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CABINET

COMPENSATION FOR COMPULSORY ACQUISITION OF LAND

MEMORANDUM BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT  
AND MINISTER FOR WELSH AFFAIRS

On 1st April the Cabinet (i) authorised the drafting of a Bill to provide that the basis of compensation for compulsory acquisition of land should be market value; and (ii) agreed to consider further, at a subsequent meeting, whether it would be appropriate to introduce this Bill during the 1958-59 session (C.C. (58) 28th Conclusions, minute 5).

2. I hope that the Cabinet will now decide that the Bill should be introduced during the forthcoming session.

3. On 20th June the Home Affairs Committee had before them an outline of a scheme for going over to market value (H.A. (58) 11th Meeting, Item 4). They agreed that, if there was to be a Bill on this subject, provisions on certain other related matters should be included, in particular the relaxation of certain statutory controls by Ministers over local authority land transactions, and the implementation of certain of the outstanding recommendations of the Franks Committee. I append a summary of these various provisions (to which at a later stage I may wish to suggest one or two minor additions).

4. The drafting of the Bill is proceeding. It looks as though the provisions for a change in the basis of compensation will run to about 18-20 clauses, and there will in addition be the supplementary proposals approved by the Home Affairs Committee. The complete Bill should be ready for submission to Ministers by October, so that if approved it ought to be available for introduction at the beginning of the new session. It is desirable to have one United Kingdom Bill and not two separate Bills, but the possibility of this depends on technical considerations which cannot be resolved until further progress has been made with the drafting.

5. At the earlier discussion, the Cabinet considered a memorandum by the Home Secretary (C. (58) 70) covering the report suggesting that it would be right, on merits, to amend the basis of compensation for compulsory acquisition to market value. I hope that this view will now be endorsed by the Cabinet. It seems to me that it is no longer possible to defend the system under which in certain circumstances an owner may get from a public authority who buy his land against his will only a fraction of what he would get in a free sale to a private purchaser.

6. There is a very strong feeling in our Party that such a Bill ought to be introduced next session. Captain Corfield was prevailed upon to withdraw his Bill, of which the purpose was to provide for market value, and which was given a Second Reading by 123 votes to 2, without any undertaking being given by the Government about the introduction of legislation, but I had to say that the Government agreed that the existing basis of compensation for compulsory acquisition ought to be re-examined and that we were engaged on a re-examination which might well lead to amending legislation. In reply to subsequent Parliamentary Questions and correspondence, nothing more has been said than that this re-examination is in progress. But there is a widespread expectation that the Government will bring in a Bill in the new session. When I met officers of the Party's Housing Committee to discuss my proposals for the future of New Towns, they were emphatic that though they wanted a Bill to deal with the New

Towns it must not take priority over or squeeze out of next session's programme a Bill to change the basis of compensation payable on compulsory acquisition. It is certain, therefore, that if no such Bill is introduced we shall have great difficulty with our Party in the House.

7. I myself am satisfied that it is right in principle that the basis of compensation should be changed to market value. I accordingly seek approval for the proposal that a place should be found for this Bill in the programme for next session.

H. B.

*Ministry of Housing and Local Government, S.W. 1,  
14th July, 1958.*

## APPENDIX

### OUTLINE OF PROPOSED PROVISIONS

#### I.—Compensation on Market Value Basis

At present, compensation for compulsory acquisition is limited to (a) the existing use value of the land, which involves the assumption that planning permission has not been and would not be granted for any development other than the very limited purposes covered by the Third Schedule of the Town and Country Planning Act, 1947, plus (b) any unexpended balance of an established claim for loss of the 1947 development value (or the development value which would have been established had a claim been made).

2. The proposal that, instead, compensation should be at market value means that these limitations would be repealed, and that any existing planning permission would no longer be disregarded. But this would not cover all the circumstances; and, since the market value of land depends very largely on the planning permissions relating to it, it would also be necessary to provide for certain assumptions about planning permission in order to enable market value to be assessed. Thus:—

- (a) If, at the time of the notice to treat, no planning permission exists for the development for which the land is being purchased, it should be assumed that planning permission would be granted for that development.
- (b) It should be assumed that planning permission would be given for the use (if any) for which the land is allocated in the Development Plan, even if the authority is acquiring it for a less profitable use or for a public purpose for which there is no corresponding private purpose, e.g., for a school or for an open space.
- (c) If however in the Development Plan the land is allocated for a public use, or is not allocated at all (as would often be the case in rural areas), any person interested in the land, or the acquiring authority, should be able to apply to the local planning authority, or to the Minister or Secretary of State on appeal, for a certificate as to what would have been the appropriate development if the land had not been required for a purpose involving acquisition by a public authority, and it should then be assumed that permission had been granted for that development.
- (d) A special case arises where a local authority is buying land which has been defined in the Development Plan as an area of comprehensive development. Such an area is often broken up into a large number of small ownerships; and the new Plan will usually create a completely new pattern of development for the whole area. To base compensation in respect of each separate site on the planning permission given for that site under the new Plan would lead to unfair discrimination between one owner and his neighbour. Thus, one owner might find that his property was to be redeveloped for a highly remunerative use, e.g., a new department store, whereas his neighbour's land might be used for the construction of a new road leading to the store. In order to avoid discrimination, it is proposed that the planning permission

to be assumed for the purposes of compensation should be, not the permission for the development shown in the Plan for the individual sites, but permission for comprehensive development of the whole area.

3. The provision for obtaining certificates explained in paragraph 2 (c) should be available in cases where the land is being obtained by agreement, but compulsory powers exist.

4. The new basis of compensation should apply where notice to treat is served after the date of introduction of the Bill.

5. Even with all these various assumptions, there could be cases where market value compensation is less favourable to an owner than the present basis. For instance, there might be a site in the green belt of which the market value is agricultural because no development would be permitted, but which would attract payment under the present code, if compulsorily acquired, in respect of a claim for loss of the 1947 development value. It is proposed that for a limited period the owner should have the option of compensation on the present basis. This period might be five years, subject to extension by statutory instrument.

#### *Supplementary Payments*

6. When land is bought and sold by public authorities on the same basis, that is, a market value basis, much of the grievance caused to-day by selling at a profit will disappear; but one cause of grievance might still remain if not dealt with, viz., the case where the value of the land is enhanced not long after compulsory purchase (or purchase by agreement when compulsory powers are available) by a new planning permission for a more profitable use whether for the authority's own development or in connection with a sale. It is proposed that, if such an event occurs within a fixed period of years from the date of acquisition, the former owner should, with certain qualifications, be able to claim the additional compensation (if any) which would have been due if the new permission had existed at the time of the acquisition.

#### *Compensation under Pre-1947 Act Notices to Treat*

7. Some 1,000 properties in England and Wales are affected by outstanding notices to treat served before the passing of the Town and Country Planning Act, 1947. At present, compensation in these cases falls to be assessed in terms of pre-war prices. No such cases are known in Scotland, but some may exist. It is proposed that unless at the time of the passing of the Bill the purchase has been completed or the compensation has been determined, or the acquiring authority have entered and taken possession of the land, the owner should have the option to have compensation assessed as if notice to treat had been served on 1st January, 1958. It is also proposed that if compensation has not been settled or referred to the Lands Tribunal (or in Scotland to arbitration) within a specified time limit, the power of compulsory purchase under the notice to treat will lapse.

#### *The Existing New Towns*

8. The New Town Corporations have, in general, bought land only as they needed it and many of them have a good deal still to buy within the designated areas. The value of this land has become very high as a result of the development already carried out by the Corporations—at market value it might cost as much as £5,000 an acre as against £100 to £200 an acre under the present system. Since these values have been created wholly by public expenditure, it is proposed to retain the present basis of compensation for land purchased by Development Corporations in areas already designated as New Towns.

## II.—Local Authority Land Transactions

*Note.*—The following paragraphs are subject to discussions at present going on with the Minister of Agriculture about reservations in regard to smallholdings and allotments.

9. At present, the consent of a Minister is needed before land is bought by agreement for certain purposes, or in advance of requirements for any purpose. It is proposed that Ministerial consent should no longer be needed, except for purchase of land in advance outside the area of the local authority.

10. The consent of a Minister is at present required for all appropriations of land for purposes other than that for which it was acquired. It is proposed to remove the need for Ministerial consent, except as regards (i) land bought compulsorily, (ii) land held for open space, and (iii) common land.

11. The consent of a Minister is at present required to the sale or exchange of land, or to a lease for more than seven years. It is proposed to remove this requirement, with the following exceptions:—

- (a) those referred to in paragraph 10;
- (b) houses built with the aid of a subsidy;
- (c) certain land held under the Town and Country Planning Act, 1947, in or contiguous to areas of comprehensive development, where there is an obligation on the local authority, and the Minister, to secure as far as practicable an opportunity of reinstatement to people who were previously living or carrying on business in the area.

To ensure open dealing and the protection of the ratepayers there will be a general provision that land should not be sold, leased or exchanged for less than the best price or rent or terms reasonably obtainable, except with the consent of the Minister. This would modify the present provision in the Housing Act which prevents any disposal at less than the best price of land acquired for housing, enabling the Minister to agree to some lower figure where the circumstances justified such a course, and it would apply the provision as modified to the disposal of any land for whatever purpose it was originally acquired.

12. The arrangements to be made for the application of any capital moneys received by a local authority on disposal of land will be included in the Bill so as to avoid the present need for the Minister to specify them on each occasion.

13. The statutory provisions covering land transactions in Scotland are not exactly the same, but no difficulty is seen in drafting legislation to produce the same results in both countries.

### III.—Franks Committee Recommendations

#### 14. *Recommendation 15*

“The right to legal representation before Tribunals should be curtailed only in the most exceptional circumstances.”

It is proposed to remove the limitation in Section 168(5) of the Local Government Act, 1933, on legal representation and expert witnesses at enquiries held by county councils into proposals by parish councils that land should be acquired compulsorily for them. There is no similar limitation in Scotland.

#### 15. *Recommendation 72*

“The code or codes of procedure for enquiries should be formulated by the Council on Tribunals and made statutory.”

Power will be taken to make rules governing procedure.

#### 16. *Recommendation 85*

“The present special form of appeal to the courts in procedures relating to land should be retained and also applied to decisions on planning appeals . . .”

This special form of appeal is a right to appeal to the High Court or Court of Session within six weeks of the decision on the ground that the order is *ultra vires* or that the prescribed procedure has not been followed. It is proposed to extend this right of appeal to planning cases as recommended by the Committee.

#### 17. *Recommendation 91*

“An appeal should lie to the courts on a point of law against a determination by the Minister as to what constitutes ‘development’.”

Effect will be given to this recommendation.

#### 18. *Recommendation 93*

“Owners and others directly interested in the land should be informed of third party planning applications and allowed to state their views. They should also be informed of the decision of the local planning authority and of the lodging of an appeal.”

It is proposed to provide that a local planning authority shall not deal with a planning application, other than from an owner, unless it is accompanied by a certificate that the owners of the land have been informed, or that proper efforts made to discover them have failed. The planning authority will not consider an application until 21 days after the notification of the owners, and will be obliged to have regard to any representations made by the owners. Provision will be made to ensure that owners will be notified of the planning authority's decision, of any subsequent appeal, and of the Minister's decision on appeal. It is proposed that agricultural tenants should be treated as owners for the purpose of these provisions.