever is appropriate of these alternatives should form part of any certificate in form A, B, C or D above.]

*2. None of the land to which the application relates constitutes or forms part of an agricultural holding.

or :—

*2. I have / *The applicant / appellant has given the requisite notice to every person who,

21 days before the date of the *application, / appeal was a tenant of any agricultural holding any part of which was comprised in the land to which the *application / appeal relates, viz. :—

Name of tenant	*Address*	*Date of service of notice*

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

PART II

TOWN AND COUNTRY PLANNING ACT, 1959

Notice under section 37 of application for planning permission

[Notice for service on individuals.]

(a) Insert address or location of proposed development.

(b) Insert name of Council.

(c) Insert name of applicant.

(d) Insert description and address or location of proposed development.

(e) Insert address of Council.

Proposed development at (a).....

TAKE NOTICE that application is being made to the (b)..... Council by (c).....for planning permission to (d).....

If you should wish to make representations about the application, you should do so by writing within 21 days of the date of service of this notice to the *Town Clerk / Clerk of the Council at (e).....

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

[Notice for publication in local newspaper.]

(a) Insert address or location of proposed development.

TOWN AND COUNTRY PLANNING ACT, 1959

Notice under section 37 of application for planning permission

Proposed development at (a).....

Notice is hereby given that application is being made to the (*b*)..... Council by (*c*).....for planning permission to (*d*)..... Any owner of the land (namely a freeholder or a person entitled to an unexpired term of at least 10 years under a tenancy) who wishes to make representations to the above-mentioned council about the application should do so by writing within 21 days of the date of publication of this notice to the * Town Clerk / Clerk of the Council at (*e*).....

(*b*) Insert name of Council.

(*c*) Insert name of applicant.

(*d*) Insert description and address or location of proposed development.

(*e*) Insert address of Council.

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

PART III

TOWN AND COUNTRY PLANNING ACT, 1959

Notice under section 37 of appeal

[Notice for service on individuals.]

Proposed development at (*a*).....

TAKE NOTICE that an appeal is being made to the Minister of Housing and Local Government, Whitehall, London, S.W.1 (in Wales and Monmouthshire—Cathays Park, Cardiff) by (*b*).....

* (i) against the decision of the (*c*).....Council

*(ii) on the failure of the (*c*).....Council to give a decision on an application to (*d*).....

.....

.....

(*a*) Insert address or location of proposed development.

(*b*) Insert name of appellant.

(*c*) Insert name of Council.

(*d*) Insert description and address or location of proposed development.

If you should wish to make representations to the Minister about the appeal you should do so by writing within 21 days of the date of service of this notice to the Secretary (in Wales and Monmouthshire, the Welsh Secretary), Ministry of Housing and Local Government at the above address.

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

[Notice for publication in local newspaper.]

TOWN AND COUNTRY PLANNING ACT, 1959

Notice under section 37 of appeal

Proposed development at (*a*).....

(*a*) Insert address or location of proposed development.

Notice is hereby given that an appeal is being made to the Minister of Housing and Local Government, Whitehall, London, S.W.1 (in Wales and Monmouthshire—Cathays Park, Cardiff) by (*b*).....

(*b*) Insert name of appellant.

* (i) against the decision of the (*c*).....Council

(*c*) Insert name of Council.

*(ii) on the failure of the (*c*).....Council to give a decision on an application to (*d*).....

(*d*) Insert description and address or location of proposed development.

.....

.....

Any owner of the land (namely, a freeholder or a person entitled to an unexpired term of at least 10 years under a tenancy) who wishes to make representations to the Minister about the appeal should do so by writing within 21 days of the date of publication of this notice to the Secretary (in Wales and Monmouthshire, the Welsh Secretary), Ministry of Housing and Local Government at the above address.

Signed.....

*On behalf of.....

Date.....

* Delete where inappropriate.

Given under the Official seal of the Minister of Housing and Local Government this twenty-seventh day of July, nineteen hundred and fifty-nine.

(L.S.)

Henry Brooke,

Minister of Housing and Local Government.

S.I. 1959, No. 1287

The Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959

Made - - - -	27*th July*, 1959
Laid before Parliament	29*th July*, 1959
Coming into Operation	16*th August*, 1959

The Minister of Housing and Local Government, in exercise of the powers conferred on him by subsection (2) of section 55 of the Town and Country Planning Act, 1959, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—These regulations may be cited as the Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959, and shall come into operation on the 16th day of August, 1959.

2.—The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3.—The forms set out in the schedule hereto or forms substantially to the like effect are the prescribed forms of notice for the purposes of subsection (2) of section 14, subsection (2) of section 16, subsection (2) of section 19, subsection (3) of section 20, subsection (3) of section 21 and subsection (2) of section 39 respectively and of counter notice for the purposes of subsection (1) of section 40 of the Town and Country Planning Act, 1959.

SCHEDULE

FORM 1
S. 14 (2)

TOWN AND COUNTRY PLANNING ACT, 1959

Sections 14 and 15

NOTICE OF INTENTION TO PROCEED WITH COMPULSORY ACQUISITION OF LAND

TO (*a*) .....

THE (*b*) .....

in compliance with the provisions of section 14 (2) of the Town and Country Planning Act, 1959, HEREBY GIVE YOU NOTICE that they intend to proceed with the compulsory acquisition of the (*c*) ..... interest in the land specified in the schedule hereto which land was the subject of a notice to treat served on (*d*) ..... at (*e*) ..... on the ..... day of ..... 19 ..... in pursuance of the (*f*) .....

(*a*) Insert name and address of addressee.

(*b*) Insert name of acquiring authority.

(*c*) Insert nature of interest to be acquired.

(*d*) Insert name of person on whom the original notice to treat was served.

(*e*) Insert address of service.

(*f*) Insert reference to the authorisation.

SCHEDULE

The land above referred to

DATED this ..... day of ..... 19 .....

.....
Clerk of the Council,
Town Clerk, etc.

Explanation of the provisions of sections 14 *and* 15 *of the Town and Country Planning Act*, 1959

1. Section 14 requires a public authority having powers of compulsory purchase and intending to proceed with the compulsory purchase of land in respect of which a notice to treat was served before 6th August, 1947, to serve a notice in the above form before the end of the period of six months beginning with the commencement of the Act, which was 16th August, 1959.

2. The notice to treat will cease to have effect if, within one year from the date of the service of this present notice, the amount of the compensation has not been agreed and no proceedings have been begun for the determination of any question relating to that compensation, but this does not apply if the authority have taken possession of the land.

3. The service of this present notice does not affect any question as to the validity of the original notice to treat.

4. As regards your *COMPENSATION*

(i) You may choose to have your compensation calculated as if the notice to treat had been served on 1st January, 1958. If you do so choose, you must say so in a notice of claim. The particulars required are set out in section 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919. The claim must be served on the council *within six months of the date of service of this notice*. If you do not choose to have your compensation calculated as above it will be calculated on the basis applicable at the date of the actual service of the notice to treat.

A Form of claim is { *attached* / *obtainable from the acquiring authority* / *obtainable from Her Majesty's Stationery Office and any law stationers*

(ii) This right of choice is *not* available if you bought your interest in the land or otherwise acquired it for valuable consideration after the date on which the notice to treat was served, or if you derive your title to it from someone who so acquired it after that date.

(iii) If, after you have made a claim as in (i) above, the authority decide not to proceed with the purchase and withdraw the notice to treat, you will be entitled to recover from them any loss or expenses referred to in section 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*i.e.* loss or expenses occasioned by the notice to treat having been given and withdrawn) incurred *after* the service of this notice and also reasonable expenses incurred *before* the service of this notice in preparing and supporting your compensation claim.

FORM 2
S. 16 (2)

TOWN AND COUNTRY PLANNING ACT, 1959

Section 16

NOTICE OF INTENTION TO PROCEED WITH COMPULSORY ACQUISITION OF LAND

(*a*) Insert name and address of addressee.

TO (*a*) .....

(*b*) Insert name of acquiring authority.

THE (*b*) .....

compliance with the provisions of section 16 (2) of the Town and Country Planning Act, 1959, HEREBY GIVE YOU NOTICE that having on the .....day of.....19..... entered upon and taken possession of the land specified in the schedule

hereto, which land was the subject of a notice to treat served on (*c*).....at (*d*).....on the.....day of .....19..... in pursuance of the (*e*)..... they intend to proceed with the compulsory acquisition of the (*f*)..... interest in such land.

(*c*) Insert name of person on whom the original notice to treat was served.

(*d*) Insert address of service.

(*e*) Insert reference to authorisation.

(*f*) State nature of interest to be acquired.

SCHEDULE

The land above referred to

DATED this.....day of.....19.....

.....

Clerk of the Council,
Town Clerk, etc.

Explanation of the provisions of section 16 *of the Town and Country Planning Act*, 1959, *and of section* 15 *as applied by those provisions*

The effect of the service of the foregoing notice under section 16 of the Act, is to bring into force the provisions of section 15 of the Act. Under this section—

As regards your *COMPENSATION*

(1) You may choose to have your compensation calculated as if the notice to treat had been served on 1st January, 1958. If you do so choose, you must say so in a notice of claim. The particulars required are set out in section 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919. The claim must be served on the council *within six months of the date of service of this notice*. If you do not choose to have your compensation calculated as above it will be calculated on the basis applicable at the date of the actual service of the notice to treat.

A Form of Claim is | *attached* / *obtainable from the acquiring authority* / *obtainable from Her Majesty's Stationery Office and any law stationers*

(2) This right of choice is *not* available if you bought your interest in the land or otherwise acquired it for valuable consideration after the date on which the notice to treat was served, or if you derive your title to it from someone who so acquired it after that date.

TOWN AND COUNTRY PLANNING ACT, 1959

FORM 3
S. 19 (2)

Section 19

NOTICE OF THE GRANTING OF PLANNING PERMISSION FOR ADDITIONAL DEVELOPMENT

TO (*a*) .....

THIS NOTICE is given by (*b*).....

(*a*) Insert name and address of addressee.

(*b*) Insert name of acquiring authority.

in compliance with the provisions of section 19 (2) of the Town and Country Planning Act, 1959, as respects the land specified in the first schedule hereto (which land was acquired by this authority on the (*c*)..... day of.....19.....).

(*c*) Insert date of completion.

TAKE NOTICE that the additional development specified in the second schedule hereto has been permitted subject to the conditions therein set out, and that the date of such permission for the purposes of section 18 of the Act is the (*d*).....day of.....19.....

(*d*) Insert date of decision on planning application, whether or not there was an appeal.

FIRST SCHEDULE

The land above referred to

SECOND SCHEDULE

Particulars of the planning permission (including conditions imposed thereby)

.....(*e*)

(*e*) If land other than that in the first schedule is also covered by the permission, particulars of the extent of the permission should be given.

DATED this.....day of.....19.....

.....

Clerk of the Council,
Town Clerk, etc.

Note : THIS MAY ENTITLE YOU TO ADDITIONAL COMPENSATION UNDER SECTION 18 OF THE ACT.

FORM 4
S. 20 (3)

TOWN AND COUNTRY PLANNING ACT, 1959
Section 20

NOTICE OF PROPOSAL TO CARRY OUT DEVELOPMENT UNDER PLANNING PERMISSION GRANTED OTHERWISE THAN ON AN APPLICATION

TO (*a*) .....

(*a*) Insert name and address of addressee.

THIS NOTICE is given by (*b*).....

(*b*) Insert name of acquiring authority.

in compliance with the provisions of section 20 (3) of the Town and Country Planning Act, 1959, as respects the land specified in the first schedule hereto (which land was acquired by this authority on the (*c*).....day of.....19.....).

(*c*) Insert date of completion.

TAKE NOTICE of a proposal for the additional development specified in the second schedule hereto. Planning permission for this development is, under section 20, to be taken as having been given on the (*d*)..... day of.....19.....

(*d*) Insert date appropriate under s. 20.

FIRST SCHEDULE

The land above referred to

APPENDIX TWO

SECOND SCHEDULE
Particulars of development

DATED this.....day of.....19.....

.....
Clerk of the Council,
Town Clerk, etc.

Note : THIS PROPOSAL MAY ENTITLE YOU TO ADDITIONAL COMPENSATION UNDER SECTIONS 18 TO 20 OF THE ACT.

TOWN AND COUNTRY PLANNING ACT, 1959 — FORM 5 S. 21 (3)
Section 21

NOTICE OF PROPOSAL TO CARRY OUT CROWN DEVELOPMENT

TO (*a*) ..... (*a*) Insert name and address of addressee.

THIS NOTICE is given by (*b*)..... (*b*) Insert name of acquiring authority.
in compliance with the provisions of section 21 (3) of the Town and Country Planning Act, 1959, as respects the land specified in the first schedule hereto (which land was compulsorily acquired by this authority on the (*c*).....day of.....19.....). (*c*) Insert date of completion.

TAKE NOTICE of a proposal for the additional development specified in the second schedule hereto. Planning permission for this development is, for the purposes of sections 18 and 19 of the Act, to be taken as having been given on the (*d*).....day of.....19..... (*d*) Insert date appropriate under s. 21 (1).

FIRST SCHEDULE
The land above referred to

SECOND SCHEDULE
Particulars of development

DATED this.....day of.....19.....

.....
Authorised Signatory.

Note : THIS PROPOSAL MAY ENTITLE YOU TO ADDITIONAL COMPENSATION UNDER SECTIONS 18 TO 21 OF THE ACT.

FORM
S. 39 (2)

TOWN AND COUNTRY PLANNING ACT, 1959

Section 39

NOTICE REQUIRING AN AUTHORITY TO PURCHASE AN INTEREST IN LAND

(*a*) Insert name of authority served.

TO (*a*) .....

(*b*) insert principal address of authority.

at (*b*) .....

(*c*) Insert full name(s) and address(es) of person(s) or company etc. serving this notice.

*I / WE (*c*) .....

pursuant to the provisions of section 39 (2) of the Town and Country Planning Act, 1959, HEREBY GIVE YOU NOTICE :—

1. *I am / We are entitled to an interest set out in the first schedule hereto in the *hereditament / agricultural unit described in the second schedule hereto.

2. *The / *Part of the *hereditament / agricultural unit has been included in land falling within paragraph (.....) (*d*) of subsection (1) of section 39 of the Act.

(*d*) Insert which paragraph.

3. Since then, *I / we have made reasonable endeavours to sell *my / our interest but *I / we have been unable to sell it except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the *hereditament / agricultural unit were so included. (*e*)

(*e*) Particulars of the steps taken to sell the land should be given below or separately.

4. *My / Our interest qualifies for protection under Part IV of the Act because

*EITHER (*f*)

the annual value of the hereditament does not exceed the prescribed limit of annual value and *my / our interest is that of owner-occupier(s) of the hereditament within the meaning of subsection (2) of section 43.

(*f*) Whichever is appropriate of these alternatives should form part of this notice.

*OR (*f*)

*my / our interest is that of resident owner-occupier(s) of the hereditament within the meaning of subsection (4) of section 43.

*OR (*f*)

*my/our interest is that of owner-occupier(s) of the agricultural unit within the meaning of subsection (3) of section 43.

5. *I/We therefore require you to purchase *my/our interest in the

*hereditament/agricultural unit in so far as it is included in the land referred to in paragraph 2 of this notice.

FIRST SCHEDULE

Particulars of interest in land, together with the names and addresses of any mortgagees thereof and a note of any other encumbrances thereon.

SECOND SCHEDULE

Particulars of the * hereditament/agricultural unit (*g*)

(*g*) A plan should be attached, if necessary to identify the land.

DATED this.....day of.....19.....

Signed.....

*On behalf of.....

* Delete where inappropriate throughout.

Here or in an accompanying letter should be given particulars (including dates) of the endeavours made to sell the * hereditament/agricultural unit and of the price asked and of any offers received for it.

TOWN AND COUNTRY PLANNING ACT, 1959

Section 40

FORM 7
S. 40 (1)

COUNTER-NOTICE UNDER SECTION 40 (1) OBJECTING TO NOTICE SERVED UNDER SECTION 39 (2)

TO (*a*) .....

THE (*b*) .....

(*a*) Insert name and address of addressee.

(*b*) Insert name of authority.

HEREBY GIVE YOU NOTICE under section 40 (1) of the Town and Country Planning Act, 1959, that they OBJECT to the notice served by you on the.....day of.....19....., under section 39 (2) of the Act in respect of the * hereditament/agricultural unit described

(*c*) Insert particulars.

as (*c*).....

(*d*) These should include a reference to the relevant paragraph(s) of S. 40 (2).

The grounds (*d*) on which objection is taken are—

DATED this.....day of.....19.....

.....

on behalf of the (*b*)

* Delete where inappropriate.

NOTE : If you do not accept this objection, you may require the objection to be referred to the Lands Tribunal, under the provisions of section 41 of the Act. In that case you should notify the Registrar of the Lands Tribunal, 3, Hanover Square, London, W.1, within 2 months of the date of service of this notice.

Given under the official seal of the Minister of Housing and Local Government this twenty-seventh day of July, nineteen hundred and fifty-nine.

(L.S.)

Henry Brooke,
Minister of Housing
and Local Government.

S.I. 1959, No. 1318

The Town and Country Planning (Limit of Annual Value) Order, 1959

Made - - - -	27*th July*, 1959
Laid before Parliament	29*th July*, 1959
Coming into Operation	16*th August*, 1959

The Minister of Housing and Local Government, in exercise of the powers conferred on him by subsection (5) of section 43 of the Town and Country Planning Act, 1959, and of all other powers enabling him in that behalf, hereby makes the following order :—

1.—(1) This order may be cited as the Town and Country Planning (Limit of Annual Value) Order, 1959, and shall come into operation on the 16th day of August, 1959.

(2) The Interpretation Act, 1889, shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament.

2.—The amount prescribed for the purposes of paragraph (*a*) of subsection (4) of section 39 of the Town and Country Planning Act, 1959, and referred to in Part IV of the Act as " the prescribed limit," is two hundred and fifty pounds.

Given under the official seal of the Minister of Housing and Local Government this twenty-seventh day of July, nineteen hundred and fifty-nine.

(L.S.)

Henry Brooke,
Minister of Housing and
Local Government.

S.I. 1959, No. 1400

The Housing (Prescribed Forms) (Amendment) Regulations, 1959

Made - - - -	*7th August*, 1959
Laid before Parliament	13*th August*, 1959
Coming into Operation	16*th August*, 1959

The Minister of Housing and Local Government, in exercise of the powers conferred on him by section 178 of the Housing Act, 1957, and paragraph 2 of Part I of the Second Schedule to the Town and Country Planning Act, 1959, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the Housing (Prescribed Forms) (Amendment) Regulations, 1959, and shall come into operation on the 16th day of August, 1959.

(2) The Housing (Prescribed Forms) Regulations, 1957 (hereinafter called " the principal regulations ") and these regulations may be cited together as the Housing (Prescribed Forms) Regulations, 1957 and 1959.

(3) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

2.—The forms prescribed by the principal regulations and specified in Part I of the schedule to these regulations shall be amended in the manner provided in that Part.

3.—For Forms Nos. 32 and 33 prescribed by the principal regulations there shall be substituted the forms prescribed in Part II of the schedule to these regulations.

4.—Nothing herein shall affect the validity of any order, notice, advertisement or other document made or used in a form prescribed by the principal regulations before the coming into operation of these regulations.

SCHEDULE

PART I

Forms Nos. 7, 14, 17, 19

1.—(1) In every reference in the Notes to the above forms to the market value for its existing use of the interest of the person entitled to compensation, the words " for its existing use " shall be deleted.

(2) At the end of the Notes to the above forms there shall be added the following paragraph :—

> " Any compensation paid (other than a payment for good maintenance) may in addition include an amount in respect of the cost of professional fees reasonably incurred in preparing the claim."

Forms Nos. 11 *and* 26

2.—(1) For the words " Compensation based on market value", wherever they occur in the Notes to the above forms, there shall be substituted the words " Additional compensation."

(2) In every reference in the Notes to the above forms to the market

value for its existing use of the interest of the person entitled to compensation, the words " for its existing use " shall be deleted.

(3) The following two paragraphs shall be added at the end of the Notes to Form No. 11, and the first of those paragraphs shall be inserted immediately before, and the second of them after, the last paragraph of the Notes to Form No. 26 :—

" The total amount payable in respect of the interest of the owner-occupier of a private dwelling, excluding any compensation attributable to disturbance or to severance or injurious affection, will not in any event be less than the gross value of the dwelling for rating purposes.

Any compensation paid (other than a payment for good maintenance) may in addition include an amount in respect of the cost of professional fees reasonably incurred in preparing the claim."

Forms Nos. 24 *and* 28

3.—In paragraph 2 (*b*) of each of the above forms, for the words " The Town and Country Planning Acts, 1947 to 1954", there shall be substituted the words " The Town and Country Planning Acts, 1947 to 1959 ".

PART II

FORM NO. 32

HOUSING ACT, 1957

TOWN AND COUNTRY PLANNING ACT, 1959
DECLARATION OF UNFITNESS ORDER

Whereas the Council are a local authority for the purposes of Part III of the Housing Act, 1957 ;

And Whereas the [houee] [houees] described in the schedule hereto and shown coloured pink on the map annexed hereto [is] [are] situate on land in the area of the Council ;

And Whereas [the land is situated within an area designated as the site of a new town] [and] [it is proposed that the land should be acquired compulsorily under (1)] [in pursuance of (2)] ;*

And Whereas the said [house is] [houses are] in the opinion of the Council unfit for human habitation and not capable at reasonable expense of being rendered so fit ;

Now Therefore the Council, in pursuance of their powers under paragraph 2 of Part I of the Second Schedule to the Town and Country anning Act, 1959, by this order declare the said [house] [houses] to be unfit for human habitation and not capable at reasonable expense of being rendered so fit.

This order may be cited as the

(Declaration of Unfitness) Order, 19 .

SCHEDULE

The common seal of the Council was hereunto affixed this day of , 19 , in the presence of .

* The alternatives should be used according to circumstances, having regard to the provisions of sub-paragraphs (1) and (2) of paragraph 2 of Part I of the Second Schedule to the Town and Country Planning Act, 1959.

(1) Specify the relevant powers.

(2) Insert the title of any compulsory purchase order made, or refer to any notice served under section 19 of the Town and Country Planning Act, 1947, or section 39 of the Town and Country Planning Act, 1959.

FORM NO. 33

HOUSING ACT, 1957

TOWN AND COUNTRY PLANNING ACT, 1959

NOTICE OF THE MAKING OF A DECLARATION OF UNFITNESS ORDER

To of

, being the [owner] [mortgagee] of

Take Notice that—

(1) the Council, in pursuance of their powers under paragraph 2 of Part I of the Second Schedule to the Town and Country Planning Act, 1959, made on the day of , 19 , and are about to submit to the Minister of Housing and Local Government for confirmation the (Declaration of Unfitness) Order, 19 , declaring to be unfit for human habitation and not capable at reasonable expense of being rendered so fit the [house] [houses] described in the first column of the schedule to this notice [, and shown coloured pink on the map annexed to the order], being [a house] [houses] on land which * ;

(2) the principal grounds upon which the Council are of opinion that the [house is] [houses are] unfit for human habitation and not capable at reasonable expense of being rendered so fit are set out in the second column of the schedule to this notice ;

(3) any objection to the order, stating the grounds of the objection, must be made in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the ** day of , 19 .

SCHEDULE

Dated this day of , 19 .

Signed

Clerk of the Local Authority.

* Insert a reference to the relevant provisions of paragraph 2 (1) of Part I of the Second Schedule to the Town and Country Planning Act, 1959, adapting the terms of the third recital in the Declaration of Unfitness Order.

** A reasonable period should be allowed, and in any case not less than 14 days from date of service of notice.

NOTES

If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections are withdrawn, the Minister of Housing and Local Government may, if he thinks fit, confirm the order, but in any other case he is required before confirming the order to consider any objection not withdrawn and, if either the person by whom the objection was made or the local authority so desire, he must afford that person and the authority an opportunity of appearing before and being heard by a person appointed by him for the purpose.

If the unfitness order is confirmed, the compensation payable for a house to which the order applies if it is purchased compulsorily in any of the ways mentioned in paragraph 2 (1) of Part I of the Second Schedule to the Town and Country Planning Act, 1959, and either

(*a*) the compulsory purchase order was confirmed concurrently with or after the confirmation of the unfitness order, or

(*b*) where the acquisition is in pursuance of a notice to treat deemed to have been served as mentioned in paragraph 2 (2) (*b*) of Part I of the said Second Schedule, the unfitness order was made before the date on which the notice to treat is deemed to have been served,

will be the value of the land on which the house stands as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district.

If the Minister of Housing and Local Government is satisfied that a house to which this order relates, notwithstanding its unfitness, has been well maintained, he may give direction that the acquiring authority shall make a payment in respect of the house in accordance with section 60 of the Housing Act, 1957. If a person interested in the house thinks that it has been well maintained by him or at his expense, he should make a representation in writing to the Minister of Housing and Local Government, Whitehall, S.W.1, before the end of the objection period specified in paragraph (3) of this notice. A form of representation may be obtained from the Council Offices. A person on whom this notice is served who has a tenant on a monthly or lesser tenancy or a statutory tenant in occupation of the house or any part of it is requested to bring this paragraph to the notice of any such occupier.

Additional compensation may become payable if the house has been occupied for business purposes, provided that certain conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied for business purposes by a person having a freehold interest or a leasehold interest for more than a year at the date of the making of the compulsory purchase order and either on 13th December, 1955, or at all times during the ten years preceding the date of the making of the order.

Additional compensation may also become payable if the house is purchased compulsorily before 13th December, 1965, and it has been occupied as a private dwelling, provided that certain other conditions are fulfilled. Broadly these are that the house must have been wholly or partly occupied as a private dwelling on 13th December, 1955, by a person

having an interest of the kind mentioned in the preceding paragraph or a member of his family, and must have been purchased by that person on or after 1st September, 1939, and before 13th December, 1955 (members of the armed forces posted away, or persons changing their place of employment or occupation being treated in certain cases as having continued in occupation).

The further compensation, if it becomes payable, is the market value of the interest of the person entitled to compensation, less site value. A person who is entitled to such compensation cannot also receive a payment for good maintenance.

Any person on whom this notice is served who thinks that if the unfitness order is confirmed and his interest is purchased compulsorily he may have a claim to this further compensation should notify the clerk of the local authority in writing of the facts on which he relies. The question whether any compensation may be payable will not be settled at this stage, but it is important to establish the facts relating to ownership and occupation as soon as possible.

The total amount payable in respect of the interest of the owner-occupier of a private dwelling, excluding any compensation attributable to disturbance or to severance or injurious affection, will not in any event be less than the gross value of the dwelling for rating purposes.

Any compensation paid (other than a payment for good maintenance) may in addition include an amount in respect of the cost of professional fees reasonably incurred in preparing the claim.

Given under the official seal of the Minister of Housing and Local Government this seventh day of August, nineteen hundred and fifty-nine.

(L.S.)

Henry Brooke,
Minister of Housing
and Local Government.

INDEX

PAGE

ACCOUNTS
adjustment of
after appropriation of land
generally ... 91–2, 259–61
parish councils and meetings ... 101–2, 275, 276
after disposal of land ... 98–9, 271, 272
giving of directions by Minister ... 92, 99, 261, 274, 278

ACQUIRING AUTHORITY, see also *Additional Development*, *Assumptions*, *Notice to treat*, *Planning proposals*
additional compensation for additional development, see *Additional development*
application of 1919 Act ... 5, 186, 356
defined ... 352
long-standing notice to treat see *Notice to treat*
proposals of, for development, see *Planning proposals*, *Assumptions*
recovery
of payment under Part I of 1954 Act
agricultural land ... 157, 340
Central Land Board replaced by Minister ... 155, 343, 347
land acquired for development as a whole ... 156, 339–41, 345
Part VI claim pledged ... 155, 344, 345
of compensation under Parts II, IV or V of 1954 Act
acquisition for public open space ... 155–6, 341
postponed where outstanding interest ... 155, 341

ACQUISITION, see also *Compulsory Acquisition*, *Consent*, *Unfit Houses*
by agreement
authorities concerned ... 84, 252, 391–5
consents dispensed with ... 85–7, 250–3
corporate land ... 84, 252, 356
ironstone land ... 87, 250, 253
meaning of consent ... 86–7, 251, 277
compulsory, see *Compulsory Acquisition*
for highway purposes
advances to highway authorities ... 151–3, 337–9
powers of Minister of Transport ... 150–1, 336–7
for town development, see *Compulsory Acquisition*
of unfit houses, see *Unfit houses*

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT 1919, see also *Compensation*, *Rules*
application to all compulsory acquisitions ... 184, 186, 356
assessment of additional compensation ... 39, 242, 244
authorities to whom Act
applied 1919–1947 ... 1, 5
applies now ... 186, 356
dual compensation code 1919–1947 ... 1, 5
Lands Tribunal ... 201, 226
modification of principles of 1845 Act ... 5–6
notice of claim for compensation ... 79, 228
Rules for assessing compensation ... 5–6, 45–9, 186
new Rules added by 1959 Act, see *Rules*
withdrawal of notice to treat
compensation for ... 228
long-standing notice to treat ... 80, 227–8
under Part IV of 1959 Act ... 140, 399, 401

ACT OR EVENT
right to additional compensation, transferred by ... 37–8, 235, 239

ACTIONS, see also *High Court Order*
person aggrieved by Minister's
right to apply to High Court ... 115, 116–7

ADDITIONAL COMPENSATION
under Part III of 1954 Act
for buildings and works ... 185
unexpended balance ... 10, 11, 185
where no established claim ... 11, 185
election in respect of long-standing notice to treat ... 78, 228
when permission for additional development, see *Additional Development*

ADDITIONAL DEVELOPMENT, see also *Planning permission*
compensation, when permission for
amount of ... 35–6, 234
disturbance ... 35, 39–40, 42, 384
enhancement ... 41, 384–6
injurious affection ... 35, 39–42, 384
example ... 42–4
mortgaged land ... 37, 386
settled land ... 37–8, 386–7
severance ... 35, 39–42, 384
assessment of ... 39, 242, 244

assignment of 37–8, 235, 239
cases excluded 36, 234–5
Crown development 38, 247–8
definition of additional development 34, 235–6
notice of permission 38–9, 240–4
address for service 38, 240
obligation of acquiring authority 36, 244
when authority disposes of land 39, 241
permission by
deemed decision 35, 244
development order 35, 244–5
planning decision 34–5, 234
persons entitled
liquidator 37, 235, 239
mortgaged land 37, 386
personal representatives 37, 235
settled land 37–8, 386–7
trustee in bankruptcy 37, 235, 239
time for claiming 39
transmission of 37–8, 235, 239

ADDRESS FOR SERVICE
given for purpose of additional compensation
by person directly entitled 38, 240
dispensation from notice 241
by person entitled by transmission 240
service of notices 160–1, 350, 351

ADJACENT LAND, see also *Contiguous or adjacent*

ADVANCES, see also *Highway*
by Minister of Transport to highway authorities 151–3, 337–9

ADVERTISEMENTS, see also *High Court*
application for consent for display
decision, quashing of 116, 282, 289
no notice to owners under section 37 308
of applications for planning permission
all cases 108, 305
special cases 106, 301–2
order defining area of special control
quashing of 116, 282–8
Regulations relating to 288

AFFECTED AREA, see also *Agricultural unit*

AGGRIEVED, see also *Order*
by orders or actions, right to apply to High Court 115, 281
defined 287

AGRICULTURAL HOLDING
defined 309
notice of planning application to tenant of... ... ... 108, 112, 305

AGRICULTURAL LAND
declaratory order under 1944 Act 145, 330, 331
definition 327–8, 331
recovery from acquiring authorities 157, 340

AGRICULTURAL UNIT, see also *Purchase Notice*
affected area defined 324
defined 324–5
disclaimer as to part 138, 318, 322
notice requiring purchase under Part IV 129, 313
owner-occupier of 134, 313
severance 142, 399

ALLOCATION, see also *Assumptions*, *Development Plan*
of land in development plan,
assumption based on, see *Assumptions*
right to serve a purchase notice 131, 312, 315

ALLOTMENTS
fuel or field garden, defined 257
Ministerial consent preserved
appropriation of 90, 254, 258–9
disposal of 96–7, 263

ALLOWANCES
for compulsory purchase 4, 5, 186
to persons displaced 74–6, 222
under Housing Act 1957 223

ALTERNATIVE DEVELOPMENT
certificate of appropriate, see *Certificate*
power of Minister to permit, on review
Part II of 1954 Act 116, 282, 289
Part V of 1954 Act 116–7, 282, 289
quashing of Minister's decision 118, 281–5

AMENDMENTS PAGE
Agriculture Act 1947, section 58 (7) (*b*) 163, 414–5
Housing Act 1957 ... ... 164–5, 419
1947 Act 163–4, 415–6
1954 Act 164, 418
Third Schedule of 1947 Act, by 1954 Act 192, 412

ANNUAL VALUE, see also *Purchase Notice*
for purpose of Part IV
defined 133, 325
prescribed limit 133, 314, 450
when land on boundary of rating areas 133, 397

APPEAL, see also *Certificate*, *Development*, *High Court*
certain orders and decisions, against
grounds of 117, 281
powers of High Court 118, 283
certificate of alternative development, against
failure to issue certificate 32, 203
quashing of decision on 117, 283
decision under section 17 of 1947 Act, against 119–21, 292–3
previous power to grant declarations 120, 294
rules of court 120–1, 293
planning decisions, against
notice to owners and agricultural tenants 109–10, 306
quashing of decision on 116, 282
right of and time for 244, 288

APPLICATION, see also *Certificate*, *Crown*, *Development*, *High Court*, *Permission*
for certificate of alternative development, see *Certificate*
for planning permission, changes in procedure, see *Planning Permission*
of Act to Crown, see *Crown*
of capital monies on disposal of land
adjustment of accounts 98–9, 271, 272
consents dispensed with 98, 271
maximum amount in one transaction 271
to High Court to quash orders and actions, see *High Court*
under section 17 of 1947 Act, appeal to High Court 119–21, 292–3

APPORTIONMENT
of unexpended balance, on compulsory acquisition 158, 408–9

APPROPRIATE AUTHORITY, see also *Purchase Notice*
for purpose of Part IV
ascertainment of 136, 137, 395–6
counter-notice 137, 317–8
defined 136, 325
notice to treat 139–41, 321

APPROPRIATE ENACTMENT, see also *Purchase Notice*
for purpose of Part IV
acquisition under 140, 321
ascertainment of 140–1, 396–7
defined 325

APPROPRIATION, see also *Consent*, *Parish*
dispensation from Ministerial consent
authorities to whom applies 84, 391–2
consents: preserved 89–90, 254–5
replaced 88–9, 254
corporate land 84, 252, 356
execution of works on land appropriated 91, 255, 259
meaning of consent 90, 251, 277
parish councils and meetings, see *Parish*
subsequent adjustment of accounts 91–2, 259–61

ASSESSMENT OF COMPENSATION, see *Compensation*, *Rules*

ASSIGNMENT, see also *Additional Development*
of right to additional compensation 37–8, 235, 239

ASSUMPTIONS, see also *Acquiring authority*, *Certificate*, *Development Plan*, *Third Schedule*
for development proposed by acquiring authority 19–20, 189
ascertainment of proposals 19–20, 191
example 170–1
no existing personal permission 16, 19, 189
for development specified in certificate of alternative development
cases applicable 28, 197–8, 201
obtaining of certificate, see *Certificate*
for Third Schedule development 20–1, 189–91
exceptions 20–1, 189–90
requisitioned land 164, 418
Third Schedule reproduced 433–5
market assumptions not excluded 17, 187
contrary view in certificate of alternative development 17, 187
need for 15–6
statutory, as to planning permission
additional to existing permissions 18–9, 187
exception 16, 19, 189

ASSUMPTIONS—*continued.*

PAGE

comprehensive development 27–8, 193
conditions imposed 17, 23, 26, 189, 190, 192, 198–9
cumulative 16, 188
deferred development 23, 26, 190, 192, 198–9
do not apply to severance or injurious affection 17, 171
for development by reference to development plan 21–8, 192–7
hope value 25, 187–8
land allocated primarily for
one use 22–6, 193
range of uses 26–7, 194
land defined for specified development 22, 193

BALANCE, see *Unexpended balance*

BEND SINISTER, 1959 Act deserves a 1

BEST PRICE, CONSIDERATION OR RENT
dispensation from Ministerial consent
disposals of land 94, 262, 164–5, 419
Housing Act 1957 ... ... 95, 262, 268, 164, 419
local Acts 96, 263

BETTERMENT
and Compensation, past attempts to deal with 1, 7, 8
defined 6–7
of land in different ownership, none 57
set-off of enhancement of adjacent land
new rule 55–57, 212
subsequent acquisitions 58–60, 362–4
under special Acts 56, 362, 366–7

BLIGHT, see *Purchase Notice*

BOARDS
freed from Ministerial consents 84, 252, 391–5

BUILDING PRESERVATION ORDER
application for consent, quashing of decision 116, 282
applying purchase notice provisions 289, 360
provisional confirmation 284, 288
quashing of 116, 282
regulations, see *Regulations*

BUILDINGS, see also *Unfit houses*
erected before acquisition
supplement under 1954 Act 185
to increase compensation, disregarded 7–8, 50–1
defined 223
persons displaced from, allowances to 74–6, 222–3
site cleared of, see *Unfit houses*

CAPACITY
entitlement in same, defined 354

CAPITAL FUND, see *Capital money*

CAPITAL MONEY
application of, after disposal of land
adjustment of accounts 98–9, 271, 272
dispensation from consent 98, 271
maximum transferred from capital fund 271

CENTRAL LAND BOARD, see also *Acquiring Authority*
dissolution of 155, 343, 347
functions of 347
recovery by, from acquiring authorities 154–7
unexpended balance, provision of information as to 412

CERTIFICATE
applications for planning permission, accompanying all
contents of 107–9, 304–5
false or misleading, offence 110, 306
form of 107, 438–40
applications for planning permission, accompanying in special cases
form of notice certified to be published 106, 437
special cases affected 106, 437
of alternative development 28–33, 197–210, 436–7
after reference to Lands Tribunal 29, 198
appeal against 32, 202–3
quashing of decision on 117, 283
application by surveyor acting under section 58 of 1845 Act 32–3, 204–5
cases excluded 28, 197
conditions on deferment 30, 198–9
contrary to development plan 31, 199
contrary view in 17, 187
copies to third parties with interests 202, 436

development order regulating
appeals ... 436
applications ... 436
development specified ... 29, 198
failure to issue ... 32, 203
form of development plan ... 29, 207–8
general requirements ... 30, 199
persons entitled to apply ... 29, 197, 199
" proposed to be acquired " ... 29, 207
time for issuing ... 32, 203, 436
of information as to unexpended balance ... 412
of particulars of Crown development ... 39, 248

CHANGE OF USE, see also *Use*
applications for permission for special classes of ... 106, 303, 437
material ... 121
permission refused for, no compensation ... 168

CHARITY
functional land of, compensation for
prevailing use basis abolished ... 73–4, 220–2

CHURCH COMMISSIONERS
Vesting of ecclesiastical property ... 165–6, 348–9

CLAIM
for acquisition under Part IV, see *Purchase Notice*
for compensation under 1919 Act ... 79, 228
long-standing notice to treat ... 79, 228

CLAIM HOLDING, see also *Unexpended Balance*
conversion to unexpended balance ... 10, 411
reduction of, where pledge of established claim ... 155, 344

CLAIMANT, see also *Purchase Notice*
for purposes of Part IV of Act
conditions to be satisfied ... 129–30, 312–3
definition ... 313–4, 401
dying in course of proceedings ... 137, 401

CLEARANCE AREA, see also *Unfit Houses*
land in
compensation on basis of site value 63, 374, 381
Ministerial consent preserved for disposal ... 95, 262
powers of local authority ... 63

COAST PROTECTION BOARD, see also *Acquisition, Appropriation, Consent, Disposal*
freed from Ministerial consents ... 84, 391–2, 393–4

COMMON, see also *Appropriation, Disposal*
consents preserved for
appropriation of ... 89, 254, 258
disposal of ... 96, 263
consents replaced, for open space not being a,
appropriation of ... 89, 254
disposal of ... 94, 261
meaning of ... 257

COMPANY
liquidation of,
right to additional compensation ... 37, 235, 239

COMPENSATION, see also *Additional Development, Assumptions, Disturbance, Market, Severance*
additional, for additional development, see *Additional development*
and Betterment, attempts to deal with ... 178
compulsory acquisition initiated after 29th October, 1958
adjustment of unexpended balance ... 157–9, 404–9
application of rules of 1919 Act ... 12, 184
cases on the rules ... 186
the rules discussed ... 46–9
assumptions on which market value assessed, see *Assumptions*
new statutory rules of assessment
depreciation by prospect of acquisition ... 51–2, 60–1, 141, 213
scheme to be disregarded
area of comprehensive development ... 53–4, 211
area of town development ... 55, 211
compulsory purchase orders and special Acts ... 52, 211
former rule ... 6, 215
site of new town ... 54–5, 211
subsequent acquisition ... 58–60, 177–9, 362–4
set-off of enhancement of adjacent land ... 55–8, 212, 362
special Acts ... 56, 362
subsequent acquisition ... 58–60, 362–4
outstanding right to compensation under 1954 Act ... 81–2, 230–3
potential right to compensation under 1959 Act ... 47, 169–70
reduced compensation under 1959 Act ... 179–80
under Part IV of Act ... 141–2, 398–9

compulsory acquisition under 1954 Act 10–11, 185
damage to requisitioned land 145–8, 332–4
depreciation by planning restrictions
recovery from acquiring authorities 154–7, 339–343
under Parts II and IV of 1954 Act
outstanding right to, not registered 81–2, 230–3
prospect of effect on market value 47, 169–70
recoverable from subsequent developers 82, 155
the new two-price system 11, 167–9
unchanged 10
discontinuance order 20, 190
disturbance, see *Disturbance*
existing use basis repealed 12, 14, 183–4
functional land of charities 73–4, 220–2
history of law of, 1845–1958 2–12
illegal use disregarded 6, 48–9, 186
land acquired under Part IV 141–2, 398–9
local authority land 73–4, 220–2
long-standing notice to treat, owner's election 78, 226–7
measure of, see *Market*
operational land of statutory undertakers 73–4, 220–2
outstanding right to, not registered 81–2, 230–3
prevailing use basis abolished 73–4, 220–2
reduced by 1959 Act 179–80
refusal of, or conditions imposed on, permission for Third Schedule development 20, 190
restrictions, right to compensation for
actual 81–2, 230–3
potential 47, 169–70
severance and injurious affection, see *Severance*
short tenancies interrupted 75–6, 223
specified land of National Coal Board 73–4, 220–2
under Housing Act 1957, see *Unfit houses*
under 1845 Act, value to owner 4
war-damaged land 70–3, 218–9
where notice to treat withdrawn
long-standing notice to treat 80, 228
normally 228

COMPENSATION (DEFENCE) ACT 1939

damage to requisitioned land, new ceiling for compensation 145–8, 332–4

COMPREHENSIVE DEVELOPMENT, AREA OF, see also *Assumptions*,

disposal of land in, Ministerial consent preserved 95–6, 262–3
land in, compulsory acquisition of
assumption of permission for any of range of uses 26–7, 194
comprehensive development disregarded 53–4, 211
example 54
no assumption based on
defined site 22, 192–3
special allocations 22, 193
no certificate of alternative development 28, 197
meaning of 22, 194–5, 196
recovery from acquiring authority, where land to be developed as a whole ... 156, 339–40

COMPULSORY ACQUISITION, see also *Acquiring Authority*, *Compensation*, *Declaratory Order*, *Highway*, *Sale*, *Town Development*

compensation for, see *Compensation*
disposal after, Ministerial consent preserved 93–4, 261
first appropriation after Ministerial consent preserved 88, 254
for highway purposes, advances by Minister 151–3, 337–9
for town development, where land not immediately required 148–50, 334–5
history of law of compensation for, 1845–1958 2–12
land declared subject to, under 1944 Act, see *Declaratory Order*
land " proposed to be acquired," defined 29, 207
on behalf of parish councils, statutory inquiries 113, 296
origins of 2
powers of, acquisition by agreement without exercise of
where land not immediately required 149
public authority possessing compulsory powers, defined 356
recovery of sums from acquiring authority, see *Acquiring Authority*
to which Act of 1959 applies 184, 186, 356
under Part IV of Act, where planning blight 129–42, 312–28

COMPULSORY PURCHASE PRICE, see also *Requisitioned Land*

requisitioned land, damage to, compensation ceiling 146, 332

CONDITIONS, see also *Assumptions*, *Consent*, *Enforcement Notice*

assumed, in assuming permissions
by reference to development plan 23, 26, 28, 194
certificate of alternative development 30, 190
composition of,
compensation under 1954 Act,
outstanding right to 81–2, 230–3

prospective right to 47, 169–70
on Third Schedule development, compensation 20, 190
order under section 21 of 1947 Act, quashing of 115, 281
enforcement of, in Enforcement Notice 127, 128, 309–11, 416
for dispensing with consent, in applying capital moneys 97, 269–71
form and validity of 189
" no compensation " conditions under Part II of 1954 Act 192
power to impose, when giving consent, abolished
for acquisition by agreement 86, 250
for appropriation of land 88, 253–4
for disposal of land 93, 261

CONFIRMATION, see also *Orders, Purchase Notice*
orders under 1947 Act, quashing of 115
purchase notice
action in lieu of 122–3, 125, 297, 426, 427
tree and building preservation orders
not provisional confirmation 284

CONSENT, see also *Acquisition, Appropriation, Disposal*
appropriation by parish councils, approvals required 100, 274
conditions, power to impose, see *Conditions*
corporate land, transactions in respect of 84, 252, 356
defined 86, 90, 93, 251
in all or special circumstances 277
Minister satisfied 278
giving of, generally or specially 278
Ministers', dispensed with
acquisitions by agreement 86, 250–1
application of capital money 97–8, 269–72
appropriations 88, 253–4
exceptions
preserved 89–90, 254–5
replaced 88–9, 254
disposals 93, 261
exceptions
preserved 95–7, 262–3
replaced 93–4, 261–2
transactions requiring, protection of purchasers 99–100, 276–7
tree or building preservation orders
quashing of decision as to 116, 282

CONTIGUOUS OR ADJACENT, see also *Set-off*
enhancement of land, see *Set-off*
meaning... ... ... 57, 216–7

CONTRACT, see also *Acquisition, Consent, Sale*
acquisition by agreement, see *Acquisition, Consent*
assignment of right to additional compensation 37–8, 235, 239
defined 354, 358
private sale of land, two price system 11
sale by agreement in shadow of compulsory powers, see *Sale*

CONTRIBUTION
of Minister, withheld in repaying sums recovered 156, 341, 346

CORPORATE LAND
defined 356
no dispensation of consents 84, 252

COTTAGE HOLDING
no dispensation of consent,
on appropriation of 90, 258
on disposal of 96, 263

COUNCILS
application of capital monies, relevant limits for 97, 270
of county borough and county district
freed from Ministerial consents... ... ... 84, 252, 391
purchase notice under section 19 of 1947 Act 121, 296, 425
of county, City of London, Scilly Isles and metropolitan borough
freed from Ministerial consents... ... ... 84, 252, 391
parish, powers of appropriation 100–2, 274–5

COUNTER-NOTICE
under Part IV, see *Purchase Notice*

COVENANT
restrictive, taken by acquiring authority 36, 244

CREMATORIA, see also *Acquisition, Appropriation, Consent, Disposal*
local joint boards, freed from Ministerial consents 84, 252, 391–2

CROWN
acquisition for town development 154, 347
application for permission for Crown land 153–4
application of Act to 153–4, 347–8
Crown land defined 153, 347–8

Crown or Duchy interest, defined 38, 248
development by,
additional compensation 38–9, 247–8
certificate as to particulars 39, 248

CUBIC CAPACITY
for Third Schedule purposes, measured externally 358

CURRENT DEVELOPMENT PLAN, see also *Development Plan*
defined, for certificates of alternative development 29, 207–8
planning assumptions 194–5, 196

DAMAGE, see also *Disturbance*, *Severance*, *Requisitioned Land*
by disturbance
additional compensation for additional development 39–40, 42, 383–4
compensation for,
principles of 49, 74–5
under 1845 Act 4
under 1919 Act 6, 49, 74–5, 186
under Part IV of 1954 Act 141–2, 398–9
discretionary allowance for 74–6, 222
minimum compensation for unfit house 372
part of value to owner 4
by severance or injurious affection
additional compensation for additional development
compensation
principles of 50
under 1845 Act 4, 50
under 1954 Act 11, 185
under Part IV of 1959 Act 141–2, 398–9
1919 Act does not apply 45
minimum compensation for unfit house 372
reduction of unexpended balance 159, 405
during requisition, compensation ceiling 145–8, 332–4

DECISION
of Minister
challenge of, in High Court 116, 282–3
more favourable to claimant under Part II of 1954 Act 289
powers of High Court 118, 283

DECLARATION, see also *High Court*
High Court's power to make
as regards development 120
generally 114–5

DECLARATORY ORDER
under 1944 Act land subject to compulsory acquisition
agricultural land 145, 330, 331
amendment of 144, 329
purchase notice under Part IV 131–2, 144, 329
removal of 145, 329

DEFERMENT
assumed permission 23, 26, 190, 192, 198–9

DEFINITION, see also *Assumptions*, *Development Plan*
of land as site of special development,
assumption based on, see *Assumptions*
land blighted by, purchase notice under Part IV 131, 312

DEPRECIATION
by threat of compulsory acquisition
former rule 9, 217
new rule 9, 60, 141
compensation for, see *Compensation*
substantial, caused by planning proposals
purchase notice under Part IV 130, 313
what is 134–6, 317

DERIVATION OF TITLE, see *Title*

DESIGNATION, see also *Assumptions*, *Development Plan*,
assumption based on, see *Assumptions*
de-designation
effect of disclaimer under Part IV 138, 399–400
method of 144–5, 331
land blighted by, purchase notice under Part IV ... ... 131 ,312

DEVELOPMENT
additional, see *Additional development*
alternative, see *Certificate*
applications for planning permission, see *Applications*
assumptions as to, see *Assumptions*
by Crown, see *Crown*
comprehensive, see *Comprehensive development*
giving rise to enhancement of adjacent land 55–7, 212
initiation of 248, 355

DEVELOPMENT—*continued.* PAGE
mixed uses 24–5
new
defined 409
recovery of compensation on 10
reduction of unexpended balance 157
order, see *Development order*
other, grant of, in lieu of confirming purchase notice 123, 124, 299
permitted, with limitations, enforcement of 127–8, 309–11, 416
resumption of normal use 415, 420
plan, see *Development Plan*
planning permission for
applications for, see *Applications*
refused, right to serve purchase notice 121, 298, 425
purchase notice,
conditions fulfilled for 121, 298, 425
grant of permission for alternative 123, 124, 299
scheme of, disregarded
land authorised to be acquired 52, 211
land in area of comprehensive development 53–4, 211
land in area of town development 55, 211
land on site of new town 54–5, 211
subsequent acquisitions 58–60, 362–4
examples 58, 59, 177–9
rights, taken by the State 8–9
town, see *Town development*
value, unexpended balance 10
set-off by reference to 177
whether operations or change of use constitute
appeal to High Court from Minister's decision 119–21, 292–3
previous jurisdiction of Courts 120, 294

DEVELOPMENT CHARGE
abolished 10
imposed 9
pledge of Part VI claim 155, 344, 345

DEVELOPMENT CORPORATION, see also *New Town*
acquisition of unfit house 68, 369
designation of land for new town 54, 216, 364
dissolution of 55, 368
notice to treat served after "transfer date" 55, 364
powers of 381

DEVELOPMENT ORDER
G.D.O. 1959, procedure as to
certificates of alternative development 29, 206, 436
certificates with planning applications
all cases 107–9, 304–5, 438–40
special cases 106, 302, 437
G.D.O. 1950
permission with limitations, enforcement 127–8, 309–11
planning appeals 113
planning applications 112
making of, for purposes of 1959 Act 161, 350
permission granted by
additional compensation 35, 244–5
enforcement of conditions and limitations 127–8, 309–11, 416

DEVELOPMENT PLAN, see also *Allocation, Assumptions, Definition, Designation*
allocation 196
multiple zone 26–7, 193
single zone 22–6, 193
amendment of 144, 196, 331
assumptions by reference to, see *Assumptions*
current, see *Current Development Plan*
definition, designation, allocation and other indications
right to serve purchase notice under Part IV 131, 312
depreciation due to prospect of acquisition 9, 60, 141, 217
making of 196
procedure for de-designation of land 144, 331
Regulations 1948 ... ... 22, 196, 216
Regulations 1959 ... ... 196, 216
time for coming into operation 196

DIRECTIONS
of Minister
as to adjustment of accounts
after application of capital monies 98–9, 271, 272
after appropriation 91–2, 259–61
by parish councils and meetings 101–2, 275, 276
given generally or specially 92, 99, 278
for alternative development under Parts II or V of 1954 Act
quashing by High Court 116–7, 282

for alternative development avoiding purchase notice
not limited to Third Schedule development 124, 300
quashing of, by High Court 116, 282

DISCLAIMER, see also *Purchase Notice*
of intention to acquire
grounds of objection to purchase notice 137–8, 140, 318, 399

DISCONTINUANCE ORDER
under section 26 of 1947 Act,
no assumption where compensation 20, 190
quashing by High Court... ... ... 115, 281–2

DISPLACEMENT
discretionary allowances for persons displaced 74–6, 222

DISPLAY, see *Advertisements*

DISPOSAL, see also *Accounts*, *Capital Money*, *Consent*
of land
application of capital monies
adjustment of accounts 98–9, 271, 272
consent for, dispensed with
preserved 89–90, 254–5
replaced 88–9, 254
corporate land 84, 252, 356
by acquiring authority
liability for additional compensation 36, 244
notice of development by purchaser 246

DISTURBANCE, see also *Damage*
compensation for
cases on 186
excluded from 1919 Act 49, 186
none, where acquisition under Part IV 142, 398–9
principles of 49, 74–5
source of 4
when assessing additional compensation 39–40, 42, 383–4
discretionary allowances 74–6, 222

DRAINAGE AUTHORITY
freed from Ministerial consent 84, 252, 395

DUCHY INTEREST
in land, compensation for additional development 38, 247
meaning... ... ... 154, 348
reduction of unexpended balance 154, 347

DURATION, see also *Third Schedule Development*
of Third Schedule rights 192, 412

EASEMENT
acquiring authority retaining only
indemnity or restrictive covenant 36, 244
notifying local planning authority 39, 241
creation of, is a disposal of land 93, 267, 352
land includes, for purpose of Part II 252, 267

ECCLESIASTICAL PROPERTY
vesting in Church Commissioners 165–6, 348–9

EDUCATION BOARD, see also *Acquisition*, *Appropriation*, *Consent*, *Disposal*
joint, freed from Ministerial consent 84, 252, 393

ENACTMENT
appropriate, for purposes of Part IV 325
ascertainment of 140–1, 396–7
defined 251
local, defined 353
special, defined 353–4

ENFORCEMENT NOTICE
conditions enforceable, 1951 Act 128, 311
limitations now enforceable 127–8, 309–11, 416
specifying breach of conditions or limitations 128, 310

ENHANCEMENT, see *Set-off*

EQUIVALENT REINSTATEMENT
compensation on basis of 49

ESTABLISHED CLAIM, see also *Claim holding*, *Unexpended balance*
conversion into claim holdings 10, 411
discretionary payment, where no 11, 185
no, where long-standing notice to treat 78, 228
pledges of, recovery from acquiring authority 155, 344, 345

EXAMPLES
No. 1 : section 18 and Third Schedule (additional compensation ; injurious affection and set-off) 42–3
No. 2 : section 18 and Third Schedule (additional compensation ; injurious affection and set-off) 43–4

EXAMPLES—*continued.* PAGE
No. 3 : section 9 (2) (scheme of development in area of comprehensive development ignored) ... 54
No. 4 : section 9 (2) (scheme of development in new town area ignored) ... 54
No. 5 : section 9 (2) and First Schedule (subsequent acquisition ; new rule ousted) ... 58
No. 6 : section 9 (2) and First Schedule (subsequent acquisition ; new rule ousted) ... 59
No. 7 : section 10 and Second Schedule (ceiling for " well-maintained " allowance) ... 65–6
No. 8 : The new Two-price system (purchase notice before compensation for refusal) 167–8
No. 9 : The new Two-price system (purchase notice before compensation for refusal) 168–9
No. 10 : section 2 (Green Belt-land, with unexpended balance)... ...169–70
No. 11 : section 3 (Assumption based on proposals of acquiring authority) 170–1
No. 12 : The Planning Assumptions and Injurious Affection and Severance 171
No. 13 : Injurious Affection and Severance : unexpended balance adjusted 171–2
No. 14 : section 11 (war-damaged land ; less compensation under 1959 Act) ... 173–4
No. 15 : section 11 (war-damaged land ; more compensation under 1959 Act) ... 174–6
No. 16 : sections 14 and 15 (long-standing notice to treat) 176
No. 17 : section 9 (2) and (4) and First Schedule (subsequent acquisition ; new rule ousted) 177–8
No. 18 : section 9 (4) and First Schedule (subsequent acquisition ; new rule ousted) ... 178–9
No. 19 : Reduced compensation under 1959 Act (house with unexpended balance) ...179–80
No. 20 : Increased compensation under 1959 Act (house with unexpended balance) ... 180

EXCEPTED INTEREST
defined 406, 412–3
reduction of unexpended balance 405

EXCHANGE
amounts to disposal of land 93, 267, 352
local authorities' right to exchange land 93

EXCHEQUER
subsidy, under Housing (Financial Provisions) Act 1958
grant aided function 92, 99, 353

EXISTING USE, see also *Third Schedule Development*
compensation on basis of, 1947 Act
abolition of 12, 183–4
supplement to 11, 185
Third Schedule rights
amendment of Third Schedule by 1954 Act 192, 412
Third Schedule reproduced 433–4

EXPENDITURE
incurred by local authorities, in relation to mineral workings 87, 250
in maintaining land acquired for highway purposes 151–3, 337–9
in removal, discretionary allowance 74–6, 222
provision of monies for purpose of Act 162–3, 351

FEES
surveyor's, legal and accountant's
withdrawal of notice to treat 228

FINANCIAL PROVISIONS 162–3, 351

FIRE AUTHORITY, see also *Acquisition*, *Appropriation*, *Consent*, *Disposal*
combined, freed from Ministerial consent 84, 252, 392, 394

FRANKS COMMITTEE 103–5

FREEHOLD
acquiring authority disposing of freehold and tenancy
indemnity or restrictive covenant 36, 244
notifying local planning authority 39, 241
owner of, entitled to notice of planning application
owner defined 107, 307
entitled to serve purchase notice under Part IV
owner-occupier defined 132–4, 323–4

FUEL OR FIELD GARDEN ALLOTMENT, see *Allotment*

FUNCTION, see also *Accounts*
defined 353
development for the purposes of the functions 34, 235, 240
grant-aided
adjustment of accounts, consent retained
after appropriation 92, 259
application of capital monies 99, 271
defined 353, 359
Minister concerned with, for which land acquired
Consent required for
appropriation 88, 254
disposal 94, 262

GIFT
land given to municipal corporations 84, 356
not included in " disposal " 93, 267, 352

GOVERNMENT DEPARTMENT
additional development by
certificate of particulars of 39, 248

compulsory acquisition by,
Part I of Act applies to 186, 356
grant or contribution payable by, grant-aided function 92, 99, 353
includes Minister of Crown 353
interest held by, Crown interest 38, 248
land held by, Crown land 347, 348
under Part II of Act,
Minister includes 250–1

GRANT, see also *Planning Permission*
grant-aided function 92, 99, 353, 357
of planning permission, see *Planning Permission*

GREEN BELT LAND
certificate of alternative development 28, 201
valuation example 169–70

HEREDITAMENT, see also *Purchase Notice*
for purposes of Part IV
acquisition of whole of 134, 316
annual value, defined 133, 325
defined 133, 325
limit of annual value
Regulations 133, 450
on boundary of two or more rating areas 133, 397
persons entitled to serve purchase notice
owner-occupier 132–3, 134, 323–4
resident owner-occupier 132, 324
shooting, fishing, sporting and advertisement rights 133, 397

HIGH COURT
appeal to, as to development
previous power to grant declarations 120, 294
Rules of Court 120–1, 293
application to quash orders and actions
grounds of
relevant requirements 117, 284, 291
substantial prejudice 118, 283, 290
interim orders 118, 283
mandamus still available 119, 283, 290
ouster of jurisdiction 119, 283, 290
powers of 118, 283
previous remedies 114, 290

HIGHWAY, see also *Advances, Special Roads, Trunk Roads*
acquisition by Minister for highway purposes 150–1, 336–7
advances to highway authorities, see *Advances*
definition of 353, 357
Highways Act 1959
coming into force 150, 151, 316
corresponding enactments 131, 150–1. 152, 316, 336, 338, 355
trunk road orders and special road schemes 131, 315
land blighted by planning proposals,
indications as to site of highway 131, 312
plans of highway authority 131, 312
trunk road orders or special road schemes 131, 312, 315–6

HOUSING ACT 1957
general powers under 62–3
site value compensation, see *Unfit houses*

HUMAN HABITATION, see *Unfit houses*

IMMEDIATE REQUIREMENTS
acquisition of land in advance of
by Minister of Transport for highway purposes 150–1, 336
dispensation of Ministerial consent 86, 250
for town development 148–9, 334–5
no general power 149, 335
temporary use of land 253

INDUSTRIAL
development certificate under section 59 of 1954 Act
application of section 19 of 1947 Act 289

INFORMATION
as to proposal to acquire land 185
as to unexpended balance 412

INITIATION
of development
by Government department, additional compensation 38, 247
defined 248, 355

INJURIOUS AFFECTION, see also *Severance and Injurious affection*
by scheme under 1932 Act 7
land held with land acquired, see *Severance*
pure injurious affection 4, 50

PAGE

INQUIRIES
compulsory purchase on behalf of parish council, counsel and experts at ... 113, 296
Minister's power to hold local ... 159–60, 350–1
procedure for
application to all inquiries ... 105, 113, 294–5
rules under Tribunals and Inquiries Act 1958 ... 113, 294

INTENTION TO PROCEED, see *Notice*

INTEREST
supplement added to claim holdings ... 10, 412

INTEREST IN LAND
acquisition of, see *Acquisition*
certificate of alternative development
supplied to persons with interest ... 202, 436
defined ... 406
two interests, entitlement in same capacity ... 354
unexpended balance divided between two or more
reduction after compulsory acquisition ... 158, 405

INTERPRETATION, see *Words and Phrases*

IRONSTONE DISTRICT
grants towards expenditure ... 87, 250, 253

ISLES OF SCILLY, see also *Acquisition, Appropriation, Consent, Disposal*
Council of,
application of capital money ... 97, 270
Part II applies to ... 84, 252, 391

LAND
defined, for purpose of Part II ... 250

LAND CHARGES ACT 1925
registration of compensation under 1954 Act ... 82, 233

LANDS CLAUSES CONSOLIDATION ACT 1845
compensation for owners of excepted interests ... 75, 223
disturbance ... 4, 49, 74–5
excepted interests defined ... 406, 412–3
modified by 1919 Act ... 5–7
notice to treat ... 3
principles of compensation ... 3–5
pure injurious affection ... 4, 50
severance and injurious affection ... 4, 50
source of compensation law ... 2–5

LANDS TRIBUNAL, see also *Purchase Notice*
after reference to,
application for certificate of alternative development ... 29, 198
date of coming into being ... 226
owner absent, surveyor to assess compensation ... 32–3, 205
purchase notice under Part IV, objection referred to
date for deemed notice to treat ... 139–40, 321–2
onus of proof ... 139, 320
replacing official arbitrators ... 226
Rules 1956 and 1958 ... 201

LATE CLAIM
long-standing notice to treat, owner's election ... 78, 228
under Part III of 1954 Act ... 11, 185

LAW OF PROPERTY ACT 1925
trust for sale defined ... 387, 390

LEASE, see also *Planning Permission, Purchase Notice*
acquiring authority no longer freeholder or tenant
additional compensation ... 36, 39, 241, 244
notice of additional development ... 39, 241, 246
disposal includes grant of ... 93, 267, 352
division of unexpended balance between tenants, etc. ... 158–9, 407–9
excepted interests
compensation for owners of ... 75, 223
defined ... 406, 412–3
local authority's power to ... 93
owner of term of 3 years or more, purchase notice under Part IV ... 132, 134, 326
owner of term of 10 years or more, notice of planning application to ... 107, 307
protection of persons taking leases, when consent not obtained ... 99–100. 276–7
tenancy, defined ... 357

LEGAL PROCEEDINGS
ouster of, where section 31 applies ... 119, 283, 290

LIMITATIONS, see also *Enforcement Notice*
imposed on permission, see *Enforcement Notice*
resumption of normal use ... 163, 415

LOAN CHARGES
maintaining land for highway purposes, advances towards ... 153, 337

LOCAL AUTHORITIES, see also *Acquisition, Appropriation, Consent, Disposal* PAGE
disposing of surplus land 267
land held for general statutory purposes
prevailing use compensation abolished 73–4, 220–2
parish councils, inquiries
counsel and experts 113, 296
Part II applies to some
enactments imposing consents on, generally 84–5, 278, 291
parish councils, appropriation by 100–2, 274–6
removal of consents
acquisition by agreement 85–7, 250–1
application of capital money 97–8, 269–72
appropriation 87–91, 253–5
disposal 92–7, 261–5
unfit houses, see *Unfit houses*
where two or more, appropriate authority under Part IV 137, 395–6

LOCAL ENACTMENT
defined 353

LOCAL INQUIRIES, see *Inquiries*

LOCAL PLANNING AUTHORITY
additional development, notice to acquiring authority 39, 241
certificates of alternative development, see *Certificates*
compensation under Part IV of 1954 Act
recovery from acquiring authority 154–6
repayment to local planning authority 156, 341, 346
planning applications to
advertisements, application for consent 308
appeals from decisions 109–10, 306
certificates accompanying 107–9
enforcement notices, limitations imposed on permission 127–8, 309–11, 416
Minister calling-in 110, 306
development by local planning authority 110, 304, 306
special cases of development 105–7, 301–2
taking representations into account 109, 306
time for giving decisions... ... ... 109, 306

LONDON
delegation 302, 304
references to Highway Act 1959, etc. 355

LONG-STANDING NOTICE TO TREAT, see *Notice to treat*

MARKET, see also *Rules*
assumptions as to permissions, made by
contrary view in certificate of alternative development 17, 187
not excluded by Act 17, 187
value, basis of compensation
"full" 1, 5–6, 46–7
hope value 25–6, 33, 187–8
prevailing use basis abolished 73–4, 220–2
refund of compensation under 1954 Act 82
right to compensation under Part II of 1954 Act
outstanding 81–2, 230–3
prospective 47, 169–70
under 1919 Act
rule 2 46–7
war-damaged land 70–3, 218–9

MANDAMUS, see also *High Court*
former remedy 114, 290
not ousted by section 31 of Act 119, 283, 290

MEASURE OF COMPENSATION, see *Market, Rules*

MINERALS
acquisition of ironstone land, consent of Minister... ... ... 87, 250, 253
special provisions under 1954 Act 11

MINISTER OF AGRICULTURE, FISHERIES AND FOOD, see also *Appropriation, Consent, Disposal*
consents retained
appropriation of
allotments 90, 254, 258–9
common for allotments 89, 258
common held under local Act 89, 254
cottage holdings 90, 258
disposal of allotments 96, 263
common held under local Act 96, 263
cottage holdings 96, 263
smallholdings 96, 263, 269

M.H.L.G. CIRCULARS
60/51 Tree Preservation Orders 288
27/53 Tree Preservation Orders 288
45/54 Development Plans Direction 196, 202

M.H.L.G. CIRCULARS—*continued.* PAGE

9/58 Procedure before, during and after inquiries 105, 125, 300
18/59 Requisitioned Houses and Housing (Amendment) Act, 1955 333
48/59 The 1959 Act, with Memorandum 191, 201, 246, 267, 304, 404
49/59 Purchase Notices 299, 300

MINISTER OF HOUSING AND LOCAL GOVERNMENT, see also *Acquisition, Appropriation, Consent, Disposal, Inquiries, Purchase Notices*
acquisition of
ironstone land without consent, no grant 87, 250, 253
land for town development 148–50, 334–5
administrative expenses of 162–3, 351
appeal from decisions as to " development " 119–21, 292–3
declarations possible 120, 294
appeal to,
against certificate of alternative development 32, 202–3
against planning decision, quashing of order 116, 282
Central Land Board, replacing 155, 343, 347
consents of, preserved
appropriation 89–90, 254–5
disposal of
houses provided under Part V, Housing Act 1957 ... ... 95, 262
land in area of comprehensive development 95–6, 262–3
land in clearance area 95, 262
replacing former consents
appropriation of
compulsorily acquired land 88, 254
open space 89, 254
disposal
at less than best price, etc. 94, 262
of compulsorily acquired land 93–4, 261–2
of open space 94, 261–2
works on lands appropriated by local authority 91, 255, 259
consultation with, by Minister of Agriculture
after appropriation of or for allotments 90, 254–5
disposal 96–7, 263
decision as to
" appropriate authority " under Part IV 137, 395–6
" appropriate enactment " under Part IV 140–1, 396–7
challenge of, see (below) " orders . . . "
directing adjustment of accounts, power of
dispensed with generally 83–4
after appropriations 91–2, 102, 259–61
capital money applied 98–9, 271, 272
retained, grant-aided functions 92, 98–9, 353
local inquiries by 159–60, 350, 351
making of unfitness order
confirmation, with compulsory purchase order 68–9, 369–70
submitted before Act, but confirmed after 68, 373
orders confirmed by, or actions taken
challenge in High Court 115–9, 281–5
ouster of jurisdiction of courts 119, 283, 290
refusal or failure to take action 119, 283, 290
where " appropriate Minister " as well 283, 290
where special parliamentary procedure 284, 290
parish council, appropriation by, with consent of 100–2, 274–5
power of review of planning decisions 116–7, 289
purchase notices
amended form of section 19 of 1947 Act 425–8
decision not to confirm 124, 297
power to
permit development outside Third Schedule 123, 124
substitute statutory undertakers 123, 415, 427
take other action without rehearings 124, 297–8
quashing of decision 118, 282
recovery from acquiring authority
replacing Central Land Board 155, 343, 347
refusal or failure to take action 114, 119, 283, 290
regulations, power of making 161, 350–1

MINISTER OF TRANSPORT AND CIVIL AVIATION, see also *Highway*
acquisition of land by agreement for highway purposes 150–1, 336–7
advances to highway authorities 151–3, 337–9
determination of
" appropriate authority " under Part IV 141, 395
" appropriate enactment " under Part IV 397
highway authority for trunk roads and special roads 315

MODIFICATION, see also *Order, Rules*
of planning permission
by section 21 order
outstanding right to compensation under Part IV of 1954 Act ... 81–2, 230–3
quashing of order 115, 281
recovery of compensation 154–7, 339–43
of rules in 1919 Act, see *Compensation, Rules*

MORTGAGE PAGE
disposal does not include 93, 267, 352
land subject to,
additional compensation
amount of 386
to mortgagor 37, 386
NATIONAL COAL BOARD
specified land, prevailing use compensation abolished 73–4, 220–2
NEW DEVELOPMENT
defined 409
recovery of compensation 10
reduction of unexpended balance 157
NEW TOWNS, see also *Development Corporations*
area designated as site of 54, 216, 364
dissolution of development corporations 55, 368
New Town Act 1959 ... ... 55, 368
new town development, effect on compensation
after " transfer date " 55, 364
enhancement of adjacent land 55–7, 212
on subsequent acquisition 58–60, 362–4
scheme disregarded 54–5, 211
example 54
no additional compensation for new planning permission 36, 234–5
purchase notice 234–5, 369, 381
unfitness order, on acquisition under New Towns Act 1946 ... ... 68, 369
NORTHERN IRELAND
Act does not apply to 166, 361
NOTICES, see also *Additional Development*, *Compensation*, *Enforcement Notice*
Enforcement, see *Enforcement Notice*
notice to treat
abandonment of 226
deemed
no withdrawal of, under Part IV 140, 399, 401
long standing,
compensation on withdrawal 80, 227–8
effect of election on compensation 78–9, 227
example 176
intention to proceed 77, 223–5
recent entry 80–1, 228–9
rights of owner 78–9, 226–7
persons not entitled to 75, 223
served after 29th October, 1958
compensation, see *Compensation*
source of 3
withdrawal of, compensation
generally 228
long-standing notice 80, 228
under Part IV 140, 399, 401
of additional development
by development order, ... 35, 244–5
form of 446–7
given by developer to acquiring authority 246
by deemed permission 35, 244–5
form of 446–7
by planning decision 34–5, 234
address for service 38, 240
disposal of land 39, 241
form of 445–6
where Crown development 38, 247–8
certificate of particulars 39, 248
form of 447
of intention to proceed with long-standing notice to treat
conditions for 77, 223–4
no action within one year 80, 224–5
rights of owner after 78–9, 226–7
time for serving 77, 224
where recent entry on land 80–1, 228–9
of planning applications
all cases 107–9, 304–7
forms of notices 440–1
appeals 109–10, 306
applications referred to Minister 110, 306
special cases 106–7, 301–2
form of notice 437
purchase, see *Purchase Notice*
requiring purchase under Part IV, see *Purchase Notice*
service of 160–1, 350–1
OBJECTION, see also *Purchase Notice*
grounds of, to purchase notice under Part IV 137–9, 317–9
disclaimer of intention to acquire 137–8, 318, 399
onus 139, 320
referred to Lands Tribunal 139, 320

PAGE

OCCUPATION
requirements as to, under Part IV
owner-occupier of
agricultural land ... 134, 324
hereditament ... 132, 323–4
partnership firm ... 133, 398
resident owner-occupier ... 132, 324

OPEN SPACE, see also *Consent*
certificate of alternative development ... 201
consent of Minister,
appropriation of ... 89, 254
disposal of ... 94, 261–2
meaning of ... 257
recovery by Minister from acquiring authority ... 155–6, 341
site defined in development plan ... 196

OPERATIONAL LAND, see *Statutory Undertakers*

OPERATIONS
initiation of development ... 248, 355

OPTION
long-standing notice to treat,
claimant's option as to compensation ... 78, 226–7

ORDER, see also *Development Order, High Court*
compulsory purchase order
notices in connection with ... 29, 207, 209
unfitness orders before ... 68, 369–70
development, see *Development Order*
under 1947 Act, quashing of by High Court
powers of High Court ... 118, 283
subject to special parliamentary procedure ... 284, 290
under section 21 of 1947 Act revoking or modifying permissions
as applied by other provisions ... 115, 281
compensation under 1954 Act ... 11
outstanding right to compensation ... 81–2, 230–3
recovery from acquiring authority ... 154–7, 339–43
repayment to local planning authority ... 156, 341, 346

ORIGINAL UNEXPENDED BALANCE, see *Unexpended balance*

OUSTER, see also *High Court*
of Court's jurisdiction, by section 31 ... 119, 283, 290

OUTSTANDING RIGHT
to compensation, see *Compensation*

OWNER, see also *Purchase Notice*
defined, in relation to notices of planning applications ... 107, 307
—occupier, under Part IV
defined ... 132–4, 324
right to serve purchase notice ... 129, 313

PARISH
council and meeting
adjustment of accounts ... 101–2, 275, 276
compulsory purchase, inquiries ... 113–4, 296
existing powers to appropriate ... 100, 275
meeting empowered by county council ... 276
power to appropriate ... 100–2, 274–5
pure injurious affection ... 101, 274, 276

PLANNING BOARD
joint, freed from Ministers' consent ... 84, 252, 391, 393

PLANNING DECISION, see also *Additional Development, Appeal, Order, Purchase Notice*
additional development permitted by
right to additional compensation ... 34, 234
notice of ... 38–9, 240–1
notice to acquiring authority from purchaser ... 246
additional development where no,
deemed decision ... 35, 244
development order ... 35, 244–5
appeal to Minister against,
notice to owner, see *Appeal*
defined ... 353, 357–8
Minister's decisions, quashing by High Court ... 115–9, 281–5
Minister's power of review, on claim for compensation ... 116–7, 289
modification of, see *Order*
notice of, to persons making representations ... 109, 306
purchase notice served as a result of
Minister's
former powers ... 122–3
present powers ... 125–7

PLANNING INQUIRIES
compulsory purchase for parish council ... 113–4, 296
procedure for ... 113, 294

PLANNING PERMISSION, see also *Additional Compensation, Additional Development, Assumptions, Order, Planning Decision* PAGE
application for
all cases
advertisement, display of 308
appeals from... ... ... 109–10, 441, 442
false certificate 110–1, 306
form of certificate 438–40
form of notices 440–1, 442
importance of form of 111
local authority 306, 309
notice to owners and tenants 107–9, 304–7
owners defined 107, 307
quashing of Minister's decision 116, 282
special cases,
by local authority 302, 304
form of notice 437–8
nature of cases 106, 303, 437
publication of notice 106, 301–2
assumptions as to, see *Assumptions*
could reasonably have been expected to be granted
contrary opinion in certificate of alternative development 17, 187
deemed to be granted 187, 246
deferred 23, 26, 190, 192, 198–9
defined 353
existing 15, 16, 19, 185
for additional development, see *Planning decision* and *Additional Compensation*
for alternative development,
granted by Minister
in relation to purchase notice 123, 300
on review of planning decision 116–7, 289
outline 187, 189
personal... ... ... 19, 191
refusal or revocation, right to compensation
taken into account on compulsory acquisition 47, 169
revocation or modification of, see *Order*

PLANNING PROPOSALS, see also *Assumptions, Purchase Notice*
giving rise to purchase notice under Part IV, see *Purchase Notice*
ascertainment of 19–20, 191
assumption for permission based on 19–20, 189
example 170–1

PLEDGE
of claim against development charge
recovery from acquiring authority 155, 344, 345

POLICE AUTHORITY, see also *Acquisition, Appropriation, Consent, Disposal*
combined, freed from Ministerial consents 84, 252, 392

POWER OF ENTRY
for purpose of making unfitness order 370, 382

PREVAILING USE, see also *Charity, Local Authority, National Coal Board, Statutory Undertakers*
basis of compensation abolished 73–4, 220–2

PRIMARILY
meaning of 24–6, 196–7

PROFESSIONAL FEES
compensation for disturbance
for withdrawal of notice to treat 228

PROPOSALS OF ACQUIRING AUTHORITY, see *Planning proposals, Assumptions*

PROVISION OF INFORMATION
as to unexpended balance 412

PUBLICATION
of notices of planning applications
all cases 108, 305, 440–1
special cases 106, 301, 437–8

PUBLIC AUTHORITIES, see also *Acquisition of Land (etc.) Act* 1919
acquisition by
application of
1919 Act 5, 186, 356
1959 Act 184, 186, 356
defined for purposes of 1919 Act 356
possessing compulsory purchase powers 356

PUBLIC HEALTH, see also *Acquisition, Appropriation, Consent, Disposal*
joint boards, freed from Ministerial consents 84, 252, 392

PUBLIC OPEN SPACE, see *Open Space*

PURCHASE, see *Acquisition*

PURCHASE NOTICE — PAGE

amendment of section 19 of 1947 Act
form of section 19 as amended ... 425–8
Minister's powers,
decision not to confirm ... 124, 297
grant of alternative development ... 124, 297
substitution of statutory undertakers ... 123, 415
taking of other action ... 124, 298
other provisions applying section 19 ... 122, 289, 360
Minister's decision on
quashing of, by High Court ... 116, 282
service of new purchase notice ... 126–7
time for service of ... 126, 301
under New Towns Act 1946 ... 369, 381
under Part IV of 1959 Act
attempts to sell ... 134–5, 136
blighting proposals defined ... 131, 312
compensation ... 141–2, 398–9
conditions for ... 129–30, 312–3
counter-notice
form of ... 449–50
grounds of objection ... 137–9, 318
no counter-notice ... 140, 321
disclaimer of intention to acquire ... 137–8, 139–40
effect on compulsory powers ... 138, 399–400
effect of valid notice ... 139–41, 321–2
where partial disclaimer ... 139–40, 322
form of ... 313, 448–9
notice to treat ... 139–40, 321–2
not where injurious affection ... 129
personal representatives' rights ... 401
qualifications of owner-occupiers ... 132–4, 323–4
reference of objections to Lands Tribunal ... 139, 320
substantial depreciation ... 135–6 313
withdrawal of ... 131, 140, 399, 401

PURCHASERS, see also *Consent*
protection for prospective, abolished ... 185
protection, where transactions carried out without consent ... 99–100, 276–7

RECEIVING DISTRICT, see also TOWN DEVELOPMENT
for town development, defined ... 335

RECOVERY
from acquiring authorities, see *Acquiring Authorities*
from subsequent developers ... 82, 155

REDUCTION, see also *Unexpended Balance*
of unexpended balance
after compulsory acquisition ... 10
after new development ... 10
after Part II or V compensation ... 10, 167

REFUSAL
of planning permission
for Third Schedule development, compensation ... 20, 190
effect on assumption under Act ... 20–1
Minister's powers of review under 1954 Act ... 116–7, 289
outstanding right to compensation taken into account ... 81–2, 230–3
purchase notice ... 121, 425
instead of compensation under 1954 Act ... 167–9

REGISTRATION
of compensation under 1954 Act ... 82, 233
where no, outstanding right to compensation ... 81–2, 230–3

REGULATIONS AND ORDERS
Authorisation of Delegation Regulations 1947 ... 304
Building Preservation Order Regulations 1948 ... 288, 289, 291, 360
Central Land Board (Dissolution and Transfer of Functions) Order 1959 ... 347
Compensation Regulations 1954 ... 233, 291
Control of Advertisement Regulations 1948, 1948 and 1951 ... 288, 289, 308
Delegation (London) Regulations 1948 ... 304
Development by Local Planning Authorities Regulations 1948 ... 303, 304
Development Plans Regulations 1948 ... 22, 196, 216
Development Plans (Amendment) Regulations 1948 ... 196
Development Plans (Amendment) Regulations 1959 ... 161, 196, 216
General Regulations 1948 ... 126, 233, 301, 331
General Development Order 1950
72, 112, 113, 127–8, 189, 202, 244, 246, 291, 294, 310, 311, 435–442
General Development (Amendment) Order 1958 ... 246
General Development Order 1959
29, 106–7, 161, 200, 202, 203, 205, 209, 292, 302, 303, 308, 309
Housing (Prescribed Forms) Regulations 1957 ... 161, 381
Housing (Prescribed Forms) (Amendment) Regulations 1959 ... 161, 380, 451–4
Lands Tribunal Rules 1956 ... 201

REGULATIONS AND ORDERS—*continued.* PAGE
Limit of Annual Value Order 1959 ... ... 133, 161, 314, 317, 328, **450**
Local Land Charges (Amendment) Rules 1954 233
National Coal Board Regulations 1951 221
Prescribed Forms of Notices Regulations 1959 38, 77, 136–7, 161, 226, 230, 243, 247, 249, 317, 319, **442–50**
Tree Preservation Order Regulations 1950 ... ... 288, 291
Use Classes Order 1950 ... ... 104, 121

RELEVANT INTEREST
defined 354

RELEVANT LAND
defined 354

RELEVANT REQUIREMENTS
non-compliance with,
defined 117, 291
quashing of orders and actions 117–9, 281–4

RENTAL INCREMENT
defined 408

RENTAL LIABILITY
defined 407–8

RENTCHARGE
reduction of unexpended balance 407

REPEALS 165, 422–4

REPRESENTATIONS, see also *Local Planning Authority*
on planning applications,
all cases 109, 306
special cases 106–7, 302

REQUISITIONED LAND
compulsory acquisition of 164, 416, 421
damage to, compensation for, new ceiling 145–8, 332
termination of requisitioning 145–6, 333
Third Schedule rights 164, 416, 421

RESIDENTIAL USE
land allocated primarily for
ancillary development 24–6, 196
nature of assumption 196–7

RESIDENT OWNER-OCCUPIER, see also *Purchase Notice*
defined 132, 324
right to serve purchase notice under Part IV 129, 312–4

RESTRICTIVE COVENANT, see *Covenant*

REVERSIONARY DEVELOPMENT VALUE
defined 408

REVERSIONARY INTEREST
reduction of unexpended balance 408

REVIEW
Minister's powers of, under 1954 Act 116–7, 289
quashing of directions 116–7, 282

REVOCATION
of planning permission, see *Order*

RIVER BOARD, see also *Acquisition, Appropriation, Consent, Disposal*
freed from Ministerial consents 84, 392

ROADS, see *Highway*

RULES, see also *Market, Scheme, Set-off*
assessment of compensation
under 1919 Act
application of 184, 186, 356
cases on 186
working of 46–9
under 1946 Act
buildings erected 7–8, 51
under 1947 Act
effect of designation... ... ... 9, 217
under Housing Act 1957
other houses 51, 66, 372
unfit houses 51, 63, 373–4
under 1959 Act
prospect of compulsory acquisition 9, 60, 141
scheme of development disregarded 52–5, 210–2
where acquisition under Part IV 141–2
set-off of enhancement 55–8, 212, 362
subsequent acquisition 58–60, 362–4

SALE, see also *Compulsory Acquisition*
of land,
in shadow of compulsory powers
additional compensation 34, 234

SALE—*continued.* PAGE
allowances for disturbance 76, 222
in circumstances corresponding to compulsory acquisition defined 355
price to follow, new basis of compensation 14
reduction of unexpended balance 159, 404
set-off on subsequent acquisition 60, 363–4
war-damaged land 71
private
practice as to permissions 11, 15

SCHEME, see also *Rules*
of development, enhancement or depreciation due to disregarded
all cases 52, 211
area of comprehensive development 53–4, 211
new town area 54–5, 211
town development area 55, 211
former rule 6, 215
on subsequent acquisition 58–60, 362–4
examples 58, 59, 177–9
under 1932 Act 7

SCILLY ISLES, see also *Appropriation, Acquisition, Consent, Disposal*
Council of
application of capital money 97, 270
freed from Ministerial consent 84, 252, 391

SCOTLAND
application of Act to 166

SCOTT COMMITTEE
report of 5

SERVICE
of notices 160–1, 350–1

SET-OFF, see also *Rules*
of enhancement
due to scheme under 1932 Act 7
meaning 6
none under 1919 Act 7
under Special Acts 7, 56, 362
under 1959 Act
area of comprehensive development 56, 212
authority's immediate scheme 56, 212
contiguous and adjacent defined 57, 216
double set-off avoided 60, 363
excluded where special Acts apply 56, 362
new town area 56, 212
after "transfer date" 54–5
on subsequent acquisition
of other land 60, 363, 178–9
of set-off land 58, 59, 363, 177–8
town development area 56, 212
where acquisition under Part IV 141

SETTLEMENT
additional compensation to trustees of 37–8, 386–7
defined 387, 390
proceeds of sale 390–1

SEVERANCE AND INJURIOUS AFFECTION, see also *Assumptions, Injurious Affection*
land held with acquired land
assumptions do not apply to 17, 33, 171
compensation for,
additional compensation 39–42, 382–6
example 42–4
principles of 50
1919 Act does not apply 45
reduction of unexpended balance 159, 405
example 171–2
source of 4, 45
subsequent acquisition (injurious affection) 58–9, 363
under 1954 Act 11, 185
where acquisition under Part IV 141–2
land not held with acquired land
pure injurious affection 50
source of compensation 4, 50
works on land appropriated by parish council 101, 274

SEWAGE, see also *Acquisition, Appropriation, Consent, Disposal*
farm 135
joint boards for disposal of, freed from Ministerial consent 84, 252, 391

SEWERAGE BOARD, see also *Acquisition, Appropriation, Consent, Disposal*
joint, freed from Ministerial consent 84, 252, 391, 393

SITE VALUE, see *Unfit houses*

SMALL HOLDINGS PAGE
Ministerial consent retained
alteration of Ministerial contributions 163, 414–5
disposal of 96, 263, 269
provision of information about disposal of... ... ... 163, 414–5
SPECIAL ENACTMENT
blight caused by, purchase notice 131, 312
defined 353–4
" authorised to be acquired " 52, 211, 213
SPECIAL PARLIAMENTARY PROCEDURE
no quashing of order confirmed by 284
provisions for 290
SPECIAL ROADS, see *Highway, Minister of Transport*
Minister of Transport, highway authority... 315
order or scheme for, ... 315
purchase notice under Part IV 131, 312
SPECIAL SUITABILITY, see also *Rules*
of land
under Lands Clauses Acts 4
under 1919 Act 6, 47–8, 186
SPECIFIED LAND, see *National Coal Board*
STATUTORY INQUIRIES, see *Inquiries*
STATUTORY UNDERTAKERS
compensation for compulsory acquisition
prevailing use basis abolished 73–4, 220–2
section 45 of 1947 Act retained 74, 221
1919 Act applied to, by 1947 Act 356
purchase notice,
Minister's power to substitute 123, 125, 415, 427
willing to comply with 125, 296, 425
water, freed from Ministerial consents 84, 252, 392
" SUBSTANTIALLY LOWER "
price affected by blight 134–6, 172–3, 313, 317
SUPPLEMENT
on compulsory acquisition,
of unfit house, see *Unfit Houses*
under 1954 Act
buildings and works 185
unexpended balance 10–11, 185
SURVEYOR
appointed under section 58 of 1845 Act
application for certificate of alternative development 32–3, 204–5
TENANCY, see *Lease*
THIRD SCHEDULE DEVELOPMENT
amendment of Third Schedule by 1954 Act 192, 412
compensation
assumed permission for 20–1, 189–91
exceptions 20–1, 189–90
requisitioned land 164, 418
duration of rights 192, 412
new development,
defined by reference to 409
purchase notice
Minister's powers 123, 124, 297
section 112 of 1947 Act applied 354
Third Schedule reproduced 433–5
TITLE
deriving of, defined 358
person claiming under authority
protection where no consent obtained 99–100, 276–7
deriving title from previous owner
set-off provisions, on subsequent acquisition 60, 363
entitled to adjacent land, additional compensation 41, 384
entitled to two interests, in same capacity 354
TOWN AND COUNTRY PLANNING ACT 1932
schemes under 7
TOWN AND COUNTRY PLANNING (INTERIM DEVELOPMENT) ACT 1943
interim planning control by 8
TOWN AND COUNTRY PLANNING ACT 1944
land declared subject to compulsory acquisition
removal of blight 145, 329
right to serve notice under Part IV 131–2, 144, 329
values by pre-war prices 7

TOWN AND COUNTRY PLANNING ACT 1947, see *Compensation, Development, Enforcement Notice, Planning Permission*, etc. PAGE
advertisements, orders under section 31 (4), quashing of 116, 282
quashing of decisions granting consent for 116, 282, 289
allocation in development plan
assumption based on 22–7, 193–4
blight caused by 131, 329
amendments of, by 1959 Act 163–4, 415–6
appeals, planning, quashing of decisions 116, 282
applications for permission
decision, quashing of Minister's 116, 282
notices to owners and agricultural tenants 107–9, 304–5
published notice in special cases 105–7, 301–2
area of extensive war damage 196
building preservation order, quashing of
decisions as to consent 116, 282
citation of 166, 361
compensation
existing use basis abolished 12, 183–4
prevailing use basis abolished 73–4, 220–2
under section 20, no assumption as to Third Schedule rights ... 20–1, 189–91
under section 22, amended by 1954 Act 81–2, 231, 346
depreciation by designation in development plan 9, 217
development, Minister's decision under section 17
appeal to High Court 119–21, 292–3
development charge
abolished 10
development values acquired by State 8–9
discontinuance order under section 26
compensation for, no assumption as to Third Schedule rights 20, 190
quashing of 115, 281–2, 287
enforcement notices under section 23
extended to limitations 127–8, 309–11, 416
established claim under Part VI 10, 411
general scheme of 8–10
grants to local authorities
on recovery of Part IV compensation 346
land used for charitable purposes 73–4, 220–2
local authority's land 73–4, 220–2
meanings of words incorporated 162, 354
National Coal Board, specified land of 73–, 220–2
purchase notices
amendment of provisions 123–7, 296–8
Minister's decision, quashing of 116, 282
section 19 set out 425–8
refusal of Third Schedule development compensation for 20–1, 189–91
relevant requirements, quashing of orders and actions for non-compliance with 117, 281, 291
requisitioned land, acquisition of 164, 416, 421
section 21 order, quashing of 115, 281
as applied by other provisions 115
service of notices 160–1, 350–1
statutory undertakers, operational land of 73–4, 220–2
Third Schedule
amendment by 1954 Act... ... ... 192, 412
assumption of permission for Third Schedule development 20–1, 189–91
reproduced 433–5
Treasury scheme 8–9
tree preservation orders
quashing of decision as to consent 116, 282
quashing of order 115–6, 282

TOWN AND COUNTRY PLANNING (AMENDMENT) ACT 1951
amendment of Third Schedule of 1947 Act... 433
enforcement notices as to conditions 128, 311

TOWN AND COUNTRY PLANNING ACT 1953
abolition of development charge 10
cancellation of Part VI Treasury Scheme 10
citation of 166, 361

TOWN AND COUNTRY PLANNING ACT 1954, see *Compensation, Compulsory Acquisition, Established Claim*, etc.
amendments of... ... ... 164, 418
amendments of Third Schedule of 1947 Act 192, 412
claim holdings from established claim 10, 411
compensation under Parts II or V
effect on market value
outstanding right to 81–2, 230–3
prospective right to 47, 169–70
registration of 82, 233
review powers of Minister 116–7, 289
compulsory acquisition
discretionary supplement 11, 185, 228
injurious affection 11, 185

Part III repealed 14, 185
supplements 11, 185
two price system 11, 167
recovery from acquiring authorities, amendments 154–7, 339–43
refusal of permission for industrial development
purchase notice 300
requisitioned land, damage to, compensation ceiling 145–8, 332–4

TOWN DEVELOPMENT
acquisition of land for unfitness order 68, 369
in advance of immediate requirements 148–50, 334–5
Crown land 154, 347
area of, redefined 216
defined 335
enhancement or depreciation due to
disregarded 55, 211
on subsequent acquisition 58–60, 362–4
no additional compensation in respect of land in area of... ... ... 36, 235
set-off in respect of 56, 212

TOWN PLANNING ACT 1925 7

TREE PRESERVATION ORDERS
application for consent, quashing of decision 116, 282
provisional confirmation 284, 288
quashing of 115–6, 282
regulations, see *Regulations*

TRUSTEES
additional compensation,
land subject to settlement or trust for sale 37–8, 386–7
entitlement in same capacity 354
trust for sale, defined 390

TWO-PRICE SYSTEM
new 167
old 11, 167

UNDERTAKING
compensation under Parts II or V of 1954 Act,
by Minister to permit alternative development 116, 282, 289

UNEXPENDED BALANCE, see also *Claim holding*, *Established Claim*
calculation of 10, 411
fund for compensation for planning restrictions 10, 47, 167
and formerly for compulsory acquisition 10
market value affected by 47, 167
provision of information as to 412
reduction of
after compensation under Parts II and V of 1954 Act
compulsory acquisition
by reference to current values 159, 412
Duchy interest 154, 347
generally 157–9, 404–11
new development 158, 409

UNFIT HOUSES
application of amendment 359, 373
clearance orders 63
compensation at site value
definition of site value 63, 373–4
if unfitness order confirmed not later than compulsory purchase order ... 68, 369
not to be less than gross value 64, 370–1
ascertainment of gross value 372
not to exceed full market value of house 64, 368–9
owner-occupier supplement 65, 371
war damaged land 66–7, 372–3
" well maintained " supplement, ceiling for 65, 419, 421
example 65–6
demolition orders 62
house acquired with, not in good repair 66, 372
defined 64, 373, 383
powers under Housing Act 1957 62–3
procedure for making unfitness orders, special cases 67–9, 369–70
compulsory purchase orders 68–9, 369
orders submitted before 16th August 1959 ... ... 68, 373
purchase orders 69, 369
unfitness defined 62, 370, 381, 382

USE, see also *Change of Use*
allocation for, assumption of permission 22–7, 193–4
change of use,
material 121
permission refused for, no compensation 168
illegal, disregarded for compensation purposes 48–9
residential, industrial or commercial, land zoned for
no certificate of alternative development 28, 197

UTHWATT COMMITTEE 8

PAGE

VALUATION, see *Rules*

VALUATION EXAMPLES, see *Examples*

VESTING
company's right to additional compensation
vesting in liquidator 37, 235, 239

WAR DAMAGE
abolition of special provisions 70–3, 218–9
compensation examples 173–6
sales of war-damaged land 71
commission 71
supplement to converted value payment 71
unfit houses, with damage not made good 66–7, 419, 421

WAR PERIOD
acquisitions during 7

WAR WORKS
damage to requisitioned land 147, 333

WATER UNDERTAKERS, STATUTORY
freed from Ministerial consents 84, 252, 392

WILLING SELLER 46–7

WORDS AND PHRASES
definitions
additional development 34, 235–6
aggrieved 287
agricultural holding 309
area of town development 216
authority to whom Part II applies 84, 250, 291–2
compulsory purchase at site value 63, 373–4
consent 86–7, 251, 277
contiguous or adjacent 216–7
Crown or Duchy interest 38, 248
Crown land 153, 347–8
current development plan 29, 194–5, 207–8
excepted interest 406, 412–3
existing use rent 407
for Part IV 323–6
generally 352–5
land authorised to be acquired 52, 213–4
land subject to comprehensive development 22, 194–5, 196
new development 409
owner 107, 307
parties directly concerned 31, 199
proposed to be acquired 29, 207
public authority possessing compulsory powers 352, 356
rental increment 408
rental liability 407–8
settlement 387, 390
town development 335
trust for sale 390
unexpended balance 10, 411, 412
definitions of 1947 Act imported 162, 354
interpretation section 352–5

WORKS
and buildings, erected with a view to compensation 7–8, 50–1
supplement under 1954 Act abolished 185

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