



Society of Chartered
Surveyors Ireland

**Submission to the
Law Reform Commission**

Issues Paper on Compulsory
Acquisition of Land

April 2018

The SCSI

The Society of Chartered Surveyors Ireland (SCSI) is the independent professional body for Chartered Surveyors working and practising in Ireland. Working in partnership with RICS, the global chartered professional body for the property, land and construction sectors, the Society and RICS act in the public interest, setting and maintaining the highest standards of competence and integrity for the profession and providing impartial, authoritative advice on key issues for business, society and governments.

Advancing standards in property, land and construction, the Chartered Surveyor professional designation is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor status is the recognized mark of property professionalism.

Members of the profession are typically employed in the property, land and construction markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

SCSI is also the Registration Body under the Building Control Act 2007 for Quantity Surveyors and Building Surveyors.

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Introduction

The Society of Chartered Surveyors Ireland would like to commend the Law Reform Commission on its work to date on the review of Compulsory Purchase legislation in Ireland, encapsulated in the Issues Paper published in December 2017.

The Issues Paper is very wide ranging and, inter alia, suggests a general overhaul of the Compulsory Acquisition process, together with consolidating legislation. There are acknowledged shortcomings with the process as it currently operates, but significant engagement of all stakeholders will be required to achieve a comprehensive updating of the Law and compensation provisions.

Improvements are undoubtedly needed and, with the SCSi President's role on the Reference Committee, the Society believes it is best placed to assist at this interim review stage by highlighting some of the operational difficulties currently being encountered, proposing practical solutions and drawing on lessons from experience in both neighbouring and comparable jurisdictions.

Compulsory purchase has long been recognised as an essential tool in a modern, democratic society where change, regeneration and development are important factors in our economic planning and wellbeing. Without this statutory provision, how would important infrastructural projects like roads and railways have been built? Used properly, compulsory purchase powers can contribute towards effective regeneration. However, because the process can interfere with the legal and human rights of those with an interest in the land affected, there must be adequate safeguards in place to protect those rights.

The Society's response is principally focussed on matters which Chartered Surveyors have long-standing experience, recognised expertise and professional involvement. Our members act as valuers, negotiators and expert witnesses for both acquiring authorities and claimants and therefore understand the process from both viewpoints. They have direct knowledge of the practical difficulties which can arise, cause lengthy delays and sometimes lead to disproportionate costs associated with land acquisition and the assessment of compensation by arbitration. Some local authorities and acquiring bodies employ chartered surveyors to assess and manage CPO schemes. The permanent statutory Property Arbitrator is a chartered surveyor, as are all the members of the Temporary Property Arbitrators panel. In England, Wales and Northern Ireland, chartered surveyors undertake similar functions.

The Issues Paper is lengthy, with early sections covering general legal principles and an extensive range of points on Constitutional rights, interference with property rights for the common good, notification, purpose of the CPO, objections and other pre-scheme issues. To engage with and prepare a meaningful commentary on the various points raised under

the Issues numbered 1 – 13 would involve a level of research, consultation with stakeholders and members beyond the capacity of SCSI in the time available to prepare this submission.

We have provided general commentary to most of the points raised and we have given detailed responses to the principal points which are most relevant to our members' professional expertise including:

Issue 14	Notice to Treat and the Valuation Date
Issue 16	Principles & Rules for Assessment of Compensation
Issue 18	Arbitration
Issue 21	Costs
Issue 23	Consolidation of CPO legislation

Compensation

The objectives of a system in place for determining the compensation for compulsory acquisition should be that it is swift, efficient, fair, transparent and not unduly cumbersome; Long delays can cause hardship for affected claimants, create local economic and development blight, lead to project delays and ultimately give rise to increased costs to the public purse. In the interest of equity and fairness, we believe that its important to have a system that supports affected parties just as much as the acquiring authority.

It is anachronistic that the underlying 1845 Statute on which compensation is based is over 170 years old and pre-dates the foundation of the Irish State. Neither this nor the 1919 Act has been updated, amended or altered in the intervening period. The considerable body of law which defines the principles of compensation is based on multiple decisions of primarily the English and Irish Courts, but also other jurisdictions like Trinidad (Point Gourde) and Australia (San Sebastian) which have been called upon on many occasions to interpret the scope of compensation provided for in these statutes. There is considerable merit in a codification of the compensation provisions to bring clarity to all stakeholders in the process and help to make the principles more readily understood and applied. Conducting negotiations or arbitrations by reference to a long list of local and international Court decisions is incongruous in the 21st century.

Disputes today can be more contentious and disaffected parties often more litigious. Court cases and legal challenges are expensive and can cause considerable delay. With more CPO disputes and increasingly complex issues facing the Arbitrator(s), change is needed. There have been reviews and advancements of the Compulsory Purchase in other jurisdictions. We can learn from Northern Ireland, England & Wales and other jurisdictions, such as Canada and Australia where the legal system and CPO process have developed in a similar way.

Confidence

Acquiring authorities and claimants should have confidence in the CPO process. It is vital that those affected by CPO and bodies charged with developing Ireland's infrastructure are properly served by:

- a) the compensation code and
- b) the process for resolving disputes

The CPO compensation assessment system is currently under significant pressure. With the rollout of the National Development Plan and Government committed to projects for economic growth, there is little doubt that the number of compulsory acquisitions will increase, leading to an increasing number of referrals to the Arbitration process. Some examples of schemes which will require Compulsory Acquisition include –

- Road Schemes – new and reactivated projects around the country
- Wayleaves schemes for utility providers including Irish Water
- Infrastructural projects with multiple landowners – e.g. Eirgrid North South Interconnector & M20 Cork to Limerick Motorway
- Shannon Pipeline for water supply to Dublin (multiple landowners along likely route)
- Various Flooding remediation schemes
- Greater Dublin Drainage Project

Information & Transparency

Despite the numerous CPO schemes undertaken over many years, there is no public source of information on individual scheme progress, compensation levels paid or the length of time taken for assessment, whether this is by way of agreement or arbitration.

Compensation levels paid are usually a matter for the parties concerned and are not a matter of public record, unless an Arbitration award is made. A small proportion of claims are dealt with by arbitration each year, but publication of reasoned awards could provide an informative guide for local authorities and claimants alike (albeit it will not necessarily cover all aspects of compensation paid for the compulsory purchase order, especially for large schemes).

In the UK, the National Planning Case Unit has been established to co-ordinate CPO schemes with all Local Authorities. This co-ordination model could prove a useful one for Ireland where several small local authorities with no in-house expertise can avail of a centralised support service to ensure a more efficient scheme process.

The UK has also recently enabled the joint promotion of a CPO scheme – e.g. when rail and rejuvenation projects can be jointly managed by two acquiring authorities and for compensation to be better managed in the public interest. A centralised management agency could use technology and mapping to illustrate the location and purpose of all current and intended CPO schemes around the country, providing information and

transparency for all stakeholders. We suggest that this would not require a legislative change, albeit that is a model which could be incorporated into any future re-drafted or consolidating legislation.

An acquiring authority progressing with any project will want to take all reasonable steps to manage all interests in their project and ensure that accurate information and guidance is provided on its intentions, how and why. This is especially the case for those parties who are directly affected.

Compulsory purchase proposals will inevitably lead to uncertainty and anxiety for owners and occupiers of property interests to be acquired for a scheme. Acquiring authorities should therefore consider:

- providing full information from the outset about what compulsory purchase processes involve, the rights and duties of those affected and an outline timetable of events; information should be in a format accessible to all affected and interested parties;
- although there is current practice of early engagement between affected landowner and acquiring authorities, we believe that the affected landowner should be furnished with a copy of a 'best practice' code for CPO's. We feel that this is important so that all parties are aware of the process involved in CPO. It is critically important that affect parties are aware that professional advice is available to represent their interests for a fair and equitable outcome.
- appointing a scheme information manager during the preparatory stage to whom queries about the proposed acquisition can be directed for clarification and early response
- minimising delays by completing the statutory process as quickly as possible, ensuring that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling statute or power
- alleviating concerns about future compensation entitlement by offering to enter into agreements about minimum compensation levels which would be payable if the acquisition goes ahead (without prejudice to the claimant's future right to refer the matter to Arbitration)
- providing a 'not before' date, confirming that acquisition will not take place before a certain time to give some certainty to claimants
- where appropriate, give consideration to funding landowners' reasonable costs and expenses likely to be incurred in advance of the process of acquisition

Public Register of Awards

Awards of the Property Arbitrator(s) should be publicly available on a dedicated website (i.e. - www.propertyarbitrator.ie) similar to the Judgements of the Valuation Tribunal. As

arbitration awards are now reasoned, this body of reference material could assist claimants to formulate and acquiring authorities and their representatives to respond to claims, leading to the early and effective evaluation of cases and supporting meaningful settlement discussions and informed decisions on all sides.

Issue 1:

Guiding principles: after a brief overview of the CPO process, this issue discusses the protection of property rights under the Constitution of Ireland and the Council of Europe's Convention on Human Rights and Fundamental Freedoms (ECHR). This includes an analysis of the proportionality test used to assess legislation, such as CPO legislation, that seeks to restrict or limit the property rights of the landowner. The Commission seeks views as to whether it may be beneficial to include a list of general principles in any future CPO legislation, which acquiring authorities or decision-makers would have to consider when making decisions relating to the compulsory acquisition of land.

Q. Do you consider that CPO legislation should incorporate a list of guiding principles in order to assist acquiring authorities and decision makers when making a CPO or determining levels of compensation? If so, do you consider that the guiding principles in paragraph 1.49 are suitable for this purpose?

We do not consider that CPO legislation should incorporate a list of guiding principles, as they could prove unnecessarily restrictive and open to challenge. We believe that the key principle should be that of "equivalence i.e. that the landowner shall be no better or no worse off following the acquisition"

In our view, the priority for the current process is for it to be streamlined, more efficient, cost effective and accessible.

We suggest that, in advance of consolidating legislation, which itself could take many years due to the number of authorities with acquisition powers and the scale and complexity of existing legislation, it behoves the Government to have a stated policy on the context and application of existing CPO legislation and process, a good example of which exists in the UK and set out in the link below;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684529/Compulsory_purchase_process_and_the_Crichel_Down_Rules_-_guidance_updated_180228.pdf

Issue 2:

What interests in land can be acquired: This issue raises the question as to whether there should be any restriction on the land that can be acquired once the system operates in a proportional manner. There is scope, however, to consider operating different CPO systems based on the type of land and landowner, as opposed to the functions of a certain acquiring authority. This suggested approach would include modifications of the procedure for homeowners and business owners in the event of certain hardship. This issue also explores the possibility of altering the

current systems in order to account for the compulsory acquisition of entire plots of land, as opposed, for example, to acquiring strips of land for a road.

(a) Do you consider that, provided the remainder of the compulsory acquisition process adequately protects the landowner's right to private property, there should be any interests in land that should not be compulsorily acquirable, either in general or in any specific instance?

It is our opinion that that there should be no exclusion of any interest in land and the CPO process. We content that CPO powers should extend to include landowners currently excluded from the process, including the State and to those interests, such as lands owned by religious institutions, where the interpretation of constitutional protection remains somewhat undefined.

(b) Do you consider that the compulsory acquisition system should take into consideration the varying types of properties and landowners involved in the acquisition in the manner discussed above?

In general, it is our view that claimants' interests are fairly considered and compensated under currently compensation rules. However, there may be a case to give particular consideration to the family home (in certain circumstances where it does not form part of a larger holding). In the same way, there may be a case for special recognition under the disturbance where the total extinguishment of an owner's small business is the basis of compensation, where the calculation of business goodwill rests primarily with the owner. In this scenario, the owner, who is self-employed, can be left with no income for a period of time and is faced with the often onerous task of establishing a new business.

These proposals would require definition to ensure that they apply to the intended scenarios and are not used to the detriment of the public purse.

Issue 3:

Agreement between the landowner and the acquiring authority: This issue asks whether there should be a legislative provision requiring the acquiring authority to attempt negotiations before serving notice of the CPO.

Q. Do you consider that a statutory obligation should be enacted requiring the acquiring authority to enter into negotiations with a landowner before making a CPO?

We do not believe that this proposal is capable of implementation, for a number of reasons including –

- The CPO may not subsequently be confirmed in whole or in part
- Depending on when the land is required, it may often be necessary given the amount of time required to complete the compulsory purchase process, for the acquiring authority to plan a compulsory purchase timetable and initiate formal procedures
- Acquiring authority may not have access to funds prior to confirmation of a CPO
- Under current legislation, referral to Arbitration is only available once the CPO is confirmed

- Right of entry to all affected lands is a legal imperative to provide access for the appointed contractor; accordingly, the ability to serve Notices to Treat/Entry are essential to enable works to proceed on all parts of the scheme.

In our experience, local authorities will often attempt to negotiate with landowners in advance of a CPO, when it is financially possible for them to do so and assuming a high degree of certainty that the CPO will be confirmed.

However, we believe that a landowner should have the option to issue a Purchase Notice (or Blight Notice) to the Acquiring Authority where the proposed scheme renders the property incapable of reasonably beneficial use in the short term. By way of example, under Section 29 of the Local Government (Planning & Development) Act 1963, a landowner may serve a "Purchase Notice" requiring the authority to purchase his property where a decision to refuse planning permission or grant a conditional permission renders his land "incapable of reasonably beneficial use in its existing state, etc." It would seem equitable that a landowner should also be able to serve a Purchase Notice at any time between the publication of the scheme and the service of Notice to Treat. The claimant should have the option to have compensation determined in accordance with the rules of compensation or have the property purchased in its entirety.

In the UK, for example, when a landowner is unable to sell his property due to the existence of proposals for an infrastructure project, they may serve a Blight Notice after publication of the scheme requiring the authority to purchase the affected property/land.

Issue 4:

A power to request information: This issue explores the provisions in the Housing Act 1966 and the Planning and Development Act 2000 (the 2 most commonly used Acts for CPO) that require an occupier to give information about the landowner to the acquiring authority. It is an offence not to do so, or to do so in a knowingly misleading manner. An alternative approach may be to place the onus on the acquiring authority to carry out its own investigation of title.

Q. Do you consider that an occupier should have a statutory duty to provide information to an acquiring authority regarding the ownership of the land, or should there be a statutory duty on the acquiring authority to carry out an examination of title instead of, or in addition to, the obligation on the occupier to provide information?

It is already common that the Acquiring Authority will undertake their own title research, albeit this cannot always be established if title has never been registered, if leasehold interests have not been entered on the Commercial Lease Register or the property is held under Registry of Deeds title.

The owner and occupier should be required to provide evidence of their interest in the property/land being acquired, which we believe could save considerable time and delay. It is our view that this is a reasonable proposition to assert a compensable interest to be funded by public money. As compensation is assessed on the legal interest, the confirmation of title in early course

assists the parties to better assess the claim and negotiate a settlement with the relevant facts available.

The current situation, where parties are not obliged to evidence their legal interest in advance, creates a highly unsatisfactory process, where Arbitrations proceed based on the title claimed by the landowner even though there may be no proof of title capable of being adduced. The Arbitrator makes the award but compensation can only be paid when title is confirmed. This scenario occurs in a minority of cases, but leads to great waste of time and public money.

Issue 5:

Power to enter land to assess its suitability: this issue covers the instances in which a representative of the acquiring authority enters on the landowner's land in order to perform surveys, make plans, take levels, excavate and examine the subsoil. It is arguable that this should remain in place in order to offset the potential disproportionate interference that could arise if an acquiring authority acquired land without knowing that it was suitable for the proposed purpose. The question is also raised as to whether statutory guidance should be available to assist judges of the District Court in determining if entry should be prohibited on any grounds.

(a) Do you consider that CPO legislation should include specific examples in which entry upon land in order to assess its suitability would be unlawful?

We cannot foresee a situation where entry upon land for the stated purpose (with due regard to any damage or disruption caused) would be so prejudicial as to require a specific prohibition.

(b) Do you consider that a period of 14 days' notice is sufficient to override the consent of the landowner?

It is our view that a minimum period of 14 days' notice must be provided before an application can be brought to obtain consent by order. Most schemes are planned over many months and proper management should ensure that adequate time is given to plan site surveys to avoid undue disruption to the claimant's interests. In addition, a claimant must be entitled to recover all reasonable costs (such as crop loss) and fees in circumstances where entry is causing a financial loss. It is also preferable that such costs are agreed in advance, when possible, of the survey being undertaken.

In such circumstances, the acquiring authority should take the opportunity to engage with landowners to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme.

Issue 6:

Terminology: the term “compulsory purchase order” could be interpreted as implying an element of finality and or suggesting that a sale, rather than an acquisition, is involved. The Commission asks whether the current terminology should be amended to “compulsory acquisition application” or “compulsory acquisition notification” when it is sent to An Bord Pleanála and a “compulsory acquisition order” only when it has been confirmed by the Board

- (a) Do you consider that the term “compulsory purchase order” should be replaced by “compulsory acquisition application”, “compulsory acquisition notification” or some other alternative term when the initial application to compulsorily acquire land is being sent to the confirming body?

The use of the proposed revised terminology, ‘Compulsory Acquisition Application’ prior to a scheme being confirmed and ‘Compulsory Acquisition Order’ post confirmation would provide a useful distinction to assist stakeholders.

- (b) Do you consider that the term “compulsory purchase order” or “compulsory acquisition order” or some other alternative term should be used only where the compulsory purchase or acquisition has been confirmed?

As proposed above, the use of “application” pre-confirmation and “order” post-confirmation may provide help provide clarity of the stages of the process.

Issue 7:

Advertising and notifying affected landowners: this involves sending notices to the landowners, lessees and occupiers, and publishing a notice in a local newspaper of the intention to CPO the land. There may be scope to alter the timelines and, depending on the approach adopted in relation to third party objectors (discussed in Issue 10), whether it is necessary to expand the service of notices to adjacent landowners.

- (a) Do you consider that there are there any issues that need to be addressed concerning the publication and notification process in relation to CPOs? If so, please specify.

The current publication system to potential complainants is adequate. However, general public awareness of schemes could be improved by the use of online notifications; via the acquiring authority’s website; through social media sites and other media platforms.

- (b) Do you consider that there should be a statutory time limit within which objections should be sent to the confirming body? If so, please specify.

It is our view that two months would be a suitable time limit for the receipt of objections.

Issue 8:

What to do when landowners cannot be identified: this issue discusses how the notice is served and the offence of removing such a notice from the property of a landowner subject to a CPO.

One potential reform canvassed is to provide for the confirmation of the CPO following a reasonable line of enquiry and the deposit into an independent financial institution of the compensation that is determined by an arbitrator.

Q. Do you consider that there should be any additional safeguards enacted in circumstances where a landowner cannot be located or identified?

Where a landowner cannot be located or identified, compensation should be adjudicated by the Property Arbitrator. The Arbitrator should nominate a valuer to present a case for the unidentified landowner. A suitable panel of qualified valuers specialising in the area of CPO can be made available by the SCSi to the Land Reference Committee. Compensation should be assessed and paid into Court, or a nominated escrow account.

A process should be introduced whereby the acquiring Authority can claim the title and after a period of time, if the title is not claimed by a “lost owner”, it vests in the Authority, with the compensation monies being released back to the State.

In the UK, if it is not possible (after reasonable enquiry) to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority can issue a CPO Vesting Declaration.

Issue 9:

Establishing a purpose for the CPO: this issue considers the purpose provided by the acquiring authority in making a CPO. The “particular purpose” required for a CPO has been interpreted by the Irish courts as meaning a statutory purpose, such as “development.” This has resulted in a very broad approach being taken by acquiring authorities and a lack of specificity, which is relevant in terms of making a substantial objection, determining compensation, the requirement of applying for planning permission, public private partnerships and self-realisation. This issue explores whether such an interpretation may lead to a disproportionate interference with the landowner’s right to property

(a) Do you consider that it should be possible for land to be acquired as land banks for future purposes?

Local authorities are tasked with supporting the delivery of private and public housing and regeneration projects by providing, inter alia, zoning, land, services and infrastructure. Powers to compulsorily acquire land can, subject to the normal strong safeguards, ensure that development and regeneration can take place in the right place at the right time.

Where the land is required for a defined end use or to provide essential infrastructure (such as roads and sewers) to facilitate regeneration or economic development, local authorities will also normally be expected to have reasonably firm proposals or a long-term strategic need for the land in place.

Most Local Authorities no longer require land reserves as they have not built large-scale public housing projects for several years and are generally not involved in commercial development. In the absence of development plans, it is difficult therefore to justify the need for land banks, albeit there may be some justification as part of larger scheme where site assembly will ensure that the

development proposal is, on balance, more likely to be achieved if the land is acquired by the local authority. This should include the effect on the surrounding area that the purchase of the land will have in terms of stimulating and/or maintaining the regeneration of the area.

Consideration should also be given to whether, if the local authority intends to carry out direct development, this would displace or disadvantage private sector development or investment without proper justification and that the local authority objectives cannot be achieved by any other means

If local authority proposes to acquire land where they have no specific immediate proposals for the land concerned (beyond broad indications in its Housing Strategy), An Bord Pleanála should be assured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe and that the local authority can demonstrate that the use of its compulsory purchase powers is clearly in the public interest.

Where land or property is acquired, a project should always be planned, commenced and completed as quickly as possible in order not to blight an area and undermine public confidence in the overall development strategy.

Due regard should be had to the challenge faced by a claimant in such circumstances of compiling a claim for compensation when no scheme details are provided and where only part of their land holding is to be acquired. Similarly, the potential impact of statutory blight where partial development occurs but overall scheme completion could take several years should be considered.

(b) Do you consider that the current system, whereby no specific plans, funding or planning permission are approved before a CPO is made, should continue?

We do not agree that the current system operates with no specific plans in place, albeit the level of information and detail can vary widely from scheme to scheme, depending on the scheme promoter. For example, drawings for road designs are commonly available before a CPO is confirmed.

In preparing an application, the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. Funding should be generally available at the time of application or very early in the process once the CPO has been confirmed. As most large schemes are funded centrally by the Exchequer, it is a reasonable expectation that funding, in principle, is in place prior to the application being made.

Once the CPO has been confirmed, sufficient scheme detail should be available to all claimants in advance of the service of Notice to Treat to assist with the submission of claims. The absence of scheme details can leave claimants at a significant disadvantage, amounting to an infringement of property rights, which is not compensatable under the current code. Indeed, the lack of scheme details can often result in more challenges to the CPO Order, as claimants and their valuers cannot properly assess the scheme impact or quantify the mitigation factor that a detailed accommodation works schedule would provide.

(c) Do you consider that expert reports should be obtained by An Bord Pleanála in addition to, or instead of, those obtained by the acquiring authority?

An Bord Pleanála should have the power to request independent expert reports in addition to those obtained by the acquiring authority, in special circumstances.

(d) Do you consider that there should be a statutory right to “self-realisation” whereby the landowners would be given the opportunity to achieve the aim of the compulsory acquisition themselves before an acquisition by an acquiring authority?

The right to self-realisation should be available in circumstances where the landowner can demonstrate an ability to deliver the project. This prospect may only apply to building projects and a very limited number of other project types. In the past many projects have been delivered by landowners working with acquiring Authorities. Self-realization is a practice which should be encouraged in certain cases, but we do not agree that this should become a statutory right.

(e) Do you consider that the acquiring authority should be required to show evidence of assessments of suitability carried out on alternative sites?

In the vast majority of cases, local authorities will have sufficient information on the suitability of land without needing to carry out detailed assessments. Where independent studies of sites have been undertaken, it is reasonable to provide assessment evidence, albeit that there can be a variety of physical, social and economic rationale for site selection.

Issue 10:

Standing to object, including third party objectors, grounds for objection, the time limit to object: this issue discusses the objection procedure where An Bord Pleanála must determine whether or not to confirm a CPO. It asks whether objections that are based on hardship should be taken into consideration, especially in relation to more vulnerable members of society. The Commission also asks whether the opportunity to object should be extended to third party objectors, including what consideration should be given to any costs incurred by a third party objector as a result of seeking independent expert opinions.

(a) Do you consider that third party members of the public should be permitted to submit objections to CPO applications?

In the UK, a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a notice to treat is known as a relevant or statutory objector, which is a useful form of priority recognition.

The remainder (for example, those who are opposed to the environmental or social consequences of the proposed project) are known as "third-party" or "non-statutory" objectors. Where there are only non-statutory objectors, the confirming authority is not bound to hold an inquiry to hear their objections, though if there are a great many non-statutory objections, a public inquiry is often held in the interests of transparency.

The ability of third parties to object should be limited to instances where those parties have a geographical proximity to the scheme in question or a proven vested interest. Unfortunately, instances of vexatious opposition to critical infrastructure projects has proven to lead to untimely delays.

(b) Do you consider that there should be differing tests based on the type of objectors in relation to matters such as standing and the awarding of costs?

There should be differing tests based on the type of objectors in relation to matters such as standing and the awarding of costs, with particular regard to affected landowners.

Although objectors have a right to be heard at an inquiry, acquiring authorities should be encouraged to continue to negotiate with objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. This should include employing such alternative dispute resolution techniques as may be agreed between the parties.

At a minimum, costs should be paid based on a successful objection by a claimant.

(c) Do you consider that the acquiring authority should be empowered to confirm its own CPO in any instance, such as those in section 216 of the Planning and Development Act 2000?

We are aware of the provision in UK legislation for acquiring authorities, in certain circumstances (and subject to Ministerial sanction) to confirm their own CPOs. However, it is our considered view that, for the sake of transparency and public confidence, an acquiring authority should not generally be empowered to confirm its own CPO.

(d) Do you consider that An Bord Pleanála, when making a decision to confirm or not confirm a CPO, should have a discretionary power to have regard to issues of sentimentality or specific hardship that may arise for landowners?

It is our considered view that these matters are compensation issues and should not form part of the An Bord Pleanála decision.

(e) Do you consider it necessary to conduct an oral hearing when any objection has been made?

An Oral Hearing should be convened when a significant number of objections have been received or the specific nature of the scheme may be particularly detrimental to the affected and adjoining landowner(s).

A written representations procedure is a potentially quicker, less costly option than a full Oral Hearing. Submissions are made in writing; these can then be reviewed by an appointed inspector who may undertake a site visit. The inspector's report is, as with an Oral Hearing, issued to the Board for decision.

Issue 11:

The jurisdiction of a body to hear and determine objections: this issue considers the power of the inspector in his or her advisory role in carrying out an oral hearing in advance of a decision by An Bord Pleanála. The Commission asks whether there is a case for reviewing the timelines involved or the implementation of statutory guidelines for the inspector's powers during an oral hearing, including the weight afforded to the various grounds for objections.

(a) Do you consider that the CPO oral hearing process would benefit from general reform? If so, please specify.

It is our view that there is a lack of consistency on how Oral Hearings are conducted at present and, at a minimum, a best practice guide should be established and applied to all hearings.

Evidence to be given by the acquiring authority at the Oral Hearing should be made available for physical inspection and on the acquiring authority's website a minimum of one week prior to the oral hearing.

Representation on technical scheme details should be resourced for all parties who may receive Notices to Treat under the Order and reasonable professional fees for such representation should be resourced, whether or not the Order is granted.

(b) Without prejudice to your answer to (a), do you consider that the oral hearing process would benefit from: (i) reform of the timelines for decisions; (ii) the provision of statutory guidelines for inspectors in relation to their discretion under section 135 of the Planning and Development Act 2000; (iii) the weight given to the various grounds for objections? If so, please specify the reforms you would propose.

We suggest that similar timeline to those applying in Northern Ireland and the UK could be used here.

If the matter is dealt with by written representations – a decision should be issued within 4 weeks of the site visit date in 80% of cases; with 100% of cases being decided within 8 weeks of the site visit date.

If the matter is dealt with by Oral Hearing - a decision on the compulsory purchase order should be issued by the inspector within 8 weeks of the close of the Hearing in 80% of cases; with 100% of cases being decided within 12 weeks.

In the case of an Oral Hearing, a maximum timeline should be set for the issue of a decision and only for significant schemes; our suggestion in this context is 20 weeks from the close of the Hearing.

Our earlier comments at 10 (a) above relating to objector status also pertains to this question, with clarity being provided on the weighting that an inspector is permitted to assess on the various categories of objection.

Issue 12:

Advertising and notifying the outcome of the confirmation hearing: on this issue, the Commission asks whether notification of the outcome could be expanded to any person who made a written objection, as opposed to those who appeared at the hearing.

(a) Do you consider that there are any difficulties that arise in practice with the advertising and publication process in relation to the confirmation of the CPO?

All parties to the scheme and objectors should be notified. In general, the notification of a CPO is publicised in the relevant county. Schemes of a certain scale should be mandatorily advertised on a national basis. Our earlier suggestion of a national unit managing all CPO projects would be a useful source of information to all stakeholders both before and after confirmation.

(b) Do you consider that every person who made an objection, but did not appear at the oral hearing, should be notified of the outcome?

Notification of the outcome should be sent to all affected landowners and to all parties who submitted an objection and did not withdraw it in advance of the hearing.

Issue 13:

Special rules for judicial review of the decision by the confirming body: there are some time limit inconsistencies surrounding this issue, such as the date on which the CPO becomes operational arising before the deadline by which an application for judicial review must be made. In order to offset the increasing requirement for judicial review, one potential solution may be to appoint a legal professional to An Bord Pleanála when a CPO is being assessed, in order to assess the proportionality of the interference with property rights.

(a) Do you consider that there should be a time limit within which an application for judicial review of a CPO decision should be made, without any discretion to extend that time limit?

This is a legal remedy available to scheme objectors and, as such, lies outside the area of our expertise. By way of example, in the UK, the validity of a compulsory purchase order can be challenged in proceedings to the High Court within 6 weeks following the first newspaper publication of the Notice of Confirmation of the CPO.

(b) Do you consider that there should be different standards of judicial review depending on the nature of the rights involved?

This is a matter primary of law and constitutional rights, but we suggest that there should be different standards of judicial review depending on the nature of the rights involved.

(c) Do you consider that the Superior Courts should be able to review the merits of CPO decisions made by An Bord Pleanála?

We do not believe that the existing grounds for judicial review should be amended.

(d) Do you consider that CPO legislation should require the confirming decision-maker to justify the decision to approve a CPO using the proportionality test?

It may be of benefit to the parties that the decision to approve is provided with reasons when there is a fundamental difference between the inspector's report and An Bord Pleanála's decision.

It may also be beneficial for the legal representative of the acquiring authority to certify that the CPO is compliant with all relevant legislation.

(e) Do you consider that an individual with legal expertise should be a member of a panel of the Board to assess CPO applications?

It is our view that relevant expertise exists in An Bord Pleanála to assess CPO applications, albeit that when required, resources should be available to it to seek legal advice/clarification, if needed.

Issue 14:

Notice to treat and the valuation date: this issue discusses the time limits in which the notice must be served, the valuation date and the time limit by which progress on the CPO project should be made. It could be argued that the current system is not compatible with the equivalence principle (putting the landowner in the same position, in so far as money can do, as if the CPO had not been made); therefore, one possible reform canvassed is that the valuation date and the date of the payment of compensation would be the same.

(a) Do you consider that the valuation date of the market value should remain the date on which the notice to treat is served or should such value be determined on the date of arbitration?

Our view is that the Notice to Treat date should remain as the valuation date as, on balance, this is the fairest approach. It provides clarity to all parties and equity for all landowners within scheme where multiple claimants are involved. The alternative, with multiple valuation dates on the same CPO scheme, could lead to inequity where adjoining landowners are treated differently depending on market conditions.

Acquiring authorities need certainty when budgeting for compensation and therefore require a definitive valuation date, rather than an arbitration date which could occur years after the date of Notice to Treat in different market conditions where values could either be much higher or lower.

Given the current delays between the date of reference for an arbitration and the commencement of the hearing, setting the date of the hearing for valuation purposes could significantly prejudice one or other of the parties.

However, if a claim proceeds to Arbitration and this is not concluded within a reasonable timeframe after the Notice to Treat date, there may be merit in a provision to revise the valuation date on the application of either party.

(b) Do you consider that the time limit within which a notice to treat must be served should be amended?

It is our considered view that the existing 18 months' timescale is a reasonable period.

(c) Do you consider that the acquiring authority should be required to pay the compensation prior to developing the land?

An advance payment protocol could help alleviate the legitimate financial concerns that claimants often have, particularly in relation to a private house or small business owners, where upfront costs to mitigate loss by have to borne directly until the claim is settled and paid. However, we foresee difficulties where, for example, there is a title issue which prevents the assessment of compensation.

Advance payments is a well-established concept in other jurisdictions. In Northern Ireland, if a request is submitted, and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land on the basis that the amount payable in advance is:

- 90% of the agreed sum for the compensation; or
- 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

This payment is made without prejudice to the settlement of the eventual claim and is registered as a local land charge to ensure that payments are not duplicated. However, the system also works in reserve when schemes do not proceed and advance payments must be refunded to the acquiring authority.

A statutory timescale for submission of an advance payment request and the payment thereof would be vital for the effective operation of any interim payment scheme

Issue 15:

Entry power before the assessment of compensation and the interest rate payable: this issue explores the entry upon and development of the land without compensation being paid, which may result in a landowner being unable to mitigate his or her loss, especially where an entire property is acquired. The Commission also asks whether there is need to reform the basis on which the interest rate is paid in CPO cases.

(a) Do you consider that there are any instances in which entry should be permitted before compensation is paid to or deposited for the landowner?

We assume that this question should read “in which entry should NOT be permitted”, as it is currently the case that a Notice of Entry, properly served, permits entry on to the land prior to any payment being made to the landowner.

Clearly, the preference is that compensation is paid in advance and in many cases which involve the acquisition of a private dwelling, the acquiring authority will engage with the property owner at a very early stage. In our experience, in the majority of cases, this type of claimant is compensated prior to entry. However, if it is not possible to reach agreement prior to entry and the matter is referred to arbitration, which can take a considerable period of time to complete, it

would be inequitable to delay major infrastructural project being undertaken for the common good.

A practical solution is outlined above in our proposal on interim payments by the acquiring authority to the claimant, subject to certain conditions.

We believe that compensation arising from site investigation works, such as disturbance, crop loss, etc. should be paid in advance of formal entry for scheme works.

(b) Do you consider that, in CPO cases involving a dwelling, entry before the payment of compensation would disproportionately interfere with the individual's right to property or the inviolability of his or her dwelling?

Our previous comments apply in relation to the status of private dwelling claimants and to an interim payments proposal.

The purpose of the scheme underlying the acquisition is also relevant in this context. In 2017, the Attorney General confirmed that legislation generally used to build roads and public transport systems can be used to force property owners to put houses back into the housing market if they are vacant for more than 12 months.

While CPO powers (or the threat of use) have been used by several local authorities to acquire private dwellings, there has, as yet, been no challenge to the constitutionality of the exercise of CPO powers for this purpose.

(c) Do you consider that the duty to pay compensation should be triggered by the making of the vesting order?

In our experience, vesting orders are used rarely and usually when the owner cannot be identified. We believe that the acquiring authority should stand ready to pay compensation or to make a lodgement of to an escrow account, without prejudice to a final settlement.

(d) Do you consider that there is need to reform the basis on which the interest rate is paid in CPO cases? If so, please specify.

In our view, the local loans fund rate of interest does not reflect the claimant's borrowing costs. The applicable rate of interest should be referenced to normal bank borrowing rates with an additional margin. If the acquiring authority had to borrow from a commercial bank to fund the land purchase, the interest rate payable would reflect the commercial nature of the transaction.

For example, businesses that lose land to compulsory purchase and do not receive timely compensation need to borrow to relocate or reinvest in their business. It is right and fair that these businesses should receive fair interest on the compensation payments that are owed to them.

As possession can be taken prior to payment, the use of interim payments on account once a verifiable claim has been submitted and title adduced would greatly reduce any subsequent interest payment. The application of higher interest rates, potentially including some late-payment penalty rates, would encourage acquiring authorities to negotiate early and pay on time.

In the current era of low interest rates, it is important to ensure that claimants cannot unduly delay or frustrate the settlement process, as a large outstanding claim at a punitive interest rate could create a significant cost to the public purse unless procedural controls can be exercised.

Issue 16:

Principles and rules for the assessment of compensation: this issue analyses the right to compensation and the principles and rules applied where the issue goes to arbitration. There are 5 main headings under which compensation may be determined: market value, disturbance, damage, severance and injurious affection. Disturbance promotes the equivalence principle, reimbursing the landowner for incidental financial losses incurred as a result of the CPO. A drop in land value due to the severance of the land is also considered. Damages as a result of works carried out in the development of the land are undoubtedly necessary; injurious affection covers the drop in value of the land as a result of the development itself. A question arises as to whether neighbouring landowners should be allowed to make a claim for injurious affection, where they are affected. The Commission also asks whether the compensation rules, which were initially enacted in 1919 (and have been amended in 1963, 2000 and 2006), are in need of updating and revision.

(a) Do you consider that the rule for assessment of compensation under the heading of “injurious affection” should be abolished?

It is our firm view that compensation for Injurious Affection is an integral part of the claim for compensation and accordingly should not be abolished. It is accepted, inter alia, that depending on the specific facts of each case, Injurious Affection is not axiomatic as a consequence of a taking of land, but that this can be readily assessed by professional valuers.

(b) if the answer to (a) is No, then (i) do you consider that the concept of betterment should offset the devaluation of land and (ii) do you consider that neighbours should be able to claim for injurious affection?

By applying a betterment concept when assessing compensation, the acquiring authority will have regard to any increase in value of land retained that is adjacent to or adjoining the land acquired. Betterment is, therefore, the opposite of injurious affection.

There may be instances where the scheme of the acquiring authority may increase the value of retained land. An example of this would be if a house, of which a small part of the garden was acquired for the construction of a new road and the new road enhances access to the house thereby increasing its value. In such circumstances, the acquiring authority would seek to offset this increase in value against the compensation that is payable in respect of the land acquired. The acquiring authority should have to support with evidence that their proposal has generated an increase in the value of the retained land. Where betterment occurs it may sometimes be appropriate to adopt the before and after approach. This will take into account the issues of land taken, severance, injurious affection and betterment. In extreme cases, a claimant may receive no compensation because the enhancement in value of the retained land is equal to or greater than

the compensation for the land acquired. In such circumstances, the least compensation payable should be nil, with no reciprocal liability created on the claimant's part.

If the concept of betterment is to be considered, then the loss in value to the lands taken must also be factored in. Currently, any increase in value to the scheme underlying the acquisition is disregarded in assessing the value of the lands acquired. It follows that any increase in value to the retained lands must also be disregarded. In this scenario it could be argued that a landowner having land acquired is not being compensated fully. For example, an adjoining landowner with no land acquired gets the full benefit of an up-lift in value, whilst the landowner who is dispossessed only benefits from this increase to his retained lands and not to his lands acquired under the CPO.

The instance where adjoining landowners could assert a claim injurious affection will be limited, as it will generally only arise where an existing use continues and which use is less valuable than an alternative, higher value use, made possible by the scheme itself. An exception should be made however, for dwelling houses which may be permanently reduced in value or are incapable of beneficial occupation after the works are complete. In such cases, the service of a purchase notice may be a reasonable solution for both parties.

(c) Do you consider that acquiring authorities should be required to purchase severed land that is greater than 0.31 of an acre in size?

It is our view that, depending on the circumstances of each case, it may be appropriate for the acquiring authority to purchase a land area more than 0.31 acre. We note however that within the Land Clauses Consolidation Act 1845, section 92, 93 that the acquiring authority should acquire lands of 0.5 statute acres or less where the land is severed.

The acquiring authority should have the power to acquire surplus land parcels where it believes that the landowner will not be able to maintain the land due to access problems, that it would fall into disuse and become unsightly or derelict.

(d) Do you consider that acquiring authorities should be required to acquire the entirety of the land if the use for which the land was previously being used can no longer be achieved as a result of the acquisition?

A total acquisition may, in certain circumstances, be a more equitable outcome. For example, in cases, where up to 90% of a claimant's overall holding is being acquired, it would be fairer, in our view, for the acquiring authority to be obliged to acquire the total holding. While the landowner should maintain the right to retain any residual lands. Where he chooses to do so, no entitlement for access (such as over or underpasses) will exist.

The concept of Material Detriment exists in the UL, where if the acquiring authority is only proposing to acquire part of a property. It may be possible to advance a claim for "material detriment", seeking to make the authority acquire the whole of the property interest rather than just a part.

(e) Do you consider that the compensation paid in respect of a business should be the lesser of the cost of moving or the cost of closing the business down?

There are already established rules for the assessment of business compensation. In most cases, claimant will be expected to try and relocate their business if at all possible. Compensation for extinguishment is not a choice if it is reasonably possible to relocate and it is economically viable to do so. In the UK, a claimant who successfully asserts total extinguishment is required to provide an undertaking that they will not recommence a similar business within a specified area in order to justify the payment of a significantly greater payment from the public purse.

(f) Do you consider that the Rules in the 1919 Act should be replaced with updated concepts such as (i) loss of goodwill, (ii) double overheads and/or (iii) incidentals?

We believe there is no need for a definitive list of compensation headings and that the principle of equivalence should continue to be the overarching principle. The rules contained in the 1919 Act include concepts such as goodwill, double overheads and incidentals. However, we agree with the proposal for consolidating legislation and for greater clarity on the application of the rules to diminish the current reliance on case law.

All compensation claims differ and an experienced valuer is capable of establishing clear headings of claim appropriate to the case in question within the existing rules.

Issue 17:

Neighbouring landowners: as an alternative to the suggestion regarding injurious affection in Issue 16, an additional claim could extend to neighbours for the devaluation of their land as a result of the development. This may in some instances be offset by the increased value caused by some CPO developments (for example, being located close to a new light rail or metro system). This issue explores the landowner's and neighbouring landowner's claims for nuisance by treating the acquiring authority as any other landowner. There is currently a defence of statutory authority that prevents the majority of claims that are made in response to works carried out in carrying out a CPO.

(a) Do you consider that there should be a right to compensation for neighbouring landowners for any damage or encroachment on their land arising from a CPO?

A basic premise underlying any CPO is that the CPO includes all of the land necessary to complete the scheme. There should be no damage or encroachment on any land outside the CPO area itself.

Encroachment and damage is currently actionable under civil law and therefore needs no provision under CPO legislation. The Edwards Principle no longer applies in the UK, but still applies in the Republic of Ireland.

(b) Do you consider the current scope of the defence of statutory authority in the CPO context is appropriate or does it require modification?

This is primarily a legal and policy matter and we offer no particular view.

Issue 18:

Arbitration: currently, a single arbitrator determines CPO compensation. The Commission asks whether this could be reformed to mirror the system in the Minerals Development Act 2017, which involves a 3-person panel, comprising 2 property arbitrators and a legal professional.

(a) Do you consider that the grounds for setting aside an award under the 1919 Act should be expanded to include the merits of the decision based on, for example, instances in which there is independent evidence establishing that the final figure was insufficient?

No. Arbitrators decision should be final except on a point of law. No – the Arbitration Act 2010 is the key piece of legislation now and should not be interfered with.

Section 6 of the 1919 Act providing for the ‘Case Stated’ procedure survives notwithstanding the enactment of the Arbitration Act 2010. It is debateable whether this is an appropriate measure in 2018. However, there should be an appeal available on an error of law and a procedure for court oversight/intervention in the case of a serious breach of the rules of fair procedure.

(b) Do you consider that there should be more than one property arbitrator determining the compensation payable?

For many years, there were two property arbitrators, but since the retirement of one in 2012, a decision was made that there was likely to be insufficient caseload to justify the employment of two permanent arbitrators due to the ongoing recession and lack of infrastructural projects. Instead, a panel of temporary property arbitrators was formed which could be called upon on a case by case basis. The recently launched National Development Plan 2018 – 2027 envisages a comprehensive list of significant infrastructural and development projects, many of which will involve the acquisition of private property and land across the country. This is separate to the myriad of local schemes around the country. It is vital, therefore, that there are, at a minimum, two permanent property arbitrators appointed to manage this impending workload who are properly resourced to ensure an efficient, effective service for all stakeholders.

Property arbitration has evolved and today is a complex process involving not just an understanding of property valuation and planning, but also familiarity with the relevant statute(s) and case law relating to the proposed acquisition, Arbitration law, practice and procedure. The requirement for reasoned awards since the introduction of the Arbitration Act 2010 is an additional requirement. Administrative, legal and training resources must be provided in the annual budget for the Property Arbitrators as well as for such legal advice as they may require from time to time. Arbitration is the most suitable dispute resolution process to settle CPO disputes, providing early access to hearings, avoiding unnecessarily long hearings, frequent procedural objections and through active case management, ensuring that non- contentious matters can dealt with expeditiously.

The Arbitration process has come under pressure in recent years due to the number of schemes and unsettled claims. There is general dissatisfaction from stakeholders with the current process; from the acquiring Authorities perspective, it takes too long and the costs can often be disproportionately high relative to the amount of compensation. The claimant expects the statutory Arbitration process to be quicker, cheaper and less formal than High Court proceedings.

The current system does not often deliver these outcomes, due significantly to a lack of resources for this important statutory service.

Consideration should be given to having the matter decided by written submissions only, obviating the necessity for a full hearing with all the attendant costs and delays. In the vast majority of cases, a competent valuer can act as advocate where the dispute is value-based. The Arbitrator should have the option to call on legal expertise to assist at the hearing where complex legal issues arise.

The Issues Paper proposes that consideration be given to a panel consisting of one property arbitrator and one legal representative. While most cases coming to Arbitration are principally arguments as to quantum, a panel comprising both property and legal expertise may have merit in complex claims and might save time and costs. By way of example, the administration of CPO arbitrations is undertaken in Northern Ireland by the Lands Tribunal and in England and Wales by the Upper Tribunal (Lands Chamber), where a panel is convened for hearing. An example in Ireland is the Valuation Tribunal, which hears Rating Appeals and is properly resourced to provide administrative support.

The development of a statutory codified procedure for all aspects of the arbitration process would be of significant assistance to the parties to a claim. The publication of arbitration awards (as with court cases and valuation tribunal decisions) would help the analysis of compensation claims and would inform the parties to better formulate and determine compensation claims. This would obviate the necessity to have the same principle debated and determined numerous times, incurring unnecessary costs and time for all concerned.

Issue 19:

Determining Title: The legal professional in the panel suggested in Issue 18 could be tasked with determining title where there is a dispute about this: this could be both a time and cost efficient measure. It could be considered particularly important to shorten any potential delays given both the severity of the interference with the landowner's rights and the potential pressing need to acquire the land.

Do you consider that an arbitration panel, as discussed in Issue 18, should include a suitably legally qualified individual, who could determine title?

We refer to our previous comments on the issue of providing evidence of title. It is only in very few cases that a claimant does not adduce the title claimed. It would be useful to consider requiring the claimant's solicitor to give an undertaking as to title at the time of making an objection or observation to the making of the CPO.

If claimant has a statutory obligation to provide details of title to the acquiring authority when submitting a claim, this would eliminate much of the delays arising under the current process where an arbitration is determined on the basis of the title claimed rather than proven.

Issue 20: payment from compensation of sums due to the Revenue Commissioners: this issue discusses section 1002 of the Taxes Consolidation Act 1997 and the power of the Revenue

Commissioners to make an attachment order on the compensation determined by an arbitrator. The Commission seeks views as to whether the fact that the land is compulsorily acquired should be reason enough to exclude the compensation from the remit of these orders, or whether it should be a consideration when determining whether or not to grant such an order.

(a) Do you consider that section 1002 of the Taxes Consolidation Act 1997, under which taxes owing may be deducted from a CPO award, should be retained?

(b) If the answer to (a) is yes, do you consider that the Revenue Commissioners should be required to obtain a court order before using section 1002 of the 1997 Act?

(c) Do you consider that the fact that the compensation arises from a CPO should be a consideration in any proportionality test applicable to a debt enforcement decision?

Taxation and compliance are issues for policymakers to decide. The questions posed do not impinge in the valuation/representation/arbitration process and are therefore beyond the scope of our expertise. The fact that the tax would be deducted from CPO compensation should not be relevant in relation to any proportionality test applicable to a debt enforcement decision.

Issue 21: Costs: the costs incurred by a landowner are generally paid by the acquiring authority, provided the amount of compensation determined is above the amount of the unconditional offer made by the acquiring authority. The Commission asks whether costs could be awarded to the landowner regardless of the amount awarded, given that the acquiring authority will determine if the land is suitable and engage experts to assess such suitability. The Commission asks whether an amount could be offered to the landowner before the CPO is made, in order to provide for the commissioning of an independent assessment; or whether An Bord Pleanála could be charged with appointing such experts

(a) Do you consider that the landowner should be reimbursed with the costs to obtain an independent evaluation regardless of the amount of the final award (taking into consideration the unconditional offer)?

It is our view that claimants' reasonable costs, post CPO confirmation, including evaluation, are adequately dealt with under the current process. However, there is merit in considering awarding reasonable costs for affected claimants for pre-CPO assessment.

(b) Do you consider that the landowner should be provided with these costs in advance of any oral hearing that may arise?

It is our view that costs are payable post Oral Hearing stage and in a timely fashion.

Issue 22:

Disposal of land: this issue discusses how land that has been compulsorily acquired is treated as land sold, given that the landowner enjoys no special position on disposal by virtue of the CPO. The lack of a specific purpose (see Issue 9, above) may also lead to excess land being acquired which will have to be sold on. There is no right of first refusal for the original landowner and the land may be sold for any "capital purpose".

Do you consider that CPO legislation should provide for a “first refusal” to the landowner for any unused or excess land? If so, what form would that take?

We agree that the original landowner (if still in situ) should be offered first refusal for any unused or excess land for a defined period of time, say 10 years. The transfer price should be determined pro rata on the basis of the original compensation paid for the lands.

Issue 23:

Consolidation of CPO legislation: this issue describes the varied nature of the current legislation on CPOs. There are over 70 statutory powers to compulsorily acquire land, some of which are grounded in legislation from the mid-19th century. Each time a new CPO system is enacted, it involves minor to major modifications, and this has led to legal uncertainty. The Commission asks whether it is appropriate to consolidate into a single CPO Bill the current law, together with any reforms that may emerge from this project, and whether this would facilitate a more accessible and efficient CPO process.

(a) Do you consider that the existing legislation on compulsory acquisition of land and compensation should be repealed and replaced by a single consolidating Act, which would include any reforms arising from this project?

Existing legislation should be repealed and replaced by a single consolidating Act. Consolidation would help bring greater clarity to all stakeholders and provide a single reference point rather than multiple acts over many years, incorporating variances as to applicability and process. In the same way, the grounds for and assessment of compensation should be similarly consolidated. Policymakers should give consideration to supporting public guidance documentation which is available in a number of jurisdictions as part of an overall reform of the legislative framework.

We note that new legislation giving greater legal certainty for compulsory purchase orders on land required for industrial use, including in cases of foreign direct investment (FDI), has just been introduced to the Dáil. The Industrial Development (Amendment) Bill 2018 comes in response to a successful Supreme Court case brought by a landowner whose lands had been the subject of CPO by the Industrial Development Authority (IDA). Post consolidation of the primary legislation, we would propose that any additional regulations, orders or schemes could be delivered through the use of Statutory Instruments.

(b) Do you consider that compulsory acquisition legislation should involve one system in which all statutory bodies and authorities operate the same system?

It is our view that while schemes can differ in the nature and extent of the interests being acquired, nonetheless, a single operational framework for all CPO schemes is highly desirable, as this would confer similar rights on all affected parties.

(c) If the answer to (b) is No, what modifications do you consider should apply between systems?

Answered above

(d) Do you consider that there is need for reforms of the law on compulsory acquisition of land that have not identified in this Issues Paper? If so, please specify them.

We make the following suggestions for consideration -

Arbitration

- Case management procedures for all statutory property arbitrations should be developed to ensure consistency across every case
- Legal submissions should be provided in advance of all other submissions to identify any potential issues in advance and obviate the necessity for long hearings
- Following receipt of all submissions, the Arbitrator should be empowered to provide an indicate timeframe for hearing; this is particularly important to manage costs for both parties, but particularly for claimants.
- The Arbitrator should have sufficient discretion to manage simple cases in a similar way to the Valuation Tribunal, where there is discretion as to the conduct of the hearing in each case and where the Tribunal can:
 - (i) decide the order of appearance of the parties;
 - (ii) decide whether to permit any party to appear in person or to be represented by another person;
 - (iii) decide whether to hear any person who is not a party to the appeal; and
 - (iv) determine whether evidence shall be given orally or by affidavit and whether it shall be on oath or otherwise
- In event that the parties are willing to conduct the arbitration by written submission, the Arbitrator should have the power to facilitate this to improve efficiency and reduce costs.
- The Arbitration should be conducted on an inquiry type basis, not adversarial.
- Title must be proven before an Arbitration can proceed. The Arbitrator should have the jurisdiction to rule on matters of title as a preliminary matter to prevent time and costs being wasted.
- A statutory format for an unconditional offer should be developed so that an acquiring authority can make the offer in a set format which is immune from legal challenge.
- There should be a statutory period within which the unconditional offer is accepted and the claimant's costs covered. Beyond the time limit, the Arbitrator should, unless there are very salient reasons not to do so, award costs against the claimant if the unconditional offer falls below the Award, from the date of the unconditional offer.

Tax

Anomalies in relation to taxation and compulsory purchase should be addressed. Where such anomalies have not been addressed, additional tax which can be proven as arising because of a compulsory purchase, should be validly claimable under the heading of disturbance. An easement through forestry land is an example of a disconnect between compensation assessment and the tax code.

Professional Fees

Interest should be payable on a claimant's professional fees in the same manner as the compensation, as these fees are part of the compensation.

The Property Arbitrator should tax the pre-reference costs as they have a better understanding of these costs due to their own expertise and case management skills.

Blight

There has been a serious problem in recent years with the length of time that it takes from "route options" to the eventual payment on a compulsory purchase scheme. This problem could be addressed in two ways:

- (a) Strict and relatively short time frames could be provided between the various stages of the process such as the route option stage, preferred route stage, initial design stage, issuing of the CPO order, confirmation by An Bord Pleanála, the speed of any judicial review procedure, length of time in which to serve a Notice to Treat and an obligation to pay compensation within a certain timeframe.
- (b) Blight Notice: Similar provisions to those existing prior to the 2000 Act need to be put in place so that an owner can serve a blight notice, as in the case in the UK.

A Compulsory Purchase Procedures Manual

Every statutory body should have a compulsory purchase procedures manual so that proper procedures are followed. A common omission in compulsory purchase is a lack of clarity with regard to the date of possession. The date of possession should become a statutory notice letter so that all parties are clear as to when possession has been taken. Notice of entry is not necessarily the date of possession. As previously referenced, there should be a case manager for each scheme.

Joint CPOs

This process was recently introduced in the UK, providing the ability for two acquiring authorities to promote a joint CPO on the same lands. This would mean, for example that, for a regeneration development scheme which also involves improved transport infrastructure, two CPOs would no longer be required.

Temporary possession

It is common for acquiring authorities to require land on a temporary basis during a CPO. This may be to provide access to the CPO land, or for the storage of materials needed for the development. We propose that all bodies with CPO powers be given the same power to

temporarily enter and use land to deliver a scheme, with clear compensatory provision included in any legislation.

Owner's Personal Circumstances

An owner's special circumstances should be specifically allowable in relation to disturbance. Personal circumstances could include the age and health of the property owner.

Law Reform Commission and Society of Chartered Surveyors Ireland – Review Groups

There is considerable merit in the Society's Valuation Professional Group working with the Law Reform Commission on specific areas of reform as outlined above.

There is an extensive body of work required to develop the next stage of the Commission's review of this legislation and specific task modules could be supported by Society representatives. Some of the issues raised in the Issues Paper are complex and need a detailed, thorough examination to find the best way forward in the interests of all stakeholders to the CPO process, including the public interest which it is tasked to serve.