

THE VALUATION OF WAYLEAVES: TIME FOR CHANGE?

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**Pacific Rim Real Estate Society
6th Annual Conference, Sydney, January 2000**

The authors are grateful to Ms Fiona Leverick and Mr Thomas Munjoma for their assistance in undertaking this research and to the RICS Education Trust for its financial support. They are also grateful to Mr Andrew Pym and Dr Barry Denyer-

Green for their comments on a draft of this paper and to all those who provided information on current practice.

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Introduction

From time to time privately held land is required for public purposes. It has for long been accepted that private rights should give way on occasion to the wider public interest. In theory, the loss to the individual is offset by the gain to the wider community of which the individual is a part. To avoid public purposes being delayed or frustrated and to ensure that private rights give way when required, Parliament has been ready to confer powers of compulsion. Public authorities such as central and local government, new town and urban development corporations and a host of others have all been able to rely on powers of compulsory purchase, including the creation of new rights falling short of ownership, to ensure that public purposes are achieved.

This paper focuses on an important but relatively neglected area where privately held land is commonly required for public purposes.¹ This is for the provision of physical infrastructure. In order to bring services such as water, sewerage, electricity, gas and telecommunications to the consumer, a network of pipes and cables together with supporting facilities has to be provided. Ready access to such services is generally considered to be in the public interest and Parliament has conferred statutory powers on the suppliers, including where necessary the use of compulsion, to secure provision. These powers typically provide for the creation of a wayleave or, where a more formal arrangement is required, something akin to an easement or, in Scotland, a servitude. In recent years, the supply of these services has increasingly been passed to the private sector and the providers are commonly referred to as 'the utilities'. This area is important, partly because of the very extensive network of pipes and cables in existence at the present time, partly because of the very large number of wayleaves that are negotiated each year (below), and partly because of the anticipated growth in the level of services to be supplied by cable and telephone during the next decade.

The history of the development of compulsory powers by public authorities has been one of striving to achieve a fair balance between, on the one hand, retaining adequate safeguards for the individual whose land is required and, on the other, the importance of not delaying schemes which are to serve a much needed public purpose. The former is reflected in the requirement to give notice of an intention to exercise compulsory powers, the right to object and to be heard in support of an objection and an entitlement to compensation reflecting a financial equivalent of the loss. The latter is reflected in the use of codified procedures, the delegation by Parliament of decisions on the exercise of compulsory powers in each case to a Minister and provision for fast track vesting of title. In evaluating the powers conferred on the utilities, we will apply the same balance. The powers will be assessed having regard, on the one hand, to the extent to which they offer the utilities a simple and speedy means of securing access to private land where this is required and, on the other hand, the existence of adequate safeguards for the interests of the landowner. Reference to the 'landowner' should be understood to include reference to occupiers and managers of the land where this is consistent with the text.

¹ For a helpful discussion of this whole area see HW Wilkinson, *Pipes, Mains, Cables and Sewers* (FT Law and Tax, 6th Edn., 1995).

What is different about the use of compulsion by the utilities is that the supply of many of the services is now undertaken, as we have already indicated, not by public authorities, but by the private sector. The privatisation programme of the 1980s transferred the supply of many of the utilities from state control to companies carrying on their business in pursuit of profit. There is nothing very new about this. In the 19th Century many of the utilities were in the private sector and operated with the benefit of compulsory powers. However, when they were brought into the public sector, procedures were streamlined and compensation was pegged to the fair market value. This owed much to the two reports of the Scott Committee which criticised the ‘indefensible complexities’ of the procedures and the extravagant compensation settlements where access to private land was required for public purposes.² When the utilities were eventually returned to the private sector during the 1980s, they took with them the compulsory powers accompanied, for the most part, by the streamlined procedures and fair market value compensation. There was no significant adjustment in procedure or compensation to reflect their new status. A key question addressed in this paper is how far it is appropriate to apply to these bodies powers and procedures similar to those developed for public authorities exercising public functions. As McAuslan and McEldowney observe:³

“...the whole law of compulsory acquisition and compensation is based on the assumption that a public agency is acquiring land in the public interest and it is permissible in the circumstances that a legal framework is created which ensures that an even hand is held between the interests of the tax-payer and the private land-owner. It must be open to question whether the same basic framework is wholly appropriate where a commercial organisation wishes to purchase land for its commercial purposes”.

To answer the question, we undertook a desk study to determine the nature and extent of the statutory powers providing for the creation of wayleaves and ‘easements’. The results are set out in Appendix 1. We doubt whether the list in the Appendix is exhaustive; the most we claim for it is that it is reasonably comprehensive. We also undertook an interview survey of a sample of what we regard as the key utilities to obtain an understanding of the way in which they operate in practice. By ‘key’ utilities we mean gas, electricity, telecommunications, water and sewerage. We are grateful to all those who took part in the survey; the list of those interviewed is set out in Appendix 2. In addition, we contacted the bodies representing owners and occupiers of land to find out the consequences for those most affected. This paper sets out our findings. Although the desk study revealed a surprisingly wide range of such powers conferred on both public authorities and the private sector, we have focused for the most part in this paper only on the key utilities. The issues raised during the research can all be illustrated by reference to these services.

² *First Report of the Committee on the Acquisition and Valuation of Land for Public Purposes*, Cmnd.8998 (HMSO, 1918); *Second Report of the Committee Dealing with the Law and Practice relating to the Acquisition and Valuation of Land for Public Purposes*, Cmnd.9229 (HMSO 1918).

³ “Electricity Act 1989, Current Law Statutes Annotated, ch.29, annotations by P McAuslan and J McEldowney. See too B Denyer-Green, “Specific Purposes, Specific Powers: The Powers of Privatised Utilities” in *Proceedings of the National Symposium on Compulsory Purchase: An Appropriate Power for the 21st Century?*, DETR, 1999.

The central question referred to above is considered in this paper under four headings:

- powers
- procedures
- compensation
- valuation.

These headings are now examined in turn.

Powers

We have drawn together the issues arising from the allocation of compulsory powers to utilities in the form of four questions. These are:

- (a) How far is the acquisition of wayleaves important to the discharge by the utilities of their functions?
- (b) To what extent do the utilities rely on compulsion as opposed to negotiation in securing wayleaves?
- (c) In so far as compulsory powers are required, which utilities should they be conferred upon?
- (d) Where compulsory powers are required, what form should they take?

In this section of the paper, we attempt to answer these questions.

The need for wayleaves

This was one of the matters explored during the interview survey. Although it was not possible to obtain precise figures, there is no doubt that the utilities rely heavily on wayleaves and, to a lesser extent ‘easements’ in England and Wales or ‘servitudes’ in Scotland (the reference to ‘easements’ should be understood for the purposes of this paper to cover both), to carry on their functions. Exceptionally, for reasons which will become clear later, Transco rely solely on ‘easements’. The distinction between wayleaves and easements is considered further below. Transco estimate that they negotiate between 600-700 ‘easements’ per annum; the corresponding figure for wayleaves for Scottish Power is 2,000 per annum and for the North of Scotland Water Authority - 1,000 per annum. A spokesperson for one of the telecommunications operators is of the opinion that they negotiate ‘thousands’ of wayleaves each year. It would seem reasonable to conclude that, altogether, several thousand wayleaves or ‘easements’ are negotiated by the utilities every year. As many of these are of considerable duration, this would suggest that, at any one time, there may be hundreds of thousands of wayleaves or ‘easements’ in existence (some sources have suggested the figure may be as high as ‘millions’) supporting a network of pipes and cables throughout the UK. As a generalisation, the long distance trunk pipes and cables run for the most part through the countryside, although some of the telecommunications operators lay their cables on Railtrack land. The pipes and cables connecting the service to the consumer are inevitably concentrated in the urban areas and, where possible, the utilities make use of the streets and pavements. Our concern in this paper is not with streets and pavements but with the use of private land. It is evident from the results of the survey that securing ‘easements’ and wayleaves across private land is essential to the discharge by the utilities of their functions.

The need for compulsory powers

With the exception of water supply and sewerage (below), it is clear from the interview survey that in the vast majority of cases these ‘easements’ and wayleaves are concluded without resort to statutory powers. That raises the question whether the statutory powers are really necessary. Could matters not be left to the market? The response from the utilities is that the negotiations take place in the shadow of compulsion and that the existence of statutory powers in the background is regarded as essential in securing agreement. Indeed, a number of the utilities alert landowners to the existence of these ‘fallback’ powers at the outset to encourage a negotiated settlement. This reflects the position with the acquisition of land by public authorities where negotiated acquisitions are common place but only because the negotiations take place in the shadow of the compulsory purchase powers.

There is, however, a further point. The services being installed by the utilities are generally in linear form. Once the end points of the pipe or cable are determined, landowners along the line enjoy something approaching a monopoly position. The utility may have little flexibility to move a pipe or cable to avoid holdout. In other words, the market does not operate efficiently and there is an argument that intervention is appropriate to correct the position.

Which utilities should have compulsory powers

The altogether more difficult question is determining the circumstances which justify compulsory powers being conferred on utilities. While most people would probably accept that it is appropriate that public authorities exercising public functions should on occasion be able to exercise compulsory powers, they are likely to be less sympathetic to such powers being conferred on private sector bodies carrying on their functions in pursuit of profit.

There is, however, as we have already indicated, nothing very unusual about compulsory powers being conferred on private enterprise. The harbours, canals and railways, which were so much a part of the industrial revolution, were constructed and operated by private enterprise. To avoid such schemes being held hostage by a single landowner, Parliament, if satisfied as to the public utility of the scheme, was willing to confer power through private legislation to expropriate the necessary land. The railway building age saw a massive output of such legislation.

On this approach, the allocation of powers should not depend on whether the body is in the public or private sector. For example, water authorities in Scotland (public sector) and water and sewerage undertakers in England and Wales (private sector) are subject to broadly similar statutory duties; it would seem reasonable that they should both have access to broadly similar fall back compulsory powers to ensure they can carry out their duties. This would suggest that the basis for determining the allocation of powers should be whether the body, public or private, is carrying on functions having a public purpose. If this approach is adopted, the allocation of powers becomes straightforward up to a point. For example, under the Gas Act 1986, Transco, as a public gas transporter is under a duty to develop and maintain an

efficient and economical pipe-line system for the conveyance of gas;⁴ under the Electricity Act 1989 there is a duty on public electricity suppliers to develop and maintain an efficient, co-ordinated and economical system of electricity supply;⁵ the Water Industry Act 1991 imposes a duty on every water undertaker in England and Wales to develop and maintain an efficient and economical system of water supply in its area;⁶ and the same Act imposes a duty on every sewerage undertaker in England and Wales to provide, improve and extend such a system of public sewers and to cleanse and maintain those sewers so as to ensure that the area is and continues to be effectually drained.⁷ In all these cases, it would seem reasonable that compulsory powers are available.

We are conscious in advancing the public purpose argument that we may be oversimplifying the position. There is an argument that a principal objective of the *public* utilities was to bring services to areas, such as outlying areas, which lacked them. In other words, there was a strong social needs dimension to the exercise of their powers and the consequent rearrangement of the rights of private landowners was perhaps easier to accept. Today the perception is that the exercise of power by the *privatised* utilities is likely to be in response to a development opportunity and the utilities will secure a commercial return on their investment. In such circumstances, the rearrangement of private rights becomes more difficult to accept. In fact, the utilities have always played an important role in land development. Land development is an important driver of the economy and we think there is a clear public purpose in ensuring the provision of the necessary infrastructure. This is reflected in the duties imposed on the utilities by Parliament. We accept, however, that the return of the utilities to the private sector is likely to have been accompanied by a change in emphasis away from social needs towards greater commercialisation; but we think the question is not so much whether the powers should be conferred, but whether there should be a corresponding change in emphasis in the procedures and in the measure of compensation. This is a matter we return to below.

There is a further difficulty. The allocation of compulsory purchase powers becomes more problematic in the absence of a clear statutory duty. With public telecommunications operators, for example, the duty is less direct. There is a duty on the Director General of Telecommunications to exercise his functions so as to secure that there are provided throughout the UK such telecommunications services as satisfy all reasonable demands for them.⁸ The licensed public telecommunications operators, however, have no statutory duty to supply a service imposed directly on them under the Telecommunications Act 1984, although they will have obligations imposed on them by conditions in the licence to provide specified telecommunications services.⁹ British Telecom, for example, is obliged by its licence to provide a voice telephony network and other services throughout almost all of the United Kingdom. Notwithstanding the absence of a direct statutory duty, there is a clear public interest in the provision of telecommunication services. Indeed, the Telecommunications Code in Schedule 2 to the Act refers to the 'principle' that no

⁴ Section 9, as substituted by the Gas Act 1995, Sched.3, para.3.

⁵ Section 9(1)

⁶ Section 37(1).

⁷ Section 94(1).

⁸ Telecommunications Act 1984, s.3.

⁹ Section 8(1)(a) of the 1984 Act refers to conditions on the licence requiring the operator to provide such telecommunications services as are specified in the licence.

person should be unreasonably denied access to a telecommunications system.¹⁰ However, it could equally be argued that no person should be unreasonably denied access to shops or some form of transport or recreational facilities. Some other factor is required to determine where the line should be drawn.

That factor could be the linear or locational nature of the service to which we referred earlier. Telecommunications cables, for example, will have a predetermined beginning and end point which limits the room for manoeuvre with regard to the line to be taken and renders it susceptible to hold out by landowners. However, the same could be said of other services subject to linear or locational restrictions and this has been recognised up to a point. For example, there is undoubtedly a public interest in the efficient transportation of oil by pipe-line. Oil companies have access to statutory powers through the Pipe-lines Act 1962; but the procedures are considerably more cumbersome than those available to telecommunications operators (below). Why should oil companies be treated differently to telecommunications companies? Indeed, it might be asked whether there is any logic in treating oil companies operating an oil pipe-line differently to public gas transporters operating a gas pipe-line. The only distinction is that the latter is subject to a statutory duty. It is arguable that the public interest in the two services is the same.

It could also be argued that minerals operators have a claim to be treated in much the same way. Minerals have to be worked where they are found; mineral operators have little locational flexibility, although it should be said that some mineral resources are reasonably widespread. There is also a public interest in access to mineral resources; there are clear public policy pronouncements about the importance of being able to exploit the nation's mineral wealth. This is recognised in the Mines (Working Facilities and Support) Acts 1966 and 1974 which make provision for compulsory access to mineral resources. Such rights can only be granted if the court is satisfied that it is expedient in the 'national interest'.¹¹ However, as with oil pipe-lines, the provisions are generally regarded by mineral operators as very much more cumbersome than those available to gas, water, electricity and telecommunications operators.

Similarly, landfill operators are entitled under the Environmental Protection Act 1990, s.35 to enter private land adjoining their landfill site in order to fulfil the terms of any condition on their waste management licence. Such conditions might be directed, for example, at monitoring for gas migration. There is clearly a public interest in ensuring that such monitoring takes place. Here, too, the operator has no choice with regard to the land over which access is required. In other words, there are locational constraints and statutory powers are required to ensure that access can be secured. But where should the line be drawn? What about other developments where access to adjoining land is desirable, for example, to maintain sight lines for traffic safety, to maintain adequate landscaping for a development or to monitor the effect of a development on the natural heritage? Should fall back compulsory powers of access be available? They are not; yet these situations would seem to give rise to a measure of public interest.

¹⁰ Paragraph 5(3).

¹¹ See generally *Review of Mining Legislation* (DTI, 1995).

The nature of the power

Assuming a case can be made for conferring statutory powers on a utility, the next question is what form the power should take. Existing statutory powers can be grouped into two.

Compulsory ‘easements’ or ‘servitudes’: First of all, the power conferred on authorities to acquire land compulsorily commonly includes acquisition by the creation of a new right. This would enable the authority to acquire a right less than ownership such as the creation of an easement or servitude. The desk study showed this to be a common approach with public authorities but there are also a number of examples among the utilities. Public gas transporters such as Transco have power to acquire land compulsorily including the acquisition of rights by the creation of new rights.¹² A similar power is available to public electricity suppliers,¹³ to public telecommunication operators¹⁴ and to water and sewerage undertakers in England and Wales.¹⁵ Curiously, although water authorities in Scotland enjoy compulsory purchase powers,¹⁶ the powers do not extend to the acquisition of rights by the creation of new rights. Given the strict approach adopted by the courts in interpreting compulsory powers,¹⁷ such a right could not be implied.

The rights described in this paragraph are commonly referred to as ‘easements’ or, in Scotland, ‘servitudes’. However, the legislation does not generally use this term.¹⁸ Sometimes what is created will, indeed, conform to the requirements for an easement or a servitude. Sometimes the power to create a new right will be employed to create a lease. Quite often, however, what is created is not a lease and does not conform to the requirements for constituting an easement or servitude. In particular, where utilities are involved, there is a servient but generally no dominant tenement and the ‘right’ permits the utility to construct fixtures on the land, such as valve chambers, poles and pylons, which the proprietor of an easement or servitude could not do.

It would seem reasonable to assume that, in conferring a compulsory power to acquire land including acquisition by the creation of a new right, the legislature had in mind a right recognised by law such as an easement or a lease. There must be some question whether it is appropriate to employ such a power to create what might appropriately be described as a bastard form of right. In other words, it is not at all clear whether the power actually extends to the creation of the so-called ‘easements’ and ‘servitudes’ which are being created by the utilities. Early clarification of the nature of the power to create a new right would seem desirable.

¹² Gas Act 1986, s.9(3) and Sched.3, Part III, para.1, as amended by the Gas Act 1995, Sched.3, para.56.

¹³ Electricity Act 1989, s.10 and Sched.3, para.1(2).

¹⁴ Telecommunications Act 1984, s.34(3), for example, to acquire a site for a telecommunications mast.

¹⁵ Water Industries Act 1991, s.155(2).

¹⁶ Local Government (Scotland) Etc., Act 1994, s.98.

¹⁷ *Marquess of Breadalbane v West Highland Railway Co.* (1895) 22 R 307; *Sovmots Investments Ltd. v Secretary of State for the Environment* [1977] 1 QB 411. It was to deal with this difficulty that the Local Government (Miscellaneous Provisions) Act 1976, s.13 made express provision for the compulsory acquisition by local authorities of new rights over land.

¹⁸ Exceptionally, the Telecommunications Act 1984, s.34(1) specifically refers to the creation of an easement or other right.

Compulsory wayleaves: Secondly, specific provision is made in the legislation regulating the utilities for the creation of what is generally referred to as a ‘wayleave’, although the legislation does not always use this term. The term is applied loosely to a statutory right conferred on utilities to install, maintain, repair and replace their infrastructure in private land. For example, the Electricity Act 1989¹⁹ makes provision for an application to the appropriate Minister for the grant of a wayleave where this cannot be secured by agreement. The Telecommunications Act 1984²⁰ makes provision in the ‘Telecommunications Code’ for an application to the County Court in England and Wales (the Sheriff Court in Scotland) for an order conferring a wayleave. The Water Industry Act 1991²¹ confers power on water and sewerage undertakers in England and Wales to lay a pipe in private land, in effect a wayleave. Similar provision is made in Scotland in the Water (Scotland) Act 1980²² and in the Sewerage (Scotland) Act 1968.²³ Curiously, no such power is conferred with regard to wayleaves on public gas transporters. There would seem to be nothing to prevent Transco using the general powers conferred on them as a company in their Memorandum of Association to attempt to negotiate a voluntary wayleave. However, they have no fall-back power of compulsion and therefore rely on the more formal ‘easement’.

There may be difficulty in practice in distinguishing between the two statutory rights. Normally, at common law, a wayleave is treated as a form of licence and is personal to the parties and precarious or terminable after an agreed period and will not run with the land so as to bind successors in title. Because of this, compensation is often paid by way of annual payments. Easements, on the other hand, if properly constituted, are legal interests in land, the benefit and burden are annexed to identifiable land and the benefit and the burden run with the respective dominant and servient tenements so as to bind successors in title. Easements may be of indefinite duration. Because of this compensation is often paid as a capital sum. The position in Scotland with regard to servitudes is essentially the same. However, as we have just indicated, the benefit of the statutory ‘easements’ which we have been describing may not be annexed to identifiable land and it is not clear just what sort of right has been created. Furthermore, wayleaves often run for a considerable period of time; indeed, some of the statutory provisions governing the compulsory wayleaves stipulate that they will bind anyone who is at any time an owner or occupier of the land.²⁴ In other words, it is not clear that in effect there is much difference between the two and it is for consideration whether there is really any advantage to utilities in having the two separate powers.

In practice, apart from Transco who use ‘easements’ rather than wayleaves because they have no choice (above), the use of statutory ‘easements’ seems to be limited. The research indicates that they are employed in cases where a substantial and/ or long term investment is being made by a utility and where greater formality and longer

¹⁹ Section 10 and Sched.4, para.6.

²⁰ Section 10 and Sched.2, para.5.

²¹ Section 159.

²² Section 23.

²³ Section 3.

²⁴ See, for example, the Electricity Act 1989, s.10(1) and Sched.4. It should be noted that negotiated wayleaves will generally only bind the parties to them.

security is considered desirable. It is not clear that the utilities see any particular procedural advantage in an ‘easement’ which they do not enjoy through a wayleave.

Procedure²⁵

Not surprisingly, the two powers have their own procedures. These are now considered in turn.

Statutory easements

This can be dealt with shortly. The principal Act governing the utility normally applies the standard compulsory purchase procedure to the compulsory acquisition of rights in land by the creation of a new right. For example, The Gas Act 1986²⁶ applies the procedure in the Acquisition of Land Act 1981 to the creation of a statutory ‘easement’ by public gas transporters in England and Wales and the procedure in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 north of the border.²⁷ The procedure for compulsory purchase is adapted for the creation of a new right and involves the following steps which mirror standard compulsory purchase order procedure:

- preparation of order;
- notice to owners, lessees and occupiers of the making of the order;
- public advertisement of making of the order;
- submission of the order for authorisation to the Minister;
- opportunity for objection;
- right to be heard in support of objections;
- notice to owners, lessees and occupiers of the confirmation of the order;
- public notice of confirmation of the order.

The works themselves, ie the installation of the pipe or cable and the erection of poles and pylons, will, quite often, be the subject of a general planning permission under the terms of Art 3 and Sched 1 Parts 16 and 17 of the Town and Country Planning General Development Order 1988²⁸ so that it is unnecessary to apply to the local planning authority for a specific consent. The permission is subject to tolerances.

We referred earlier to the position of mineral and commercial pipe-line operators and raised the question whether it was appropriate to treat them differently to the utilities. In practice they are. The procedures they are required to follow are altogether more cumbersome than those applying to the utilities. This is partly because of the more onerous authorisation process for the works; but that is really beyond the scope of this study. It is also partly because the arrangements for obtaining a right of access to private land in order to implement the mining or pipe-line authorisation can be more

²⁵ See generally B Denyer-Green, *supra* n.2.

²⁶ Sched.3, Part II, paras.4-12, as amended by the Gas Act 1995, Sched.3, para.56. See too the Electricity Act 1989, s.10(1) and Sched.3, Part II and III; the Water Industries Act 1991, s.154(4); and the Telecommunications Act 1984, s.34.

²⁷ Gas Act 1986, Sched.3, Part II, paras.4-27, as amended.

²⁸ For Scotland the corresponding provision is Art.3 and Sched.1, Part 13 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

drawn out than for the utilities. With mining activity, for instance, application must be made first of all to the Secretary of State for Trade and Industry under the Mines (Working Facilities and Support) Acts 1966 and 1974 for a right to search for and work minerals. Unless the Minister is satisfied that a *prima facie* case has *not* been made out (in which case he will reject the application), he must refer the application to the High Court (the Court of Session in Scotland). The court must be satisfied that the grant is expedient in the national interest and that it is not reasonably practicable to obtain these rights by private arrangement. If satisfied on these two counts, the court may grant the right on such terms and conditions and for such period as it thinks fit. At the time of writing, a special, more streamlined procedure applies to the exploration for and exploitation of opencast coal deposits by licensed opencast operators but this compulsory rights procedure is being brought into line with 1966 and 1974 Act procedure as from 1st January 2000. The procedure for obtaining compulsory rights for the installation of a pipe-line is more straightforward. A person wishing to install a pipe-line may apply to the Secretary of State for Trade and Industry for a compulsory rights order²⁹ to enable installation to take place and to use the pipe-line for commercial purposes. In the event of an unresolved objection to such an order, a public inquiry will be held. A compulsory rights order may be granted subject to conditions. In fact the compulsory powers have not often been employed in relation to commercial pipe-lines,³⁰ although their existence in the background appears to have facilitated negotiations.

Wayleaves

It is in the context of compulsory wayleaves that there are differences between the utilities. The first, as we have already observed, is that public gas transporters have no compulsory wayleave powers. There are, however, other important differences and to illustrate this we set out below the different procedures for electricity, telecommunications and water and sewerage.

Electricity: The Electricity Act 1989,³¹ sets out the following procedure for securing the grant of a wayleave from the Minister:

- the electricity supplier must be satisfied that it is necessary or expedient³² to install and keep installed an electric line on, over etc land;
- the owner or occupier of the land must be given notice requesting the grant of a wayleave in appropriate terms within a specified period (minimum 21 days);
- the owner or occupier fails to grant the wayleave or grants it subject to terms and conditions which are not acceptable to the electricity supplier;
- the electricity supplier applies to the Minister to grant the necessary wayleave on acceptable terms and conditions;

²⁹ Pipe-lines Act 1962, s.12.

³⁰ For an example of the use of such powers in the context of an oil pipe-line see *Daintith and Willoughby's United Kingdom Oil and Gas Law*, Adrian Hill (ed) (Sweet & Maxwell, 2nd edn), para.1-969.

³¹ Section 10(1), Sched.4, para.6.

³² This requirement might give rise to difficulties where, for example, a pylon is being moved to adjoining land to make way for development. The owner of the adjoining land might reasonably question whether the move was necessary or expedient.

- the Minister will afford the owner and occupier an opportunity of being heard in connection with the application;
- if granted, the wayleave will run for whatever period is stipulated in it;
- the wayleave will bind anyone who is at any time the owner or occupier of the land.

183 applications were made to the Minister in England and Wales under these provisions during 1998. Of these, 8 went to a hearing.

Telecommunications: Section 10 and Schedule 2 to the Telecommunications Act 1984 makes provision for the 'Telecommunications Code'. The Code deals with the arrangements for the execution of works on private land by public telecommunications operators (PTO). Paragraph 2 of the Code provides that the agreement in writing of the occupier of the land must be obtained to confer on an operator a right to carry out works for telecommunications purposes on that land. Paragraph 2 also deals with the extent to which an owner is bound by such an agreement if the owner is not also the occupier.

Where the occupier/owner's consent cannot be obtained, the operator may give notice under paragraph 5, to the occupier/owner of the right and the agreement required. If, after 28 days, the required agreement in writing has not been given by the occupier/owner, the PTO may apply to the County Court in England and Wales (the Sheriff Court in Scotland) for an order conferring the proposed right and dispensing with the need for the agreement of the person. The Court is to make an order only if it is satisfied that any prejudice caused by such an order is (a) capable of being 'adequately' compensated for by money (below); or the prejudice is outweighed by the benefit accruing from the order to the persons whose access to a telecommunications system will be secured by the order. The Code provides that in determining the extent of prejudice the Court is to have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunications system. The order may include such terms and conditions as appear to the Court appropriate for ensuring that the least possible damage is caused by the exercise of the right.

Water and sewerage: Section 159 of the Water Industry Act 1991 gives both water and sewerage undertakers in England and Wales the power to lay a pipe in private land.³³ The power is to be exercised only after reasonable (defined) prior notice has been given to the owner and occupier. The procedure is unusual in that there is no right to object and no dispute resolution procedure. Nor is any consent or approval required for the pipe. An owner cannot prevent the laying of the pipe-line. For this reason, the procedure is always used by the utilities in preference to negotiation. An undertaker is required to prepare for the approval of the Secretary of State a Code of practice dealing with the exercise of powers under s.159.

³³ Section 159(1)(c) confers power to carry out any works requisite for, or incidental to, the purposes for which the principal power is conferred. It seems that this ancillary power has been widely interpreted in practice by water undertakers.

In Scotland, s.23 of the Water (Scotland) Act 1980 confers power on a water authority to lay a main in private land after first giving reasonable notice to the owner and occupier of the land. Until the Local Government Etc (Scotland) Act 1994 came into force, there was no provision for objection and for the resolution of disputes. In other words the position was the same as in England and Wales. However, the 1994 Act now provides that, if within two months of the giving of notice, the owner or occupier objects, the authority cannot proceed but must refer the matter by summary application to the Sheriff whose decision on the matter will be final.³⁴

Under s.3 of the Sewerage (Scotland) Act 1968, a sewerage authority has power to construct a public sewer in private land but subject to the prior service of a notice on the owner and occupier of the land. The 1968 Act has always allowed for objections. If objection is made within two months and is not withdrawn, the undertaker must obtain the consent of the Sheriff before proceeding.

Comment: Four points can be made with regard to the procedures outlined above. First of all, it is clear that with telecommunications, compulsion is to be very much a last resort; with water and sewerage (at least in England and Wales) it seems that it is intended to be the norm. Secondly, all three employ a notice procedure where compulsory wayleave powers are being invoked. Thirdly, electricity and telecommunications and, in Scotland, water and sewerage, all provide an opportunity for objection. On the other hand, water and sewerage in England and Wales makes no allowance for this, a matter which was the subject of strong criticism during the research. Fourthly, the Electricity Act uses the Minister to arbitrate disputes whereas the Telecommunications Act uses the County Court (or in Scotland the Sheriff Court).³⁵ Rationalisation with regard to the decision to use compulsion, the service of notice, the opportunity to object and dispute resolution would seem desirable.

It would seem that the reason why the water and sewerage procedures in England and Wales do not allow for objection is because the water industry was viewed as different to the other utilities. During the passage of the water Bill through Parliament, Michael Howard, the Minister responsible said that:

“I know that in retaining the existing powers of water authorities to lay pipes on notice, we would be preserving the unique position of the water industry as the only public utility with such powers. The water industry can, however, properly be regarded in a different context from other utilities. Satisfactory water supply and sewerage arrangements are essential to public health”.³⁶

If that is the explanation, we might reasonably ask how it is that the Scottish water industry seem to get by without such draconian powers.

Compensation³⁷

³⁴ 1980 Act, s.23(1A), added by the 1994 Act, s.109.

³⁵ The Sheriff Court also arbitrates disputes over compulsory wayleaves for water and sewerage in Scotland.

³⁶ Hansard, Session 1988/89, 4th July 1989, col.180.

³⁷ See generally B Denyer-Green, *supra* n.2.

Although there is no constitutional requirement in the UK to compensate a landowner where access to private land is taken in exercise of compulsory powers, statute almost always provides for this. Furthermore, there is a strong judicial presumption that, in the absence of clear wording, Parliament does not intend to provide for the expropriation of a right without full compensation.³⁸ This will be reinforced by the Human Rights Act 1998 which will incorporate into English and Scots law the European Convention on Human Rights. In this section of the report, we examine the provisions for compensation which apply to the key utilities. The discussion is in two parts. In the first part, we consider what measure of compensation is applied; in the second, we look at dispute resolution.

The measure of compensation

The question ‘what should be the measure of compensation’ depends on the purpose that compensation is intended to achieve. In the following brief discussion, we consider five different purposes that compensation can serve.³⁹ Although the discussion is based on compensation for compulsory purchase, these purposes are relevant also to compensation for compulsory access to private land by the utilities.

First of all, it has been suggested that a utilitarian approach to compensation would provide claimants with a small balance of advantage thus encouraging less objection and speedier settlements.⁴⁰ By way of illustration, Cullingworth cites the Minister of Transport in 1958 as stating that his department “could not be more strongly in favour” of a Bill providing for an increase in the measure of compensation for compulsory acquisition because of the difficulties faced by his department in time-consuming procedures for compulsory acquisition at unattractive rates of compensation.⁴¹

Secondly, what has been described as a ‘Rawlsian’ or ‘justice as fairness’ approach to compensation⁴² might also conclude that those faced with expropriation of their land should end up marginally better off, not for utilitarian reasons, but because that would seem to be just and fair. It has been suggested that the compensation decisions of the lay juries prior to 1919 exhibited some of the characteristics of a Rawlsian approach to compensation.⁴³ That was at a time when compulsory powers were being exercised by private enterprise carrying on business as much for the pursuit of profit as for the public interest.

³⁸ *Burmah Oil Company (Burma Trading) Ltd. v Lord Advocate* 1964 SC (HL) 117; *Tiverton and North Devon Railway Co. v Loosemore* (1884) App. Cas. 480; *Colonial Sugar Refining Co. Ltd. v Melbourne Harbour Trust Commissioners* [1927] AC 343; *Bond v Nottingham Corporation* [1960] Ch. 429; *Belfast Corporation v OD Cars Ltd* [1960] AC 490; and *Westminster Bank Ltd. v Minister of Housing and Local Government* [1971] AC 508.

³⁹ See generally J Rowan-Robinson, *Compulsory Purchase and Compensation: The Law in Scotland* (W Green & Son Ltd, 1990), ch.4.

⁴⁰ M Bell, “Taking Justice Seriously: Rawl’s, Utilitarianism and Land Compensation”, (1980) 3 *Urban Law and Policy* 23.

⁴¹ JB Cullingworth, *Environmental Planning*, Vol.IV (HMSO, 1980), p.185. See too P McAuslan, *Ideologies of Planning Law* (Pergamon Press, 1980), ch.4.

⁴² From J Rawls, “Justice as Fairness”, 67 *Phil.Rev.* 164 (1958); also J Rawls, *A Theory of Justice* (Harvard University Press, 1971), p.22.

⁴³ M Bell, *supra* n.36.

Thirdly, and drawing on the approach to settling damages claims, the courts have determined that compensation for compulsory purchase should generally be measured by the financial equivalent of the claimant's loss.⁴⁴ Since 1919 and the growth in the exercise of compulsory powers by the public sector, statutory rules have measured this loss by analogy with a sale in the open market by a hypothetical willing seller.⁴⁵ Compensation, on this approach, reflects, so far as possible, the sum required to leave the claimant as well off financially, but no better off, than he or she would have been without the change in their position.⁴⁶

Fourthly, it has since been acknowledged that, where compulsory powers are exercised, claimants may face losses other than patrimonial loss. With residential claimants, this is sometimes referred to as 'householder's surplus' and reflects loss of ties with an area, friendships made and so on, items to which it is difficult to attach a value.⁴⁷ This sort of loss is now compensated where homes are compulsorily acquired through the home loss payment⁴⁸ and there is pressure to recognise that others, such as commercial claimants, also experience similar uncompensated losses.⁴⁹ Compensation here goes beyond financial equivalence and offers a measure of solace to the claimant.

Finally, it has been argued that there might be advantage in terms of efficiency and equity if the measure of compensation enabled a claimant to participate in the social worth of the scheme for which access to private land is acquired.⁵⁰ Such an approach would be concerned not so much with measurement of loss but with redistribution of profit. The Sheaf committee, for example, considered the possibility of encouraging the voluntary sale of land to local authorities by allowing the payment of a price which gave the landowner part of the equity estimated to arise from the subsequent development.⁵¹ The idea was rejected as inequitable and likely to inflate market values.

Against this background, we may now consider what measure of compensation is applied by statute to the compulsory creation of 'easements' and wayleaves.

Easements: The position with regard to the creation of an 'easement' or 'servitude' has been standardised to quite a large extent and is, therefore, relatively straightforward. If we use Transco as an example, the Gas Act 1986 applies s.7 of the

⁴⁴ *Stebbing v The Metropolitan Board of Works* (1870) LR 6 QB 37.

⁴⁵ See the Land Compensation Act 1961, s.5; Land Compensation (Scotland) Act 1963, s.12.

⁴⁶ *Horn v Sunderland Corporation* [1941] 2 KB 26 per Scott LJ at pp.42 and 49.

⁴⁷ See *The Report of the Commission on the Third London Airport* (HMSO, 1971); *The Report of the Urban Motorways Committee: New Roads in Towns*, Department of the Environment (HMSO, 1972); and *Development and Compensation - Putting People First*, Cmnd.5124 (HMSO, 1972).

⁴⁸ Land Compensation Act 1973, ss.29-33; Land Compensation (Scotland) Act 1973, ss.27-30.

⁴⁹ RICS, *Compensation for Compulsory Acquisition*, 1995; J.Rowan-Robinson and N Hutchison, "Compensation for the Compulsory Acquisition of Business Interests: Satisfaction or Sacrifice", 1995, 13(1) *Jo of Property Valuation and Investment* 44; City University Business School, *The Operation of Compulsory Purchase Orders*, Report to the Department of the Environment, 199, p.7.

⁵⁰ See JL Knetsch, *Property Rights and Compensation* (Butterworths & Co., Canada, Ltd., 1983), ch.4; and WD Jones, "The Impact of Public Works on Farming: A Case Study Relating to a Reservoir and Power Station in North Wales", (1972) 12 *Jo of Agricultural Economics* 23.

⁵¹ *Report of the Working Party on Local Authority/ Private Enterprise Partnership Schemes* (HMSO, 1972), paras.94-96 and Annex K.

Compulsory Purchase Act 1965, in adapted form⁵² to the assessment of compensation in England and Wales. Section 7, as adapted, provides that:

⁵² As substituted by the 1986 Act, Sched.3, para.7.

“In assessing compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”.

As Denyer-Green points out,⁵³ this identifies two heads of claim: depreciation in the value of the land through which the pipe-line is to be laid, including any lost development potential, and severance and injurious affection. Any value added to the land which is attributable to Transco’s scheme would be ignored on the basis of the *Pointe Gourde* rule,⁵⁴ so the owner could not claim for the value of the right to Transco. The Land Compensation Act rules are applied.⁵⁵ In Scotland, the principal measure is set out in s.61 of the Lands Clauses Consolidation (Scotland) Act 1845 and this identifies the same two heads. In terms of the different measures of compensation described above, s.7 of the 1965 Act aims to provide claimants with a financial equivalent of their loss.

The Telecommunications Act 1984,⁵⁶ Electricity Act 1989⁵⁷ and the Water Industry Act 1991⁵⁸ apply the same approach to their respective utilities.

Wayleaves: The position with regard to compensation for compulsory wayleaves is more complex. There is very little standardisation and it is necessary to consider each of the utilities in turn.

1. Electricity: The Electricity Act 1989 provides that the occupier of land, and the owner where the owner is not in occupation, may recover compensation from the electricity company for the grant by the Secretary of State of a wayleave.⁵⁹ In addition, compensation is payable for any damage to land or moveables and for disturbance.⁶⁰ No further assistance is gained from the Act as to what is meant by ‘compensation for the grant’. Is it, like s.7 of the 1965 Act, simply concerned with a financial equivalence of the claimant’s loss or does the reference to the grant imply an element of consideration? If so, what losses are contemplated? Unlike wayleaves for pipe-lines, electricity wayleaves may result in structures on the land which have a serious effect on the view and a corresponding depreciating effect on the value of the

⁵³ B Denyer-Green, supra n.2

⁵⁴ Derived from *Pointe Gourde Quarrying and Transport Co. v Sub-Intendent of Crown Lands* [1947] AC 565. The principle is to the effect that increases or decreases in value due to the scheme underlying the acquisition should be ignored in assessing compensation.

⁵⁵ The rules are set out in the Land Compensation Act 1961, s.5; and the Land Compensation (Scotland) Act 1963, s.12.

⁵⁶ The 1984 Act does not expressly adapt s.7 of the 1965 Act. It simply applies in s.34(1) the Acquisition of Land Act 1981 procedure and that Act, in turn, applies the Land Compensation Act 1961 to the assessment of compensation (s.4(1)).

⁵⁷ 1989 Act, Sched.3, Part II, para.8

⁵⁸ 1991 Act, s.154(5) and Sched.18.

⁵⁹ 1989 Act, s.10(1) and Sched.4, para.7(1).

⁶⁰ *Ibid*, para.7(2).

‘retained’ land.⁶¹ Does ‘compensation for the grant’ encompass injurious affection? The Land Compensation Act rules are not applied and the result, as Denyer-Green points out, is that the measure of compensation remains unclear.⁶²

2. Water supply and sewage disposal: The Water Industry Act 1991 provides for England and Wales that, if the value of an interest in land is depreciated as a result of the laying of a pipe in private land, compensation equal to the amount of the depreciation shall be paid to the person entitled to that interest.⁶³ The compensation entitlement applies not only to the land in which the pipe is being laid but to land held with that land. In other words, it includes injurious affection. The rules set out in s.5 of the Land Compensation Act 1961 are to be applied to the assessment of compensation for depreciation⁶⁴ and provision is made for set off for any enhancement in value.⁶⁵ In addition to depreciation, any loss or damage of the nature of disturbance attributable to the carrying out of the works is to be compensated.⁶⁶

The general approach in the 1991 Act to the measurement of compensation (depreciation, damage and disturbance) is similar to that for compulsory rights orders under the Pipe-lines Act 1962⁶⁷ except that the latter makes no reference to the application of the Land Compensation Act rules or to set off. Broadly, the approach in both cases is to provide for a financial equivalent of the loss.

North of the border, the Sewerage (Scotland) Act 1968 makes provision for compensation for any loss, injury or damage sustained by any person by reason of the exercise of the power to lay pipes for sewage disposal.⁶⁸ The Water (Scotland) Act 1980 provides that where a water authority lays a main through private land, the authority must pay compensation for “any damage done to or injurious affection of that land”.⁶⁹ It is not altogether clear whether ‘any damage’ refers simply to disturbance or whether it would cover depreciation should this occur.

3. Telecommunications: The Telecommunications Act 1984 provides for the court to include such terms and conditions as appear appropriate, including such terms and conditions with respect to the payment of consideration as appears “would have been fair and reasonable if the agreement had been given willingly”.⁷⁰ Compensation is also payable for loss or damage.⁷¹ The ‘fair and reasonable’ test is similar to the

⁶¹ It is reasonable to highlight the position of neighbours who may also suffer injurious affection and corresponding depreciation in the value of their property as a result of the structures but who will not fall within the compensation entitlement in s.10(1) and Sched.4, para.7(1) of the 1989 Act.

⁶² B Denyer-Green, supra n.2.

⁶³ 1991 Act, s.180 and Sched.12, para.2(1). In *Leonidis v Thames Water Authority* (1979) 77 LGR 722, the claimant was held on earlier legislation to be entitled to loss of profits incurred over a period of 11 months as a result of the exercise of powers by the Water Authority.

⁶⁴ *Ibid*, para.3(2). See *Collins v Thames Water Utilities* (1994) 99 EG 116; *Rush and Tomkins Ltd. v West Kent Sewerage Board* (1963) 14 P&CR 469.

⁶⁵ *Ibid*, para.3(4).

⁶⁶ *Ibid*, para.2(2).

⁶⁷ Section 14.

⁶⁸ 1968 Act, s.20.

⁶⁹ 1980 Act, s.23(2).

⁷⁰ 1984 Act, s.10 and Sched.2, paras.5(4) and 7(1)(a).

⁷¹ *Ibid*, para.7(1)(b).

provision in the Mines (Working Facilities and Support) Act 1923⁷² and its successor Act of 1966.⁷³ Both the MWFS Acts provided for compensation for access to minerals to be determined on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted. In *Re Naylor Benzoin Mining Co. Ltd.*⁷⁴ and subsequently in *BP Petroleum Developments Ltd. v Ryder*⁷⁵ it was held that compulsory purchase principles should be applied in assessing compensation under these Acts so that the position of special purchasers should be ignored.

The 1984 Act provision was considered in *Mercury Communications Ltd. v London and India Dock Investments Ltd.*⁷⁶ Mercury argued that the same approach should apply. However, His Honour Judge Hague QC in the County Court, having regard to the terms of the legislation which it replaced and to other provisions in the 1984 Act Telecommunications Code, distinguished the provision and held that the determination of what was fair and reasonable involved an element of subjective judgement and that the phrase should be interpreted without regard to compulsory purchase principles. It followed from this that the *Pointe Gourde* principle, which requires any increase in value due to the scheme underlying a compulsory acquisition to be ignored, had no application. The claimants, for their part, argued that the proper consideration to be paid should be an annual sum representing a percentage of the anticipated net profit to Mercury from the development for which the cables were required, in other words a measure reflecting the social worth of the scheme. This argument was also rejected. Such an approach was considered appropriate only in cases like ransom strips where there is a single capital payment to be made and where the benefit to the utility is readily quantifiable. The judge concluded that wayleave payments reflect the use made of the right granted and its importance to the grantee so that a wayleave 'rent' would generally be the most fair and reasonable way of calculating the consideration. That approach was not, however, practical in right of way cases such as this. In the end, a fair and reasonable consideration was determined by reference to the settlements under two earlier agreements negotiated in the area. The measure employed by the 1984 Act would seem to come closest to the social worth model in the sense that it is concerned less with the loss to the landowner than the gain to the utility, although it would seem that that worth should reflect the value of the wayleave rather than a proportion of the value of the scheme for which it is required.

Comment: The different measures of compensation provided in law for compulsory access by the utilities to private land is both surprising and confusing. Our interview survey suggests that there is too little experience of contested claims arising from compulsory access to be clear about just how far these measures actually differ in practice and how they affect valuation. On paper, however, they seem to range from a strict compulsory purchase compensation approach at one end to a more generous consideration-based approach at the other. The approach in practice to the valuation

⁷² Section 9(2).

⁷³ Section 8(2).

⁷⁴ [1950] Ch.567.

⁷⁵ [1987] RVR 211.

⁷⁶ (1994) 69 P&CR 135.

of rights negotiated under the shadow of compulsory powers is considered in the next section of this paper.

There is no obvious justification for the different approaches. It would seem to be highly desirable to have clarity about whether compensation should be based on depreciation, whether the Land Compensation Act rules should be applied to determine this, whether injurious affection is compensatable, whether there should be an element of consideration and whether set off applies.⁷⁷

Dispute resolution

There is also some variation in the way in which disputes over compensation for compulsory access to private land by the utilities are settled. With compulsory 'easements' and 'servitudes' disputes fall to be determined by the Lands Tribunal or the Lands Tribunal for Scotland as for other compulsory purchase compensation disputes. The same is the case with compulsory wayleaves under the Electricity Act 1989⁷⁸ and with water and sewerage in England and Wales.⁷⁹ With water in Scotland, on the other hand, disputes are to be determined by arbitration;⁸⁰ and with sewerage, disputes are to be determined by the Sheriff.⁸¹ Under the Telecommunications Act 1984, on the other hand, compensation disputes where the need for agreement is dispensed with, are to be determined by the County Court in England and Wales or by the Sheriff Court in Scotland at the same time as a decision is taken on the granting of the right.⁸² Whether this is a good use of court time or whether county court judges or sheriffs are well-placed to handle such disputes was the subject of comment in *Mercury Communications Ltd*. In that case, the judge observed that:

“Presumably Parliament thought that cases under the Code would be relatively straightforward and could be accommodated in the normal county court listings without difficulty. The hearing before me extended over seven full days. The papers are contained in eight lever-arch files, some of them quite bulky. As well as considering the several reports from each expert and hearing their oral evidence, I have read statements from seven other persons and four of them also gave oral evidence. Counsel made their submissions to me with economy, but their written submissions together covered 60 pages. Further, the valuation issues which I have considered are of a kind which are familiar to the Lands Tribunal, but not to most county court judges”.⁸³

He went on to suggest that any future application under the Code which was likely to be of substance should be heard by a judge with some experience in valuation matters. It should be noted that disputes under the Mines (Working facilities and Support)

⁷⁷ It is doubtful whether set off can be implied - *South Eastern Railway Co. v London County Council* [1915] 2 Ch 252 per Eve J.

⁷⁸ 1989 Act, s.10(1) and Sched.4, para.7(4).

⁷⁹ 1991 Act, s.180 and Sched.12, para.3(1).

⁸⁰ 1980 Act, s.23(2).

⁸¹ 1968 Act, s.3(2).

⁸² 1984 Act, s.10 and Sched.2, paras.1 and 5.

⁸³ (1994) 69 P&CR 135 at p.142.

Acts 1966 and 1974 fall to be determined by the High Court or the Court of Session in Scotland.⁸⁴

⁸⁴ 1966 Act, s.8(1).

Valuation

Methodology

Although much of this paper has been devoted to a discussion of the statutory arrangements governing compulsory access to private land by the utilities, it is important to bear in mind that compensation arising from nearly all of the thousands of requests for access every year are settled by negotiation without recourse to statutory powers. The statutory measures of compensation clearly provide a backcloth against which the negotiations take place, but neither the claimants nor the utilities are bound by them. Much of the interview survey was directed towards identifying the approach adopted by the different utilities to the settlement of claims negotiated under the shadow of compulsory powers. A detailed questionnaire was prepared for the face to face interviews with seven promoters. These comprised two each from the electricity, water and telecommunication industries and one from the gas industry. From the survey it became evident that the vast majority of new wayleaves over the last three years were acquired in rural areas. In consequence, lengthy interviews were also held with the National Farmers Union (NFU) in England and Scotland and with the Country Landowners Association (CLA).

This section will consider the appropriate valuation methodology which should be used in making a claim for compensation for land which is sterilised by a wayleave and will then compare current practice between the gas, electricity, water and telecommunication industries.

In granting a wayleave, whether by agreement or through compulsory powers, the landowner is giving a right to the promoter to enter his land to construct and use apparatus, and to return at any future date to carry out repairs. As discussed in the previous section, existing legislation makes provision for a variety of compensation measures but is not clear how far they differ, as only one - the Telecommunications Act 1984 - explicitly provides for consideration with the others compensating for any loss. The statutory compensation measure of loss to the claimant is normally calculated by reference to the diminution in market value of the land including the effects of severance and injurious affection, plus any disturbance elements; but with a negotiated settlement it does not need to be calculated in this way.

In some, but not all, cases of statutory compensation, payment is only made where the wayleave crosses a claimant's interest and the claimant receives no benefit. Where the owner benefits from the service provided then no payment is made. For example, where the owner of a business park requires the installation of a telephone line to the buildings, then no compensation would be payable for entering the land. However, if the line crosses an adjoining field in order to supply the business park then the owner of that field would be entitled to receive compensation. Generally, the companies charge their customers for the initial cost of connection and while practice and the amount differs between the utilities, the connection charge must to some extent defray the cost of the wayleave payments.

The NFU and the CLA (or equivalent bodies in Scotland) negotiate annual agreements with Transco as well as with the electricity and telecommunication

industries, which are intended to guide compensation settlements in both compulsory and voluntary cases. These agreements substantially reduce the time spent on negotiation between the parties, although they are not binding. If members of the NFU or the CLA feel that they are not sufficient to compensate in their particular circumstances then they are free to negotiate on their own account, although the onus is on the claimant to prepare the claim and provide comparable evidence to substantiate the loss. Notably, there is no agreement with the water / sewerage industry.

The key issue is the degree of sterilisation which results from the existence of the apparatus. Some equipment might result in 100% sterilisation while others might result in a minor or nil reduction in value or could even result in an increase in land value. To illustrate this point, where an electricity line is proposed through afforestation and it is considered that the electricity structures are likely to be permanently required, their presence effectively sterilises the ground in perpetuity along the length of the wayleave. As a result the landowner loses all future earning capability on the land occupied by the apparatus and under the wires, and the land value effectively reduces to nil. The compensation claim should reflect the financial equivalence of the loss and will be based on the reduction in market value as a consequence of the wayleave which in this case is full open market value, including future potential.⁸⁵ In contrast, where an electricity line is proposed across arable land, only the area of ground physically occupied by the apparatus is sterilised, with the farmer able to grow crops and carry out normal agricultural operations under the flying wires. In the case of underground pipes, the degree of sterilisation may be very minor except where development is proposed. Often building is prevented immediately above the pipe and this may affect the development value of the site. In practical terms, the presence of a pipeline may restrict the size of an extension to an existing dwelling or prevent new dwellings being constructed.

A further possible complication is the involvement of the Health and Safety Executive (HSE) where high pressure pipelines are proposed. The HSE are a statutory consultee to the local planning authority on planning applications where the application site is affected by a notifiable pipeline or is within a certain distance of such a pipeline. This distance is commonly referred to as the consultation zone. Where the HSE believe that there is unacceptable risk to the public as a consequence of the proximity of the pipeline, they will advise the planning authority to reject the application. This may result in a substantially wider sterilised strip than was originally compensated. Concern was expressed by practitioners about whether, in practice, compensation is paid for the entire area affected. 'Easements', however, commonly provide for further compensation for lost development value where planning permission is refused solely because of the existence of the pipe-line.

It is common practice in negotiated wayleaves to set off any benefit due to the existence of the apparatus, even though statute does not always provide for set off in the exercise of compulsory powers. As noted in the previous section, the Water Industry Act 1991 does make provision for set off, and the provision of a new water main or sewerage system might well increase the development value of the

⁸⁵ N. Hutchison, A. Cameron and J. Rowan-Robinson, (1999) Assessing the compensation for electricity wayleaves, *Journal of Property Investment and Finance*. Vol. 19 (2).

contiguous land to a far greater extent than any reduction in value due to the sterilisation of the land at the immediate vicinity of the apparatus. Despite this set off provision, in the majority of cases the existence of the wayleave results in a reduction in land value, although not the complete sterilisation of the land in perpetuity.

The claim for compensation may be based on the future potential of the site. In any sale situation the future potential is reflected in the exchange price in the market place. Where the potential is uncertain, for example where planning permission has not yet been obtained, the price includes an element of “hope value”, and in this situation the price is normally greater than the existing use value but less than the alternative use value without any uncertainty. This is relevant here, as the majority of wayleaves are in rural areas, some on the peri-urban fringe, where the potential for alternative use will be reflected in the offers made in the open market by a purchaser. The onus is on the claimant to provide open market⁸⁶ evidence of any sales of land with similar characteristics.

In a poor market open market sales evidence may be difficult to obtain. There may be very few transactions and much of the evidence that does exist is often clouded in secrecy. Moreover, the property market is often criticised for not reacting quickly to changes in underlying fundamentals and is thus, to a degree, inefficient. Indeed, there is tentative evidence to support the view that the UK commercial property market exhibits only a weak form of efficiency⁸⁷ where prices do not fully reflect all publicly available information. For example, there may be a reduction in tax rates and current valuations may not adequately take into account this uplift in income. Claimants may therefore feel that relying on historic comparable evidence does not adequately reflect their loss. In these cases it may be appropriate to consider an explicit Discounted Cash Flow approach, where all future income and expenditure is discounted back to the present day at an appropriate discount rate to leave a Net Present Value which is the land value. However inputs to the calculation require critical analysis as the NPV figure is highly sensitive to changes in a number of key variables, including the choice of discount rate. In view of this sensitivity, it is not surprising that promoters prefer to consider claims using past comparable sales evidence rather than explicit DCF techniques.

The exact area of land sterilised depends upon the type and purpose of the apparatus. A certain distance either side of the pipe, sewer, line or cable is required for safety and access purposes and should be included in calculating the area affected by the wayleave. Where a capital payment is to be made the width of the land sterilised is multiplied by the length of the wayleave and then a sterilisation factor applied. Often in the initial installation of the apparatus, a larger area may be required, (the initial working width) than will be needed in the future for maintenance purposes (the sterilised width). However, where the land faces any restrictions in use then the entire area should be included in the calculation⁸⁸. Such restrictions might include prohibition against building above the pipe or the growing of trees. It was apparent in

⁸⁶ Open market value is defined in the *RICS Appraisal and Valuation Manual* (1997) RICS, London

⁸⁷ G Brown (1991) *Property Investment and the Capital Markets*, E& FN Spon, London.

⁸⁸ See *St Johns' College Oxford v Thames Water Authority*, (1990)1 EGLR 229. It was argued by the water industry that this case was unusual due to the abnormal depth of the sewer which necessitated a wider working width than would normally be required.

our survey of the utilities that the exact area which is sterilised is subject to negotiation and that practice differs between companies in the same industry. A standardised approach would appear to be needed to avoid uncertainty and confusion among claimants. On occasions, the agreed settlement is a global sum which is not easily disaggregated among the component parts of the claim.

Where the sterilisation payment reflects the effect on market value, then no additional annual payments should be made. This would be double counting. Where annual payments are made they are calculated on a per item of equipment basis. The annual payments are often described as “rent”, but this terminology can be misleading as the payment is in essence for a right acquired over land.

The measure of compensation under a negotiated wayleave

The results of our survey of current practice within the gas, electricity, water and telecommunication industries are now considered with the key differences highlighted.

Transco: Under the national agreement with the CLA/NFU, Transco have agreed to pay 80% of the vacant possession value of the land affected. The land values are calculated with reference to local comparable evidence. The farmer can carry out normal acts of husbandry on the land and continue to grow crops or graze cattle. However, there is a restriction on building above the land occupied by the pipe and on a buffer zone either side of the pipe. This sterilised area for building purposes ranges from 3 metres to 24 metres depending on the diameter and pressure of the pipe. In addition an occupier’s payment is made, partly as compensation for the time which the occupier spends on the paperwork and partly as an inducement for the early return of the consent form. On receipt of the signed form, Transco are allowed to enter the land prior to the completion of the legal formalities. The payment is calculated on a per metre basis depending on the diameter of the pipe. For example, if the diameter of the pipe is 36” to 48” the payment is £2.50 per metre run.

Where the land affected, is not in agricultural use, then Transco are more flexible with the level of payments. In practice, with small areas in residential gardens, higher rates are employed as owners will not accept small sums, of say, £25. In other cases where the land affected has a higher open market value than agricultural values, then the payments may be at reduced percentage, say 50% of the land value and are subject to negotiation between the parties.

Disturbance payments are made to cover such items as crop loss, repairs to drainage, professional fees and a payment to reflect the farmer’s time. The national agreement also allows the claimant to make a further claim for loss of development value should planning permission be granted at any time in the future notwithstanding that the original claim may have been settled on the basis of existing use value plus disturbance.

Under this agreement the claimant receives significantly more than would seem to be strictly required to compensate for the actual loss. This would indicate that both parties have accepted the need for an element of consideration to be paid. While

accepting that the occupier must allow access at all times, a farmer can very often carry on growing crops or grazing cattle and thus has no loss of income, yet receives compensation amounting to 80% of the land value with an opportunity to seek further compensation if planning permission is refused solely because of the existence of the pipeline. At the same time, Transco are satisfied with the level of payment as they gain swift access to the land, reduce the administrative cost of negotiating payments while at the same time initiating and maintaining a good working relationship with the landowner which is seen as crucial. All the utilities require unfettered access to their apparatus for maintenance and repair, and if the goodwill was lost and landowners adopted a “locked gates policy” then this could result in lengthy disruption to supplies and services.

Electricity: The national agreement with the electricity industry, consists of two elements. The first part is an annual payment to landowners / owner occupiers and is calculated on a per item of equipment basis. It is unclear exactly how these figures are calculated, but from the evidence submitted in *Clouds Estate Trs v Southern Electricity Board* (1983) 268 EG 376 and 451, the basis of the rates would appear to stem from the underlying rental value of the land. However the current rates appear to be far in excess of agricultural rental values. If one imagined a hypothetical field full of electricity poles the total annual payments would greatly exceed the underlying rental value of the land in agricultural use. Moreover, as the rates are based on aggregated data of land values which are then applied throughout the country, the rates may seem particularly at odds with the underlying rental values of poor quality land in remote areas. The CLA argue that the payment includes other elements, for example, compensation for the presence of the lines, the loss of sporting rights and visual impact of the whole apparatus⁸⁹. While this may be true, the payments would also seem to include what amounts to a consideration for the granting of the wayleave.

The second element of compensation is an annual payment to occupiers for agricultural interference and is calculated using an ADAS model. The rates are revised annually, on an upward only basis, and attempt to accurately reflect the increased costs associated with the presence of the equipment, such as the extra time needed to harvest the crop and the cost of additional weedkiller. Despite the upward only clause at a time when some costs are reducing, these payments attempt to reflect actual loss, and thus appear not to include an element of consideration.

Disturbance payments are made to cover any loss during installation or subsequent repair of the apparatus and claimants are also entitled to compensation under the headings of severance and injurious affection. However, the various elements of the claim must be consistent with each other⁹⁰. It is not for example, possible to claim disturbance or injurious affection if the depreciation claim is based on development potential which would inevitably involve disturbance or injurious affection. The electricity companies are satisfied with the level of compensation paid, once again reflecting the need for a good working relationship with the occupier in order to ensure access in the future.

⁸⁹ A.Pym & O.Harwood (1997) *Cables and Wires*, Country Landowners Association, London.

⁹⁰ *Horn v Sunderland Corporation* [1941] 2KB 26

Water: There is no national agreement with the CLA/NFU and the water / sewerage industry. During the research, two completely different approaches to compensation were found between the non privatised North of Scotland Water Authority (NSWA) and a privatised water company operating in England and Wales. The NSWA pay no compensation for the acquisition of wayleave rights (except on Crown Land). As with all of the promoters involved in our study, in preparing the line of the wayleave, the authority work closely with the landowner to minimise any disruption. The Authority argue that if the landowner suffers no loss as a result of the presence of the water main or sewer under his land, then no compensation is payable. However, compensation is paid for disturbance where the loss arises directly and unavoidably as a result of the scheme, and for injurious affection.

The privatised water company operating in England and Wales make capital payments for the acquisition of the wayleave on a per metre basis, based on 50% of the agricultural land value. Where the land is in non agricultural use, then “enhanced” agricultural land values are used which, although an improvement, may be significantly less than the full open market value of the land. This anomaly would appear to be based purely on commercial expediency, with the route of the pipe chosen in order to minimise sterilisation. One-off capital payments are made for structures above the ground such as manhole covers, with the level of payment, (normally between £100 and £400), dependant on the degree of inconvenience to farm activities such as ploughing. Unlike the agreement with the electricity industry, the amount is not calculated with reference to an ADAS model of agricultural interference, but by negotiation between the parties. This seems a further anomaly which introduces potential inconsistency between companies and which could be overcome. Indeed, it was suggested during our research that some water companies offer significantly lower levels of payment than others. Disturbance payments are made to cover any direct and unavoidable loss suffered during installation and maintenance, and compensation is paid for injurious affection provided this is consistent with other elements of the claim.

While the terms offered by the water company is less than paid by Transco, the payment, based on 50% of agricultural land value, appears greater than the actual loss suffered by a farmer and thus would appear to include what amounts to an element of consideration for the grant of the wayleave. The water company is highly satisfied with the level of compensation payable believing it to be commercially expedient and reasonable to make a payment in order to establish a good working relationship with the owner.

Telecommunications: The CLA/ NFU enter into national agreements with British Telecom and the other main operators such as Cable and Wireless Communications (Mercury) Ltd. Similar to the agreement with the electricity industry, the agreement with BT consists of two parts; an annual payment to landowners which is calculated on a per item of equipment basis, and annual agricultural disturbance payments to occupiers which are in line with the ADAS model.

For the period ending 31 March 2001, Mercury have agreed to pay a single payment of £6.00 per metre run for a fixed term of 20 years for the right to lay maintain and renew up to four ducts laid in a single trench in agricultural land. The farmer can

continue growing crops above the ducts although the area is sterilised for building purposes. Single capital payments are also made for junction boxes which are located below and finish level with the surface and which can cause a nuisance for ploughing. Using an average price for agricultural land of £7,833 per hectare⁹¹ and assuming a sterilised width of 6 metres, the payment of £6.00 per metre represents a payment at nearly one and a third times the underlying land value. The CLA, who were involved in negotiating the agreed rate, commented that the payment of £6.00 per metre is not related in any way to agricultural land value. It was argued that as the telecommunications operator can lay cables in the public highway without payment, the figure of £6.00 per metre is a rough approximation of the difference in cost between restoring tarmac and restoring agricultural land after cable laying. The figure was therefore calculated on an avoided cost basis. Whichever way the figure is calculated the payment appears to include an element of consideration, as the farmer can carry on his normal operations.

However, in non rural locations the exact method of valuation employed is far from clear. In these cases the settlement is more a reflection of the negotiation strengths of the parties with the level of land value and the width of the sterilised strip all being subject to a degree of give and take. Exactly how much consideration is actually paid is uncertain.

Comment: One of the most striking aspects of the research has been the different levels of payment made to claimants for negotiated wayleaves. Some of the payments are annual, some one-off capital amounts and some, as with Mercury on agricultural land, capital payments for a limited period of time. Moreover, some utilities attempt to compensate actual loss while others pay no compensation, or alternatively include a consideration for the grant of the right which is greater than the actual loss. While similar rates across all the utilities would not be appropriate, as the degree of sterilisation depends on the apparatus employed, some consistency of procedure and approach to compensation, reflecting a fair balance for claimants, would seem sensible. To illustrate this point, imagine the predicament of a landowner who owns a field which is located on the edge of an expanding town and who is approached by four different utilities - gas, electric, water and telecommunication - who all wish to place equipment under, over or on his land. The landowner is faced with a bewildering plethora of legislation, which will produce compensation levels which will differ, not only across the industries but also in some cases between companies within the same industry for the installation of the same apparatus. This is not satisfactory and leads to a compensation lottery.

⁹¹ RICS Farm Price Survey, October 1997, RICS London.

Conclusions and recommendations

In the introduction to this paper we identified two themes at the heart of this research. The first questioned how far it is appropriate to confer on the privatised utilities a framework of powers and procedures for the creation of ‘easements’ and wayleaves across private land similar to those available to public bodies. The second focused on the extent to which such powers and procedures strike a fair balance between the interests of the utilities and the landowners. How far do they offer the utilities a simple and speedy means of securing access to private land where this is required while at the same time providing adequate safeguards for the interests of landowners? We consider these two themes in turn in this final section of the report⁸⁷.

The need for access to private land

It is evident from Appendix 1 that the power to create ‘easements’ and wayleaves across private land has been widely conferred; and our research indicates that in practice such powers are extensively, but indirectly, used by the key utilities. We were left in no doubt that the securing of ‘easements’ and wayleaves is regarded as vital to the discharge by the utilities of their functions; but the statutory powers involving compulsory access are rarely invoked. Instead, they provide an important backdrop to the private negotiation of access and it is in this sense that we refer to their use as ‘indirect’. We were told that the existence of compulsory powers in the background is instrumental in securing the voluntary agreement of landowners to access and we believe the utilities could face considerable difficulties, particularly given the linear form of their services, if the statutory powers were removed.

However, it might be argued that such difficulties should be faced up to. The effect of privatisation has been to place the utilities in the market place where they carry on their business in pursuit of profit. We referred earlier to the switch in emphasis from social needs to greater commercialisation. In the market place, promoters would expect to have to live with such difficulties and landowners would expect to be able to benefit from their quasi-monopoly position. This argument would hold that statutory intervention in such cases is no longer appropriate.

The difficulty with this argument is that it ignores the statutory obligations placed on the utilities, obligations which, for all the underlying commercialisation, have a strong public interest dimension. The utilities have no choice about fulfilling their obligations; and with trunk routes they may have little choice with regard to the line. To remove the statutory powers of access would prejudice their ability to discharge their duties. Our conclusion is that statutory powers of access should continue to be available where utilities are under a statutory duty to develop and maintain a service.

The more difficult question is where to draw the line. As we pointed out earlier in the paper, there are a number of bodies, such as telecommunication operators, oil companies and mineral undertakers, carrying on functions which have a public interest dimension. These bodies are not discharging statutory duties; but there is a clear public interest in what they do and there are linear or locational constraints

⁸⁷ See generally B Denyer-Green, *supra* n.2.

which, if exploited by landowners, could prejudice their ability to do it. Drawing the line with regard to powers of access to private land is really a matter of political choice and at present it is drawn so as to include this sort of case.

Having determined which bodies should have powers of access to private land, the next matter to consider is the nature of the power. In this paper we have drawn a distinction between what are commonly referred to as 'easements' or 'servitudes' on the one hand and wayleaves on the other. This is an area where there seems to be an element of confusion. Confusion exists, first of all, over the nature of the right described as an 'easement' or 'servitude'. It seems that sometimes what has been created does not satisfy the requirements in law for an easement or a servitude. Where this is so, it is difficult to know what, if anything, has been established. If such rights are to continue to be available, we think it would be helpful if the legislation clarified the nature of the right created.

Secondly, preference for the creation of an 'easement' or 'servitude' seems to turn on their endurance and on their ability to bind successors in title. Yet some of the statutory wayleaves are also stated to bind successors in title and, in practice, some of them secure what to all intents and purposes are permanent arrangements. In other words, the distinction between the two instruments becomes blurred in practice. It is for consideration whether two separate instruments are required and whether a single clearly defined but suitably flexible statutory instrument which does not attempt to masquerade as an 'easement' or 'servitude' would reduce the confusion. The CLA in its response to the research indicated that it favoured a lease as the instrument best able to reflect the continuing relationship established between the private landowner and the utility. We think there is much to be said for this view.

Striking a fair balance

One feature which distinguishes the nature of the power conferred on the utilities from the exercise of conventional compulsory purchase powers is the continuing relationship between the landowner and the utility to which we have just referred. The CLA referred to this as having some of the characteristics of a landlord/ tenant relationship. If this continuing relationship is to operate on a satisfactory basis, it is clearly desirable that both sides should be content with the outcome. Striking a fair balance is therefore very important and we have a number of observations to make in this regard.

Separate procedures apply to easements and servitudes on the one hand and to wayleaves on the other. The procedure applied to the former is the standard code (with minor adaptations) applicable to most compulsory acquisitions of land set out in the Acquisition of Land Act 1981 for England and Wales and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 for Scotland. We make no proposals to change this if the power to create a new right is to remain available to utilities (above).

The procedure applied to the latter varies from utility to utility. It is difficult to see any justification for this. Much confusion would be removed if the procedure was standardised. There is much to be said for following the model for compulsory

purchase whereby a standard procedure (set out in the 1981 or 1947 Acts) is simply incorporated by reference each time a new Act provides for compulsory purchase. For utilities in the private sector carrying on their business in pursuit of profit, we believe the approach set out in the Telecommunications Code, whereby the use of compulsion is to be a matter of last resort, has much to commend it as a starting point. We think the automatic resort to compulsion by water undertakers in England and Wales is too strong an approach and the experience of the other utilities in securing wayleaves suggests it is unnecessary.

As to the procedure to be followed, most statutes provide for notice to owners and occupiers, an opportunity to object and a dispute resolution procedure. Any standard procedure should comprise these three steps. We are not convinced of the justification for excluding an objection procedure for water and sewerage in England and Wales; an objection procedure operates for water and sewerage in Scotland.

The dispute resolution procedure varies between utilities and could usefully be standardised. The option of mediation should be available. Inevitably, adjudication will sometimes be required and both parties will benefit if this is cheap, speedy, accessible, informal and expert. We think the courts will sometimes have difficulty meeting these requirements; arbitration (either through the appropriate Minister or through an arbitrator) or a tribunal would offer a more straightforward dispute resolution mechanism. It would be important that the procedure should be able to adopt a level of informality consistent with the matters in dispute. In the event of the dispute resolution procedure being invoked, the utility should be compelled to establish the case for the wayleave if the objector so requires. If, as has been suggested, acquisition and compensation procedures are to be run at the same time rather than sequentially for compulsory purchase, it would seem sensible to bring the wayleave procedure into line. This is already provided for with telecommunications.

The measure of compensation is also standardised for the creation of an easement. The Land Compensation Act rules are invoked with minor adaptations. There is no doubt that a lot of confusion would be avoided if the measure of compensation for wayleaves was clarified and standardised. At present the measure varies from utility to utility and in some cases is unclear.

We would propose that the measure of compensation should be codified. The code could then be incorporated by reference into every statute which confers compulsory wayleave powers on a utility. The following matters would need to be determined:

- Should a consideration be paid for the grant of the wayleave or should landowners simply be entitled to a financial equivalent of their loss? This is a matter of political choice; but it would seem that there would be nothing very novel about providing for a consideration. Our research shows that, with the exception of water in Scotland, voluntary settlements commonly include what in effect is an element of consideration; and the Telecommunications Code makes explicit provision for consideration. We think an element of consideration would be consistent with the privatisation of the utilities. It would also be consistent with the position which applied in the 19th Century before the utilities were brought into the public sector.

It is arguably also fair that those affected should receive some recognition beyond their financial loss; and experience in practice suggests that there could be advantages for the utilities in terms of a speedy settlement.

- If a consideration is to be paid, how should it be measured? In *Mercury Communications Ltd.* (above) the judge favoured, but did not adopt, an approach for annual payments which reflected the use made of the right granted, i.e. something akin to a royalty payment or a wayleave 'rent'. The implication from the judgement is that with capital payments, an assessment based on the increase in the value of the land due to the scheme for which the wayleave is required might be appropriate: the so-called *Stokes v Cambridge* approach.⁸⁸ In other words, the consideration might reflect an element of the gain to the utility. However, in reality it is extremely difficult to measure the gain to the utility from the installation of specific items of apparatus at the local level. Some of the apparatus installed will produce a very high level of return while others, in the more remote areas, may be lucky to produce a minimum level of profit. In practice, a percentage of market value is used, in a somewhat arbitrary way, which in effect partly reflects the gain to the utility. For rural areas, the percentage is renegotiated from time to time (except for water) on a national basis by the CLA/ NFU (and their Scottish counterparts) and the utilities. This sort of approach is analogous to the home loss payment which is an arbitrary additional payment to residential occupants dispossessed as a result of compulsory purchase.⁸⁹ This would seem to be a pragmatic approach and we would recommend that the current legislation is amended to reflect that the compensation due to claimants should reflect gain to the promoter but that it is calculated as a percentage of market value. The exact percentage will be the subject of negotiation between the parties and there may well need to be different rates for rural and urban areas. For example, a rate of 80% of market value may be appropriate when the land is in agricultural use. However, 80% of market value when the land has planning permission for say, prime retail, may produce a level of compensation which prohibits the installation of services and may run contrary to the public interest argument. There is a precedent for differentiating rural and urban areas. The supplement payable on compulsory acquisition in Scotland pre 1919, was considerably more generous in rural than in urban areas.
- However in certain instances the claimant may well suffer a loss which is greater than the compensation calculated by reference to a percentage of market value. This may be particularly the case where planning permission for a higher use is denied due to the presence of the apparatus. This would be unfair to the claimant, who would be an unwilling seller unable to walk away from the proposal. In these cases there needs to be a fall back position where the claimant can decide to pursue compensation based not on percentage of market value, but on the basis of all loss. This will generally be reflected in depreciation in the market value of the land, including

⁸⁸ *Stokes v Cambridge Corporation* (1961) 13 P&CR 77.

⁸⁹ Land Compensation Act 1973, ss.29-33.

depreciation in the value of any retained land. Depreciation may be measured by the effect on the existing use value of the land or, in appropriate cases, the development value. An alternative approach would be to compensate on an itemised basis for the actual effects of the works on the management of the land, rather than for the consequences of these effects on the market value.⁹⁰

- The claimant would not be able to make a claim based on both a percentage of market value as well as all loss, as in that case the compensation would reflect both value to the purchaser as well as value to the seller, which would be double counting.
- The consideration and the compensation for depreciation could be paid as a capital sum or as an annual sum or part in part.
- Disturbance should also be paid, including any loss of profits which is not reflected in depreciation. A disturbance claim should, however be consistent with the rest of the claim. In other words, if the claim for loss is based on development value and/ or injurious affection, then disturbance would not normally be recoverable.
- A decision will also need to be made about set off. There are two problems with set off. First of all, the prospect of connecting to a utility is likely to benefit a number of properties, including some which have not been subject to a wayleave. Why should those which are subject to the wayleave be penalised by having this benefit set off against the compensation when the others retain the benefit? Secondly, this is an arbitrary means of recovering betterment. Set off is measured, not by the amount of betterment but in effect by the amount of worsenment. In other words, if the benefit is considerable but the loss is limited, the utility will only recover that amount of the benefit which is co-extensive with the loss. It might be more logical if the utilities were simply to rely on user charges to recover this benefit.

In addition to variation in the measure of compensation, there is also some variation in dispute resolution. We think that standardisation here too would be beneficial. Again, mediation might usefully be an option. For adjudication, some form of expert arbitration, including, if the parties are so minded, the Lands Tribunal, would seem an appropriate way forward given the technical nature of the matters in dispute. Many disputes involve comparatively small sums and it is important that arbitration in such cases should be accessible, speedy, cheap and informal. There must be some question whether a court is an appropriate forum in such cases, although, as was pointed out to us, county court judges are regularly involved in valuation matters in the context of lease renewals.

At the beginning of this conclusion, we returned to the two themes identified in the introduction to this paper. We have tried in these recommendations, not only to

⁹⁰ For an illustration of the differences in these approaches see *Cooke v Secretary of State for the Environment* (1973) 27 P&CR 234.

address the question how far it is appropriate to confer compulsory powers on privatised utilities, but also to strike a fair balance between the interests of the utilities and the landowners. Our research has revealed a third theme and that is the confusion inherent in the diversity of powers and procedures. To tackle this we have recommended a move towards standardisation. We recognise that any change produces winners and losers and drawing the line between the interests of the utilities and those of landowners is always going to be difficult. However, we have no doubt that this is an area where change is required.

Appendix 1: Compulsory Rights

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Water and Sewage Water Industry Act 1991 (c.56)	Water undertakers and sewage undertakers	For carrying out their functions	s.155(2) and Sch. 9 - acquisition of rights ss. 158(1), 159(1) and Sch. 12 - laying of pipes s.167(4) and Sch. 11 - compulsory works orders	England/Wales
Water Resources Act 1991 (c.57)	National Rivers Authority ⁹¹	For carrying out its functions	ss. 154(2), 156(1) and Sch. 18 - acquisition of rights ss. 159(1), 160(1) - laying of pipes s.168(4) and Sch. 19 - compulsory works orders	England/Wales
Water (Scotland) Act 1980 ⁹² (c.45)	Water authority or water development board	For the purposes of their functions	s.17(2) - rights to take water s.22 and Sch. 3, Para. 1 - power to break open street s.23 - right to lay water main in street/other land s.76 - protection of water	Scotland
Sewerage (Scotland) Act 1968 (c.47)	Local authority	For executing sewage work	s.3 - construction of public sewer s.41 - power to break open streets ⁹³	Scotland

⁹¹ s.2(3) of the Environment Act 1995 abolishes the National Rivers Authority and provides that their rights be transferred to the Environmental Agency.

⁹² Note amendments made to this in Local Government etc. (Scotland) Act 1994 (c.39) s.109 and Sch. 14.

⁹³ The provisions of Part IV of the New Roads and Street Works Act 1991 apply (for example on giving notice).

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
See also Opencast Coal Act 1958 below				

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Land Drainage, Flood Defence and Coast Protection				
Land Drainage Act 1991 (c.59)	Internal drainage board	For any purpose connected with the performance of any of their functions	s.62(4)	England/Wales
Land Drainage (Scotland) Act 1941 (4 & 5 Geo. 6 c.13)	Secretary of State	Execution and maintenance of land drainage works	s.1	Scotland
Coast Protection Act 1949 (12 & 13 Geo. 6 c.74)	Coast protection authority	Access to land on which coast protection work is carried out	s.27	England/Wales and Scotland
Flood Prevention (Scotland) Act 1961 (9 & 10 Eliz. 2 c.41)	Local authority	Preventing or mitigating flooding of land	s.2	Scotland
See also Opencast Coal Act 1958 below				
Waste Management				
Environmental Protection Act 1990 (c.43)	Waste collection authority	For the purposes of collecting waste	s.45(7)	England/Wales and Scotland
Railways, Tramways and Inland Waterways				
Transport and Works Act 1992 (c.42)	Constructors or operators of transport works	For works relating to railway, tramway, trolley vehicle and inland waterway undertakings ⁹⁴	ss. 1, 3 and Sch. 1, Paras. 4 and 11 ⁹⁵	England/Wales ⁹⁶
Light Railways Act 1896 (59 & 60 Vict. c.48)	Light railway company	For construction of a light railway	s.11 ⁹⁷	Scotland ⁹⁸
Railway Clauses Consolidation (Scotland) Act 1945 (8 & 9 Vict. c.33)	Railway company	Construction of railway and accommodation works connected therewith	s.16	Scotland

⁹⁴ Plus any other modes of guided transport or other works prescribed by order of the Secretary of State.

⁹⁵ The Transport and Works (Application and Objection) Rules 1992 govern the steps to be taken prior to an application for a works order. The Transport and Works (Inquiries Procedure) Rules 1992 govern public inquiries into works orders.

⁹⁶ In Scotland, the procedure followed under the Private Legislation Procedure (Scotland) Act 1936 is retained in relation to constructors or operators of transport works (see s.24 of the Transport and Works Act 1992).

⁹⁷ Under s.11, an order for the construction of a light railway can incorporate all or any of the provisions of the Clauses Acts, including the Lands Clauses Consolidation (Scotland) Act 1845 which, in s.6, provides for the purchase of rights and interests in land.

⁹⁸ The provisions of the Light Railways Act 1896 were repealed in relation to England/Wales by the Transport and Works Act 1992 but are still in force in Scotland.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Transport Act 1962 (10& 11 Eliz. 2 c.46)	British Rail, London Transport Board, Docks Board, British Waterways Board	For the purposes of the business of their undertakings	s.15(3)	England/Wales and Scotland
Roads, Footpaths and Rights of Way				
Highways Act 1980 (c.66)	Local authority	Creation of footpath/brideway	ss. 26, 28	England/Wales
	Secretary of State for Transport and highway authority	Construction and improvement of highways	s. 250	England/Wales
Roads (Scotland) Act 1984 (c.54)	Secretary of State for Transport and roads authority	Construction and improvement of roads, related buildings, motorway service stations etc.	s.110(2) n	Scotland
Local Government (Footpaths and Open Spaces) (Scotland) Act 1970 (c.28)	Local authority	Footpaths associated with or forming part of a development	s.2	Scotland
Countryside (Scotland) Act 1967 (c.86)	Local planning authority	Creation of footpath/right of way	s.14 - access order s.31 - public path	Scotland
Metropolitan Police and Traffic Wardens				
Metropolitan Police Act 1886 (49 Vict. c.22)	Police receiver	For offices, police stations, houses and buildings required for the purposes of the Metropolitan Police	s.2	Local ⁹⁹
Road Traffic Regulation Act 1984 (c.27)	Police receiver ¹⁰⁰	For proper carrying out of the functions relating to traffic wardens	s.97(5)	Local
Parking Places				
Road Traffic Regulation Act 1984 (c.27)	Local authority	Provision of parking places	s.40(2)	England/Wales and Scotland
Street Works				
New Roads and Street Works Act 1991 (c.22)	Persons with a street works licence	For purposes of placing apparatus in the street	s.50 - England/Wales s.109 - Scotland	England/Wales and Scotland

⁹⁹ Only in the Metropolitan Police Act 1886 are provisions made for the compulsory acquisition of rights over land. The Police Act 1964 and Police (Scotland) Act 1967 provide only for the compulsory purchase of land and no subsequent statutory provisions widen this to include rights.

¹⁰⁰ s.97(5) applies the provisions of the Metropolitan Police Act 1886 to traffic wardens, but clearly this is only in the Metropolitan Police area.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Telecommunications Telecommunications Act 1984 (c.12)	Public telecommunications operators authorised by Secretary of State	Required by operator for establishing/running system	s.34(1)(3) (Eng/Wales) and s.35(1)(3) (Scot) - acquisition of rights Sch.2, Paras. 5-6 power to dispense with the need for agreement Sch. 2, Para. 9 - right to install apparatus ¹⁰¹ Sch. 2, Para. 10 - right to connect lines to apparatus Sch. 2, Para. 12 - right to cross land with a line Sch. 2, Para. 21 - restriction on right to require removal of apparatus	England/Wales and Scotland
Aviation Civil Aviation Act 1982 (c.16)	Secretary of State, Civil Aviation Authority or Eurocontrol	Purposes in s.44(1)(a)-(c)	s.44	England/Wales and Scotland
Airports Authority Act 1975 (c.78)	Airports Authority	Purpose connected with the discharge of its functions	s.17 ¹⁰²	England/Wales and Scotland
Airports Act 1986 (c.31)	Relevant airport operators	Any purpose connected with the performance of the operator's functions	s.59(3)(4)	England/Wales and Scotland
Local Government Local Government (Scotland) Act 1973 (c.65)	Local authority	For the purpose of any of their functions	s.71 read in conjunction with s.234	Scotland
Local Government (Miscellaneous Provisions) Act 1976 (c.57)	Local authority	For carrying out their functions	s.13 and Sch.1	England/Wales

¹⁰¹ The provisions of Part III or IV of the New Roads and Street Works Act 1991 apply (for example on giving notice).

¹⁰² As amended by the Civil Aviation Act 1982 Sch. 15 Para. 17.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
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ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Town and Country Planning				
Town and Country Planning Act 1990 (c.8)	Secretary of State for the Environment	Any land necessary for the public service	s.228(3)	England/Wales
Town and Country Planning (Scotland) Act 1997 (c.8)	Secretary of State for the Environment	Any land necessary for the public service	s.190(3)	Scotland
National Parks/Country Parks				
Countryside (Scotland) Act 1967 (c.86)	Local planning authority	Provision of country park	s.48(8) read in conjunction with s.78	Scotland
Environment Act 1995 (c.25)	National Park authority	For carrying out their functions	s.65(7) and Sch.8	England/Wales
Urban and Regional Development				
Local Government, Planning and Land Act 1980 (c.65)	Urban Development Corporation	For carrying out their functions	s.142(4)	England/Wales and Scotland
	The Land Authority for Wales	For the purpose of exercising its functions	s.104(2)(c)	Wales
Regional Development Agencies Act 1988 (c.45)	Regional Development Agency	For its purposes	s.20(2)	England
Development of Rural Wales Act 1976 (c.75)	Development Board for Rural Wales	For carrying out its functions	s.6(5)	Wales
Welsh Development Agency Act 1975 (c.70)	Welsh Development Agency	For carrying out its functions	s.22(7)	Wales
Leasehold Reform, Housing and Urban Development Act 1993 (c.28)	Urban Regeneration Agency	For the purpose of achieving its objectives	s.162(2)	England
Norfolk and Suffolk Broads Act 1988 (c.4)	The Broads Authority	Maintenance, improvement or alteration of staithes; provision of facilities; improvement of moorings	s.2(6) and Sch. 3, Para. 44(3)	Local
New Towns (Scotland) Act 1968 (c.16)	Development corporation for a new town	Land within the area of the new town; adjacent land connected with development of the new town; provision of services for the new town; construction of roads	ss. 7, 8 read in conjunction with s.47	Scotland

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Enterprise and New Towns (Scotland) Act 1990 (c.35)	Scottish Enterprise; Highlands and Islands Enterprise	To facilitate the discharge of their functions	s.8(1)(f)	Scotland
Camping and Caravan Sites				
Caravan Sites and Control of Development Act 1960 (8 & 9 Eliz. 2 c.62)	Local authority	Where a caravan site is needed	s.24(5)	England/Wales and Scotland
Countryside (Scotland) Act 1967 (c.86)	Local authority	Where camping site is needed	s.49 read in conjunction with s.78	Scotland
Education				
Education (Scotland) Act 1980 (c.44)	Local education authority	For the purposes of the Act	s.20(6)	Scotland
Education Act 1996 (c.56)	Local education authority	For purposes of any school/ institution maintained by them; for purposes of their functions under the Act	s.530 read in conjunction with s.579 (but see footnote) ¹⁰³	England/Wales
Housing				
Housing Act 1988 (c.50)	Housing action trust	For the purposes of its functions	s.77(5)	England/Wales
Housing (Scotland) Act 1988 (c.43)	Scottish Homes	For the discharge of its general functions	s.2(2)(g)	Scotland
Forestry				
Forestry Act 1967 (c.10)	Forestry Commissioners	If insufficient facilities exist for the haulage of timber from any wood or forest to a road, railway or waterway	s.6	England/Wales and Scotland
Conservation/Heritage				
Ancient Monuments and Archaeological Areas Act 1979 (c.46)	Secretary of State or local authority	Maintenance of/access to monuments (see s.15(1))	s.16	England/Wales and Scotland
Natural Heritage (Scotland) Act 1991 (c.28)	Scottish Natural Heritage	Development projects or schemes to achieve conservation/enhancement/ understanding/enjoyment of natural heritage of Scotland	s.5(11)	Scotland
Marketplaces/Other Food Related Purposes				
Food Act 1984 (c.30)	Local authority	Provision of marketplaces/ facilities for examination of food samples	s.110	England/Wales

¹⁰³ It is doubtful whether the 1996 Act provides for the compulsory acquisition of rights. The corresponding Scottish legislation, the Education (Scotland) Act 1980, contains no such ambiguity, providing explicitly for the compulsory acquisition of rights over land.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Post Office Post Office Act 1969 (c.48)	Post Office	Exercise of its powers	s.55(2) s.55(3)	England/Wales and Scotland
Prisons Criminal Justice Act 1988 ¹⁰⁴ (c.33)	Prison Commissioners	For prisons	s.167	England/ Wales ¹⁰⁵
Lighting Civic Government (Scotland) Act 1982 (c.45)	District/islands council or owner of common property	Provision or maintenance of lights	s.91	Scotland
Electricity Electricity Act 1989 (c.29)	Public electricity supplier or person authorised by licence to transmit electricity	Any purpose connected with the carrying on of the activities he is authorised by his licence to carry on	s.10(1) and Sch. 3, Para. 1(2) - rights over land s.10(1) and Sch. 4, Para. 6 - wayleaves	England/Wales and Scotland
Gas ¹⁰⁶ Gas Act 1986 (c.44)	Public gas transporter ¹⁰⁷	Any purpose for the discharge of their functions	s.9(3) and Sch. 3, Para. 1(2) - rights over land s.9(3) and Sch. 4, Para. 1(1) - right to lay pipes in street ¹⁰⁸	England/Wales and Scotland
Gas Act 1965 (c.36)	Gas authority	To ensure wells, boreholes and shafts are stopped up; to obtain access to land in a storage/protective area	s.13 and Sch. 4 Part I.	England/Wales and Scotland
Nuclear Energy Atomic Energy Authority Act 1954 (2 & 3 Eliz. 2 c.32)	Atomic Energy Authority	Exercise and performance of its functions	s.5(1)	England/Wales and Scotland

¹⁰⁴ The 1988 Act extends the power to purchase compulsorily land for prisons in the Prison Act 1952 (c.52) to 'easements and other rights over land'.

¹⁰⁵ In Scotland it does not appear that rights can be acquired compulsorily for the purposes of prisons. The Prisons (Scotland) Act 1989 (c.45) provides only for the compulsory purchase of land and no subsequent enactment appears to extend this to cover rights.

¹⁰⁶ Schedules 2 and 4 of the Gas Act 1972 are sometimes cited as providing for the compulsory acquisition of rights but these were both repealed by the Gas Act 1986 Sch. 9.

¹⁰⁷ Originally a public gas supplier in the 1980 Act but amended to public gas transporter by minor amendments in Gas Act 1995 (c.45) Sch. 3, Paras. 3, 56 and 57.

¹⁰⁸ The provisions of Part III or IV of the New Roads and Street Works Act 1991 apply (for example on giving notice).

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Street Works New Roads and Street Works Act 1991 (c.22)	Any undertaker with a street works licence granted by the street authority	To carry out operations on sewers, drains, tunnels or to place apparatus	s.50(1)	England/Wales
	Any undertaker with permission in writing from the roads authority	To carry out operations on sewers, drains, tunnels or to place apparatus	s.109(1)	Scotland
Coal, Oil and Other Minerals				
Opencast Coal Act 1958 ¹⁰⁹ (6 & 7 Eliz. 2 c.69)	Coal Authority ¹¹⁰	For the purpose of facilitating the working of coal by opencast operations	s.4(1) - compulsory rights order	England/Wales and Scotland
	Coal Authority	For the purpose of draining land; for the purpose of bringing a supply of water to land	s.16(1)(2)	England/Wales and Scotland
Coal Industry Act 1994 (c.21)	Coal Authority and licensed operators	For the carrying on of any coal mining operations (licensed operator); for any purposes connected with the carrying out of its functions (Coal Authority)	s.51(3)	England/Wales and Scotland
Mines (Working Facilities and Support) Act 1966 (c.4)	Person having the right to work minerals	To acquire ancillary rights necessary for the working of the minerals - granted by the court if expedient in national interest (see s.3)	ss. 1, 2	England/Wales and Scotland
Offshore Petroleum Development (Scotland) Act 1975 (c.8)	Secretary of State	Any purpose relating to exploration for or exploitation of offshore petroleum	s.1 read alongside definitions in s.20	Scotland
Mineral Workings Act 1985 (c.12)	Local authority	Works on former mining land to prevent collapse	s.8	England/Wales and Scotland
Petroleum Act 1998 (c.17)	Person holding a licence under the Act	To acquire ancillary rights required for the exercise of rights granted by the licence	s.7(1) ¹¹¹	England/Wales and Scotland

¹⁰⁹ The Coal Industry Act 1994 s.52(1) provides that the power to make a compulsory rights order under the Opencast Coal Act 1958 shall not be exercisable at any time after 31st December 1999. Schedule 8 of the 1994 Act also makes substantial amendments to the Opencast Coal Act 1958 and therefore the two statutes should be read together.

¹¹⁰ The powers in the Opencast Coal Act 1958 were originally given to the National Coal Board. This was remained the British Coal Corporation in s.1 of the Coal Industry Act 1987 (c.2), but the British Coal Corporation in turn was abolished by the Coal Industry Act 1994, which established the Coal Authority, in which these powers now vest.

¹¹¹ Applies the Mines (Working Facilities and Support) Act 1966 to petroleum.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Other Pipes or Pipe-lines				
Pipe-lines Act 1962 (c.58)	Person executing works in land	For the placing of a pipeline ¹¹²	s.12 and Sch. 2	England/Wales and Scotland
Civic Government (Scotland) Act 1982 (c.45)	Owner of part of a building	Installation of pipes through neighbouring property	s.88	Scotland
See also Land Powers (Defence) Act 1958				
Lloyd's Signal Stations Act 1888 (51 & 52 Vict. c.29)	Lloyds	For signal stations	ss. 2, 3	England/Wales and Scotland
Military Lands Act 1892 (55 & 56 Vict. c.43)	Person authorised by Secretary of State	Alignment marks for coast defence operations	s.21	England/Wales and Scotland
Civil Defence Act 1948 (12, 13 & 14 Geo. 6 c.5)	Designated Minister, local or police authority	Providing or maintaining a civil defence shelter	s.4(2)	England/Wales and Scotland
Manoeuvres Act 1958 (7 Eliz. 2 c.7)	Persons taking part in manoeuvres authorised by Order	Execution of defence manoeuvres	s.2	England/Wales and Scotland
Land Powers (Defence) Act 1958 (6 & 7 Eliz. 2. c.30)	Minister of Power	For oil installations essential for defence of the realm	s.13 and Sch. 2	England/Wales and Scotland
	Secretary of State or the Admiralty	Occasional use of land for purposes in s.6(1)(a) to (d)	s.6	England/Wales and Scotland
	Secretary of State or the Admiralty and Minister of Power	Laying and maintenance of oil pipelines for defence purposes	s.14 and Sch. 2	England/Wales and Scotland
Local Acts				
London Regional Transport Act 1984 (c.32)	London Regional Transport	For the purposes of their business	s.15(5)	Local
Severn Bridges Act 1992 (c.3)	Secretary of State	Construction of Severn Bridge	s.2(6) and Sch. 2, Para. 1	Local
Cardiff Bay Barrage Act 1993 (c.42)	Development Corporation	Construction of Cardiff Bay barrage	s.5 and Sch. 4, Para. 1.	Local

¹¹² s.65 defines a pipe-line as a pipe or system of pipes for the conveyance of anything other than air, water, water vapour or steam. Drains and sewers are not included, neither are pipes for heating, cooling or domestic purposes, pipes used in building or engineering operations, pipes within the boundaries of an agricultural unit and designed for use in agriculture, or pipes in premises used for education or research. The provisions on compulsory rights do not apply to the pipes of a public gas or electricity supplier; the Atomic Energy Authority; pipe-lines of railway undertakers, dock pipe-lines; government pipe-lines; pipe-lines in factories, mines, quarry premises or petroleum depots.

ACTS	PERSONS AUTHORISED	PURPOSES	SECTIONS	Extent
Conwy Tunnel (Supplementary Powers) Act 1983 (c.7)	Secretary of State	Construction of Conwy Tunnel	s.3(2)	Local
Channel Tunnel Act 1987 (c.53)	Secretary of State; Kent County Council; Railways Board	Construction of Channel Tunnel	s.8 and Sch. 5, Part III, Para. 2.	Local
Channel Tunnel Rail Link Act 1996 (c.61)	Secretary of State	Construction of Channel Tunnel Rail Link	s.5(3)	Local
Dartford-Thurrock Crossing Act 1988 (c.20)	Secretary of State	Construction of Dartford- Thurrock Crossing	s.2 and Sch. 2, Para. 2	Local

Statutes Providing for Compulsory Purchase of Land Only (No Provisions on Compulsory Rights)

Small Holdings and Allotments Act 1908
Fire Services Act 1947
Agriculture Act 1947
Agriculture (Scotland) Act 1948
National Parks and Access to the Countryside Act 1949
Police Act 1964
Civic Amenities Act 1967
Police (Scotland) Act 1967
Courts Act 1971
Local Government Act 1972 (this is rectified for England/Wales in the Local Government (Miscellaneous Provisions) Act 1976)
National Health Service Act 1977
National Health (Scotland) Act 1978
Refuse Disposal (Amenity) Act 1978
Slaughter of Animals (Scotland) Act 1980
Animal Health Act 1981 (burial of carcasses)
New Towns Act 1981
Iron and Steel Act 1982 (British Steel Corporation)
Industrial Development Act 1982 (premises in a development area)
Miscellaneous Financial Provisions Act 1983 (Development Commission)
Planning (Listed Buildings and Conservation Areas) Act 1990 (listed buildings in need of repair)
Merchant Shipping Act 1995

Common Provisions

England/Wales

Lands Clauses Consolidation Act 1845 c.18 (mostly now incorporated into 1965 Act).

Compulsory Purchase Act 1965

Land Compensation Act 1961 (common rules for assessing compensation).

Land Compensation Act 1973

Acquisition of Land Act 1981 (common rules on acquisition procedure).

Planning and Compensation Act 1991 Parts I and III

Scotland

Lands Clauses Consolidation (Scotland) Act 1845

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Land Compensation (Scotland) Act 1963

Land Compensation (Scotland) Act 1973

Planning and Compensation Act 1991 Parts II and IV

Appendix 2: List of those interviewed / completed questionnaire.

Transco
Scottish Power
Scottish and Southern Energy plc
Freeth Melhuish
North of Scotland Water Authority
Telewest Communications
Cable & Wireless
Shanks - Waste Solutions
Country Landowners Association
National Farmers Union
Scottish National Farmers Union