**FIVE10TWELVE FURTHER COMMENTS ON APP-013 AND RESPONSES TO APPLICANT'S RESPONSES TO WRITTEN QUESTIONS (FUNDING & RESOURCES) (REP3-187)**

DATED 7 MARCH 2019

**FUNDING STATEMENT**

**COMMENTS**

1. Part 1 of the **Land Compensation Act 1973**[1] provides that compensation can be claimed for **residential property that has been reduced in value due to physical factors such as noise and pollution caused by public works (including airports)**, even though no land is acquired.
2. Claims cannot be made until **a period of 12 months from the date of opening/** adoption has passed.
3. The Limitation Act 1980 provides that **a person who is entitled to make a claim must do so within six years of the first claim day**.
4. This form of compensation will potentially be most relevant to new runways.
5. Manston Airport is closed.
6. It has been closed for 5 years.
7. A large number of people have relocated to the area within this time.
8. Children have been born during this time whom have not experienced aircraft noise.
9. It did not come up in building searches during this time.
10. It comes up on Google Maps as '*permanently closed*[2]*'*.
11. It is not listed on the NATS Aerodromes published in the UK AIP[3].
12. Applicant states at F.1.6 of **REP3-187** that it will "…**bring the airport back into use**".
13. The most recent examples of its application to airports were Manchester's second runway and runway extensions at East Midlands and Southend Airports[4] an similarly the Applicant proposal is a "new runway".

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[1] Land Compensation Act 1973
[2] Screenshot Google Maps/ get directions
[3] NATS Aeronautical Information Service, Aerodromes Published in the UK AIP

14. Over the last 5 years – since the airport has closed - house prices in Ramsgate have risen by **36.95%**[5]. This is considerably above the national average.

15. Over the last 5 years – since the airport has closed - house prices in Herne Bay have risen by **32.52%**[6]. This is considerably above the national average.

16. A large number of residential houses fall within the catchment area that will **reduce in value due to physical factors such as noise and pollution caused by public works (including airports)** once the airport opens.

QUESTIONS

In light of comments at paragraphs 1-16 above, we respectfully suggest that the ExA should ask Applicant to: (i) identify **what (if any) compensation has been allocated for these Land Compensation Act claims within its Funding Statement**?; and (2) **quantify what the worse case assessment Land Compensation Act claim amount could be**?

**FIVE10TWELVE LTD STATEMENT REGARDING CONFLICT OF INTEREST AND IMPARTIALITY**

For the avoidance of any doubt and in the interests of full transparency, we hereby confirm that neither Five10Twelve Ltd or its subsidiary, Love Ramsgate Ltd, or any of our Directors have any interests, either financial or otherwise, in the Manston site or any other rival development beyond those of a local business and local residents with strong concerns regarding the devastating impacts of the proposed development on the local area, economy, environment and population. Neither Five10Twelve Ltd, or Love Ramsgate Ltd, or any of our directors have accepted any payments or any other form of compensation or inducements for presenting this or any of our other submissions or representations to the ExA. Any offers or suggestions of such from any party will be refused and immediately reported to the ExA.

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[4] UK Airspace Policy : A framework for balanced decisions on the design and use of airspace, Moving Britain Ahead February 2017 at D.8

[5] Zoopla House prices in Ramsgate, Kent

[6] Zoopla House prices in Herne Bay, Kent

# Land Compensation Act 1973

CHAPTER 26

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ELIZABETH II

# Land Compensation Act 1973

## 1973 CHAPTER 26

An Act to confer a new right to compensation for depreciation of the value of interests in land caused by the use of highways, aerodromes and other public works; to confer powers for mitigating the injurious effect of such works on their surroundings; to make new provision for the benefit of persons displaced from land by public authorities; to amend the law relating to compulsory purchase and planning blight; to amend section 35 of the Roads (Scotland) Act 1970; and for purposes connected with those matters.

[23rd May 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

### COMPENSATION FOR DEPRECIATION CAUSED BY USE OF PUBLIC WORKS

Right to compensation.

**1.**—(1) Where the value of an interest in land is depreciated by physical factors caused by the use of public works, then, if—

(*a*) the interest qualifies for compensation under this Part of this Act; and

(*b*) the person entitled to the interest makes a claim within the time limited by and otherwise in accordance with this Part of this Act,

compensation for that depreciation shall, subject to the provisions of this Part of this Act, be payable by the responsible authority to the person making the claim (hereafter referred to as " the claimant ").

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(2) The physical factors mentioned in subsection (1) above are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance.

(3) The public works mentioned in subsection (1) above are—

(*a*) any highway;

(*b*) any aerodrome; and

(*c*) any works or land (not being a highway or aerodrome) provided or used in the exercise of statutory powers.

(4) The responsible authority mentioned in subsection (1) above is, in relation to a highway, the appropriate highway authority and, in relation to other public works, the person managing those works.

(5) Physical factors caused by an aircraft arriving at or departing from an aerodrome shall be treated as caused by the use of the aerodrome whether or not the aircraft is within the boundaries of the aerodrome; but, save as aforesaid, the source of the physical factors must be situated on or in the public works the use of which is alleged to be their cause.

(6) Compensation shall not be payable under this Part of this Act in respect of the physical factors caused by the use of any public works other than a highway unless immunity from actions for nuisance in respect of that use is conferred (whether expressly or by implication) by an enactment relating to those works or, in the case of an aerodrome and physical factors caused by aircraft, the aerodrome is one to which section 41(2) of the Civil Aviation Act 1949 (immunity from actions for nuisance) for the time being applies.

1949 c. 67.

(7) Compensation shall not be payable under this Part of this Act in respect of physical factors caused by accidents involving vehicles on a highway or accidents involving aircraft.

(8) Compensation shall not be payable under this Part of this Act on any claim unless the relevant date in relation to the claim falls on or after 17th October 1969.

(9) Subject to section 9 below, "the relevant date" in this Part of this Act means—

(*a*) in relation to a claim in respect of a highway, the date on which it was first open to public traffic;

(*b*) in relation to a claim in respect of other public works, the date on which they were first used after completion.

Interests qualifying for compensation.

**2.**—(1) An interest qualifies for compensation under this Part of this Act if it was acquired by the claimant before the relevant date in relation to the claim and the requirements of subsection

(2) or, as the case may be, subsection (3) below are satisfied on the date on which notice of the claim for compensation in respect of that interest is served. PART I

(2) If and so far as the interest is in land which is a dwelling, the said requirements are—

(*a*) that the interest is an owner's interest; and

(*b*) where the interest carries the right to occupy the land, that the land is occupied by the claimant in right of that interest as his residence.

(3) If and so far as the interest is not in such land as aforesaid, the said requirements are—

(*a*) that the interest is that of an owner-occupier; and

(*b*) that the land is or forms part of either—

(i) a hereditament the annual value of which does not exceed the prescribed amount; or

(ii) an agricultural unit.

(4) In this section "owner's interest" in relation to any land, means the legal fee simple therein or a tenancy thereof granted or extended for a term of years certain of which, on the date of service of the notice of claim in respect thereof, not less than three years remain unexpired.

(5) In this section "owner-occupier", in relation to land in a hereditament, means a person who occupies the whole or a substantial part of the land in right of an owner's interest therein and, in relation to land in an agricultural unit, means a person who occupies the whole of that unit and is entitled, while so occupying it, to an owner's interest in the whole or any part of that land.

(6) In this section "the prescribed amount" means the amount for the time being prescribed for the purposes of section 192(4)(*a*) of the Town and Country Planning Act 1971 (interests qualifying for protection under planning blight provisions) and "annual value" and "hereditament" have the meanings given in section 207 of that Act taking references to the date of service of a notice under section 193 of that Act as references to the date on which notice of the claim is served. 1971 c. 78.

(7) This section has effect subject to sections 10(4), 11 and 12 below.

(8) In the application of this section to Scotland—

(*a*) for subsection (4) there shall be substituted—

"(4) In this section "owner's interest", in relation to any land, includes the interest of—

(*a*) the lessee under a lease thereof, being a lease the unexpired period of which on the date

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of service of the notice of claim in respect thereof is not less than three years; and

(*b*) a crofter, a landholder, a statutory small tenant and a cottar in the land.

(*b*) in subsection (6) for the references to sections 192(4)(*a*), 193 and 207 of the Town and Country Planning Act 1971 there shall be substituted respectively references to sections 181(4)(*a*), 182 and 196 of the Town and Country Planning (Scotland) Act 1972.

1972 c. 52.

Claims.

**3.**—(1) A claim under this Part of this Act shall be made by serving on the responsible authority a notice containing particulars of—

(*a*) the land in respect of which the claim is made;

(*b*) the claimant's interest and the date on which, and the manner in which, it was acquired;

(*c*) the claimant's occupation of the land (except where the interest qualifies for compensation without occupation);

(*d*) any other interests in the land so far as known to the claimant;

(*e*) the public works to which the claim relates;

(*f*) the amount of compensation claimed;

(*g*) any land contiguous or adjacent to the land in respect of which the claim is made, being land to which the claimant was entitled in the same capacity (within the meaning of section 6 below) on the relevant date.

(2) Subject to the provisions of this section and of sections 12 and 14 below, no claim shall be made otherwise than in the claim period, that is to say, the period of two years beginning on the expiration of twelve months from the relevant date.

(3) Subsection (2) above shall not preclude the making of a claim in respect of an interest in land before the beginning of the claim period if—

(*a*) the claimant has during the said twelve months made a contract for disposing of that interest or (in so far as the interest is in land which is not a dwelling) for the grant of a tenancy of that land; and

(*b*) the claim is made before the interest is disposed of or the tenancy is granted;

but compensation shall not be payable before the beginning of the claim period on any claim made by virtue of this subsection.

(4) Where notice of a claim has been served on a responsible authority, any person authorised by that authority may, on giving reasonable notice, enter the land to which the claim relates for

the purpose of surveying it and ascertaining its value in connection with the claim; and any person who wilfully obstructs a person in the exercise of the powers conferred by this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20.

(5) Where compensation is payable by a responsible authority on a claim there shall be payable by the authority, in addition to the compensation, any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of the claim; but this subsection is without prejudice to the powers of the Lands Tribunal or the Lands Tribunal for Scotland in respect of the costs or expenses of proceedings before the Tribunal by virtue of section 16 below.

Assessment of compensation: general provisions.

**4.**—(1) The compensations payable on any claim shall be assessed by reference to prices current on the first day of the claim period.

(2) In assessing depreciation due to the physical factors caused by the use of any public works, account shall be taken of the use of those works as it exists on the first day of the claim period and of any intensification that may then be reasonably expected of the use of those works in the state in which they are on that date.

(3) In assessing the extent of the depreciation there shall be taken into account the benefit of any relevant works—

(*a*) which have been carried out, or in respect of which a grant has been paid, under section 20 below, section 15 of the Airports Authority Act 1965 or any corresponding local enactment; 1965 c. 16.

(*b*) which have been carried out under section 23 or 27 below;

and it shall be assumed that any relevant works which could be or could have been carried out, or in respect of which a grant could be or could have been paid, under any of the provisions mentioned in paragraph (*a*) above have been carried out but, in a case where the authority having functions under that provision have a discretion whether or not to carry out the works or pay the grant, only if they have undertaken to do so.

(4) The value of the interest in respect of which the claim is made shall be assessed—

(*a*) subject to subsection (5) below, by reference to the nature of the interest and the condition of the land as it subsisted on the date of service of notice of the claim;

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1961 c. 33.

(*b*) subject to section 5 below, in accordance with rules (2) to (4) of the rules set out in section 5 of the Land Compensation Act 1961 ;

(*c*) if the interest is subject to a mortgage or to a contract of sale or to a contract made after the relevant date for the grant of a tenancy, as if it were not subject to the mortgage or contract.

(5) In assessing the value of the interest in respect of which the claim is made there shall be left out of account any part of that value which is attributable to—

(*a*) any building, or improvement or extension of a building, on the land if the building or, as the case may be, the building as improved or extended, was first occupied after the relevant date ; and

(*b*) any change in the use of the land made after that date.

(6) In the application of subsection (4) above to Scotland for the references to section 5 of the Land Compensation Act 1961, a mortgage and a contract of sale there shall be substituted
1963 c. 51. respectively references to section 12 of the Land Compensation (Scotland) Act 1963, a heritable security and missives of sale.

Assessment of compensation: assumptions as to planning permission.

**5.**—(1) The following assumptions shall be made in assessing the value of the interest in respect of which the claim is made.

(2) Subject to subsection (3) below, it shall be assumed that planning permission would be granted in respect of the land in which the interest subsists (" the relevant land ") or any part thereof for development of any class specified in Schedule 8
1971 c. 78. to the Town and Country Planning Act 1971.

(3) Notwithstanding subsection (2) above—

(*a*) it shall not by virtue of that subsection be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Part II of the said Schedule 8 if it is development for which planning permission has been refused and compensation under section 169 of the said Act of 1971 has become payable in respect of that refusal ;

(*b*) where planning permission has been granted, in respect of the relevant land or any part thereof, for development of any class specified in the said Part II but was so granted subject to conditions, and compensation under the said section 169 has become payable in respect of the imposition of the conditions, it shall not by virtue of the said subsection (2) be assumed that planning permission for that development, in respect

of the relevant land or that part thereof, as the case may be, would be granted otherwise than subject to those conditions;

(*c*) where an order has been made under section 51 of the said Act of 1971, in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation has become payable in respect of that order under section 170 of that Act, it shall not by virtue of the said subsection (2) be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.

(4) It shall be assumed that planning permission would not be granted in respect of the relevant land or any part thereof for any development other than such development as is mentioned in subsection (2) above; and, if planning permission has been granted in respect of the relevant land or any part thereof for such other development, it shall be assumed that the planning permission has not been granted in so far as it relates to development that has not been carried out.

(5) In this section any expression which is also used in the said Act of 1971 has the same meaning as in that Act and references to any provision of that Act include references to any corresponding provision previously in force.

(6) In the application of this section to Scotland for references in subsections (2) and (3) above to Schedule 8 to the said Act of 1971 and to sections 51, 169 and 170 thereof, there shall be substituted respectively references to Schedule 6 to the Town and Country Planning (Scotland) Act 1972 and to sections 49, 158 and 159 of that Act, and in subsection (5) above for the reference to the said Act of 1971 there shall be substituted a reference to the said Act of 1972. 1972 c. 52.

Reduction of compensation where land is benefited.

**6.**—(1) The compensation payable on a claim shall be reduced by an amount equal to any increase in the value of—

(*a*) the claimant's interest in the land in respect of which the claim is made; and

(*b*) any interest in other land contiguous or adjacent to the land mentioned in paragraph (*a*) above to which the claimant was entitled in the same capacity on the relevant date,

which is attributable to the existence of or the use or prospective use of the public works to which the claim relates.

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(2) Sections 4 and 5 above shall not apply to the assessment, for the purposes of subsection (1) above, of the value of the interest mentioned in paragraph (*a*) of that subsection.

(3) Where, for the purpose of assessing compensation on a claim in respect of any interest in land, an increase in the value of an interest in other land has been taken into account under subsection (1) above, then, in connection with any subsequent acquisition to which this subsection applies, that increase shall not be left out of account by virtue of section 6 of the Land Compensation Act 1961 or taken into account by virtue of section 7 of that Act or any corresponding enactment, in so far as it was taken into account in connection with that claim.

1961 c. 33.

(4) Subsection (3) above applies to any subsequent acquisition, not being an acquisition of the land in respect of which the claim is made, where either—

(*a*) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole of the land in which that interest previously subsisted or only to part of that land); or

(*b*) the person entitled to the interest acquired is, or directly or indirectly derives title to that interest from, the person who at the time of the claim mentioned in that subsection was entitled to the interest previously taken into account;

and in this subsection "the interest previously taken into account" means the interest the increased value of which was taken into account as mentioned in the said subsection (3).

(5) For the purposes of this section a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—

(*a*) to both of them beneficially; or

(*b*) to both of them as trustee of one particular trust; or

(*c*) to both of them as personal representative of one particular person;

and in this section references to a person deriving title from another person include references to any successor in title of that other person.

(6) In subsection (3) above "corresponding enactment" has the same meaning as in section 8 of the said Act of 1961.

(7) In the application of this section to Scotland, for the references to sections 6, 7 and 8 of the Land Compensation Act 1961 there shall be substituted respectively references to sections 13, 14 and 15 of the Land Compensation (Scotland) Act 1963.

1963 c. 51.

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Exclusion of minimal compensation.

**7.** Compensation shall not be payable on any claim unless the amount of the compensation exceeds £50.

Other restrictions on compensation.

**8.**—(1) Where a claim has been made in respect of depreciation of the value of an interest in land caused by the use of any public works and compensation has been paid or is payable on that claim, compensation shall not be payable on any subsequent claim in relation to the same works and the same land or any part thereof (whether in respect of the same or a different interest) except that, in the case of land which is a dwelling, this subsection shall not preclude the payment of compensation both on a claim in respect of the fee simple and on a claim in respect of a tenancy.

(2) Where a person is entitled to compensation in respect of the acquisition of an interest in land by an authority possessing compulsory purchase powers, or would be so entitled if the acquisition were compulsory, and—

(*a*) the land is acquired for the purposes of any public works; and

(*b*) that person retains land which, in relation to the land acquired, constitutes other land or lands within the meaning of section 63 of the Lands Clauses Consolidation Act 1845 or section 7 of the Compulsory Purchase Act 1965 (compensation for acquisition to include compensation for injurious affection of other land retained),

1845 c. 18.
1965 c. 56.

then, whether or not any sum is paid or payable in respect of injurious affection of the land retained, compensation shall not be payable under this Part of this Act on any claim in relation to those works made after the date of service of the notice to treat (or, if the acquisition is by agreement, the date of the agreement) in respect of any interest in the land retained.

(3) Subsection (2) above applies whether the acquisition is before, on or after the date on which this Part of this Act comes into force (hereafter referred to as "the commencement date") and, where it is on or after that date, the public works for the purposes of which the land is acquired shall be taken to be those specified in the relevant particulars registered under subsection (4) below.

(4) Where on or after the commencement date an authority possessing compulsory purchase powers acquires land for the purposes of any public works and the person from whom the land is acquired retains land which, in relation to the land acquired, constitutes other land or lands within the meaning of the sections mentioned in subsection (2) above, the authority shall deposit particulars of the land retained and the nature

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and extent of those works with the council of the district or London borough in which the land retained is situated; and any particulars so deposited shall be registered by the proper officer of the council in the register of local land charges in such manner as may be prescribed by rules made for the purposes of this subsection under section 19 of the Land Charges Act 1925.

1925 c. 22.

(5) In a case in which compensation for injurious affection fell or falls to be assessed otherwise than in accordance with section 44 below, subsection (2) above shall not preclude the payment of compensation under this Part of this Act in respect of depreciation by public works so far as situated elsewhere than on the land acquired.

(6) Where after a claim has been made in respect of any interest in land the whole or part of the land in which that interest subsists is compulsorily acquired, then, if—

(*a*) the value of that land has been diminished by the public works to which the claim relates; but

(*b*) the compensation in respect of the compulsory acquisition falls to be assessed without regard to the diminution,

the compensation in respect of the acquisition shall be reduced by an amount equal to the compensation paid or payable on the claim or, if the acquisition extends only to part of the land, to so much of the last-mentioned compensation as is attributable to that part.

(7) Without prejudice to the foregoing provisions of this section, compensation shall not be payable in respect of the same depreciation both under this Part of this Act and under any other enactment.

(8) In the application of this section to Scotland—

(*a*) in subsection (1) for the words "fee simple" there shall be substituted the words "ownership of the dominium utile";

(*b*) in subsection (2)(*b*) for the reference to the sections there mentioned there shall be substituted a reference to section 61 of the Lands Clauses Consolidation (Scotland) Act 1845;

1845 c. 19.

(*c*) in subsection (4) for the words from "the authority shall deposit" to the end there shall be substituted the words "the authority shall cause particulars of the land retained and the nature and extent of those works to be recorded in the Register of Sasines and shall send a copy of those particulars to the local planning authority".

PART I
Alterations to public works and changes of use.

**9.**—(1) This section has effect where, whether before, on or after the commencement date—

(*a*) the carriageway of a highway has been altered after the highway has been open to public traffic;

(*b*) any public works other than a highway have been reconstructed, extended or otherwise altered after they have been first used; or

(*c*) there has been a change of use in respect of any public works other than a highway or aerodrome.

(2) If and so far as a claim in respect of the highway or other public works relates to depreciation that would not have been caused but for the alterations or change of use, this Part of this Act shall, subject to subsection (3) below, have effect in relation to the claim as if the relevant date (instead of being the date specified in section 1(9) above) were—

(*a*) the date on which the highway was first open to public traffic after completion of the alterations to the carriageway;

(*b*) the date on which the other public works were first used after completion of the alterations; or

(*c*) the date of the change of use,

as the case may be.

(3) Subsection (2) above shall not by virtue of any alterations to an aerodrome apply to a claim in respect of physical factors caused by aircraft unless the alterations are runway or apron alterations.

(4) Where a claim relates to such depreciation as is mentioned in subsection (2) above the notice of claim shall specify, in addition to the matters mentioned in section 3 above, the alterations or change of use alleged to give rise to the depreciation; and if and so far as the claim relates to such depreciation—

(*a*) section 6 above shall have effect as if the increase in value to be taken into account were any increase that would not have been caused but for the alterations or change of use in question;

(*b*) subsection (1) of section 8 above shall not preclude the payment of compensation unless the previous claim was in respect of depreciation that would not have been caused but for the same alterations or change of use, and subsection (2) of that section shall not preclude the payment of compensation unless the works for which the land was acquired were works resulting from the alterations, or works used for the purpose, to which the claim relates.

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(5) For the purposes of this section the carriageway of a highway is altered if, and only if—

(*a*) the location, width or level of the carriageway is altered (otherwise than by re-surfacing); or

(*b*) an additional carriageway is provided for the highway beside, above or below an existing one;

and the reference in subsection (2) above to depreciation that would not have been caused but for alterations to the carriageway of a highway is a reference to such depreciation by physical factors which are caused by the use of, and the source of which is situated on, the length of carriageway which has been altered as mentioned in paragraph (*a*) above or, as the case may be, the additional carriageway and the corresponding length of the existing one mentioned in paragraph (*b*) above.

(6) In this section "runway or apron alterations" means—

(*a*) the construction of a new runway, the major re-alignment of an existing runway or the extension or strengthening of an existing runway; or

(*b*) a substantial addition to, or alteration of, a taxiway or apron, being an addition or alteration whose purpose or main purpose is the provision of facilities for a greater number of aircraft.

(7) For the avoidance of doubt it is hereby declared that references in this section to a change of use do not include references to the intensification of an existing use.

Mortgages, trusts for sale and settlements.

**10.**—(1) Where an interest is subject to a mortgage—

(*a*) a claim may be made by any mortgagee of the interest as if he were the person entitled to that interest but without prejudice to the making of a claim by that person;

(*b*) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);

(*c*) any compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall in either case be applied by him as if it were proceeds of sale.

(2) Where the interest is held on trust for sale the compensation shall be dealt with as if it were proceeds of sale arising under the trust.

1925 c. 18.

(3) Where the interest is settled land for the purposes of the Settled Land Act 1925 the compensation shall be treated as capital money arising under that Act.

(4) Where an interest in land is vested in trustees (other than a sole tenant for life within the meaning of the Settled Land Act 1925) and a person beneficially entitled (whether directly or derivatively) under the trusts is entitled or permitted by reason of his interest to occupy the land, section 2 above shall have effect as if occupation by that person were occupation by the trustees in right of the interest vested in them. PART I 1925 c. 18.

(5) In the application of this section to Scotland—

(*a*) in subsection (1) for the references to a mortgage and a mortgagee there shall be substituted respectively references to a heritable security and a heritable creditor;

(*b*) for subsections (2) and (3) there shall be substituted the following subsection—

"(2) Where the interest is that of any of the persons specified in section 67 of the Lands Clauses Consolidation (Scotland) Act 1845, that Act shall have effect with regard to the application of the compensation as it has effect with regard to the application of the compensation payable in respect of the purchase of land"; 1845 c. 19.

(*c*) in subsection (4) the words "(other than a sole tenant for life within the meaning of the Settled Land Act 1925)" shall be omitted.

Interests acquired by inheritance.

**11.**—(1) So much of section 2(1) above as requires an interest qualifying for compensation under this Part of this Act to have been acquired by the claimant before the relevant date shall not apply to any interest acquired by him by inheritance from a person who acquired that interest, or a greater interest out of which it is derived, before the relevant date.

(2) For the purposes of this section an interest is acquired by a person by inheritance if it devolves on him by virtue only of testamentary dispositions taking effect on, or the law of intestate succession or the right of survivorship between joint tenants as applied to, the death of another person or the successive deaths of two or more other persons.

(3) For the purposes of subsection (2) above a person who acquires an interest by appropriation of it in or towards satisfaction of any legacy, share in residue or other share in the estate of a deceased person shall be treated as a person on whom the interest devolves by direct bequest.

(4) Where an interest is settled land for the purposes of the Settled Land Act 1925 and on the death of a tenant for life within the meaning of that Act a person becomes entitled to

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the interest in accordance with the settlement, or by any appropriation by the personal representatives in respect of the settled land, subsection (2) above shall apply as if the interest had belonged to the tenant for life absolutely and the trusts of the settlement taking effect after his death had been trusts of his will.

(5) Subsection (4) above shall apply, with any necessary modifications, where a person becomes entitled to an interest on the termination of a settlement as it would apply if he had become entitled in accordance with the terms of the settlement.

(6) In the application of this section to Scotland—

(*a*) in subsection (2), for the words from " testamentary " to " tenants " there shall be substituted the words—
" (*a*) a testamentary disposition or any other deed with testamentary effect taking effect on, or
(*b*) the law of intestate succession " ;

(*b*) in subsection (3), for the words " by appropriation of it in or towards " there shall be substituted the words " in satisfaction or in partial " ;

(*c*) subsections (4) and (5) shall be omitted.

Tenants entitled to enfranchisement or extension under Leasehold Reform Act 1967.

1967 c. 88.

**12.**—(1) This section has effect where a person is entitled under Part I of the Leasehold Reform Act 1967 to acquire the freehold or an extended lease of a house by virtue of any tenancy (" the qualifying tenancy ") and—

(*a*) has on or before the relevant date given notice under that Act to the landlord of his desire to have the freehold or an extended lease ; and

(*b*) has not acquired the freehold or an extended lease before that date.

(2) The qualifying tenancy shall be treated as an owner's interest as defined in section 2(4) above whether or not the unexpired term on the date of service of the notice of claim is of the length there specified.

(3) If no claim is made in respect of the qualifying tenancy before the claimant has ceased to be entitled to it by reason of his acquisition of the freehold or an extended lease he may make a claim in respect of the qualifying tenancy as if he were still entitled to it.

(4) No claim shall be made by virtue of subsection (3) above after the claimant has ceased to be entitled to the freehold or extended lease but such a claim may be made before the beginning of the claim period if it is made before the claimant has disposed of the freehold or extended lease and after he has made a contract for disposing of it.

(5) Compensation shall not be payable before the beginning of the claim period on any claim made by virtue of subsection (4) above.

(6) Any notice of a claim made by virtue of this section shall contain, in addition to the matters mentioned in section 3 above, a statement that it is made in respect of a qualifying tenancy as defined in this section and, if made by virtue of subsection (3) or (4) above, sufficient particulars to show that it falls within that subsection.

(7) In relation to a claim made by virtue of subsection (3) above section 4(4)(*a*) above shall have effect as if the reference to the date of service of notice of the claim were a reference to the relevant date.

Ecclesiastical property.

**13.**—(1) Any compensation payable under this Part of this Act in respect of land which is ecclesiastical property shall be paid to the Church Commissioners to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale.

(2) In this section "ecclesiastical property" means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

Special provisions for claims arising before commencement date.

**14.**—(1) Where the whole of the claim period for a claim has expired before the commencement date, or less than two years of that period remains unexpired on that date, that period shall be treated as continuing until the end of two years from the commencement date.

(2) Where on or after 17th October 1972 and before the commencement date a person—

(*a*) has disposed of an interest in land which would have qualified for compensation under this Part of this Act if it had then been in force and a notice of claim had been served in respect of the interest immediately before the disposal; or

(*b*) being entitled to such an interest as is mentioned in paragraph (*a*) above in land which is not a dwelling, has granted a tenancy thereof so that the interest remaining to him is not such an interest as aforesaid,

this Part of this Act shall have effect in relation to any claim made before the end of one year from the commencement date

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(being a claim in relation to which the relevant date falls before the disposal or the grant of the tenancy) as if that person were still entitled to the interest disposed of or the interest to which he was entitled prior to the grant of the tenancy.

(3) Any notice of a claim made by virtue of subsection (2) above shall specify, in addition to the matters mentioned in section 3 above, the date on which the interest was disposed of or, as the case may be, the date on which the tenancy was granted.

(4) A claim may be made by virtue of subsection (2) above notwithstanding that the claim period has not begun but compensation shall not be payable on the claim before the beginning of that period.

(5) In relation to a claim made by virtue of subsection (2) above section 4(4)(*a*) above shall have effect as if the reference to the date of service of notice of the claim were a reference to the date immediately preceding that on which the claimant disposed of the interest or granted the tenancy.

Information for ascertaining relevant date.

**15.**—(1) The responsible authority in relation to a highway or other public works shall keep a record and, on demand, furnish a statement in writing of—

(*a*) the date on which the highway was first open to public traffic, or was first open to public traffic after completion of any particular alterations to the carriageway of the highway;

(*b*) the date on which the public works were first used after completion, or were first used after completion of any particular alterations to those works;

(*c*) in the case of public works other than a highway or aerodrome, the date on which there was a change of use in respect of the public works.

(2) A certificate by the Secretary of State stating that runway or apron alterations have or have not been carried out at an aerodrome and the date on which an aerodrome at which any such alterations have been carried out was first used after completion of the alterations shall be conclusive evidence of the facts stated.

(3) In this section references to alterations to the carriageway of a highway, to runway or apron alterations and to a change of use shall be construed in the same way as in section 9 above; and subsection (1) above shall not apply unless the date in question falls on or after the commencement date.

Disputes.

**16.**—(1) Any question of disputed compensation under this Part of this Act shall be referred to and determined by the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland.

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(2) No such question arising out of a claim made before the beginning of the claim period shall be referred to either of those Tribunals before the beginning of that period.

Action for nuisance following unsuccessful claim where responsible authority have disclaimed statutory immunity.

**17.** Where, in resisting a claim under this Part of this Act, a responsible authority contend that no enactment relating to the works in question confers immunity from actions for nuisance in respect of the use to which the claim relates, then if—

(*a*) compensation is not paid on the claim ; and

(*b*) an action for nuisance in respect of the matters which were the subject of the claim is subsequently brought by the claimant against the authority,

no enactment relating to those works, being an enactment in force when the contention was made, shall afford a defence to that action in so far as it relates to those matters.

Interest on compensation. 1961 c. 33.

**18.**—(1) Compensation under this Part of this Act shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961, from—

(*a*) the date of service of the notice of claim ; or

(*b*) if that date is before the beginning of the claim period, from the beginning of the claim period,

until payment.

(2) In the application of this section to Scotland for the reference to section 32 of the said Act of 1961 there shall be substituted a reference to section 40 of the Land Compensation (Scotland) Act 1963. 1963 c. 51.

Interpretation of Part I.

**19.**—(1) In this Part of this Act—

" the appropriate highway authority " means—

(*a*) except where paragraph (*b*) below applies, the highway authority who constructed the highway to which the claim relates ;

(*b*) if and so far as the claim relates to depreciation that would not have been caused but for alterations to the carriageway of a highway, the highway authority who carried out the alterations ;

" claim " means a claim under this Part of this Act and " the claimant " means the person making such a claim ;

" the claim period " has the meaning given in section 3(2) above but subject to section 14(1) above and subsection (3) below ;

" commencement date " means the date on which this Part of this Act comes into force ;

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"highway" includes part of a highway and, in relation to England and Wales, means a highway or part of a highway maintainable at the public expense as defined in section 295(1) of the Highways Act 1959 and, in relation to Scotland, means a highway or part of a highway within the meaning of the Roads (Scotland) Act 1970;

1959 c. 25.

1970 c. 20.

"highway authority", in relation to Scotland, has the meaning assigned to it in the said Act of 1970;

"land", in relation to Scotland, includes salmon fishings;

"public works" and "responsible authority" have the meaning given in section 1 above;

"the relevant date" has the meaning given in sections 1(9) and 9(2) above.

(2) For the purposes of sections 2(1), 11(1) and 14(2) above an interest acquired or disposed of, or a tenancy granted, pursuant to a contract shall be treated as acquired, disposed of or granted when the contract was made.

(3) In the application of this Part of this Act to a highway which has not always since 17th October 1969 been a highway maintainable at the public expense as defined above—

(*a*) references to its being open to public traffic shall be construed as references to its being so open whether or not as a highway so maintainable;

(*b*) for references to the highway authority who constructed it there shall be substituted references to the highway authority for the highway;

and no claim shall be made if the relevant date falls at a time when the highway was not so maintainable and the highway does not become so maintainable within three years of that date but, if it does, the claim period shall be treated as continuing until the end of one year from the date on which it becomes so maintainable if, apart from this provision, that period would end earlier.

(4) In the application of subsection (3) above to Scotland—

(*a*) for the words from "highway which" to "defined above" and "highway so maintainable" there shall be substituted respectively the words "road which has not always since 17th October 1969 been a highway" and "highway";

(*b*) for the words "the highway was not so maintainable and the highway does not become so maintainable" there shall be substituted the words "the road was not a highway and the road does not become a highway";

(*c*) for the words "it becomes so maintainable" there shall be substituted the words "it becomes a highway".

## PART II



## MITIGATION OF INJURIOUS EFFECT OF PUBLIC WORKS

### *Insulation against noise*

Sound-proofing of buildings affected by public works.

**20.**—(1) The Secretary of State may make regulations imposing a duty or conferring a power on responsible authorities to insulate buildings against noise caused or expected to be caused by the construction or use of public works or to make grants in respect of the cost of such insulation.

(2) Regulations under this section may—

(*a*) make provision as to the level of noise giving rise to a duty or power under the regulations and the area in which a building must be situated if a duty or power is to arise in respect of it;

(*b*) specify the classes of public works and of buildings in respect of which a duty or power is to arise, and the classes of persons entitled to make claims, under the regulations;

(*c*) specify the nature and extent of the work which is to be undertaken under the regulations and the expenditure in respect of which and the rate at which grants are to be made under the regulations;

(*d*) make the carrying out of work or the making of grants under the regulations dependent upon compliance with conditions;

(*e*) make provision as to the funds out of which expenses incurred by responsible authorities under the regulations are to be defrayed;

(*f*) make provision for the settlement of disputes arising under the regulations.

(3) Without prejudice to the generality of paragraph (*a*) of subsection (2) above, regulations made by virtue of that paragraph may provide for the relevant level of noise or the relevant area in a particular case to be determined by reference to a document published by or on behalf of the Secretary of State or by any other authority or body or in such other manner as may be provided in the regulations.

(4) If regulations under this section impose a duty or confer a power to carry out, or make a grant in respect of the cost of, work in respect of a building which is subject to a tenancy on a claim in that behalf made by the landlord or the tenant, provision may also be made by the regulations for enabling the work to be carried out notwithstanding the withholding of consent by the other party to the tenancy.

(5) Regulations under this section may authorise or require local authorities to act as agents for responsible authorities in

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dealing with claims and in discharging or exercising the duties or powers of responsible authorities under the regulations, and may provide for the making by responsible authorities of payments to local authorities in respect of anything done by them as such agents.

(6) Regulations under this section may authorise the council of a London borough to contribute towards expenses incurred under the regulations by a responsible authority in respect of the insulation of buildings against noise caused or expected to be caused by the use of any highway in that borough in relation to which an order has been made under section 6 of the Road Traffic Regulation Act 1967 (traffic regulation orders in Greater London).

1967 c. 76.

(7) Regulations under this section may contain such supplementary provisions as appear to the Secretary of State to be necessary or expedient and may make different provision with respect to different areas or different circumstances.

(8) The power to make regulations under this section shall be exercisable by statutory instrument.

(9) A draft of any regulations under this section shall be laid before Parliament and the first regulations shall not be made unless the draft has been approved by a resolution of each House of Parliament.

(10) The purposes for which advances may be made by the Secretary of State under section 235(1) of the Highways Act 1959 or section 8 of the Development and Road Improvement Funds Act 1909 shall include the discharge or exercise by a highway authority of any duty or power imposed or conferred on the authority under this section.

1959 c. 25.
1909 c. 47.

(11) In sections 25(4), 31(*a*) and 57(1)(*a*) of the Rent Act 1968 and sections 24(4) and 29(*a*) of the Rent (Scotland) Act 1971 (increase of rent for improvements) after the words " section 15 of the Airports Authority Act 1965 (grants towards cost of sound-proofing) " there shall be inserted the words " or regulations under section 20 of the Land Compensation Act 1973 ".

1968 c. 23.
1971 c. 28.
1965 c. 16.

(12) In this section " public works " and " responsible authority " have the same meaning as in section 1 above except that " public works " does not include an aerodrome and except that " responsible authority ", in relation to a highway, includes any authority having power to make an order in respect of that highway under section 1 or 6 of the Road Traffic Regulation Act 1967 (traffic regulation orders).

Sound-proofing of buildings affected by aerodromes.

**21.** In section 15 of the Airports Authority Act 1965 (grants towards sound-proofing of dwellings affected by noise from aerodromes) references to dwellings shall include references to

buildings other than dwellings but a scheme under that section need apply only to such classes of buildings as the Secretary of State thinks fit. PART II

*Powers of highway authorities*

Acquisition of land in connection with highways.

**22.**—(1) Subject to subsection (3) below, a highway authority may acquire land compulsorily or by agreement for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the highway.

(2) Subject to subsection (3) below, a highway authority may acquire by agreement—

(*a*) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or improvement of a highway;

(*b*) land the enjoyment of which is seriously affected by the use of a highway which the authority have constructed or improved,

if the interest of the vendor is one which falls within section 192(3) to (5) of the Town and Country Planning Act 1971 (interests qualifying for protection under blight provisions) taking references to the date of service of a notice under section 193 of that Act as references to the date on which the purchase agreement is made. 1971 c. 78.

(3) The powers conferred by subsection (2)(*b*) above shall not be exercisable unless the date on which the highway or, as the case may be, the improved highway is first open to public traffic falls on or after 17th October 1971 and the powers conferred by subsections (1) and (2)(*a*) above shall not be exercisable unless that date falls on or after 17th October 1972; and—

(*a*) if that date falls not later than one year after the passing of this Act—

(i) the powers conferred by subsection (1) above to acquire land compulsorily and the powers conferred by subsection (2)(*a*) above shall not be exercisable unless the acquisition is begun before the end of one year after the passing of this Act;

(ii) the powers conferred by subsection (1) above to acquire land by agreement and the powers conferred by subsection (2)(*b*) above shall not be exercisable unless the acquisition is begun before the end of one year after the passing of this Act or one year after that date, whichever ends later;

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(*b*) if that date falls more than one year after the passing of this Act—

(i) the powers mentioned in paragraph (*a*)(i) above shall not be exercisable unless the acquisition is begun before that date;

(ii) the powers mentioned in paragraph (*a*)(ii) above shall not be exercisable unless the acquisition is begun before the end of one year after that date.

(4) Where under the powers of this section a highway authority have acquired, or propose to acquire, land forming part of a common, open space or fuel or field garden allotment and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land compulsorily or by agreement.

(5) A power to acquire land compulsorily conferred by this section on a local highway authority shall be exercisable in any particular case on their being authorised by the Secretary of State to exercise it; and the Acquisition of Land (Authorisation Procedure) Act 1946 shall have effect—

1946 c. 49.

(*a*) in relation to the compulsory acquisition of land under this section by a local highway authority, as if this section had been in force immediately before the commencement of that Act;

(*b*) in relation to the compulsory acquisition of land under this section by the Secretary of State, as if this section had been in force immediately before the commencement of that Act and as if this section were included among the enactments specified in section 1(1)(*b*) of that Act.

(6) For the purposes of subsection (3) above the acquisition of any land is begun—

(*a*) if it is compulsory, on the date on which the notice required by paragraph 3(1)(*a*) of Schedule 1 to the said Act of 1946 is first published;

(*b*) if it is by agreement, on the date on which the agreement is made;

and where the compulsory acquisition of any land under subsection (1) is begun within the time limited by subsection (3) above but is not proceeded with, any subsequent compulsory acquisition of that land under subsection (1) above shall be treated for the purposes of this section as begun within that time.

(7) For the purpose of assessing the compensation payable on the compulsory acquisition of land under this section—

(*a*) the land shall be treated as if it were being acquired for the construction of the highway or, as the case may be, the improvement in question;

(*b*) section 222(6) of the Highways Act 1959 (matters to be taken into account by Lands Tribunal) shall, so far as applicable, apply as it does in relation to compulsory acquisition under the provisions there mentioned; PART II 1959 c. 25.

and in section 222(11) of that Act (application of Compulsory Purchase Act 1965 to acquisition of land by agreement under Part X of the said Act of 1959) the reference to the said Part X shall include a reference to this section. 1965 c. 56.

(8) Section 214(5) and (6) of the said Act of 1959 (acquisition of land for preserving view from or other amenities of a highway) shall cease to have effect; and in section 10(1) of that Act (delegation of functions relating to trunk roads) for the words " under subsection (5) or subsection (6) of section two hundred and fourteen of this Act or under section two hundred and fifteen thereof " there shall be substituted the words " under section 215 of this Act or under section 22 of the Land Compensation Act 1973 ".

(9) References in the Highways Act 1971 to highway land acquisition powers shall include references to the powers exercisable under this section. 1971 c. 41.

(10) In this section references to the construction or improvement of a highway include references to the construction or improvement of a highway by virtue of an order under section 9 or 13 of the Highways Act 1959 or section 1 of the Highways Act 1971.

(11) In the application of this section to Scotland—

(*a*) for the references to sections 192(3) to (5) and 193 of the Town and Country Planning Act 1971 there shall be substituted respectively references to sections 181(3) to (5) and 182 of the Town and Country Planning (Scotland) Act 1972; 1972 c. 52.

(*b*) in subsection (4) for the words " open space or fuel or field garden allotment " there shall be substituted the words " or open space ";

(*c*) for references to the Acquisition of Land (Authorisation Procedure) Act 1946 there shall be substituted references to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; 1946 c. 59. 1947 c. 42.

(*d*) for the reference to section 222(6) of the Highways Act 1959 there shall be substituted a reference to section 35(3) of the Roads (Scotland) Act 1970; 1970 c. 20.

(*e*) for subsection (8) there shall be substituted—

" (8) In section 5(2) of the Trunk Roads Act 1946 (delegation of functions relating to trunk roads) after 1946 c. 30.

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1970 c. 20.

the words "section 29(4) of the Roads (Scotland) Act 1970" there shall be inserted the words "or under section 22 of the Land Compensation Act 1973."";

(f) in subsection (10) for the words from "9" to the end there shall be substituted "3 or 14 of the Special Roads Act 1949 or section 15 of the Roads (Scotland) Act 1970".

1949 c. 32.
1970 c. 20.

Execution of works in connection with highways.

**23.**—(1) A highway authority may carry out—

(a) on land acquired by them under section 22 above;

(b) on any other land belonging to them;

(c) on any highway for which they are the highway authority;

(d) on any highway which they have been authorised to improve or construct by virtue of an order under section 9 or 13 of the Highways Act 1959, section 1 of the Highways Act 1971, section 3 or 14 of the Special Roads Act 1949 or section 15 of the Roads (Scotland) Act 1970,

1959 c. 25.
1971 c. 41.

works for mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway.

(2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.

(3) A highway authority may develop or redevelop any land acquired by them under section 22 above, or any other land belonging to them, for the purpose of improving the surroundings of a highway in any manner which they think desirable by reason of its construction, improvement, existence or use.

Agreements as to use of land near highways.

**24.**—(1) For the purpose of mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway, the highway authority may enter into an agreement with any person interested in land adjoining or in the vicinity of the highway for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement; and any such agreement may, in particular, make provision for the planting and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

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(2) An agreement under this section may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

(3) Subject to subsection (4) below, the provisions of any agreement made under this section with any person interested in land shall be binding on persons deriving title from that person in respect of the land.

(4) No provision shall be enforceable by virtue of subsection (3) above against a purchaser for money or money's worth of a legal estate in the land unless before completion of the purchase the agreement has been registered in the register of local land charges by the proper officer of the council of the district or London borough in which the land is situated in such manner as may be prescribed by rules made for the purposes of this subsection under section 19 of the Land Charges Act 1925; and in this subsection " purchaser " and " purchase " have the same meaning as in that Act. 1925 c. 22.

(5) This section is without prejudice to section 52 of the Town and Country Planning Act 1971 (agreements regulating development or use of land). 1971 c. 78.

(6) In the application of this section to Scotland—

(*a*) for subsection (4) there shall be substituted—

" (4) No provision shall be enforceable by virtue of subsection (3) above against a third party who shall have in good faith and for value acquired right (whether completed by infeftment or not) to land prior to the agreement being recorded in the Register of Sasines, or against any person deriving title from such third party ";

(*b*) for the reference to section 52 of the said Act of 1971 there shall be substituted a reference to section 50 of the Town and Country Planning (Scotland) Act 1972. 1972 c. 52.

Advances for exercise of powers by highway authorities. 1959 c. 25. 1909 c. 47.

**25.** The purposes for which advances may be made by the Secretary of State under section 235(1) of the Highways Act 1959 or section 8 of the Development and Road Improvement Funds Act 1909 shall include the exercise by a highway authority of any powers conferred by sections 22 to 24 above.

*Powers of authorities responsible for other public works*

Acquisition of land in connection with public works.

**26.**—(1) Subject to the provisions of this section, a responsible authority may acquire land by agreement for the purpose of mitigating any adverse effect which the existence or use of any public works has or will have on the surroundings of the works.

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(2) Subject to the provisions of this section, a responsible authority may acquire by agreement—

(*a*) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or alteration of any public works;

(*b*) land the enjoyment of which is seriously affected by the use of any public works,

if the interest of the vendor is of the kind mentioned in section 22(2) above.

(3) The powers conferred by subsection (2)(*b*) above shall not be exercisable unless the date on which the public works or, as the case may be, the altered public works, are first used falls on or after 17th October 1971 and the powers conferred by subsections (1) and (2)(*a*) above shall not be exercisable unless that date falls on or after 17th October 1972; and—

(*a*) if that date falls not later than one year after the passing of this Act—

(i) the powers conferred by subsections (1) and (2)(*b*) above shall not be exercisable unless the acquisition is begun before the end of one year after the passing of this Act or one year after that date, whichever ends later;

(ii) the powers conferred by subsection (2)(*a*) above shall not be exercisable unless the acquisition is begun before the end of one year after the passing of this Act;

(*b*) if that date falls more than one year after the passing of this Act—

(i) the powers mentioned in paragraph (*a*)(i) above shall not be exercisable unless the acquisition is begun before the end of one year after that date;

(ii) the powers mentioned in paragraph (*a*)(ii) above shall not be exercisable unless the acquisition is begun before that date.

(4) For the purposes of subsection (3) above the acquisition of any land shall be treated as begun when the agreement for its acquisition is made.

(5) This section applies only where the responsible authority have statutory powers to acquire land (whether compulsorily or by agreement) for the purposes of their functions but would not, apart from this section, have power to acquire land as mentioned in subsections (1) and (2) above.

(6) In this section "public works" and "responsible authority" have the same meaning as in section 1 above except that

" public works " does not include a highway or in Scotland a road or any works forming part of a statutory undertaking as defined in section 290(1) of the Town and Country Planning Act 1971 or, as respects Scotland, section 275(1) of the Town and Country Planning (Scotland) Act 1972. PART II 1971 c. 78. 1972 c. 52.

Execution of works etc. in connection with public works.

**27.**—(1) A responsible authority may carry out—

(*a*) if they have power to acquire land under section 26 above, on any land acquired by them under that section ;

(*b*) on any other land belonging to them,

works for mitigating any adverse effect which the construction, alteration, existence or use of any public works has or will have on the surroundings of the works.

(2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.

(3) A responsible authority may—

(*a*) develop or redevelop any land acquired by them under section 26 above, or any other land belonging to them, for the purpose of improving the surroundings of public works in any manner which they think desirable by reason of the construction, alteration, existence or use of the works ;

(*b*) dispose of any land acquired by them under section 26 above.

(4) This section applies only where the responsible authority are a body incorporated by or under any enactment and has effect only for extending the corporate powers of any such authority.

(5) In this section " public works " and " responsible authority " have the same meaning as in section 1 above except that " public works " does not include a highway or in Scotland a road.

*Expenses of persons moving temporarily during construction works etc.*

Power to pay expenses of persons moving temporarily during construction works etc.

**28.**—(1) This section has effect where works are carried out—

(*a*) by a highway authority for the construction or improvement of a highway ; or

(*b*) by a responsible authority for the construction or alteration of any public works other than a highway,

and the carrying out of those works affects the enjoyment of a dwelling adjacent to the site on which they are being carried out

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to such an extent that continued occupation of the dwelling is not reasonably practicable.

(2) Subject to subsection (3) below, the highway authority or responsible authority, as the case may be, may pay any reasonable expenses incurred by the occupier of the dwelling in providing suitable alternative residential accommodation for himself and members of his household for the whole or any part of the period during which the works are being carried out.

(3) No payment shall be made to any person under this section in respect of any expenses except in pursuance of an agreement made between that person and the authority concerned before the expenses are incurred; and no payment shall be so made except in respect of the amount by which the expenses exceed those which that person would have incurred if the dwelling had continued to be occupied.

(4) In this section "public works" and "responsible authority" have the same meaning as in section 1 above.

1970 c. 20.

(5) In the application of this section to Scotland "highway authority" has the same meaning as in the Roads (Scotland) Act 1970, and in subsection (1) for any reference to a highway there shall be substituted a reference to a road.

## PART III

## PROVISIONS FOR BENEFIT OF PERSONS DISPLACED FROM LAND

### *Home loss payments*

Right to home loss payment where person displaced from dwelling.

**29.**—(1) Where a person is displaced from a dwelling on any land in consequence of—

(*a*) the compulsory acquisition of an interest in the dwelling;

(*b*) the making, passing or acceptance of a housing order, resolution or undertaking in respect of the dwelling;

(*c*) where the land has been previously acquired by an authority possessing compulsory purchase powers or appropriated by a local authority and is for the time being held by the authority for the purposes for which it was acquired or appropriated, the carrying out of redevelopment on the land,

he shall, subject to the provisions of this section and section 32 below, be entitled to receive a payment (hereafter referred to as a "home loss payment") from the acquiring authority, the authority who made the order, passed the resolution or accepted the undertaking or the authority carrying out the redevelopment, as the case may be.

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(2) A person shall not be entitled to a home loss payment unless throughout a period of not less than five years ending with the date of displacement—

(*a*) he has been in occupation of the dwelling, or a substantial part of it, as his only or main residence; and

(*b*) he has been in occupation as aforesaid by virtue of an interest or right to which this section applies.

(3) For the purposes of this section a person shall not be treated as displaced from a dwelling in consequence of the compulsory acquisition of an interest therein if he gives up his occupation thereof before the date on which the acquiring authority were authorised to acquire that interest, but, subject to that, it shall not be necessary for the acquiring authority to have required him to give up his occupation of the dwelling.

(4) This section applies to the following interests and rights—

(*a*) any interest in the dwelling;

(*b*) a right to occupy the dwelling as a statutory tenant within the meaning of the Rent Act 1968 or under a contract to which Part VI of that Act (furnished lettings) applies or would apply if the contract or dwelling were not excluded by section 70(3)(*a*) or 71 of that Act; 1968 c. 23.

(*c*) a right to occupy the dwelling as a statutory tenant within the meaning of the Rent (Scotland) Act 1971 or under a contract to which Part VII of that Act (furnished lettings) applies or would apply if the contract or dwelling were not excluded by section 85(3)(*a*) or 86 of that Act; 1971 c. 28.

(*d*) a right to occupy the dwelling under a contract of employment.

(5) No home loss payment shall be made to any person displaced from a dwelling in consequence of the compulsory acquisition of an interest therein if the acquisition is in pursuance of the service by him of a blight notice within the meaning of section 192 of the Town and Country Planning Act 1971 or section 181 of the Town and Country Planning (Scotland) Act 1972 or of a notice under section 11 of the New Towns Act 1965 or section 11 of the New Towns (Scotland) Act 1968. 1971 c. 78. 1972 c. 52. 1965 c. 59. 1968 c. 16.

(6) Where an authority possessing compulsory purchase powers acquire the interest of any person in a dwelling by agreement, then, in relation to any other person who is displaced from the dwelling in consequence of the acquisition, subsections (1) to (4) above shall have effect as if the acquisition were

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compulsory and the authority (if not authorised to acquire the interest compulsorily) had been so authorised on the date of the agreement.

(7) In this section " a housing order, resolution or undertaking " means—

(*a*) a demolition, closing or clearance order under Part II or III of the Housing Act 1957, section 60 of the Housing Act 1969 or Part II of the Housing (Scotland) Act 1966;

1957 c. 56. 1969 c. 33.

(*b*) a resolution under section 56 of the said Act of 1966; or

1966 c. 49.

(*c*) an undertaking accepted under section 16(4) of the said Act of 1957, section 60(2) of the said Act of 1969 or section 15(4)(i) of the said Act of 1966;

and " redevelopment " includes a change of use.

(8) Where an interest in a dwelling is vested in trustees (other than a sole tenant for life within the meaning of the Settled Land Act 1925) and a person beneficially entitled (whether directly or derivatively) under the trusts is entitled or permitted by reason of his interest to occupy the dwelling, he shall be treated for the purposes of this section as occupying it by virtue of an interest in the dwelling.

1925 c. 18.

In the application of this subsection to Scotland the words " (other than a sole tenant for life within the meaning of the Settled Land Act 1925 ") shall be omitted.

(9) This section applies if the date of displacement is on or after 17th October 1972.

Amount of home loss payment in England and Wales.

**30.**—(1) Subject to subsection (2) below, the amount of a home loss payment in England and Wales shall be—

(*a*) where the date of displacement is before 1st April 1973, an amount equal to the rateable value of the dwelling multiplied by seven;

(*b*) where the date of displacement is on or after 1st April 1973, an amount equal to the rateable value of the dwelling multiplied by three;

subject, in either case, to a maximum of £1,500 and a minimum of £150.

(2) The Secretary of State may from time to time by order prescribe different multipliers and a different maximum or minimum for the purposes of subsection (1) above; and the power to make orders under this subsection shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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(3) For the purposes of this section the rateable value of a dwelling shall be determined as follows—

(*a*) if the dwelling is a hereditament for which a rateable value is shown in the valuation list in force on the date of displacement, it shall be that rateable value;

(*b*) if the dwelling forms part only of such a hereditament or consists of or forms part of more than one such hereditament, an apportionment or aggregation of the rateable value or values so shown shall be made by the valuation officer and the rateable value of the dwelling shall be taken to be the amount certified by him as being the amount which, on such an apportionment or aggregation, is properly attributable to the dwelling;

(*c*) if neither paragraph (*a*) nor paragraph (*b*) of this subsection applies to the dwelling, its rateable value shall be determined by the valuation officer in accordance with the General Rate Acts 1967 and 1970.

(4) In this section " valuation officer " has the same meaning as in the General Rate Act 1967. 1967 c. 9.

Amount of home loss payment in Scotland.

**31.**—(1) Subject to subsection (2) below, the amount of a home loss payment in Scotland shall be an amount equal to the rateable value of the dwelling multiplied by six, subject to a maximum of £1,500 and a minimum of £150.

(2) The Secretary of State may from time to time by order prescribe a different multiplier and a different maximum or minimum for the purposes of subsection (1) above; and the power to make orders under this subsection shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) For the purposes of this section the rateable value of a dwelling shall be determined as follows—

(*a*) if the dwelling consists of lands and heritages for which a rateable value is shown in the valuation roll in force on the date of displacement, it shall be that rateable value;

(*b*) if the dwelling forms part only of such lands and heritages or consists or forms part of more than one unit of such lands and heritages, an apportionment or aggregation of the rateable value or values so shown shall be made by the assessor and the rateable value of the dwelling shall be taken to be the amount certified by him as being the amount which, on such an apportionment or aggregation, is properly attributable to the dwelling;

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(*c*) if neither paragraph (*a*) nor paragraph (*b*) of this subsection applies to the dwelling, its rateable value shall be determined by the assessor in accordance with the Valuation Acts.

1956 c. 60.

(4) This section shall be construed as one with the Valuation and Rating (Scotland) Act 1956.

Supplementary provisions about home loss payments.

**32.**—(1) Subject to subsection (8) below, no home loss payment shall be made except on a claim in that behalf made by the person entitled thereto (" the claimant ") before the expiration of the period of six months beginning with the date of displacement; and any such claim shall be in writing and shall be accompanied or supplemented by such particulars as the authority responsible for making the payment may reasonably require to enable them to determine whether the claimant is entitled to a payment and, if so, its amount.

(2) A home loss payment shall be made not later than three months after the date on which a claim for the payment is made in accordance with subsection (1) above or, if those three months end before the date of displacement, on the date of displacement.

(3) Where the claimant has been in occupation of a dwelling or a substantial part of it as mentioned in paragraphs (*a*) and (*b*) of section 29(2) above for any period (" the claimant's own qualifying period ") and has also for an immediately preceding period resided in the dwelling, or a substantial part of it, as his only or main residence but without being in occupation as required by those paragraphs then, if another person was, or other persons successively were, in occupation thereof as mentioned in those paragraphs throughout that preceding period, the claimant's own qualifying period shall be treated for the purposes of section 29(2) above as including that preceding period.

(4) Where a person (" the deceased ") dies before the expiration of the period for making a claim to a home loss payment and would have been entitled to such a payment if he had made a claim within that period, a claim to that payment may be made, before the expiration of that period, by any person, not being a minor, who—

(*a*) throughout a period of not less than five years ending with the date of displacement of the deceased, has resided in the dwelling, or a substantial part of it, as his only or main residence; and

(*b*) is entitled to benefit by virtue of testamentary dispositions taking effect on, or the law of intestate succession or the right of survivorship between joint tenants as applied to, the death of the deceased.

(5) Where the claimant has successively been in occupation of or resided in different dwellings in the same building, being dwellings consisting of a room or rooms not constructed or structurally adapted for use as a separate dwelling, section 29(2) above and subsections (3) and (4) above shall have effect as if those dwellings were the same dwelling.

(6) Where there are two or more persons entitled to make a claim to a home loss payment in respect of the same dwelling (whether by virtue of joint occupation or of subsection (4) above) the payment to be made on each claim shall be equal to the whole amount of the home loss payment divided by the number of such persons.

(7) Where an interest in a dwelling is acquired by agreement by an authority possessing compulsory purchase powers, the authority may, in connection with the acquisition, make to the person from whom the interest is acquired a payment corresponding to any home loss payment which they would be required to make to him if the acquisition were compulsory and the authority had been authorised to acquire that interest before he gave up occupation of the dwelling.

(8) Where the date of displacement is before the passing of this Act the period within which a claim to a home loss payment can be made shall be the period of six months beginning with the date of the passing of this Act.

(9) In the application of subsection (4) above to Scotland—

(*a*) for the word " minor " there shall be substituted the words " person under the age of eighteen " ;

(*b*) in paragraph (*b*)—

(i) for the words from " testamentary " to " tenants " there shall be substituted the words " a testamentary disposition or any other deed with testamentary effect taking effect on, or the law of intestate succession ", and

(ii) at the end there shall be added the following words—" or a right to *jus relicti, jus relictae* or *legitim* out of the deceased's estate.".

Home loss payments for certain caravan dwellers.

**33.**—(1) Sections 29 to 32 above shall, so far as applicable, have effect in relation to a person residing in a caravan on a caravan site who is displaced from that site as they have effect in relation to a person displaced from a dwelling on any land but shall so have effect subject to the following modifications.

(2) No home loss payment shall be made to any person by virtue of this section except where no suitable alternative site for stationing a caravan is available to him on reasonable terms.

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(3) Subsection (1) of section 29 above shall have effect as if for the words preceding paragraph (*a*) there were substituted the words " Where a person residing in a caravan on a caravan site is displaced from that site in consequence of " and subsection (2) of that section shall have effect as if for paragraphs (*a*) and (*b*) there were substituted—

" (*a*) he has been in occupation of the caravan site by using a caravan stationed on it as his only or main residence ; and

(*b*) he has been in occupation of the site as aforesaid by virtue of an interest or right to which this section applies."

(4) Sections 30(3) and 31(3) above shall have effect as if—

(*a*) paragraph (*b*) were omitted ; and

(*b*) in paragraphs (*a*) and (*c*) for the word " dwelling " there were substituted the words " caravan site together with a caravan ".

(5) Section 32 above shall have effect—

(*a*) as if in subsection (3) for the words " in occupation of a dwelling or a substantial part of it ", " resided in the dwelling, or a substantial part of it " and " in occupation thereof " there were substituted respectively the words " in occupation of a caravan site ", " resided in a caravan on that site " and " in occupation of that site " ;

(*b*) as if in subsection (4) for the words " resided in the dwelling, or a substantial part of it " there were substituted the words " resided in a caravan on the caravan site " ; and

(*c*) as if for subsection (5) there were substituted—

" (5) Where any land comprises two or more caravan sites and the claimant has successively been in occupation of or resided in a caravan on different caravan sites on that land, section 29(2) above and subsections (3) and (4) above shall have effect as if those sites were the same site."

(6) Sections 29 to 32 above shall have effect as if in any provision not modified as aforesaid for any reference to a dwelling or land there were substituted a reference to a caravan site.

(7) In this section " caravan site " means land on which a caravan is stationed for the purpose of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

*Farm loss payments*

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Right to farm loss payment where person displaced from agricultural unit.

**34.**—(1) Where land constituting or included in an agricultural unit is land in respect of which the person in occupation of the unit has an owner's interest, then if—

(*a*) in consequence of the compulsory acquisition of his interest in the whole of that land (" the land acquired ") he is displaced from the whole of that land ; and

(*b*) not more than three years after the date of displacement he begins to farm another agricultural unit (" the new unit ") elsewhere in Great Britain,

he shall, subject to the provisions of this section and section 36 below, be entitled to receive a payment (hereafter referred to as a " farm loss payment ") from the acquiring authority.

(2) In subsection (1) above " owner's interest " means a freehold interest or a tenancy granted or extended for a term of years certain of which not less than three years remain unexpired on the date of displacement.

(3) For the purposes of this section a person is displaced from land in consequence of the compulsory acquisition of his interest therein if, and only if, he gives up possession thereof—

(*a*) on being required to do so by the acquiring authority ;

(*b*) on completion of the acquisition ; or

(*c*) where the acquiring authority permit him to remain in possession of the land under a tenancy or licence of a kind not making him a tenant as defined in the Agricultural Holdings Act 1948, on the expiration of that tenancy or licence ;

1948 c. 63.

and references in this section and section 35 below to the date of displacement are references to the date on which the person concerned gives up possession as aforesaid.

(4) No farm loss payment shall be made to any person unless on the date on which he begins to farm the new unit he is in occupation of the whole of that unit in right of a freehold interest therein or a tenancy thereof, not having been entitled to any such interest or tenancy before the date on which the acquiring authority were authorised to acquire his interest in the land acquired.

(5) No farm loss payment shall be made by virtue of the displacement of a person from any land if he is entitled to a payment under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 in consequence of the acquisition of an interest in, or the taking of possession of, that land.

1968 c. 34.

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(6) No farm loss payment shall be made to any person displaced from land in consequence of the compulsory acquisition of his interest therein if the acquisition of his interest in the whole or any part of that land is in pursuance of the service by him of a blight notice within the meaning of section 192 of the 1971 c. 78. Town and Country Planning Act 1971 or a notice under section 1965 c. 59. 11 of the New Towns Act 1965.

(7) In the application of this section to Scotland—

(*a*) for subsection (2) there shall be substituted—

"(2) In subsection (1) above "owner's interest" means the interest of an owner or a lessee under a lease, being a lease the unexpired period of which on the date of displacement is not less than three years or the interest of a crofter or a landholder;"

(*b*) for any reference to a tenancy or licence there shall be substituted respectively a reference to a lease or a right or permission relating to land but not amounting to an estate or interest therein;

(*c*) in subsection (3)(*c*) for the words "Agricultural Holdings 1948 c. 63. Act 1948" there shall be substituted the words 1949 c. 75. "Agricultural Holdings (Scotland) Act 1949";

(*d*) in subsection (4) for the words "a freehold interest" there shall be substituted the words "an interest as owner thereof";

(*e*) in subsection (6) for the words "section 192 of the Town and Country Planning Act 1971" and "the New Towns Act 1965" there shall be substituted respectively 1972 c. 52. the words "section 181 of the Town and Country 1968 c. 16. Planning (Scotland) Act 1972" and "the New Towns (Scotland) Act 1968".

(8) This section applies if the date of displacement is on or after 17th October 1972.

Amount of farm loss payment.

**35.**—(1) Subject to the provisions of this section, the amount of any farm loss payment shall be equal to the average annual profit derived from the use for agricultural purposes of the agricultural land comprised in the land acquired; and that profit shall be computed by reference to the profits for the three years ending with the date of displacement or, if the person concerned has then been in occupation for a shorter period, that period.

(2) Where accounts have been made up in respect of the profits of the person concerned for a period or consecutive periods of twelve months and that period or the last of them

ends not more than one year before the date of displacement, subsection (1) above shall have effect as if the date on which that period or the last of those periods ends were the date of the displacement.

(3) Where the date of displacement is determined in accordance with section 34(3)(*c*) above and the person concerned has on that date been in occupation for more than three years, he may elect that the average annual profit shall, instead of being computed by reference to the profits for the years mentioned in subsection (1) above, be computed by reference to the profits for—

(*a*) any three consecutive periods of twelve months for which accounts in respect of his profits have been made up, being periods for which he has been in occupation and the last of which ends on or after the date of completion of the acquisition ; or

(*b*) if there are no such periods as aforesaid, any three consecutive years for which he has been in occupation and the last of which ends on or after the date mentioned in paragraph (*a*) above.

(4) In calculating the profits mentioned in subsection (1) above there shall be deducted a sum equal to the rent that might reasonably be expected to be payable in respect of the agricultural land comprised in the land acquired if it were let for agricultural purposes to a tenant responsible for rates, repairs and other outgoings ; and that deduction shall be made whether or not the land is in fact let and, if it is, shall be made to the exclusion of any deduction for the rent actually payable.

(5) In calculating the profits mentioned in subsection (1) above there shall be left out of account profits from any activity if a sum in respect of loss of profits from that activity would fall to be included in the compensation, so far as attributable to disturbance, for the acquisition of the interest in the land acquired.

(6) Where the value of the agricultural land comprised in the land acquired exceeds the value of the agricultural land comprised in the new unit the amount of the farm loss payment shall be proportionately reduced.

(7) For the purposes of subsection (6) above the value of any land shall be assessed—

(*a*) on the basis of its value as land used solely for agriculture and as for a freehold interest therein (or, in Scotland, an interest as owner thereof) with vacant possession ;

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(*b*) by reference to the condition of the land and its surroundings and to prices current—

(i) in the case of the land comprised in the land acquired, on the date of displacement;

(ii) in the case of land comprised in the new unit, on the date on which the person concerned begins to farm the new unit;

(*c*) in accordance with rules (2) to (4) of the rules set out in section 5 of the Land Compensation Act 1961 or section 12 of the Land Compensation (Scotland) Act 1963;

1961 c. 33.
1963 c. 51.

(*d*) without regard to the principal dwelling, if any, comprised in the same agricultural unit as that land.

(8) The amount of a farm loss payment shall not be greater than the amount, if any, by which—

(*a*) that payment, calculated apart from this subsection, together with compensation for the acquisition of the interest in the land acquired assessed on the assumptions mentioned in section 5(2), (3) and (4) above (including any sum included as compensation for disturbance), exceeds

(*b*) the compensation actually payable for the acquisition of that interest.

(9) Any dispute as to the amount of a farm loss payment shall be referred to and determined by the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland.

Supplementary provisions about farm loss payments.

**36.**—(1) Subject to subsection (7) below, no farm loss payment shall be made except on a claim in that behalf made by the person entitled thereto before the expiration of the period of one year beginning with the date on which the requirement in section 34(1)(*b*) above is complied with, and any such claim shall be in writing and shall be accompanied or supplemented by such particulars as the acquiring authority may reasonably require to enable them to determine whether that person is entitled to a payment and, if so, its amount.

(2) Where the agricultural unit containing the land acquired is occupied for the purposes of a partnership firm sections 34 and 35 above shall have effect in relation to the firm and not the partners individually (any interest of a partner in the land acquired being treated as an interest of the firm) except that the requirements in section 34 as to the new unit shall be treated as complied with in relation to the firm as soon as they are complied with by any one of the persons who were members of the firm.

(3) Where a person dies before the expiration of the period for making a claim to a farm loss payment and would have been entitled to such a payment if he had made a claim within that period, a claim to that payment may be made, before the expiration of that period, by his personal representative.

(4) Where an interest in land is acquired by agreement by an authority possessing compulsory purchase powers, the authority may, in connection with the acquisition, make to the person from whom the interest is acquired a payment corresponding to any farm loss payment which they would be required to make to him if the acquisition were compulsory and the authority (if not authorised to acquire the interest compulsorily) had been so authorised on the date of the agreement.

(5) Where a farm loss payment is made to any person the authority making the payment shall also pay any reasonable valuation or legal expenses incurred by that person for the purposes of the preparation and prosecution of his claim to the payment; but this subsection is without prejudice to the powers of the Lands Tribunal or the Lands Tribunal for Scotland in respect of the costs or expenses of proceedings before the Tribunal by virtue of section 35(9) above.

(6) A farm loss payment shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or, in Scotland, section 40 of the Land Compensation (Scotland) Act 1963, from the date mentioned in subsection (1) above until payment. 1961 c. 33. 1963 c. 51.

(7) Where the date mentioned in subsection (1) above is before the passing of this Act the period within which a claim to a farm loss payment can be made shall be the period of one year beginning with the date of the passing of this Act.

*Disturbance payments*

Disturbance payments for persons without compensatable interests.

**37.**—(1) Where a person is displaced from any land in consequence of—

(*a*) the acquisition of the land by an authority possessing compulsory purchase powers;

(*b*) the making, passing or acceptance of a housing order, resolution or undertaking in respect of a house or building on the land;

(*c*) where the land has been previously acquired by an authority possessing compulsory purchase powers or appropriated by a local authority and is for the time being held by the authority for the purposes for which

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it was acquired or appropriated, the carrying out of redevelopment on the land,

he shall, subject to the provisions of this section, be entitled to receive a payment (hereafter referred to as a "disturbance payment") from the acquiring authority, the authority who made the order, passed the resolution or accepted the undertaking or the authority carrying out the redevelopment, as the case may be.

(2) A person shall not be entitled to a disturbance payment—

(*a*) in any case, unless he is in lawful possession of the land from which he is displaced;

(*b*) in a case within subsection (1)(*a*) above, unless either—

(i) he has no interest in the land for the acquisition or extinguishment of which he is (or if the acquisition or extinguishment were compulsory would be) entitled to compensation under any other enactment; or

(ii) he has such an interest as aforesaid but the compensation is subject to a site value provision and he is not (or if the acquisition were compulsory would not be) entitled in respect of that acquisition to an owner-occupier's supplement;

(*c*) in a case within subsection (1)(*b*) above, if he is entitled to an owner-occupier's supplement by reference to the order, resolution or undertaking.

In this subsection "site value provision" means section 29(2) or 59(2) of the Housing Act 1957, section 20 of the Housing (Scotland) Act 1966 or section 10 of the Housing (Scotland) Act 1969 and "owner-occupier's supplement" means a payment under Part II of Schedule 2 to the said Act of 1957, Schedule 5 to the Housing Act 1969 or sections 18 to 20 of the Housing (Scotland) Act 1969.

1957 c. 56.
1966 c. 49.
1969 c. 34.
1969 c. 33.

(3) For the purposes of subsection (1) above a person shall not be treated as displaced in consequence of any such acquisition or redevelopment as is mentioned in paragraph (*a*) or (*c*) of that subsection unless he was in lawful possession of the land—

(*a*) in the case of land acquired under a compulsory purchase order, at the time when notice was first published of the making of the compulsory purchase order prior to its submission for confirmation or, where the order did not require confirmation, of the preparation of the order in draft;

(*b*) in the case of land acquired under an Act specifying the land as subject to compulsory acquisition, at the time

when the provisions of the Bill for that Act specifying the land were first published;

(*c*) in the case of land acquired by agreement, at the time when the agreement was made;

and a person shall not be treated as displaced in consequence of any such order, resolution or undertaking as is mentioned in paragraph (*b*) of that subsection unless he was in lawful possession as aforesaid at the time when the order was made, the resolution was passed or the undertaking was accepted.

(4) Where a person is displaced from land in circumstances such that, apart from this subsection, he would be entitled to a disturbance payment from any authority and also to compensation from that authority under section 37 of the Landlord and Tenant Act 1954 (compensation from landlord where order for new tenancy of business premises precluded on certain grounds) he shall be entitled, at his option, to one or the other but not to both. 1954 c. 56.

(5) Where a person is displaced from any land as mentioned in subsection (1) above but is not entitled, as against the authority there mentioned, to a disturbance payment or to compensation for disturbance under any other enactment, the authority may, if they think fit, make a payment to him determined in accordance with section 38(1) to (3) below.

(6) A disturbance payment shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or, in Scotland, section 40 of the Land Compensation (Scotland) Act 1963, from the date of displacement until payment. 1961 c. 33. 1963 c. 51.

(7) This section does not apply to any land which is used for the purposes of agriculture.

(8) In section 71(4) of the Housing (Financial Provisions) (Scotland) Act 1972 (financial assistance towards tenants' removal expenses) for the words from "160" to the end there shall be substituted the words "37 of the Land Compensation Act 1973 (disturbance payments for persons without compensatable interests)". 1972 c. 46.

(9) In this section "a housing order, resolution or undertaking" and "redevelopment" have the same meaning as in section 29 above.

(10) This section applies if the date of displacement is on or after 17th October 1972.

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Amount of disturbance payment.

**38.**—(1) The amount of a disturbance payment shall be equal to—

(*a*) the reasonable expenses of the person entitled to the payment in removing from the land from which he is displaced ; and

(*b*) if he was carrying on a trade or business on that land, the loss he will sustain by reason of the disturbance of that trade or business consequent upon his having to quit the land.

(2) In estimating the loss of any person for the purposes of subsection (1)(*b*) above, regard shall be had to the period for which the land occupied by him may reasonably have been expected to be available for the purposes of his trade or business and to the availability of other land suitable for that purpose.

This subsection has effect subject to section 46(7) below.

(3) Where the displacement is from a dwelling in respect of which structural modifications have been made for meeting the special needs of a disabled person (whether or not the person entitled to the disturbance payment) then, if—

(*a*) a local authority having functions under section 29 of the National Assistance Act 1948, or having duties under section 12 of the Social Work (Scotland) Act 1968, provided assistance, or

1948 c. 29.
1968 c. 24.

(*b*) such an authority would, if an application had been made, have provided assistance,

for making those modifications, the amount of the disturbance payment shall include an amount equal to any reasonable expenses incurred by the person entitled to the payment in making, in respect of a dwelling to which the disabled person removes, comparable modifications which are reasonably required for meeting the disabled person's special needs.

(4) Any dispute as to the amount of a disturbance payment shall be referred to and determined by the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland.

*Rehousing*

Duty to rehouse residential occupiers.

**39.**—(1) Where a person is displaced from residential accommodation on any land in consequence of—

(*a*) the acquisition of the land by an authority possessing compulsory purchase powers ;

(*b*) the making, passing or acceptance of a housing order, resolution or undertaking in respect of a house or building on the land ;

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(*c*) where the land has been previously acquired by an authority possessing compulsory purchase powers or appropriated by a local authority and is for the time being held by the authority for the purposes for which it was acquired or appropriated, the carrying out of redevelopment on the land,

and suitable alternative residential accommodation on reasonable terms is not otherwise available to that person, then, subject to the provisions of this section, it shall be the duty of the relevant authority to secure that he will be provided with such other accommodation.

(2) Subsection (1) above shall not by virtue of paragraph (*a*) thereof apply to a person if the acquisition is in pursuance of the service by him of a blight notice within the meaning of section 192 of the Town and Country Planning Act 1971 or section 181 of the Town and Country Planning (Scotland) Act 1972. 1971 c. 78. 1972 c. 52.

(3) Subsection (1) above shall not apply to any person who is a trespasser on the land or who has been permitted to reside in any house or building on the land pending its demolition.

(4) Subsection (1) above shall not apply to any person to whom money has been advanced—

(*a*) under section 41 below ;

(*b*) under the Small Dwellings Acquisition Acts 1899 to 1923 or section 43 of the Housing (Financial Provisions) Act 1958 ; 1958 c. 42.

(*c*) under the Small Dwellings Acquisition (Scotland) Acts 1899 to 1923 or section 49 of the Housing (Financial Provisions) (Scotland) Act 1968 ; or 1968 c. 31.

(*d*) by a development corporation or the Commission for the New Towns otherwise than under section 41 below,

for the purpose of enabling him to obtain accommodation in substitution for that from which he is displaced as mentioned in that subsection.

(5) Subsection (1)(*a*) above shall not apply to any acquisition of land in relation to which the Secretary of State has before the passing of this Act decided under paragraph 1 of Schedule 9 to the Housing Act 1957 or paragraph 1 of Schedule 8 to the Housing (Scotland) Act 1966 that a housing scheme is not necessary. 1957 c. 56. 1966 c. 49.

(6) For the purposes of subsection (1) above a person shall not be treated as displaced in consequence of any such acquisition or redevelopment as is mentioned in paragraph (*a*) or (*c*) of that

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subsection unless he was residing in the accommodation in question—

(*a*) in the case of land acquired under a compulsory purchase order, at the time when notice was first published of the making of the order prior to its submission for confirmation or, where the order did not require confirmation, of the preparation of the order in draft;

(*b*) in the case of land acquired under an Act specifying the land as subject to compulsory acquisition, at the time when the provisions of the Bill for the Act specifying the land were first published;

(*c*) in the case of land acquired by agreement, at the time when the agreement was made;

and a person shall not be treated as displaced in consequence of any such order, resolution or undertaking as is mentioned in paragraph (*b*) of that subsection unless he was residing in the accommodation in question at the time when the order was made, the resolution was passed or the undertaking was accepted.

(7) Subject to subsection (8) below, "the relevant authority" for the purposes of this section is—

(*a*) where the land is in a London borough, the council of that borough or the Greater London Council if they have agreed with that council to discharge the functions of the latter under this section;

(*b*) where the land is in any other area or district, the local authority having functions in relation to that area under Part V of the Housing Act 1957 or that district under Part VII of the Housing (Scotland) Act 1966.

1957 c. 56.
1966 c. 49.

(8) Where the land is in an area designated as the site of a new town—

(*a*) paragraph (*c*) of subsection (1) above shall apply if the land on which the redevelopment is carried out has been previously acquired by the development corporation and is for the time being held either by that corporation or by the Commission for the New Towns;

(*b*) if the authority by whom the land is acquired or redeveloped is the development corporation, that corporation shall, in a case falling within paragraph (*a*) or (*c*) of that subsection, be the relevant authority for the purposes of this section;

(*c*) if the authority by whom the land is redeveloped is the Commission for the New Towns, the Commission shall, in a case falling within paragraph (*c*) of that subsection, be the relevant authority for the purposes of this section.

(9) In this section " a housing order, resolution or undertaking " and " redevelopment " have the same meaning as in section 29 above. PART III

Duty to rehouse certain caravan dwellers.

**40.**—(1) Section 39 above shall, so far as applicable, have effect in relation to a person residing in a caravan on a caravan site who is displaced from that site as it has effect in relation to a person displaced from residential accommodation on any land but shall so have effect subject to the following modifications.

(2) Subsection (1) of the said section 39 shall have effect—

(*a*) as if for the words preceding paragraph (*a*) there were substituted the words " Where a person residing in a caravan on a caravan site is displaced from that site in consequence of "; and

(*b*) as if for the words following paragraph (*c*) there were substituted the words " and neither suitable residential accommodation nor a suitable alternative site for stationing a caravan is available to that person on reasonable terms, then, subject to the provisions of this section, it shall be the duty of the relevant authority to secure that he will be provided with suitable residential accommodation ".

(3) Subsection (6) of the said section 39 shall have effect as if in the words preceding paragraph (*a*) for the words " unless he was residing in the accommodation in question " there were substituted the words " unless he was residing in a caravan on the caravan site in question ".

(4) The said section 39 shall have effect as if in any provision not modified as aforesaid for any reference to land there were substituted a reference to a caravan site.

(5) In this section " caravan site " has the same meaning as in section 33 above.

Power of relevant authority to make advances repayable on maturity to displaced residential owner-occupiers.

**41.**—(1) Where a person displaced from a dwelling in consequence of any of the matters mentioned in subsection (1)(*a*), (*b*) or (*c*) of section 39 above—

(*a*) is an owner-occupier of the dwelling; and

(*b*) wishes to acquire or construct another dwelling in substitution for that from which he is displaced,

the relevant authority for the purposes of that section may advance money to him for the purpose of enabling him to acquire or construct the other dwelling.

(2) The power conferred by this section shall be exercisable subject to such conditions as may be approved by the Secretary of State and the following provisions shall apply with respect to any advance made in the exercise of that power.

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(3) The advance shall be made—

(*a*) on terms providing for the payment of the principal—

(i) at the end of a fixed period, with or without a provision allowing the authority to extend that period; or

(ii) upon notice given by the authority,

subject, in either case, to a provision for earlier repayment on the happening of a specified event;

(*b*) on such other terms as the authority may think fit having regard to all the circumstances.

(4) An advance for the construction of a dwelling may be made by instalments from time to time as the works of construction progress.

(5) The principal of the advance, together with interest thereon, shall be secured by a mortgage of the borrower's interest in the dwelling, and the amount of the principal shall not exceed the value which, in accordance with a valuation duly made on behalf of the relevant authority, it is estimated that the borrower's interest will bear or, as the case may be, will bear when the dwelling has been constructed.

(6) Before advancing money under this section the relevant authority shall satisfy themselves that the dwelling to be acquired is or will be made, or that the dwelling to be constructed will on completion be, in all respects fit for human habitation.

(7) While the payment of the principal of an advance made by a local authority under this section is not required in accordance with the terms of the advance, the local authority may suspend, with respect to so much of any sum borrowed by them as is referable to the advance or with respect to any sum paid in respect of the advance out of their Consolidated Loans Fund, any periodical provision for repayment that may be required by any enactment or by any scheme (whether made under section 55 of the Local Government Act 1958 or under any local enactment) by which the Fund was established.

1958 c. 55.

(8) The power conferred by this section on a relevant authority is without prejudice to any power to advance money exercisable by the authority under any other enactment.

(9) In this section "owner-occupier", in relation to any dwelling, means a person who occupies it on the date of displacement and either—

(*a*) occupies it on that date in right of a freehold interest therein or a tenancy thereof granted or extended for a term of years certain of which not less than three years remain unexpired; or

(*b*) if the displacement is in consequence of the matters mentioned in paragraph (*c*) of section 39(1) above, occupied it in right of such an interest or tenancy on the date on which the land was acquired or appropriated as mentioned in that paragraph. PART III

(10) In this section references to the construction of a dwelling include references to the acquisition of a building and its conversion into a dwelling and to the conversion into a dwelling of a building previously acquired.

(11) In the application of this section to Scotland—

(*a*) in subsection (5) for the reference to a mortgage there shall be substituted a reference to a heritable security;

(*b*) in subsection (6) for the words from "is or will" to the end there shall be substituted the words "meets or will meet the tolerable standard as determined for the purposes of the Housing (Scotland) Act 1969 by section 2 of that Act"; 1969 c. 34.

(*c*) in subsection (7) for the words from "or with respect" to the end there shall be substituted the words "any periodical provision for repayment that may be required by any enactment";

(*d*) in subsection (9)—

(i) in paragraph (*a*) for the words from "a freehold interest" to "certain" there shall be substituted the words "an owner's interest or a lease", and at the end there shall be added the following words "or by virtue of a tenancy or other interest to which the Crofters (Scotland) Acts 1955 and 1961 or the Small Landholders (Scotland) Acts 1886 to 1931 apply;

(ii) in paragraph (*b*) for the word "tenancy" there shall be substituted the words "lease or by virtue of such a tenancy or interest".

Duty of displacing authority to indemnify rehousing or lending authority for net losses.

**42.**—(1) Where a relevant authority within the meaning of section 39 above provide or secure the provision of accommodation for any person in pursuance of subsection (1)(*a*) or (*c*) of that section, then, if—

(*a*) the authority providing the accommodation ("the rehousing authority") are not the same as the authority by whom the land in question is acquired or redeveloped ("the displacing authority"); and

(*b*) the displacing authority are not an authority having functions under Part V of the Housing Act 1957 or Part VII of the Housing (Scotland) Act 1966, 1957 c. 56. 1966 c. 49.

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the displacing authority shall make to the rehousing authority periodical payments, or if the rehousing authority so require a lump sum payment, by way of indemnity against any net loss in respect of the rehousing authority's provision of that accommodation which may be incurred by that authority in any year during the period of ten years commencing with the year in which the accommodation is first provided.

(2) For the purposes of subsection (1) above a local authority incur a net loss in respect of their provision of accommodation for a person whom they are rehousing—

(*a*) if they rehouse him in a dwelling provided by them under Part V of the said Act of 1957, or a house provided by them under Part VII of the said Act of 1966, for the purpose of rehousing him ; or

(*b*) if—

(i) they rehouse him in a Housing Revenue Account dwelling not so provided or (in Scotland) a house to which the housing revenue account relates not so provided, and

(ii) provide under the said Part V or the said Part VII in the year immediately preceding that in which he first occupies it, or in the period of three years commencing with the year in which he first occupies it, a dwelling or house of a similar type or size.

(3) Where money has been advanced to a person as mentioned in section 39(4) above, then if—

(*a*) the authority making the advance (" the lending authority ") are not the same as the displacing authority; and

(*b*) the lending authority incur a net loss in respect of the making of the advance,

the displacing authority shall make to the lending authority a lump sum payment by way of indemnity against that loss.

(4) For the purposes of subsection (3) above, a lending authority incur a net loss in respect of the making of an advance to any person if—

(*a*) he does not fully discharge his liability to the authority in respect of principal, interest and costs or expenses in accordance with the terms on which the advance is made ; and

(*b*) the deficiency exceeds the net proceeds arising to the authority on a sale of the interest on which the principal and interest is secured.

(5) The Secretary of State may—

(*a*) for the purposes of subsection (1) above from time to time determine a method to be used generally in calculating net losses incurred by rehousing authorities;

(*b*) for the purposes of that subsection or subsection (3) above, determine the net loss incurred by a rehousing authority or lending authority in any particular case;

(*c*) give directions as to the manner in which any payment under this section is to be made.

(6) Subsection (2) above shall be construed as one with the Housing Finance Act 1972 or, in relation to Scotland, the Housing (Financial Provisions) (Scotland) Act 1972. 1972 c. 47. 1972 c. 46.

Power of relevant authority to defray expenses in connection with acquisition of new dwellings.

**43.**—(1) Where a person displaced from a dwelling in consequence of any such acquisition as is mentioned in section 39(1)(*a*) above—

(*a*) has no interest in the dwelling or no greater interest therein than as tenant for a year or from year to year; and

(*b*) wishes to acquire another dwelling in substitution for that from which he is displaced,

the acquiring authority may pay any reasonable expenses incurred by him in connection with the acquisition, other than the purchase price.

(2) No payment shall be made under this section in respect of expenses incurred by any person in connection with the acquisition of a dwelling unless the dwelling is acquired not later than one year after the displacement and is reasonably comparable with that from which he is displaced.

(3) For the purposes of subsection (2) above a dwelling acquired pursuant to a contract shall be treated as acquired when the contract is made.

(4) Subsections (3) and (6) of section 39 above shall have effect in relation to subsection (1) above and to subsection (1)(*a*) of that section as applied thereby.

## PART IV

## COMPULSORY PURCHASE

### *Assessment of compensation*

Compensation for injurious affection.

**44.**—(1) Where land is acquired or taken from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land acquired or taken from him.

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(2) In this section "compensation for injurious affection" means compensation for injurious affection under section 63 or 121 of the Lands Clauses Consolidation Act 1845 or section 7 or 20 of the Compulsory Purchase Act 1965, and subsection (1) above shall apply with the necessary modifications to such compensation under the said section 7 as substituted by paragraph 7 of Schedule 6 to the Highways Act 1971, paragraph 13 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land) or any corresponding enactment, including (except where otherwise provided) an enactment passed after this Act.

1845 c. 18.
1965 c. 56.
1971 c. 41.
1972 c. 60.

(3) In this section "compensation for injurious affection", in relation to Scotland, means compensation for injurious affection under section 61 or 114 of the Lands Clauses Consolidation (Scotland) Act 1845, and subsection (1) above shall apply with the necessary modifications to such compensation under the said section 61 as substituted by paragraph 26 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land) or any corresponding enactment extending to Scotland, including (except where otherwise provided) an enactment passed after this Act.

1845 c. 19.

Compensation for acquisition of dwelling specially adapted for disabled person.

**45.**—(1) This section applies to the assessment of compensation in respect of the compulsory acquisition of an interest in a dwelling which—

(*a*) has been constructed or substantially modified to meet the special needs of a disabled person; and

(*b*) is occupied by such a person as his residence immediately before the date when the acquiring authority take possession of the dwelling or was last so occupied before that date.

(2) The compensation shall, if the person whose interest is acquired so elects, be assessed as if the dwelling were land which is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose.

Compensation for disturbance where business carried on by person over sixty.

**46.**—(1) Where a person is carrying on a trade or business on any land and, in consequence of the compulsory acquisition of the whole of that land, is required to give up possession thereof to the acquiring authority, then if—

(*a*) on the date on which he gives up possession as aforesaid he has attained the age of sixty; and

(*b*) on that date the land is or forms part of a hereditament the annual value of which does not exceed the prescribed amount; and

(*c*) that person has not disposed of the goodwill of the whole of the trade or business and gives to the acquiring authority the undertakings mentioned in subsection (3) below, PART IV

the compensation payable to that person in respect of the compulsory acquisition of his interest in the land or, as the case may be, under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 (tenants from year to year etc.) shall, so far as attributable to disturbance, be assessed on the assumption that it is not reasonably practicable for that person to carry on the trade or business or, as the case may be, the part thereof the goodwill of which he has retained, elsewhere than on that land. 1845 c. 18. 1965 c. 56.

(2) In subsection (1) above " the prescribed amount " means the amount which on the date mentioned in that subsection is the amount prescribed for the purposes of section 192(4)(*a*) of the Town and Country Planning Act 1971 (interests qualifying for protection under planning blight provisions) and " annual value " and " hereditament " have the meanings given in section 207 of that Act taking references to the date of service of a notice under section 193 of that Act as references to the date mentioned in subsection (1) above. 1971 c. 78.

(3) The undertakings to be given by the person claiming compensation are—

(*a*) an undertaking that he will not dispose of the goodwill of the trade or business, or, as the case may be, of the part thereof the goodwill of which he has retained ; and

(*b*) an undertaking that he will not, within such area and for such time as the acquiring authority may require, directly or indirectly engage in or have any interest in any other trade or business of the same or substantially the same kind as that carried on by him on the land acquired.

(4) If an undertaking given by a person for the purposes of this section is broken the acquiring authority may recover from him an amount equal to the difference between the compensation paid and the compensation that would have been payable if it had been assessed without regard to the provisions of this section.

(5) This section shall apply to a trade or business carried on by two or more persons in partnership as if references to the person by whom it is carried on were references to all the partners and as if the undertakings mentioned in subsection (3) above were required to be given by all the partners.

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(6) This section shall apply to a trade or business carried on by a company—

(*a*) as if subsection (1)(*a*) above required—

(i) each shareholder, other than a minority shareholder, to be an individual who has attained the age of sixty on the date there mentioned; and

(ii) each minority shareholder to be an individual who either has attained that age on that date or is the spouse of a shareholder who has attained that age on that date; and

(*b*) as if the undertakings mentioned in subsection (3)(*b*) above were required to be given both by the company and by each shareholder.

In this subsection "shareholder" means a person who is beneficially entitled to a share or shares in the company carrying voting rights and "minority shareholder" means a person who is so entitled to less than 50 per cent. of those shares.

(7) This section shall apply in relation to any disturbance payment assessed in accordance with section 38(1)(*b*) above as it applies in relation to the compensation mentioned in subsection (1) above, and shall so apply subject to the necessary modifications and as if references to the giving up of possession of land to the acquiring authority in consequence of its compulsory acquisition were references to displacement as mentioned in section 37 above.

(8) In the application of this section to Scotland for the reference to the sections mentioned in subsection (1) above there shall be substituted a reference to section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 and for the references to sections 192(4)(*a*), 193 and 207 of the Town and Country Planning Act 1971 there shall be substituted respectively references to sections 181(4)(*a*), 182 and 196 of the Town and Country Planning (Scotland) Act 1972.

1845 c. 19.

1971 c. 78.

1972 c. 52.

Compensation in respect of land subject to business tenancy.

**47.**—(1) Where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—

1954 c. 56.

(*a*) acquire the interest of the landlord in any land subject to a tenancy to which Part II of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies; or

(*b*) acquire the interest of the tenant in, or take possession of, any such land,

the right of the tenant to apply under the said Part II for the grant of a new tenancy shall be taken into account in assessing

the compensation payable by the acquiring authority (whether to the landlord or the tenant) in connection with the acquisition of the interest or the taking of possession of the land; and in assessing that compensation it shall be assumed that neither the acquiring authority nor any other authority possessing compulsory purchase powers have acquired or propose to acquire any interest in the land.

(2) Subsection (1) of section 39 of the said Act of 1954 (right of tenant to apply under the said Part II for a new tenancy to be disregarded in assessing compensation for compulsory taking of possession of land subject to short tenancy) shall cease to have effect.

(3) In subsection (2) of the said section 39 for the words "the compensation assessed in accordance with the last foregoing subsection" there shall be substituted the words "the compensation payable under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 in the case of a tenancy to which this Part of this Act applies". 1845 c. 19. 1965 c. 56.

Compensation in respect of agricultural holdings.

**48.**—(1) This section has effect where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—

(*a*) acquire the interest of the landlord in an agricultural holding or any part of it; or

(*b*) acquire the interest of the tenant in, or take possession of, an agricultural holding or any part of it.

(2) In assessing the compensation payable by the acquiring authority to the landlord in connection with any such acquisition of an interest as is mentioned in subsection (1)(*a*) above—

(*a*) there shall be disregarded any right of the landlord to serve a notice to quit, and any notice to quit already served by the landlord, which would not be or would not have been effective if—

(i) in section 24(2)(*b*) of the Agricultural Holdings Act 1948 (land required for non-agricultural use for which planning permission has been granted etc.) the reference to the land being required did not include a reference to its being required by an acquiring authority; and 1948 c. 63.

(ii) in section 25(1)(*e*) of that Act (proposed termination of tenancy for purpose of land's being used for non-agricultural use not falling within section 24(2)(*b*)) the reference to the land's being used did not include a reference to its being used by an acquiring authority; and

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(*b*) if the tenant has quitted the holding or any part of it by reason of a notice to quit which is to be so disregarded, it shall be assumed that he has not done so.

(3) In assessing the compensation payable by the acquiring authority to the tenant in connection with any such acquisition of an interest or taking of possession of land as is mentioned in subsection (1)(*b*) above (hereafter referred to as " the tenant's compensation "), there shall be disregarded any right of the landlord to serve a notice to quit, and any notice to quit already served by the landlord, which would not be or would not have been effective if the said sections 24(2)(*b*) and 25(1)(*e*) were construed in accordance with subsection (2)(*a*)(i) and (ii) above.

1968 c. 34.

(4) Section 42 of the Agriculture (Miscellaneous Provisions) Act 1968 (tenant's compensation to be assessed without regard to his prospects of remaining in possession after contractual date) and section 15(1) of that Act (effect on tenant's compensation of provision enabling landlord to resume possession for non-agricultural use) shall cease to have effect.

(5) The tenant's compensation shall be reduced by an amount equal to any payment which the acquiring authority are liable to make to him, in respect of the acquisition or taking of possession in question, under section 12 of the said Act of 1968 (additional payments by acquiring authority in circumstances described in subsection (1)(*b*) above).

(6) If the tenant's compensation as determined in accordance with subsections (3) to (5) above is less than it would have been if those subsections had not been enacted, it shall be increased by the amount of the deficiency.

(7) In the application of this section to Scotland—

(*a*) in subsections (2) and (3), for the references to sections 24(2)(*b*) and 25(1)(*e*) of the Agricultural Holdings Act 1948 there shall be substituted respectively references to sections 25(2)(*c*) and 26(1)(*e*) of the Agricultural Holdings (Scotland) Act 1949 ;

1949 c. 75.

(*b*) after subsection (2)(*a*) there shall be inserted the following—

" (*aa*) there shall be disregarded any entitlement of the landlord to resume land comprised in the holding by virtue of a stipulation in the lease, and any notice already given in pursuance of such a stipulation which would not be or would not have been effective if the stipulation were construed as not including authority to resume the land for the purpose of its being required by the acquiring authority ; and "

(*c*) at the end of subsection (2)(*b*) there shall be inserted the following— PART IV

"and

(*c*) if land comprised in the holding has been resumed by reason of such an entitlement or notice which is to be so disregarded that land shall be assumed not to have been so resumed.";

(*d*) in subsection (3), after the word "disregarded" there shall be inserted the word "(*a*)", and at the end there shall be added the words—

"and

(*b*) any entitlement of the landlord to resume land comprised in the holding by virtue of a stipulation in the lease, and any notice already given in pursuance of such a stipulation which would not be or would not have been effective if the stipulation were construed in accordance with subsection (2)(*aa*) above.";

(*e*) after subsection (6) there shall be inserted the following subsection—

"(6A) This section shall not apply to an agricultural holding which is a croft or the holding of a landholder or a statutory small tenant.".

Compensation in respect of crofts, etc.

**49.**—(1) This section has effect where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—

(*a*) acquire the interest of the landlord in an agricultural holding which is a croft; or

(*b*) take possession of a croft.

(2) In assessing the compensation payable by the acquiring authority to the landlord of a croft in connection with any such acquisition of an interest as is mentioned in subsection (1)(*a*) above—

(*a*) there shall be disregarded any right of the landlord to apply to the Scottish Land Court under section 12 of the Crofters (Scotland) Act 1955 for authority to resume the croft and any such authority already granted which would not be or would not have been effective if in that section the reference to resuming the croft did not include a reference to its being resumed for the purpose of its being required by the acquiring authority; and 1955 c. 21.

(*b*) if the crofter has surrendered his croft under the said section 12 by reason of an authority which is to be so disregarded it shall be assumed that he has not done so.

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(3) In assessing the compensation payable by the acquiring authority to the crofter in connection with any such taking of possession of a croft as is mentioned in subsection (1)(*b*) above, there shall be disregarded any right of the landlord to apply to the Scottish Land Court under the said section 12 for authority to resume the croft or any such authority already granted which would not be or would not have been effective if the said section 12 were construed in accordance with subsection (2)(*a*) above.

(4) If the compensation payable to the crofter as determined in accordance with subsection (3) above is less than it would have been if that subsection had not been enacted, it shall be increased by the amount of the deficiency.

(5) This section shall apply to part of a croft as it applies to an entire croft.

(6) This section shall apply to the holding or part of the holding of a landholder as it applies to a croft or part of a croft except that for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, landholder or section 2 of the Crofters Holdings (Scotland) Act 1886.

1955 c. 21.

1886 c. 29.

(7) This section shall apply to the holding or part of the holding of a statutory small tenant as it applies to a croft or part of a croft except that—

(*a*) for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, statutory small tenant or section 32(15) of the Small Landholders (Scotland) Act 1911;

1911 c. 49.

(*b*) in subsection (2)(*b*), for the words "crofter has surrendered his croft under the said section 12" there shall be substituted the words "landlord has resumed the holding under the said section 32(15)";

(*c*) after subsection (3) there shall be inserted the following subsection—

"(3A) The compensation payable to the statutory small tenant shall be reduced by an amount equal to any payment which the acquiring authority are liable to make to him, in respect of the taking of possession in question, under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payments by acquiring authority in circumstances described in subsection (1)(*b*) above).";

1968 c. 34.

(*d*) in subsection (4), for the words "subsection (3)" there shall be substituted the words "subsections (3) and (3A)".

PART IV
Compensation where occupier is rehoused.

**50.**—(1) The amount of compensation payable in respect of the compulsory acquisition of an interest in land shall not be subject to any reduction on account of the fact that the acquiring authority have provided, or undertake to provide or arrange for the provision of, or another authority will provide, residential accommodation under any enactment for the person entitled to the compensation.

(2) In assessing the compensation payable in respect of the compulsory acquisition of an interest in land which on the date of service of the notice to treat is subject to a tenancy, there shall be left out of account any part of the value of that interest which is attributable to, or to the prospect of, the tenant giving up possession after that date in consequence of being provided with other accommodation by virtue of section 39(1)(*a*) above; and for the purpose of determining the date by reference to which that compensation is to be assessed the acquiring authority shall be deemed, where the tenant gives up possession as aforesaid, to have taken possession on the date on which it is given up by the tenant.

(3) Subsection (1) above shall apply in relation to any payment to which a person is entitled under Part III of this Act as it applies in relation to the compensation mentioned in that subsection taking references to the acquiring authority as references to the authority responsible for making that payment.

(4) Subsection (2) above shall apply in relation to a case where a notice to treat is deemed to have been served by virtue of Schedule 3 to the Town and Country Planning Act 1968 or Schedule 24 to the Town and Country Planning (Scotland) Act 1972 (general vesting declarations) as it applies in relation to a case where a notice to treat is actually served.

1968 c. 72.
1972 c. 52.

Compensation where land is in area designated as site of new town for purpose of public development.
1965 c. 59.

**51.**—(1) Where the Secretary of State proposes to make an order under section 1 of the New Towns Act 1965 designating any area as—

(*a*) the site of a new town; or

(*b*) an extension of the site of a new town,

and the purpose or main purpose, or one of the main purposes, for which the order is proposed to be made is the provision of housing or other facilities required in connection with or in consequence of the carrying out of any public development, he may, before making the order, give a direction specifying that development for the purposes of this section in relation to that area.

(2) Where the area mentioned in paragraph 3 or 3A in the first column of Schedule 1 to the Land Compensation Act 1961 (cases where land acquired forms part of site of new town or

1961 c. 33.

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extension of site of new town) is an area to which a direction under this section relates, then, in the circumstances described in that paragraph—

(*a*) the increase or diminution in value to be left out of account by virtue of section 6 of that Act (compensation to be assessed without regard to development attributable to designation of new town) or any rule of law relating to the assessment of compensation in respect of compulsory acquisition; and

(*b*) the increase in value to be taken into account by virtue of section 7 of that Act (reduction of compensation where other land benefited by such development),

shall respectively include any increase or diminution in value, and any increase in value, which is attributable to the carrying out or the prospect of the public development specified in the direction.

(3) No direction shall be given under this section in relation to any area until the Secretary of State has prepared a draft of the order under section 1 of the said Act of 1965 in respect of that area and has published the notice required by paragraph 2 of Schedule 1 to that Act.

(4) Any direction under this section shall be given by order; and any order containing such a direction may be varied or revoked by a subsequent order.

(5) The power to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section "public development" means development (whether or not in the area designated under section 1 of the said Act of 1965) in the exercise of statutory powers by—

(*a*) a government department;

(*b*) any statutory undertakers within the meaning of the Town and Country Planning Act 1971 or any body deemed by virtue of any enactment to be statutory undertakers for the purposes of, or of any provision of, that Act; or

1971 c. 78.

(*c*) without prejudice to paragraph (*b*) above, any body having power to borrow money with the consent of a Minister,

and includes such development which has already been carried out when the direction in respect of it is given as well as such development which is then proposed.

(7) In the application of this section to Scotland—

1965 c. 59.

(*a*) for any reference to section 1 of the New Towns Act 1965 and for the reference in subsection (3) to paragraph 2 of Schedule 1 to that Act there shall be substituted respectively a reference to section 1 of the

New Towns (Scotland) Act 1968 and to paragraph 2 of Schedule 1 to that Act; PART IV 1968 c. 16.

(*b*) in subsection (2), for the references to sections 6 and 7 of the Land Compensation Act 1961 and to paragraphs 3 and 3A in the first column of Schedule 1 to that Act there shall be substituted respectively references to sections 13 and 14 of the Land Compensation (Scotland) Act 1963 and to paragraphs 3 and 3A in the first column of Schedule 1 to that Act; 1961 c. 33. 1963 c. 51.

(*c*) in subsection (6)(*b*), for the reference to the Town and Country Planning Act 1971 there shall be substituted a reference to the Town and Country Planning (Scotland) Act 1972. 1971 c. 78. 1972 c. 52.

*Advance payment of compensation*

Right to advance payment of compensation.

**52.**—(1) Where an acquiring authority have taken possession of any land the authority shall, if a request in that behalf is made in accordance with subsection (2) below, make an advance payment on account of any compensation payable by them for the compulsory acquisition of any interest in that land.

(2) Any request under this section shall be made by the person entitled to the compensation (hereafter referred to as "the claimant"), shall be in writing, shall give particulars of the claimant's interest in the land (so far as not already given pursuant to a notice to treat) and shall be accompanied or supplemented by such other particulars as the acquiring authority may reasonably require to enable them to estimate the amount of the compensation in respect of which the advance payment is to be made.

(3) Subject to subsection (6) below, the amount of any advance payment under this section shall be equal to 90 per cent. of the following amount, that is to say—

(*a*) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount;

(*b*) in any other case, an amount equal to the compensation as estimated by the acquiring authority.

(4) Any advance payment under this section shall be made not later than three months after the date on which a request for the payment is made in accordance with subsection (2) above or, if those three months end before the date on which the acquiring authority take possession of the land to which the compensation relates, on the date on which they take possession as aforesaid.

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(5) Where an advance payment is made on the basis of an estimate under subsection (3)(*b*) above and the amount of that payment exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after an advance payment has been made to any person it is discovered that he was not entitled to it the amount of the payment shall be recoverable by the acquiring authority.

(6) No advance payment shall be made on account of compensation payable in respect of any land which is subject to a mortgage the principal of which exceeds 90 per cent. of the amount mentioned in subsection (3) above; and where the land is subject to a mortgage the principal of which does not exceed 90 per cent. of that amount, the advance payment shall be reduced by such sum as the acquiring authority consider will be required by them for securing the release of the interest of the mortgagee.

(7) Any advance payment on account of compensation in respect of an interest which is settled land for the purposes of the Settled Land Act 1925 shall be made to the persons entitled to give a discharge for capital money and shall be treated as capital money arising under that Act.

1925 c. 18.

(8) Where an acquiring authority make an advance payment under this section on account of compensation in respect of any interest in land they shall deposit with the council of the district or London borough in which the land is situated particulars of the payment, the compensation and the interest in land to which it relates; and any particulars so deposited shall be registered by the proper officer of the council in the register of local land charges in such manner as may be prescribed by rules made for the purposes of this subsection under section 19 of the Land Charges Act 1925.

1925 c. 22.

(9) Where after particulars of the advance payment made to any claimant have been registered as aforesaid the claimant disposes of the interest in the land to, or creates an interest in the land in favour of, a person other than the acquiring authority, the amount of the advance payment shall be set off against any sum payable by the authority to that other person in respect of the compulsory acquisition of the interest disposed of or the compulsory acquisition or release of the interest created.

(10) Where an advance payment has been made under this section on account of any compensation—

1845 c. 18.
1965 c. 56.

(*a*) section 76 of the Lands Clauses Consolidation Act 1845 and section 9 of the Compulsory Purchase Act 1965 (refusal of owner to convey on tender of compensation) shall have effect as if references to the compensation were references to the balance thereof remaining unpaid; and

(*b*) neither section 11(1) of the said Act of 1965 nor any bond under Schedule 3 to that Act or under section 85 of the said Act of 1845 (interest on compensation where possession is taken before payment) shall require the acquiring authority to pay interest, in respect of any time after the date of the advance payment, on so much of the compensation as corresponds to that payment. PART IV

(11) Where the acquiring authority, instead of taking possession of any land, serve a notice in respect of that land under section 98 of the Housing Act 1957 or under paragraph 3 of Schedule 1 or paragraph 10 of Schedule 3 to that Act (notice authorising existing occupier to continue in occupation where house acquired for housing purposes) this section shall have effect as if they had taken possession of the land on the date on which the notice is served. 1957 c. 56.

(12) This section shall apply to compensation for the compulsory acquisition of a right over land as it applies to compensation for the compulsory acquisition of an interest in land, and shall so apply with the necessary modifications and as if references to taking possession of the land were references to first entering it for the purpose of exercising the right.

(13) In the application of this section to Scotland—

(*a*) in subsection (6) for any reference to a mortgage or mortgagee there shall be substituted respectively a reference to a heritable security or a heritable creditor;

(*b*) subsections (7) and (11) shall be omitted;

(*c*) for subsection (8) there shall be substituted the following subsection—

"(8) Where an acquiring authority make an advance payment under this section on account of compensation in respect of any interest in land, the authority shall cause notice of that fact, specifying particulars of the payment, the compensation and the interest in land to which it relates, to be recorded in the Register of Sasines and shall send a copy of the notice to the local planning authority.";

(*d*) in paragraph (*a*) of subsection (10) for the words from the beginning to "1965" there shall be substituted the words "section 75 of the Lands Clauses Consolidation (Scotland) Act 1845" and in paragraph (*b*) of that subsection for the words from the beginning to "section 85" there shall be substituted the words "no bond under section 84"; 1845 c. 19.

(*e*) in subsection (12) after the words "a right" there shall be inserted the words "in or".

PART IV

*Severance of land*

Notice to treat in respect of part of agricultural land.

**53.**—(1) Where an acquiring authority serve notice to treat in respect of any agricultural land on a person (whether in occupation or not) having a greater interest in the land than as tenant for a year or from year to year, and that person has such an interest in other agricultural land comprised in the same agricultural unit as that to which the notice relates, the person on whom the notice is served (hereafter referred to as " the claimant ") may, within the period of two months beginning with the date of service of the notice to treat, serve on the acquiring authority a counter-notice—

(*a*) claiming that the other land is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and

(*b*) requiring the acquiring authority to purchase his interest in the whole of the other land.

(2) Where a counter-notice is served under subsection (1) above the claimant shall also, within the period mentioned in that subsection, serve a copy thereof on any other person who has an interest in the land to which the requirement in the counter-notice relates, but failure to comply with this subsection shall not invalidate the counter-notice.

(3) Subject to subsection (4) below, " other relevant land " in subsection (1) above means—

(*a*) land comprised in the same agricultural unit as the land to which the notice to treat relates, being land in which the claimant does not have such an interest as is mentioned in that subsection; and

(*b*) land comprised in any other agricultural unit occupied by him on the date of service of the notice to treat, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.

(4) Where an acquiring authority have served a notice to treat in respect of any of the other agricultural land mentioned in subsection (1) above or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 54 below shall have effect as if that land did not form part of that other agricultural land or did not constitute other relevant land, as the case may be.

(5) This section shall have effect in relation to a case where a notice to treat is deemed to have been served by virtue of any of the provisions of sections 180 to 189 of the Town and Country Planning Act 1971 or sections 169 to 177 of the Town

1971 c. 78.
1972 c. 52.

and Country Planning (Scotland) Act 1972 (purchase notices) or Schedule 3 to the Town and Country Planning Act 1968 or Schedule 24 to the said Act of 1972 (general vesting declarations) as it has effect in relation to a case where a notice to treat is actually served, and section 54 below shall have effect accordingly. PART IV 1968 c. 72.

(6) This section is without prejudice to the rights conferred by sections 93 and 94 of the Lands Clauses Consolidation Act 1845, sections 91 and 92 of the Lands Clauses Consolidation (Scotland) Act 1845 or section 8(2) and (3) of the Compulsory Purchase Act 1965 (provisions as to divided land). 1845 c. 18. 1845 c. 19. 1965 c. 56.

**54.**—(1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 53 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question. Effect of counter-notice under section 53.

(2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above the acquiring authority shall be deemed—

(*a*) to be authorised to acquire compulsorily, under the enactment by virtue of which they are empowered to acquire the land in respect of which the notice to treat was served, the claimant's interest in the land to which the requirement in the counter-notice relates; and

(*b*) to have served a notice to treat in respect of that land on the date on which the first-mentioned notice to treat was served.

(3) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which the compensation is so determined; and where a counter-notice is withdrawn by virtue of this subsection any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.

(4) Without prejudice to subsection (3) above, the power conferred by section 31 of the Land Compensation Act 1961 to withdraw a notice to treat shall not be exerciseable in the case of a notice to treat which is deemed to have been served by virtue of this section. 1961 c. 53.

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(5) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) above.

(6) Where by virtue of this section the acquiring authority become, or will become, entitled to a lease of any land but not to the interest of the lessor—

(*a*) the authority shall offer to surrender the lease to the lessor on such terms as the authority consider reasonable;

(*b*) the question of what terms are reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of three months after the date of the offer mentioned in paragraph (*a*) above, the authority and the lessor have not agreed on that question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority;

(*c*) if that question is referred to the Tribunal, the lessor shall be deemed to have accepted the surrender of the lease at the expiration of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct and to have agreed with the authority on the terms of surrender which the Tribunal has held to be reasonable.

For the purposes of this subsection any terms as to surrender contained in the lease shall be disregarded.

(7) Where the lessor refuses to accept any sum payable to him by virtue of subsection (6) above, or refuses or fails to make out his title to the satisfaction of the acquiring authority, they may pay into court any sum payable to the lessor by virtue of that subsection; and subsections (2) and (5) of section 9 of the Compulsory Purchase Act 1965 (deposit of compensation in cases of refusal to convey etc.) shall apply to that sum with the necessary modifications.

1965 c. 56.

(8) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (6) above are a body incorporated by or under any enactment the corporate powers of the authority shall, if they would not otherwise do so, include power to farm that land.

(9) In the application of this section to Scotland—

(*a*) for any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland;

(*b*) in subsection (4), for the words " section 31 of the Land Compensation Act 1961 " there shall be substituted the words " section 39 of the Land Compensation (Scotland) Act 1963 "; PART IV 1963 c. 51.

(*c*) in subsection (6), in paragraph (*a*), for the word " surrender " there shall be substituted the word " renounce ", and in paragraph (*c*) for the word " surrender " there shall be substituted the word " renunciation ";

(*d*) in subsection (7), for the word " court " and for the words from " subsections (2) " to the end there shall be substituted respectively the words " the Bank within the meaning of section 3 of the Lands Clauses Consolidation (Scotland) Act 1845 " and the words " the following provisions of the said Act of 1845 shall apply to that sum with the necessary modifications— 1845 c. 19.

(i) section 75 so far as it relates to the opening of an account,

(ii) section 76 so far as it relates to the giving of a receipt,

(iii) section 77,

(iv) section 79 ".

Notice of entry in respect of part of agricultural holding. 1965 c. 56.

**55.**—(1) Where an acquiring authority serve notice of entry under section 11(1) of the Compulsory Purchase Act 1965 on the person in occupation of an agricultural holding, being a person having no greater interest therein than as tenant for a year or from year to year, and the notice relates to part only of that holding, the person on whom the notice is served (hereafter referred to as " the claimant ") may, within the period of two months beginning with the date of service of the notice of entry, serve on the acquiring authority a counter-notice—

(*a*) claiming that the remainder of the holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and

(*b*) electing to treat the notice of entry as a notice relating to the entire holding.

(2) Where a counter-notice is served under subsection (1) above the claimant shall also, within the period mentioned in that subsection, serve a copy thereof on the landlord of the holding, but failure to comply with this subsection shall not invalidate the counter-notice.

(3) Subject to subsection (4) below, " other relevant land " in subsection (1) above means—

(*a*) land comprised in the same agricultural unit as the agricultural holding; and

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(*b*) land comprised in any other agricultural unit occupied by the claimant on the date of service of the notice of entry, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.

(4) Where an acquiring authority have served a notice to treat in respect of land in the agricultural holding other than that to which the notice of entry relates or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 56 below shall have effect as if that land did not form part of the holding or did not constitute other relevant land, as the case may be.

(5) In the application of this section to Scotland, in subsection (1) for the words " section 11(1) of the Compulsory Purchase Act 1965 " there shall be substituted the words " paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or paragraph 8 of Schedule 24 to the Town and Country Planning (Scotland) Act 1972 ".

1947 c. 42.

1972 c. 52.

Effect of counter-notice under section 55.

**56.**—(1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 55 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question.

(2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up possession of every part of the agricultural holding to the acquiring authority—

(*a*) the notice of entry shall be deemed to have extended to the part of the holding to which it did not relate; and

(*b*) the acquiring authority shall be deemed to have taken possession of that part in pursuance of that notice on the day before the expiration of the year of the tenancy which is current when the counter-notice is so accepted or declared.

(3) Where the claimant gives up possession of an agricultural holding to the acquiring authority as aforesaid but the authority have not been authorised to acquire the landlord's interest in, or in any of, the part of the holdin to which the

notice of entry did not relate (" the land not subject to compulsory purchase ")— PART IV

(*a*) neither the claimant nor the authority shall be under any liability to the landlord by reason of the claimant giving up possession of the land not subject to compulsory purchase or the authority taking or being in possession of it;

(*b*) immediately after the date on which the authority take possession of the land not subject to compulsory purchase they shall give up to the landlord, and he shall take, possession of that land;

(*c*) the tenancy shall be treated as terminated on the date on which the claimant gives up possession of the holding to the acquiring authority or (if he gives up possession of different parts at different times) gives up possession as aforesaid of the last part, but without prejudice to any rights or liabilities of the landlord or the claimant which have accrued before that date;

(*d*) any rights of the claimant against, or liabilities of the claimant to, the landlord which arise on or out of the termination of the tenancy by virtue of paragraph (*c*) above (whether under the contract of tenancy, under the Agricultural Holdings Act 1948 or otherwise) shall be rights and liabilities of the authority, and any question as to the payment to be made in respect of any such right or liability shall be referred to and determined by the Lands Tribunal; 1948 c. 63.

(*e*) any increase in the value of the land not subject to compulsory purchase which is attributable to the landlord's taking possession of it under paragraph (*b*) above shall be deducted from the compensation payable in respect of the acquisition of his interest in the remainder of the holding.

(4) Where a tenancy is terminated by virtue of subsection (3)(*c*) above, section 58 of the Agricultural Holdings Act 1948 (landlord's right to compensation for deterioration of holding) shall have effect as if the proviso required the landlord's notice of intention to claim compensation to be served on the acquiring authority and to be so served within three months after the termination of the tenancy.

(5) In the application of this section to Scotland—

(*a*) for any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland;

(*b*) in subsection (3)(*d*) for the words from " contract " to " 1948 " there shall be substituted the words " lease,

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1949 c. 75.

the Agricultural Holdings (Scotland) Act 1949, the Crofters (Scotland) Acts 1955 and 1961, the Small Landholders (Scotland) Acts 1886 to 1931";

1948 c. 63.

(*c*) in subsection (4), for the reference to section 58 of the Agricultural Holdings Act 1948 there shall be substituted a reference to section 59(1) of the Agricultural Holdings (Scotland) Act 1949 and for the word "proviso" there shall be substituted the words "said section 59(1)".

Other procedures for taking possession of part of agricultural holding.

1845 c. 18.
1965 c. 56.
1968 c. 72.

**57.**—(1) Before taking possession of part only of an agricultural holding under section 85 of the Lands Clauses Consolidation Act 1845, under Schedule 3 to the Compulsory Purchase Act 1965 or under Schedule 3 to the Town and Country Planning Act 1968 (alternative procedures for taking possession of land) the acquiring authority shall serve notice of their intention to do so on the person in occupation of the holding, and sections 55 and 56 above shall have effect, subject to any necessary modifications, as if possession were being obtained pursuant to a notice of entry under section 11(1) of the said Act of 1965.

1965 c. 59.

(2) Sections 55 and 56 above shall have effect, subject to any necessary modifications, in relation to a notice of entry under paragraph 4 of Schedule 6 to the New Towns Act 1965 (provisions applicable to compulsory acquisitions under that Act) as they have effect in relation to a notice of entry under section 11(1) of the said Act of 1965.

1957 c. 56.

(3) Sections 55 and 56(1) and (2) above shall have effect, subject to any necessary modifications, in relation to a notice under section 101 of the Housing Act 1957 (dispossession of tenant where local authority have agreed to purchase or have appropriated land for purposes of Part V of that Act) as they have effect in relation to a notice of entry under section 11(1) of the said Act of 1965.

1845 c. 19.

1947 c. 42.

(4) Before taking possession of part only of an agricultural holding under section 84 or 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (alternative procedures for taking possession of land) the acquiring authority shall serve notice of their intention to do so on the person in occupation of the holding, and sections 55 and 56 above shall have effect, subject to any necessary modifications, as if possession were being obtained pursuant to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

1968 c. 16.

(5) Sections 55 and 56 above shall have effect, subject to any necessary modifications, in relation to a notice of entry under paragraph 4 of Schedule 6 to the New Towns (Scotland) Act

1968 (provisions applicable to compulsory acquisitions under that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. PART IV 1947 c. 42.

(6) Sections 55 and 56(1), (2) and (5)(*a*) above shall have effect, subject to any necessary modifications, in relation to a notice under section 114 of the Housing (Scotland) Act 1966 (dispossession of tenant where local authority have agreed to purchase or have appropriated land for purposes of Part VII of that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the said Act of 1947. 1966 c. 49.

Determination of material detriment where part of house etc. proposed for compulsory acquisition. 1965 c. 56. 1968 c. 72. 1971 c. 78.

**58.**—(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, paragraph 10 of Schedule 3A to the Town and Country Planning Act 1968 or section 202(2) of the Town and Country Planning Act 1971 whether—

(*a*) part of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or

(*b*) part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Lands Tribunal shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.

(2) Subsection (1) above shall apply with the necessary modifications to any determination—

(*a*) under the said section 8(1) as substituted by paragraph 8 of Schedule 6 to the Highways Act 1971 or paragraph 14 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land); or 1971 c. 41. 1972 c. 60.

(*b*) under any provision corresponding to or substituted for the said section 8(1) which is contained in, or in an instrument made under, any other enactment including (except where otherwise provided) an enactment passed after this Act.

(3) In the application of this section to Scotland—

(*a*) for the reference in subsection (1) to the provisions there mentioned there shall be substituted a reference to paragraph 4 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and section 191(2) of, and paragraph 26 of Schedule 24 to, the Town and Country Planning (Scotland) Act 1972; 1947 c. 42. 1972 c. 52.

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(*b*) for the reference to the said section 8(1) as substituted by the provisions mentioned in subsection (2)(*a*) above there shall be substituted a reference to the said paragraph 4 as substituted by paragraph 24 of Schedule 2 to the Gas Act 1972;

1972 c. 60.

(*c*) for the reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland.

*Miscellaneous*

Notice to quit agricultural holding: right to opt for notice of entry compensation.

**59.**—(1) This section has effect where the person in occupation of an agricultural holding, being a person having no greater interest therein than as tenant for a year or from year to year, is served with a notice to quit the holding, and—

(*a*) the notice is served after an acquiring authority have served notice to treat on the landlord of the holding or, being an authority possessing compulsory purchase powers, have agreed to acquire his interest in the holding; and

(*b*) either—

1948 c. 63.

(i) subsection (1) of section 24 of the Agricultural Holdings Act 1948 does not apply to the notice by virtue of subsection (2)(*b*) of that section (land required for non-agricultural use for which planning permission has been granted etc.); or

(ii) the Agricultural Land Tribunal have consented to the operation of the notice and stated in the reasons for their decision that they are satisfied as to the matter mentioned in section 25(1)(*e*) of that Act (land required for non-agricultural use not falling within section 24(2)(*b*)).

(2) If the person served with the notice to quit elects that this subsection shall apply to the notice and gives up possession of the holding to the acquiring authority on or before the date on which his tenancy terminates in accordance with the notice—

1965 c. 56.

(*a*) section 20 of the Compulsory Purchase Act 1965 (compensation for tenants from year to year etc.) and

1968 c. 34.

section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 shall have effect as if the notice to quit had not been served and the acquiring authority had taken possession of the holding in pursuance of a notice of entry under section 11(1) of the said Act of 1965 on the day before that on which the tenancy terminates in accordance with the notice to quit; and

(*b*) the provisions of the Agricultural Holdings Act 1948 relating to compensation to a tenant on the termination of his tenancy and sections 9 and 15(2) of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payment and compensation in cases of notice to quit) shall not have effect in relation to the termination of the tenancy by reason of the notice to quit. PART IV 1948 c. 63. 1968 c. 34.

(3) No election under subsection (2) above shall be made or, if already made, continue to have effect in relation to any land (whether the whole or part of the land to which the notice to quit relates) if, before the expiration of that notice, an acquiring authority take possession of that land in pursuance of an enactment providing for the taking of possession of land compulsorily.

(4) Any election under subsection (2) above shall be made by notice in writing served on the acquiring authority not later than the date on which possession of the holding is given up.

(5) This section shall have effect in relation to a notice to quit part of an agricultural holding as it has effect in relation to a notice to quit an entire holding and references to a holding and the termination of the tenancy shall be construed accordingly.

(6) A person served with a notice to quit part of an agricultural holding shall not be entitled, in relation to that notice, both to make an election under this section and to give a counter-notice under section 32 of the Agricultural Holdings Act 1948 (tenant's right to cause notice to quit part of holding to operate as notice to quit entire holding).

(7) The reference in subsection (1)(*a*) above to a notice to treat served by an acquiring authority includes a reference to a notice to treat deemed to have been so served under any of the provisions mentioned in section 53(5) above.

(8) In the application of this section to Scotland—

(*a*) for subsection (1)(*b*) there shall be substituted the following paragraph—

"(*b*) either—

(i) subsection (1) of section 25 of the Agricultural Holdings (Scotland) Act 1949 does not apply to the notice by virtue of subsection (2)(*c*) of that section (land required for non-agricultural use for which planning permission has been granted, etc); or 1949 c. 75.

(ii) the Scottish Land Court have consented to the operation of the notice and stated in the reasons for their decision that they are

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satisfied as to the matter mentioned in section 26(1)(*e*) of that Act (land required for non-agricultural use not falling within section 25(2)(*c*)) ; " ;

(*b*) in subsection (2)(*a*), for the references to section 20 of the Compulsory Purchase Act 1965 and 11(1) of that Act there shall be substituted respectively references to section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 and paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 ;

1965 c. 56.
1845 c. 19.
1947 c. 42.

(*c*) in subsection (2)(*b*), for the references to the Agricultural Holdings Act 1948 and section 15(2) of the Agriculture (Miscellaneous Provisions) Act 1968 there shall be substituted respectively references to the Agricultural Holdings (Scotland) Act 1949 and section 15(3) of the said Act of 1968 ;

1948 c. 63.
1968 c. 34.
1949 c. 75.

(*d*) in subsection (6), for the reference to section 32 of the Agricultural Holdings Act 1948 there shall be substituted a reference to section 33 of the Agricultural Holdings (Scotland) Act 1949 ;

(*e*) after subsection (7) there shall be inserted the following subsections—

" (7A) This section and section 61 below shall have effect in relation to a notice given in pursuance of a stipulation in a lease entitling the landlord to resume land for building, planting, feuing or other purposes (not being agricultural purposes) as it has effect in relation to a notice to quit as if, in this section, subsections (1)(*b*) and (6) were omitted ; and references in this section to the termination of the tenancy shall be construed accordingly.

(7B) This section shall not apply where the person in occupation of an agricultural holding is a crofter, landholder or statutory small tenant.".

Requirement to surrender croft, etc.: right to opt for notice of entry compensation.
1955 c. 21.

**60.**—(1) This section has effect where—

(*a*) the person in occupation of an agricultural holding is a crofter and is required by an order of the Scottish Land Court under section 12 of the Crofters (Scotland) Act 1955 to surrender his croft ; and

(*b*) the crofter is so required—

(i) after an acquiring authority have served notice to treat on the landlord of the croft or, being an authority possessing compulsory purchase powers, have agreed to acquire his interest in the croft, and

(ii) where the Court have been satisfied under the said section 12 that the landlord desires to resume the croft for a reasonable purpose which is a purpose other than an agricultural purpose. PART IV

(2) If the crofter required by such an order to surrender his croft elects that this subsection shall apply to the order and gives up possession of the croft to the acquiring authority on or before the date on which the croft is required to be surrendered in accordance with the order—

(*a*) section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation for tenants from year to year, etc.) shall have effect as if the crofter had not been so required to surrender his croft and the acquiring authority had taken possession of the croft in pursuance of a notice of entry under paragraph 3 of Schedule 2 to to Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before that on which the croft is required to be surrendered in accordance with the order ; and 1845 c. 19. 1947 c. 42.

(*b*) any provision of an order under section 12 of the Crofters (Scotland) Act 1955 relating to the compensation to a crofter shall not have effect in relation to the surrender of the croft by reason of the order. 1955 c. 21.

(3) No election under subsection (2) above shall be made or, if already made, continue to have effect in relation to any land to which such an order relates if, before the date on which the croft is required to be surrendered in accordance with the order, an acquiring authority take possession of that land in pursuance of an enactment providing for the taking of possession of land compulsorily.

(4) Any election under subsection (2) above shall be made by notice in writing served on the acquiring authority not later than the date on which possession of the croft is given up.

(5) This section shall have effect in relation to an order to surrender part of a croft as it has effect in relation to an order to surrender an entire croft and references to a croft shall be construed accordingly.

(6) The reference in subsection (1)(*b*)(i) above to a notice to treat served by an acquiring authority includes a reference to a notice to treat deemed to have been so served under any of the provisions mentioned in section 53(5) above.

(7) This section shall apply to a landholder as it applies to a crofter except that for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted

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1886 c. 29.

respectively a reference to a holding, landholder or section 2 of the Crofters Holdings (Scotland) Act 1886.

(8) This section shall apply to a statutory small tenant subject to the modifications set out in Part I of Schedule 1 to this Act; and in accordance with this subsection this section shall have effect in relation to a statutory small tenant as set out in Part II of that Schedule.

Notice to quit part of agricultural holding: right to claim notice of entry compensation for remainder of holding.

**61.**—(1) Where a notice to quit in respect of which a person is entitled to make an election under section 59 above relates to part only of an agricultural holding and that person makes such an election within the period of two months beginning with the date of service of that notice, or, if later, the decision of the Agricultural Land Tribunal, he may also within that period serve a notice on the acquiring authority claiming that the remainder of the holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit.

(2) If the acquiring authority do not within the period of two months beginning with the date of service of a notice under subsection (1) above agree in writing to accept the notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal, and on any such reference the Tribunal shall determine whether the claim in the notice is justified and declare the notice valid or invalid in accordance with its determination of that question.

(3) Where a notice under subsection (1) above is accepted as, or declared to be, valid under subsection (2) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up to the acquiring authority possession of the part of the holding to which the notice relates, section 20 of the Compulsory Purchase Act 1965 and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 shall have effect as if the acquiring authority had taken possession of that part in pursuance of a notice of entry under section 11(1) of the said Act of 1965 on the day before the expiration of the year of the tenancy which is current when the notice is so accepted or declared.

1965 c. 56.
1968 c. 34.

(4) Subsections (2) to (4) of section 55 and subsection (3) of section 56 above shall apply in relation to subsections (1) to (3) above and to a notice under subsection (1) above as they apply in relation to those sections and a counter-notice under subsection (1) of section 55, and shall so apply with the necessary modifications and as if any reference to the notice of entry were a reference to the notice to quit.

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(5) Where an election under section 59 above ceases to have effect in relation to any land by virtue of subsection (3) of that section any notice served by virtue of this section shall also cease to have effect in relation thereto.

(6) In the application of this section to Scotland—

(*a*) in subsection (1) for the reference to the Agricultural Land Tribunal there shall be substituted a reference to the Scottish Land Court;

(*b*) in subsection (2) for any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland;

(*c*) in subsection (3) for the references to sections 11(1) and 20 of the Compulsory Purchase Act 1965 there shall be substituted respectively references to paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and section 114 of the Lands Clauses Consolidation (Scotland) Act 1845. 1965 c. 56. 1947 c. 42. 1845 c. 19.

Requirement to surrender part of croft, etc.: right to claim notice of entry compensation for remainder.

**62.**—(1) Where an order of the Scottish Land Court in respect of which a person is entitled to make an election under section 60 above relates to part only of a croft or holding and that person makes such an election within the period of two months beginning with the date of the making of the order, he may also within that period serve a notice on the acquiring authority claiming that the remainder of the croft or holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit.

(2) If the acquiring authority do not within the period of two months beginning with the date of service of a notice under subsection (1) above agree in writing to accept the notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal for Scotland, and on any such reference the Tribunal shall determine whether the claim in the notice is justified and declare the notice valid or invalid in accordance with its determination of that question.

(3) Where a notice under subsection (1) above is accepted as, or declared to be valid under subsection (2) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up to the acquiring authority possession of the part of the croft or holding to which the notice relates, section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 shall have effect as if the acquiring authority had taken possession of that part in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of

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1947 c. 42.

Land (Authorisation Procedure) (Scotland) Act 1947 on the day before the expiration of the year of the tenancy which is current when the notice is so accepted or declared.

(4) Subsections (2) to (4) of section 55 and subsection (3) of section 56 above shall apply in relation to subsections (1) to (3) above and to a notice under subsection (1) above as they apply in relation to those sections and a counter-notice under subsection (1) of section 55, and shall so apply with the necessary modifications and as if in section 55(3)(*b*) for the words " service of the notice of entry " and in section 56(3) for the words " the notice of entry " there were substituted the words " the order of the Scottish Land Court ".

(5) Where an election under section 60 above ceases to have effect in relation to any land by virtue of subsection (3) of that section any notice served by virtue of this section shall cease to have effect in relation thereto.

(6) Subsection (3) above shall apply in the case of the holding of a statutory small tenant as if after the word " 1845 " there were inserted the words " and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 ".

1968 c. 34.

Interest on compensation for injurious affection where no land taken.
1845 c. 18.
1965 c. 56.
1961 c. 33.
1845 c. 33.
1963 c. 51.

**63.**—(1) Compensation under section 68 of the Lands Clauses Consolidation Act 1845 or section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection where no land taken) shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961, from the date of the claim until payment.

(2) Compensation under section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (compensation for injurious affection where no land taken) shall carry interest, at the rate for the time being prescribed under section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

Extension of grounds for challenging validity of compulsory purchase order.
1946 c. 49.
1947 c. 42.
1971 c. 62.

**64.** In paragraph 15 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 and paragraph 15 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (which enable an aggrieved person to challenge the validity of a compulsory purchase order on the ground that certain requirements have not been complied with) references to those requirements shall include references to any requirements of the Tribunals and Inquiries Act 1971 or of any rules made, or having effect as if made, under that Act.

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Construction of section 6 of Railways Clauses Consolidation (Scotland) Act 1845. 1845 c. 33. 1845 c. 19.

**65.** At the end of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (construction of railway to be subject to that Act and Lands Clauses Consolidation (Scotland) Act 1845) there shall be added the following subsection—

"(2) For the avoidance of doubt it is hereby declared that in this section the reference to the construction of the railway includes a reference to the execution of works in connection therewith."

Amendment of section 35 of Roads (Scotland) Act 1970. 1970 c. 20.

**66.** Section 35 of the Roads (Scotland) Act 1970 (general provisions as to acquisition of land) shall have effect as if—

(*a*) after subsection (1) there were inserted the following subsection—

"(1A) Any power to acquire land compulsorily conferred by any of the said sections or by section 22 of the Land Compensation Act 1973 shall include power to acquire a servitude or other right in or over land by the creation of a new right.";

(*b*) at the end there were added the following subsection—

"(5) Where under section 29, 30, 31, 32 or 33 of this Act or section 22 of the Land Compensation Act 1973 a highway authority are authorised to acquire land by agreement, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall be incorporated with this Act, and in construing those Acts for the purposes of this subsection this Act shall be deemed to be the special Act, and the highway authority to be the promoters of the undertaking or company, as the case may require, and the word 'land' shall have the meaning assigned to it by section 50(1) of this Act".

1923 c. 20.

Provisions relating to acquisition of new rights in Scotland. 1947 c. 42.

**67.**—(1) Subject to the provisions of this section, the Lands Clauses Consolidation (Scotland) Act 1845 and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply subject to any necessary modifications to the compulsory acquisition under any enactment of a right in or over land by the creation of a new right as they apply to the compulsory acquisition of land under the enactment in question.

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(2) Section 61 of the said Act of 1845 (estimation of purchase money and compensation) shall apply to the compulsory acquisition of such a right as if for the words from " value " to " undertaking " there were substituted the words " extent (if any) to which the value of the land in or over which the right is to be acquired is depreciated by the acquisition of the right ".

(3) Paragraph 4 of Schedule 2 to the said Act of 1947 (protection for vendor against severance of house, garden, etc.) shall apply to the compulsory acquisition of such a right as if at the end there were added the following sub-paragraph—

" (2) In considering the extent of any material detriment to a house, building or manufactory or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired in or over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

(4) Nothing in this section shall affect the operation of any enactment which makes specific provision to the like effect as the provisions of this section.

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## PLANNING BLIGHT

### *Extension of classes of blighted land*

Land affected by proposed structure and local plans etc.

**68.**—(1) In para graph (*a*) of section 192(1) of the Act of 1971 (land indicated in a structure plan in force for the relevant district as land which may be required for the purposes of functions of public authorities or as land which may be included in an action area) the reference to a structure plan in force shall include a reference to—

(*a*) a structure plan which has been submitted to the Secretary of State under section 7 of that Act;

(*b*) proposals for alterations to a structure plan which have been submitted to the Secretary of State under section 10 of that Act;

(*c*) modifications proposed to be made by the Secretary of State in any such plan or proposals as are mentioned in the preceding paragraphs, being modifications of which he has given notice in accordance with regulations under Part II of that Act.

(2) In paragraph (*b*) of the said section 192(1) (land allocated for the purposes of functions of public authorities by a local plan in force for the relevant district and land defined in such

a plan as the site of proposed development for the purposes of any such functions) the reference to a local plan in force shall include a reference to— PART V

(*a*) a local plan of which copies have been made available for inspection under section 12(2) of the Act of 1971;

(*b*) proposals for alterations to a local plan of which copies have been made available for inspection under section 15(3) of that Act;

(*c*) modifications proposed to be made by the local planning authority or the Secretary of State in any such plan or proposals as are mentioned in the preceding paragraphs, being modifications of which notice has been given by the authority or the Secretary of State in accordance with regulations under Part II of that Act.

(3) In section 138(1)(*b*) of the Town and Country Planning Act 1962 as it has effect by virtue of paragraph 58 of Schedule 24 to the Act of 1971 (provisions corresponding to section 192(1)(*b*) of the Act of 1971 pending coming into force of local plans) the reference to a development plan shall include a reference to— 1962 c. 38.

(*a*) proposals for alterations to a development plan submitted to the Secretary of State under paragraph 3 or 9 of Schedule 5 to the Act of 1971;

(*b*) modifications proposed to be made by the Secretary of State in any such proposals, being modifications of which notice has been given by the Secretary of State by advertisement.

(4) No blight notice shall be served by virtue of subsection (1) or (2) above at any time after the copies of the plan or proposals made available for inspection have been withdrawn under—

(*a*) section 8(6) or 12(5) of the Act of 1971 (directions by Secretary of State requiring further publicity); or

(*b*) section 10B of that Act (withdrawal of structure plans);

but so much of the said section 10B as provides that a structure plan which has been withdrawn shall be treated as never having been submitted shall not invalidate any blight notice served by virtue of subsection (1)(*a*) above before the withdrawal of the structure plan.

(5) No blight notice shall be served by virtue of this section after the relevant plan or alterations have come into force (whether in their original form or with modifications) or the Secretary of State has decided to reject or, in the case of a local plan, the local planning authority have decided to abandon the plan or alterations and notice of the decision has been given by advertisement.

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(6) Where an appropriate authority have served a counter-notice objecting to a blight notice served by virtue of this section, then, if the relevant plan or alterations come into force (whether in their original form or with modifications) the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection, and section 195 of the Act of 1971 (reference of objections to Lands Tribunal) shall have effect in relation to the further counter-notice as it has effect in relation to the counter-notice already served:

Provided that a further counter-notice under this subsection shall not be served—

(*a*) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations come into force; or

(*b*) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection.

(7) References in subsections (1) to (3) above to anything done under any of the provisions there mentioned include references to anything done under those provisions as they apply by virtue of section 17 of, or paragraph 4 of Schedule 5 to, the Act of 1971 (default powers of Secretary of State).

(8) In the application of this section to Greater London—

(*a*) the reference to section 10 of the Act of 1971 shall include a reference to paragraph 6 of Schedule 4 to that Act;

(*b*) for the reference to section 12(2) of that Act there shall be substituted a reference to paragraphs 12(2) and 13(2) of that Schedule;

(*c*) for the reference to section 12(5) of that Act there shall be substituted a reference to paragraph 14(3) of that Schedule;

(*d*) for the reference to section 15(3) of that Act there shall be substituted a reference to the said section 15(3) as substituted by paragraph 16(1), and to paragraph 16(4), of that Schedule.

(9) In this section references to alterations to a local plan include references to its replacement, and references to alterations to a development plan include references to additions to it.

(10) In relation to land falling within section 192(1)(*b*) of the Act of 1971 or section 138(1)(*b*) of the Town and Country Planning Act 1962, as extended by this section, "the appropriate enactment" for the purposes of sections 192 to 207 of the Act of 1971 shall be determined in accordance with section 206(2)

1962 c. 38.

of that Act as if references therein to the development plan were references to any such plan, proposal or modifications as are mentioned in subsection (2)(*a*), (*b*) or (*c*) and subsection (3)(*a*) or (*b*) above. PART V

Land affected by proposed highway orders. 1959 c. 25. 1971 c. 41.

**69.**—(1) In section 192(1)(*d*) of the Act of 1971 (land on or adjacent to line of highway proposed to be constructed etc. as indicated in an order or scheme which has come into operation under the provisions of Part II of the Highways Act 1959 relating to trunk roads or special roads or in an order which has come into operation under section 1 of the Highways Act 1971) the reference to an order or scheme which has come into operation as aforesaid shall include a reference to—

(*a*) an order or scheme which has been submitted for confirmation to, or been prepared in draft by, the Secretary of State under the provisions of Part II of the said Act of 1959 relating to trunk roads or special roads and in respect of which a notice has been published under paragraph 1, 2 or 7 of Schedule 1 to that Act;

(*b*) an order which has been submitted for confirmation to the Secretary of State under the said section 1 and in respect of which a notice has been published under paragraph 2 of that Schedule.

(2) No blight notice shall be served by virtue of this section at any time after the relevant order or scheme has come into operation (whether in its original form or with modifications) or the Secretary of State has decided not to confirm or make the order or scheme.

(3) Subsection (6) of section 68 above shall have effect in relation to a blight notice served by virtue of this section as it has effect in relation to a blight notice served by virtue of that section taking references to the relevant plan or alterations as references to the relevant order or scheme.

Land affected by proposed compulsory purchase orders. 1946 c. 49.

**70.**—(1) Section 192(1)(*g*) and (*j*) of the Act of 1971 (land in respect of which a compulsory purchase order is in force where a notice to treat has not been served) shall apply also to land in respect of which a compulsory purchase order has been submitted for confirmation to, or been prepared in draft by, a Minister and in respect of which a notice has been published under paragraph 3(1)(*a*) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 or under any corresponding enactment applicable thereto.

(2) No blight notice shall be served by virtue of this section at any time after the relevant compulsory purchase order has

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come into force (whether in its original form or with modifications) or the Minister concerned has decided not to confirm or make the order.

(3) In relation to land falling within the said section 192(1)(*g*) or (*j*) by virtue of this section " the appropriate enactment " for the purposes of sections 192 to 207 of the Act of 1971 shall be the enactment which would provide for the compulsory acquisition of the land or of the rights over the land if the relevant compulsory purchase order were confirmed or made.

Land affected by resolution of planning authority or directions of Secretary of State.

**71.**—(1) Section 192(1) of the Act of 1971 shall have effect as if the land specified therein included land which—

(*a*) is land indicated in a plan (not being a development plan) approved by a resolution passed by a local planning authority for the purpose of the exercise of their powers under Part III of that Act as land which may be required for the purposes of any functions of a government department, local authority or statutory undertakers ; or

(*b*) is land in respect of which a local planning authority have resolved to take action to safeguard it for development for the purposes of any such functions or been directed by the Secretary of State to restrict the grant of planning permission in order to safeguard it for such development.

(2) Paragraph (*a*) of the said section 192(1) shall not apply to land within subsection (1) above.

(3) In relation to land falling within subsection (1) above " the appropriate enactment " for the purposes of sections 192 to 207 of the Act of 1971 shall be determined in accordance with section 206(2) of that Act as if references therein to the development plan were references to the resolution or direction in question.

Land affected by orders relating to new towns.

**72.**—(1) Section 192(1) of the Act of 1971 shall have effect as if the land specified therein included land which—

(*a*) is land within an area described as the site of a proposed new town in the draft of an order in respect of which a notice has been published under paragraph 2 of Schedule 1 to the New Towns Act 1965 ; or

1965 c. 59.

(*b*) is land within an area designated as the site of a proposed new town by an order which has come into operation under section 1 of the said Act of 1965.

(2) No blight notice shall be served by virtue of subsection (1)(*a*) above at any time after the order there mentioned has come

into operation (whether in the form of the draft or with modifications) or the Secretary of State has decided not to make the order. PART V

(3) Until such time as a development corporation is established for the new town, sections 192 to 207 of the Act of 1971 shall have effect in relation to land within subsection (1) above as if " the appropriate authority " and " the appropriate enactment " were the Secretary of State and subsection (4) below respectively.

(4) Until such time as aforesaid the Secretary of State shall have power to acquire compulsorily any interest in land in pursuance of a blight notice served by virtue of subsection (1) above; and where he acquires an interest as aforesaid, then—

(*a*) if the land is or becomes land within subsection (1)(*b*) above, the interest shall be transferred by him to the development corporation established for the new town; and

(*b*) in any other case, the interest may be disposed of by him in such manner as he thinks fit.

(5) The Land Compensation Act 1961 shall have effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State under subsection (4) above as if the acquisition were by a development corporation under the New Towns Act 1965 and as if, in the case of land within subsection (1)(*a*) above, the land formed part of an area designated as the site of a new town by an order which has come into operation under section 1 of the said Act of 1965. 1961 c. 33. 1965 c. 59.

(6) Section 11 of the said Act of 1965 (right to require development corporation to acquire land within area designated as the site of a new town) shall cease to have effect except in relation to any notice served under that section before the coming into force of this section.

Land affected by slum clearance resolution. 1957 c. 56.

**73.**—(1) Section 192(1) of the Act of 1971 shall have effect as if the land specified therein included land which—

(*a*) is land within an area declared to be a clearance area by a resolution under section 42 of the Housing Act 1957; or

(*b*) is land surrounded by or adjoining an area declared as aforesaid to be a clearance area, being land which a local authority have determined to purchase under section 43 of that Act.

(2) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of subsection (1) above shall not include those specified in section 194(2)(*b*) or (*c*) of the Act of 1971 (no intention to acquire the land).

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(3) In relation to land within subsection (1) above "the appropriate enactment" for the purposes of sections 192 to 207 of the Act of 1971 shall be section 43 of the Housing Act 1957.

1957 c. 56.

(4) Where an interest in land is acquired in pursuance of a blight notice served by virtue of subsection (1)(*a*) above the compensation payable for the acquisition shall be assessed in accordance with section 59(2) of the said Act of 1957 (site value) and paragraph 2 of Schedule 2 to the Land Compensation Act 1961 shall not apply.

1961 c. 33.

(5) Where the land in which an interest is acquired as aforesaid comprises a house—

(*a*) section 60 of, and Part I of Schedule 2 to, the said Act of 1957 (payments in respect of well-maintained houses) shall have effect as if the house had been made the subject of a compulsory purchase order under Part III of that Act as being unfit for human habitation;

(*b*) Part II of Schedule 2 to the said Act of 1957 and Schedule 5 to the Housing Act 1969 (payments to owner-occupiers) shall have effect as if the house had been purchased at site value in pursuance of a compulsory purchase order made by virtue of the said Part III;

1969 c. 33.

and references in the said Schedules 2 and 5 to the date of the making of the compulsory purchase order and the date when the house was purchased compulsorily shall be respectively construed as references to the date of service of the blight notice and the date of acquisition in pursuance of that notice.

Land affected by proposed exercise of powers under section 22.

**74.**—(1) In section 192(1)(*d*) of the Act of 1971—

(*a*) the reference to a power of compulsory acquisition conferred by any of the provisions there mentioned shall include a reference to the power of compulsory acquisition conferred by section 22(1) above;

(*b*) the reference to land required for purposes of construction, improvement or alteration as indicated in an order or scheme there mentioned shall include a reference to land required for the purposes of the said section 22(1).

(2) Section 192(1) of the Act of 1971 shall have effect as if the land specified therein included land which—

(*a*) is land shown on plans approved by a resolution of a local highway authority as land proposed to be acquired by them for the purposes of the said section 22(1); or

(*b*) is land shown in a written notice given by the Secretary of State to the local planning authority as land proposed to be acquired by him for those purposes in connection with a trunk road or special road which he proposes to provide. PART V

Land affected by compulsory purchase orders providing for acquisition of rights over land.

**75.**—(1) Section 192(1)(*g*) of the Act of 1971 (land in respect of which there is in force a compulsory purchase order made by a highway authority in the exercise of highway land acquisition powers and providing for the acquisition of rights over land) shall apply generally to land in respect of which there is in force a compulsory purchase order providing for the acquisition of a right or rights over that land, and the provisions of that Act mentioned in subsections (2) and (3) below shall accordingly be amended in accordance with those subsections.

(2) In the said section 192(1)(*g*)—

(*a*) in sub-paragraph (i) for the words from "made by" to "1971" there shall be substituted the word "providing";

(*b*) in sub-paragraph (ii) for the words "highway authority" there shall be substituted the words "appropriate authority".

(3) In section 194—

(*a*) in subsection (4) for the words "is one of the enactments conferring highway land acquisition powers" there shall be substituted the words "confers power to acquire rights over land";

(*b*) in subsection (6), in paragraphs (*a*) and (*b*), after the word "acquire" there shall be inserted the words "or to acquire any rights over" and the words following paragraph (*b*) as far as the semi-colon shall be omitted.

Land affected by new street orders.
1959 c. 25.
1925 c. 71.

**76.**—(1) Section 192(1) of the Act of 1971 shall have effect as if the land specified therein included land which—

(*a*) either—

(i) is within the outer lines prescribed by an order under section 159 of the Highways Act 1959 (orders prescribing minimum width of new streets); or

(ii) has a frontage to a highway declared to be a new street by an order under section 30 of the Public Health Act 1925 and lies within the minimum width of the street prescribed by any byelaws or local Act applicable by virtue of the order; and

PART V

(*b*) is, or is part of—

(i) a dwelling erected before, or under construction on, the date on which the order is made; or

(ii) the curtilage of any such dwelling.

(2) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of subsection (1) above shall not include those specified in section 194(2)(*b*) or (*c*) of the Act of 1971.

(3) In relation to land within subsection (1) above "the appropriate authority" and "the appropriate enactment" for the purposes of sections 192 to 207 of the Act of 1971 shall be the highway authority for the highway in relation to which the order mentioned in that subsection was made and section 214(8) of the said Act of 1959 respectively.

(4) This section shall not enable a blight notice to be served in respect of any land in which the appropriate authority have previously acquired an interest either in pursuance of a blight notice served by virtue of this section or by agreement in circumstances such that they could have been required to acquire it in pursuance of such a notice.

*Attempts to sell blighted property*

Amended requirements about attempts to sell blighted property.

**77.**—(1) In section 193(1)(*c*) and section 201(1)(*b*) of the Act of 1971 (which require a person serving a blight notice to have made reasonable endeavours to sell his interest since the relevant date, that is to say, the date on which the land became blighted) the words "since the relevant date" and "since the relevant date (within the meaning of section 193 of this Act)" shall be omitted.

(2) In sections 193(1)(*d*) and 201(1)(*c*) of the Act of 1971 (which require a person serving a blight notice to have been unable to sell his interest except at a price lower than if the land had not been blighted) for the words from "he has been unable to sell" onwards there shall be substituted the words "in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in land of any of the specified descriptions, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land".

(3) This section does not affect any blight notice served before the passing of this Act.

*Blight notices by personal representatives* PART V

Power of personal representative to serve blight notice.

**78.**—(1) Where the whole or part of a hereditament or agricultural unit is comprised in land of any of the specified descriptions, and a person claims that—

(*a*) he is the personal representative of a person ("the deceased") who at the date of his death was entitled to an interest in that hereditament or unit; and

(*b*) the interest was one which would have qualified for protection under sections 192 to 207 of the Act of 1971 if a notice under section 193 of that Act had been served in respect thereof on that date; and

(*c*) he has made reasonable endeavours to sell that interest; and

(*d*) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in land of any of the specified descriptions, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land; and

(*e*) one or more individuals are (to the exclusion of any body corporate) beneficially entitled to that interest,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the said sections 192 to 207.

(2) Subsection (1) above shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the entirety of a hereditament or agricultural unit:

Provided that this subsection shall not enable any person—

(*a*) if the deceased was entitled to an interest in the entirety of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of the deceased's interest in part of the hereditament or unit; or

(*b*) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the entirety of that part.

(3) Subject to sections 73(2) and 76(2) above and 80(2) below, the grounds on which objection may be made in a counter-notice under section 194 of the Act of 1971 to a notice under this section are those specified in paragraphs (*a*) to (*c*) of

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subsection (2) of that section and, in a case to which it applies, the grounds specified in paragraph (*d*) of that subsection and also the following grounds—

(*a*) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;

(*b*) that (for reasons specified in the counter-notice) the interest of the deceased is not such as is specified in subsection (1)(*b*) above;

(*c*) that the conditions specified in subsection (1)(*c*), (*d*) or (*e*) above are not fulfilled.

(4) For the purpose of section 201(4) and (5) of the Act of 1971 (which prevent the service of concurrent blight notices under sections 193 and 201 of that Act) a notice served under this section shall be treated as a notice served under the said section 193.

1968 c. 73.

(5) In section 139(1)(*c*) of the Transport Act 1968 (compensation where land acquired for special road service area) the reference to a notice under section 193 of the Act of 1971 shall include a reference to a notice under this section.

*Blight notices in respect of agricultural units*

Blight notice requiring purchase of whole agricultural unit.

**79.**—(1) Where a blight notice is served in respect of an interest in the whole or part of an agricultural unit and on the date of service that unit or part contains land (hereafter referred to as "the unaffected area") which does not fall within any of the specified descriptions as well as land (hereafter referred to as "the affected area") which does so, the claimant may include in the notice—

(*a*) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and

(*b*) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.

(2) Subject to section 80(3) below, "other relevant land" in subsection (1) above means—

(*a*) land comprised in the remainder of the agricultural unit if the blight notice is served only in respect of part of it;

(*b*) land comprised in any other agricultural unit occupied by the claimant on the date of service, being land in respect of which he is then entitled to an owner's interest as defined in section 203(4) of the Act of 1971. PART V

Objection to blight notice requiring purchase of whole agricultural unit.

**80.**—(1) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of section 79 above shall include the grounds that the claim made in the notice is not justified.

(2) Objection shall not be made to a blight notice served by virtue of section 79 above on the grounds mentioned in section 194(2)(*c*) of the Act of 1971 (part only of affected area proposed to be acquired) unless it is also made on the grounds mentioned in subsection (1) above; and the Lands Tribunal shall not uphold an objection to any such notice on the grounds mentioned in the said section 194(2)(*c*) unless it also upholds the objection on the grounds mentioned in subsection (1) above.

(3) Where objection is made to a blight notice served by virtue of section 79 above on the grounds mentioned in subsection (1) above and also on those mentioned in the said section 194(2)(*c*), the Lands Tribunal, in determining whether or not to uphold the objection, shall treat that part of the affected area which is not specified in the counter-notice as included in "other relevant land" as defined in section 79(2) above.

(4) If the Lands Tribunal upholds an objection but only on the grounds mentioned in subsection (1) above, the Tribunal shall declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area.

(5) If the Tribunal upholds an objection both on the grounds mentioned in subsection (1) above and on the grounds mentioned in the said section 194(2)(*c*) (but not on any other grounds) the Tribunal shall declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned but not in relation to any other part of the affected area or in relation to the unaffected area.

(6) In a case falling within subsection (4) or (5) above, the Tribunal shall give directions specifying a date on which notice to treat (as mentioned in section 81 below and section 196 of the Act of 1971) is to be deemed to have been served.

(7) Section 195(5) of the Act of 1971 shall not apply to any blight notice served by virtue of section 79 above.

PART V
Effect of blight notice requiring purchase of whole agricultural unit.

**81.**—(1) In relation to a blight notice served by virtue of section 79 above, subsection (1) of section 196 of the Act of 1971 shall have effect as if for the words " or (in the case of an agricultural unit) the interest of the claimant in so far as it subsists in the affected area " there were substituted the words " or agricultural unit " and subsection (3) of that section shall not apply to any such blight notice.

(2) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 80(1) above, then if either—

(*a*) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area: or

(*b*) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 80(4) above,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the affected area (but not in so far as it subsists in the unaffected area) and to have served a notice to treat in respect thereof on the date mentioned in subsection (3) below.

(3) The said date—

(*a*) in a case falling within paragraph (*a*) of subsection (2) above, is the date on which notice is given in accordance with that paragraph; and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 80(6) above.

(4) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 80(1) above and also on the grounds mentioned in section 194(2)(*c*) of the Act of 1971 then if either—

(*a*) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired, gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and withdraws his claim as to the remainder of that area and as to the unaffected area; or

(*b*) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 80(5) above in respect of that part of the affected area,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the

interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area or in the unaffected area) and to have served a notice to treat in respect thereof on the date mentioned in subsection (5) below.

(5) The said date—

(*a*) in a case falling within paragraph (*a*) of subsection (4) above, is the date on which notice is given in accordance with that paragraph; and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 80(6) above.

(6) The compensation payable in respect of the acquisition by virtue of this section of an interest in land comprised in—

(*a*) the unaffected area of an agricultural unit; or

(*b*) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in the said section 194(2)(*c*), so much of the affected area of the unit as is not specified in the counter-notice,

shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) above.

(7) In relation to a blight notice served by virtue of section 79 above references to "the appropriate authority" and "the appropriate enactment" shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

(8) The provisions mentioned in section 200(2) of the Act of 1971 (operation of blight provisions where claimant dies after serving blight notice) shall include subsections (2) and (4) above.

*Supplementary*

Supplementary provisions for Part V. 1971 c. 78.

**82.**—(1) In this Part of this Act "the Act of 1971" means the Town and Country Planning Act 1971.

(2) In section 192(6) of the Act of 1971 (definition of "blight notice") there shall be added at the end the words "or section 78 of the Land Compensation Act 1973".

(3) In section 194(5) of the Act of 1971 (which requires a counter-notice to state the grounds of objection) after the words "section 201(6) of this Act" there shall be inserted the words "or section 78(3) or 80(1) of the Land Compensation Act 1973".

(4) In sections 192 to 207 of the Act of 1971 references to "these provisions" shall include references to this Part of this

PART V

Act, and references to " the specified descriptions " shall include references to the descriptions contained in section 192(1)(*a*), (*b*), (*d*), (*g*) and (*j*) of that Act as extended by this Part of this Act and to the descriptions contained in sections 71, 72, 73, 74(2) and 76 above.

(5) The Act of 1971 shall have effect as if this Part of this Act were included in the said sections 192 to 207.

Application of Part V to Scotland.

**83.** This Part of this Act shall have effect in relation to Scotland as set out in Schedule 2 to this Act.

## PART VI

### SUPPLEMENTARY PROVISIONS

Application to Crown.

**84.**—(1) Part I of this Act does not apply to any aerodrome in the occupation of a government department but, subject to that, references in that Part and in Part II of this Act to public works and responsible authorities include references to any works or authority which, apart from any Crown exemption, would be public works or a responsible authority.

(2) Parts III and IV of this Act apply in relation to the acquisition of interests in land (whether compulsorily or by agreement) by government departments being authorities possessing compulsory purchase powers, as they apply in relation to the acquisition of interests in land by such authorities who are not government departments.

Financial provisions.

**85.** There shall be paid out of moneys provided by Parliament—

(*a*) any expenses incurred under this Act by any government department;

(*b*) any increase attributable to this Act in the sums payable out of such moneys under any other Act.

Repeals.

**86.** The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

General interpretation.

**87.**—(1) In this Act—

" agriculture ", " agricultural " and " agricultural land " have the meaning given in section 109 of the Agriculture Act 1947 or, in relation to Scotland, section 86 of the Agriculture (Scotland) Act 1948, and references

1947 c. 48.

1948 c. 45.

to the farming of land include references to the carrying on in relation to the land of any agricultural activities;

"agricultural holding" has the meaning given in section 1 of the Agricultural Holdings Act 1948 or, in relation to Scotland, section 1 of the Agricultural Holdings (Scotland) Act 1949 and "landlord", "tenant" and "notice to quit", in relation to an agricultural holding, have the same meaning as in those Acts respectively; 1948 c. 63. 1949 c. 75.

"agricultural unit" has the meaning given in section 207(1) of the Town and Country Planning Act 1971 or, in relation to Scotland, section 196(1) of the Town and Country Planning (Scotland) Act 1972; 1971 c. 78. 1972 c. 52.

"acquiring authority" and "authority possessing compulsory purchase powers" have the same meaning as in the Land Compensation Act 1961 or, in relation to Scotland, the Land Compensation (Scotland) Act 1963; 1961 c. 33. 1963 c. 51.

"aerodrome" has the meaning given in section 63(1) of the Civil Aviation Act 1949; 1949 c. 67.

"cottar" has the same meaning as in section 28(4) of the Crofters (Scotland) Act 1955; 1955 c. 21.

"croft", "crofter" and "landlord", in relation to a croft, have the same meanings respectively as in the Crofters (Scotland) Act 1955;

"disabled person" means a person who is substantially and permanently handicapped by illness, injury or congenital infirmity, or, in relation to Scotland, means a person in need under section 12 of the Social Work (Scotland) Act 1968 as read with section 1 of the Chronically Sick and Disabled Persons (Scotland) Act 1972; 1968 c. 49. 1972 c. 51.

"dwelling" means a building or part of a building occupied or (if not occupied) last occupied or intended to be occupied as a private dwelling or, in relation to Scotland, a private house, and (except in section 29) includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

"heritable security" means any security capable of being constituted over any interest in land by a disposition or assignation of that interest in security of any debt and of being recorded in the Register of Sasines;

"holding", in relation to a landholder and a statutory small tenant, has the same meaning as in section 2(1) of the Small Landholders (Scotland) Act 1911 and "landlord", in relation to such a holding, has the same 1911 c. 49.

PART VI

1949 c. 75. meaning as in the Agricultural Holdings (Scotland) Act 1949;

1911 c. 49. "landholder" has the same meaning as in section 2(2) of the Small Landholders (Scotland) Act 1911;

"owner", in relation to Scotland, has the same meaning 1963 c. 51. as in section 45(1) of the Land Compensation (Scotland) Act 1963;

1970 c. 20. "road" has the meaning assigned to it in the Roads (Scotland) Act 1970;

"statutory small tenant" has the same meaning as in section 32(1) of the Small Landholders (Scotland) Act 1911;

"tenancy", in relation to England and Wales and otherwise than in relation to an agricultural holding, has the 1954 c. 56. same meaning as in the Landlord and Tenant Act 1954.

(2) In this Act references to the council of a district are, until 1st April 1974, references to the council of a county district or county borough and, thereafter, to the council of a 1972 c. 70. district within the meaning of the Local Government Act 1972; and references to a London borough and the council of a London borough include references to the City of London and the Common Council.

(3) Sections 22 to 25 above shall be construed as one with the 1959 c. 25. Highways Act 1959 or, in relation to Scotland, the Roads (Scotland) Act 1970.

(4) Except where the context otherwise requires, references in this Act to any enactment are references to that enactment as amended, and include references to that enactment as extended or applied, by any other enactment, including this Act.

Northern Ireland.

**88.**—(1) Her Majesty may by Order in Council—

(*a*) extend this Act (other than Part V thereof), with such additions, exceptions and modifications as appear to Her Majesty to be expedient, to—

(i) the provision, operation, management or use of public works in Northern Ireland under any enactment relating to a matter in respect of which the Parliament of Northern Ireland does not have power to make laws (in this section referred to as "a reserved enactment"); and

(ii) acquisitions of land in Northern Ireland by any department or body exercising powers of acquisition under a reserved enactment;

(*b*) apply, with such additions, exceptions and modifications as appear to Her Majesty to be expedient, the

provisions of Schedules 5 and 6 to the Roads Act (Northern Ireland) 1948 or Schedule 6 to the Local Government Act (Northern Ireland) 1972 to the acquisition, otherwise than by agreement, of land in Northern Ireland by any department or body exercising powers of acquisition under a reserved enactment. PART VI 1948 c. 28. (N.I.) 1972 c. 9 (N.I.).

(2) An Order in Council under this section may include such provisions as appear to Her Majesty to be incidental to or consequential on any provision contained in such an Order by virtue of subsection (1) above.

(3) An Order in Council under this section may be varied or revoked by a further Order in Council made thereunder.

**89.**—(1) This Act may be cited as the Land Compensation Act 1973. Short title, commencement and extent.

(2) Part I of this Act shall not come into force until the expiration of the period of one month beginning with the date on which this Act is passed.

(3) Section 48 above does not affect any compensation which fell or falls to be assessed by reference to prices current on a date before the passing of this Act, and the other provisions of Part IV of this Act relating to the assessment of compensation do not affect any compensation which fell or falls to be assessed by reference to prices current on a date before 17th October 1972.

(4) This Act, except section 88, does not extend to Northern Ireland.

# SCHEDULES

Section 60.

## SCHEDULE 1

### APPLICATION OF SECTION 60 TO STATUTORY SMALL TENANTS

### PART I

*Modification of section 60*

Section 60 above shall apply to a statutory small tenant subject to the following modifications—

1955 c. 21. 1911 c. 49.

(*a*) for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, statutory small tenant or section 32(15) of the Small Landholders (Scotland) Act 1911;

(*b*) in subsection (1), for the words from "crofter" in paragraph (*a*) to "so required" in paragraph (*b*) there shall be substituted the words "statutory small tenant and resumption of the holding is authorised by an order of the Scottish Land Court under section 32(15) of the Small Landholders (Scotland) Act 1911; and (*b*) the resumption is so authorised";

(*c*) in subsection (2), for the words "crofter required by such an order to surrender his croft" there shall be substituted the words "statutory small tenant, resumption of whose holding is authorised by such an order";

(*d*) in subsections (2) and (3), for the words "croft is required to be surrendered", wherever they occur, there shall be substituted the words "holding is authorised to be resumed";

1968 c. 34.

(*e*) in subsection (2)(*a*), after the words "year, etc.)" there shall be inserted the words "and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968" and for the words "the crofter had not been so required to surrender his croft" there shall be substituted the words "resumption of the holding had not been so authorised";

(*f*) for subsection (2)(*b*) there shall be substituted the following paragraph—

> "(*b*) any provision of the said section 32(15) relating to compensation to a statutory small tenant shall not have effect in relation to the resumption of the holding by reason of the order.";

(*g*) in subsection (5), for the words "to surrender", wherever they occur, there shall be substituted the words "authorising resumption of".

PART II SCH. 1

*Section 60 as modified, in its application to statutory small tenants*

(1) This section has effect where—

Resumption of holding of statutory small tenant: right to opt for notice of entry compensation.

(*a*) the person in occupation of an agricultural holding is a statutory small tenant and resumption of the holding is authorised by an order of the Scottish Land Court under section 32(15) of the Small Landholders (Scotland) Act 1911 ; and

(*b*) the resumption is so authorised—

(i) after an acquiring authority have served notice to treat on the landlord of the holding or, being an authority possessing compulsory purchase powers, have agreed to acquire his interest in the holding ; and 1911 c. 49.

(ii) where the Court have been satisfied under the said section 32(15) that the landlord desires to resume the holding for a reasonable purpose which is a purpose other than an agricultural purpose.

(2) If the statutory small tenant, resumption of whose holding is authorised by such an order, elects that this subsection shall apply to the order and gives up possession of the holding to the acquiring authority on or before the date on which the holding is authorised to be resumed in accordance with the order—

(*a*) section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation for tenants from year to year, etc.) and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 shall have effect as if resumption of the holding had not been so authorised and the acquiring authority had taken possession of the holding in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before that on which the holding is authorised to be resumed in accordance with the order : and 1845 c. 19. 1968 c. 34. 1947 c. 42.

(*b*) any provision of the said section 32(15) relating to compensation to a statutory small tenant shall not have effect in relation to the resumption of the holding by reason of the order.

(3) No election under subsection (2) above shall be made or, if already made, continue to have effect in relation to any land to which such an order relates if, before the date on which the holding is authorised to be resumed in accordance with the order, an acquiring authority take possession of that land in pursuance of an enactment providing for the taking of possession of land compulsorily.

(4) Any election under subsection (2) above shall be made by notice in writing served on the acquiring authority not later than the date on which possession of the holding is given up.

SCH. 1

(5) This section shall have effect in relation to an order authorising resumption of part of a holding as it has effect in relation to an order authorising resumption of an entire holding and references to a holding shall be construed accordingly.

(6) The reference in subsection (1)(*b*)(i) above to a notice to treat served by an acquiring authority includes a reference to a notice to treat deemed to have been so served under any of the provisions mentioned in section 53(5) above.

Section 83.

## SCHEDULE 2

### APPLICATION OF PART V TO SCOTLAND

### PLANNING BLIGHT

*Extension of classes of blighted land*

Land affected by proposed structure and local plans etc.

68.—(1) In paragraph (*a*) of section 181(1) of the Act of 1972 (land indicated in a structure plan in force as land which may be required for the purposes of functions of public authorities or as land which may be included in an action area) the reference to a structure plan in force shall include a reference to—

(*a*) a structure plan which has been submitted to the Secretary of State under section 5 of that Act;

(*b*) proposals for alterations to a structure plan which have been submitted to the Secretary of State under section 8 of that Act;

(*c*) modifications proposed to be made by the Secretary of State in any such plan or proposals as are mentioned in the preceding paragraphs, being modifications of which he has given notice in accordance with regulations under Part II of that Act.

(2) In paragraph (*b*) of the said section 181(1) (land allocated for the purposes of functions of public authorities by a local plan in force and land defined in such a plan as the site of proposed development for the purposes of any such functions) the reference to a local plan in force shall include a reference to—

(*a*) a local plan of which copies have been made available for inspection under section 10(2) of the Act of 1972;

(*b*) proposals for alterations to a local plan of which copies have been made available for inspection under section 13(2) of that Act;

(*c*) modifications proposed to be made by the local planning authority or the Secretary of State in any such plan or proposals as are mentioned in the preceding paragraphs, being modifications of which notice has been given by the authority or the Secretary of State in accordance with regulations under Part II of that Act.

(3) In section 38(1)(*b*) of the Town and Country Planning (Scotland) Act 1959 as it has effect by virtue of paragraph 49 of Schedule 22 to the Act of 1972 (provisions corresponding to section 181(1)(*b*) of the Act of 1972 pending coming into force of local plans) the reference to a development plan shall include a reference to— SCH. 2 1959 c. 70.

(*a*) proposals for alterations to a development plan submitted to the Secretary of State under paragraph 3 of Schedule 3 to the Act of 1972 ;

(*b*) modifications proposed to be made by the Secretary of State in any such proposals, being modifications of which notice has been given by the Secretary of State by advertisement.

(4) No blight notice shall be served by virtue of subsection (1) or (2) above at any time after the copies of the plan or proposals made available for inspection have been withdrawn under section 6(6) or 10(5) of the Act of 1972 (directions by Secretary of State requiring further publicity).

(5) No blight notice shall be served by virtue of this section after the relevant plan or alterations have come into force (whether in their original form or with modifications) or the Secretary of State has decided to reject or, in the case of a local plan, the local planning authority have decided to abandon the plan or alterations and notice of the decision has been given by advertisement.

(6) Where an appropriate authority have served a counter-notice objecting to a blight notice served by virtue of this section, then, if the relevant plan or alterations come into force (whether in their original form or with modifications) the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection, and section 184 of the Act of 1972 (reference of objections to Lands Tribunal for Scotland) shall have effect in relation to the further counter-notice as it has effect in relation to the counter-notice already served :

Provided that a further counter-notice under this subsection shall not be served—

(*a*) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations come into force ; or

(*b*) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal for Scotland has already determined whether or not to uphold that objection.

(7) References in subsections (1) to (3) above to anything done under any of the provisions there mentioned include references to anything done under those provisions as they apply by virtue of section 15 of, or paragraph 4 of Schedule 3 to, the Act of 1972 (default powers of Secretary of State).

(8) In this section references to alterations to a local plan include references to its replacement, and references to alterations to a development plan include references to additions to it.

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(9) In relation to land falling within section 181(1)(*b*) of the Act of 1972 or section 38(1)(*b*) of the Town and Country Planning (Scotland) Act 1959, as extended by this section, "the appropriate enactment" for the purposes of sections 181 to 196 of the Act of 1972 shall be determined in accordance with section 195(2) of the Act of 1972 as if references therein to the development plan were references to any such plan, proposals or modifications as are mentioned in subsection (2)(*a*), (*b*) or (*c*) and subsection (3)(*a*) or (*b*) above.

1959 c. 70.

Land affected by proposed highway orders.

69.—(1) In section 181(1)(*e*) of the Act of 1972 (land on or adjacent to line of road proposed to be constructed etc. as indicated in an order or scheme which has come into operation under the provisions of the Trunk Roads Act 1946 or Special Roads Act 1949)—

1946 c. 30.

1949 c. 32.

(*a*) the reference to such an order or scheme which has come into force as aforesaid shall include a reference to an order or scheme proposed to be made or confirmed under section 1(2) of the Trunk Roads Act 1946, section 1, 3 or 14 of the Special Roads Act 1949 or section 15 of the Roads (Scotland) Act 1970 in respect of which a notice has been published under Schedule 2 to the said Act of 1946 or Schedule 1 to the said Act of 1949; and

1970 c. 20.

1935 c. 47.

(*b*) for the reference to section 13 of the Restriction of Ribbon Development Act 1935 there shall be substituted a reference to sections 29 to 33 of the Roads (Scotland) Act 1970 as read with, in addition to the enactments specified in the said section 181(1)(*e*), section 15 of the said Act of 1970.

(2) No blight notice shall be served by virtue of this section at any time after the relevant order or scheme has come into operation (whether in its original form or with modifications) or the Secretary of State has decided not to confirm or make the order or scheme.

(3) Subsection (6) of section 68 above shall have effect in relation to a blight notice served by virtue of this section as it has effect in relation to a blight notice served by virtue of that section taking references to the relevant plan or alterations as references to the relevant order or scheme.

Land affected by proposed compulsory purchase orders.

70.—(1) Section 181(1)(*g*) and (*i*) of the Act of 1972 (land in respect of which a compulsory purchase order is in force where a notice to treat has not been served) shall apply also to land in respect of which a compulsory purchase order has been submitted for confirmation to, or been prepared in draft by, a Minister and in respect of which a notice has been published under paragraph 3(1)(*a*) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or under any corresponding enactment applicable thereto.

1947 c. 42.

(2) No blight notice shall be served by virtue of this section at any time after the relevant compulsory purchase order has come into force (whether in its original form or with modifications) or the Minister concerned has decided not to confirm or make the order.

(3) In relation to land falling within the said section 181(1)(*g*) or (*i*) by virtue of this section "the appropriate enactment" for the

purposes of sections 181 to 196 of the Act of 1972 shall be the enactment which would provide for the compulsory acquisition of the land or of the rights in or over the land if the relevant compulsory purchase order were confirmed or made. SCH. 2

Land affected by resolution of planning authority or directions of Secretary of State.

71.—(1) Section 181(1) of the Act of 1972 shall have effect as if the land specified therein included land which—

(*a*) is land indicated in a plan (not being a development plan) approved by a resolution passed by a local planning authority for the purpose of the exercise of their powers under Part III of that Act as land which may be required for the purposes of any functions of a government department, local authority or statutory undertakers ; or

(*b*) is land in respect of which a local planning authority have resolved to take action to safeguard it for development for the purposes of any such functions or been directed by the Secretary of State to restrict the grant of planning permission in order to safeguard it for such development.

(2) Paragraph (*a*) of the said section 181(1) shall not apply to land within subsection (1) above.

(3) In relation to land falling within subsection (1) above "the appropriate enactment" for the purposes of sections 181 to 196 of the Act of 1972 shall be determined in accordance with section 195(2) of that Act as if references therein to the development plan were references to the resolution or direction in question.

Land affected by orders relating to new towns.

72.—(1) Section 181(1) of the Act of 1972 shall have effect as if the land specified therein included land which—

(*a*) is land within an area described as the site of a proposed new town in the draft of an order in respect of which a notice has been published under paragraph 2 of Schedule 1 to the New Towns (Scotland) Act 1968 ; or 1968 c. 16.

(*b*) is land within an area designated as the site of a proposed new town by an order which has come into operation under section 1 of the said Act of 1968.

(2) No blight notice shall be served by virtue of subsection (1)(*a*) above at any time after the order there mentioned has come into operation (whether in the form of the draft or with modifications) or the Secretary of State has decided not to make the order.

(3) Until such time as a development corporation is established for the new town, sections 181 to 196 of the Act of 1972 shall have effect in relation to land within subsection (1) above as if "the appropriate authority" and the "appropriate enactment" were the Secretary of State and subsection (4) below respectively.

(4) Until such time as aforesaid the Secretary of State shall have power to acquire compulsorily any interest in land in pursuance of a blight notice served by virtue of subsection (1) above ; and where he acquires an interest as aforesaid, then—

(*a*) if the land is or becomes land within subsection (1)(*b*) above, the interest shall be transferred by him to the development corporation established for the new town ; and

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(*b*) in any other case, the interest may be disposed of by him in such manner as he thinks fit.

1963 c. 51.

(5) The Land Compensation (Scotland) Act 1963 shall have effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State under subsection (4) above as if the acquisition were by a development corporation under the New Towns (Scotland) Act 1968 and as if, in the case of land within subsection (1)(*a*) above, the land formed part of an area designated as the site of a new town by an order which has come into operation under section 1 of the said Act of 1968.

(6) Section 11 of the said Act of 1968 (right to require development corporation to acquire land within area designated as the site of a new town) shall cease to have effect except in relation to any notice served under that section before the coming into force of this section.

Land affected by housing treatment resolution.

1969 c. 34.

73.—(1) Section 181(1) of the Act of 1972 shall have effect as if the land specified therein included land which—

(*a*) is land within an area declared to be a housing treatment area by a resolution under section 4 of the Housing (Scotland) Act 1969 where the resolution provides that any of the buildings in that area are to be demolished ; or

(*b*) is land surrounded by or adjoining an area declared as aforesaid to be a housing treatment area, whether or not the resolution provides that any of the buildings in that area are to be demolished.

(2) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of subsection (1) above shall not include those specified in section 183(2)(*b*) or (*c*) of the Act of 1972 (no intention to acquire the land).

(3) In relation to land within subsection (1) above "the appropriate enactment" for the purposes of sections 181 to 196 of the Act of 1972 shall be section 5 of the Housing (Scotland) Act 1969.

Land affected by proposed exercise of powers under section 22.

1959 c. 25.

74.—(1) In section 181(1)(*e*) of the Act of 1972—

(*a*) the reference to a power of compulsory acquisition conferred by any of the provisions there mentioned shall include a reference to the power of compulsory acquisition conferred by section 22(1) above ;

(*b*) the reference to land required for purposes of construction, improvement or alteration as indicated in an order or scheme there mentioned shall include a reference to land required for the purposes of the said section 22(1).

(2) Section 181(1) of the Act of 1972 shall have effect as if the land specified therein included land which—

(*a*) is land shown on plans approved by a resolution of a local highway authority as land proposed to be acquired by them for the purposes of the said section 22(1) ; or

(*b*) is land shown in a written notice given by the Secretary of State to the local planning authority as land proposed to be acquired by him for those purposes in connection with a trunk road or special road which he proposes to provide.

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Land affected by compulsory purchase orders providing for acquisition of rights in or over land.

75.—(1) Section 181(1) of the Act of 1972 (which sets out the classes of blighted land) shall apply to land in the case of which there is in force a compulsory purchase order providing for the acquisition of a right in or over that land, and the appropriate authority have power to serve, but have not served, notice to treat in respect of the right; and the provisions of that Act mentioned in subsections (2) to (4) below shall accordingly be amended in accordance with those subsections.

(2) In section 181—

(*a*) at the end of subsection (1) there shall be added the following paragraph—

"(*i*) is land in the case of which there is in force a compulsory purchase order providing for the acquisition of a right in or over that land, and the appropriate authority have power to serve, but have not served, notice to treat in respect of the right.";

(*b*) in subsection (6), for the word "(*h*)" there shall be substituted the word "(*i*)".

(3) In section 183—

(*a*) after subsection (3) there shall be inserted the following subsection—

"(3A) Where the appropriate enactment confers power to acquire a right in or over land, subsection (2) of this section shall have effect as if—

(*a*) in paragraph (*b*), after the word 'acquire' there were inserted the words 'or to acquire any right in or over';

(*b*) in paragraph (*c*), for the words 'do not propose to acquire' there were substituted the words 'propose neither to acquire nor to acquire any right in or over';

(*c*) in paragraph (*d*), after the words 'affected area' there were inserted the words 'or to acquire any right in or over any part thereof';

(*b*) in subsection (5), in paragraphs (*a*) and (*b*), after the word 'acquire' there shall be inserted the words 'or to acquire any right in or over'".

(4) At the end of section 195(1) there shall be added the following words "or, as respects the description contained in paragraph (*i*) of section 181(1) of this Act, the enactment under which the compulsory purchase order referred to in that paragraph was made.".

*Attempts to sell blighted property*

Amended requirements about attempts to sell blighted property.

76.—(1) In sections 182(1)(*c*) and 190(1)(*b*) of the Act of 1972 (which require a person serving a blight notice to have made reasonable endeavours to sell his interest since the relevant date, that is to say, the date on which the land became blighted) the words "since the relevant date" and "since the relevant date (within the meaning of section 182 of this Act)" shall be omitted.

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(2) In sections 182(1)(*d*) and 190(1)(*c*) of the Act of 1972 (which require a person serving a blight notice to have been unable to sell his interest except at a price lower than if the land had not been blighted) for the words from "he has been unable to sell" onwards there shall be substituted the words "in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in land of any of the specified descriptions, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land".

(3) This section does not affect any blight notice served before the passing of this Act.

*Blight notices by personal representatives*

Power of personal representative to serve blight notice.

77.—(1) Where the whole or part of a hereditament or agricultural unit is comprised in land of any of the specified descriptions, and a person claims that—

(*a*) he is the personal representative of a person ("the deceased") who at the date of his death was entitled to an interest in that hereditament or unit; and

(*b*) the interest was one which would have qualified for protection under sections 181 to 196 of the Act of 1972 if a notice under section 182 of that Act had been served in respect thereof on that date; and

(*c*) he has made reasonable endeavours to sell that interest; and

(*d*) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in land of any of the specified descriptions, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land; and

(*e*) one or more individuals are (to the exclusion of any body corporate) beneficially entitled to that interest,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the said sections 181 to 196.

(2) Subsection (1) above shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the entirety of a hereditament or agricultural unit:

Provided that this subsection shall not enable any person—

(*a*) if the deceased was entitled to an interest in the entirety of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of the deceased's interest in part of the hereditament or unit; or

(*b*) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the entirety of that part.

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(3) Subject to sections 73(2) above and 79(2) below, the grounds on which objection may be made in a counter-notice under section 183 of the Act of 1972 to a notice under this section are those specified in paragraphs (*a*) to (*c*) of subsection (2) of that section and, in a case to which it applies, the grounds specified in paragraph (*d*) of that subsection and also the following grounds—

(*a*) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates ;

(*b*) that (for reasons specified in the counter-notice) the interest of the deceased is not such as is specified in subsection (1)(*b*) above ;

(*c*) that the conditions specified in subsection (1)(*c*), (*d*) or (*e*) above are not fulfilled.

(4) For the purpose of section 190(4) and (5) of the Act of 1972 (which prevent the service of concurrent blight notices under sections 182 and 190 of that Act) a notice served under this section shall be treated as a notice served under the said section 182.

(5) In section 139(1)(*c*) of the Transport Act 1968 (compensation where land acquired for special road service area) the reference to a notice under section 182 of the Act of 1972 shall include a reference to a notice under this section. 1968 c. 73.

*Blight notices in respect of agricultural units*

Blight notice requiring purchase of whole agricultural unit.

78.—(1) Where a blight notice is served in respect of an interest in the whole or part of an agricultural unit and on the date of service that unit or part contains land (hereafter referred to as "the unaffected area") which does not fall within any of the specified descriptions as well as land (hereafter referred to as "the affected area") which does so, the claimant may include in the notice—

(*a*) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit ; and

(*b*) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.

(2) Subject to section 79(3) below, "other relevant land" in subsection (1) above means—

(*a*) land comprised in the remainder of the agricultural unit if the blight notice is served only in respect of part of it ;

(*b*) land comprised in any other agricultural unit occupied by the claimant on the date of service, being land in respect of which he is then entitled to an owner's interest as defined in section 192(4) of the Act of 1972.

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Objection to blight notice requiring purchase of whole agricultural unit.

79.—(1) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of section 78 above shall include the grounds that the claim made in the notice is not justified.

(2) Objection shall not be made to a blight notice served by virtue of section 78 above on the grounds mentioned in section 183(2)(*c*) of the Act of 1972 (part only of affected area proposed to be acquired) unless it is also made on the grounds mentioned in subsection (1) above; and the Lands Tribunal for Scotland shall not uphold an objection to any such notice on the grounds mentioned in the said section 183(2)(*c*) unless it also upholds the objection on the grounds mentioned in subsection (1) above.

(3) Where objection is made to a blight notice served by virtue of section 78 above on the grounds mentioned in subsection (1) above and also on those mentioned in the said section 183(2)(*c*), the Lands Tribunal for Scotland, in determining whether or not to uphold the objection, shall treat that part of the affected area which is not specified in the counter-notice as included in "other relevant land" as defined in section 78(2) above.

(4) If the Lands Tribunal for Scotland upholds an objection but only on the grounds mentioned in subsection (1) above, the Tribunal shall declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area.

(5) If the Tribunal upholds an objection both on the grounds mentioned in subsection (1) above and on the grounds mentioned in the said section 183(2)(*c*) (but not on any other grounds) the Tribunal shall declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned but not in relation to any other part of the affected area or in relation to the unaffected area.

(6) In a case falling within subsection (4) or (5) above, the Tribunal shall give directions specifying a date on which notice to treat (as mentioned in section 80 below and section 185 of the Act of 1972) is to be deemed to have been served.

(7) Section 184(5) of the Act of 1972 shall not apply to any blight notice served by virtue of section 78 above.

Effect of blight notice requiring purchase of whole agricultural unit.

80.—(1) In relation to a blight notice served by virtue of section 78 above, subsection (1) of section 185 of the Act of 1972 shall have effect as if for the words "or (in the case of an agricultural unit) the interest of the claimant in so far as it subsists in the affected area" there were substituted the words "or agricultural unit" and subsection (3) of that section shall not apply to any such blight notice.

(2) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 79(1) above, then if either—

(*a*) the claimant, without referring that objection to the Lands Tribunal for Scotland, and before the time for so referring it

has expired, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area ; or

(*b*) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 79(4) above,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the affected area (but not in so far as it subsists in the unaffected area) and to have served a notice to treat in respect thereof on the date mentioned in subsection (3) below.

(3) The said date—

(*a*) in a case falling within paragraph (*a*) of subsection (2) above, is the date on which notice is given in accordance with that paragraph ; and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 79(6) above.

(4) Where the appropriate authority have served a counter-notice objection to a blight notice on the grounds mentioned in section 79(1) above and also on the grounds mentioned in section 183(2)(*c*) of the Act of 1972, then if either—

(*a*) the claimant, without referring that objection to the Lands Tribunal for Scotland, and before the time for so referring it has expired, gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and withdraws his claim as to the remainder of that area and as to the unaffected area ; or

(*b*) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 79(5) above in respect of that part of the affected area,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area or in the unaffected area) and to have served a notice to treat in respect thereof on the date mentioned in subsection (5) below.

(5) The said date—

(*a*) in a case falling within paragraph (*a*) of subsection (4) above, is the date on which notice is given in accordance with that paragraph ; and

(*b*) in a case falling within paragraph (*b*) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 79(6) above.

(6) The compensation payable in respect of the acquisition by virtue of this section of an interest in land comprised in—

(*a*) the unaffected area of an agricultural unit ; or

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(*b*) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in the said section 183(2)(*c*), so much of the affected area of the unit as is not specified in the counter-notice,

shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) above.

(7) In relation to a blight notice served by virtue of section 78 above references to " the appropriate authority " and " the appropriate enactment " shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

(8) The provisions mentioned in section 189(2) of the Act of 1972 (operation of blight provisions where claimant dies after serving blight notice) shall include subsections (2) and (4) above.

*Supplementary*

Supplementary provisions for Part V.

81.—(1) In this Part of this Act " the Act of 1972 " means the Town and Country Planning (Scotland) Act 1972.

1972 c. 52.

(2) In section 181(6) of the Act of 1972 (definition of " blight notice ") there shall be added at the end the words " or section 77 of the Land Compensation Act 1973 ".

(3) In section 183(4) of the Act of 1972 (which requires a counter-notice to state the grounds of objection) after the words " section 190(6) of this Act ", there shall be inserted the words " or section 77(3) or 79(1) of the Land Compensation Act 1973 ".

(4) In sections 181 to 196 of the Act of 1972 references to " these provisions " shall include references to this Part of this Act, and references to " the specified descriptions " shall include references to the descriptions contained in section 181(1)(*a*), (*b*), (*e*), (*g*) and (*i*) of that Act as extended by this Part of this Act and to the descriptions contained in sections 71, 72, 73 and 74(2) above.

(5) The Act of 1972 shall have effect as if this Part of this Act were included in the said sections 181 to 196.

## SCHEDULE 3

Section 86.

REPEALS

| Chapter | Short Title | Extent of Repeal |
|---|---|---|
| 49 & 50 Vict. c. 22. | The Metropolitan Police Act 1886. | Section 5. |
| 12, 13 & 14 Geo. 6 c. 67. | The Civil Aviation Act 1949. | Section 31(3). |
| 2 & 3 Eliz. 2. c. 56. | The Landlord and Tenant Act 1954. | Section 39(1). |
| 5 & 6 Eliz. 2. c. 56. | The Housing Act 1957. | Section 32.<br>Section 42(3).<br>Section 63(1).<br>Section 100.<br>Section 144.<br>Schedule 9. |
| 7 & 8 Eliz. 2. c. 25. | The Highways Act 1959. | In section 82(2) the words " subsection (5), or subsection (6) ".<br>In section 214, subsections (5), (6) and (7) and the proviso to subsection (8).<br>Section 222(5) and (10).<br>Section 225(1) and (2).<br>In section 238(3) the words " (5) and (6) ". |
| 9 & 10 Eliz. 2. c. 33. | The Land Compensation Act 1961. | Section 30. |
| 1963 c. 33. | The London Government Act 1963. | In Schedule 6 paragraph 58.<br>In Schedule 8 paragraphs 12 and 13. |
| 1963 c. 51. | The Land Compensation (Scotland) Act 1963. | Section 38 except so far as relating to land used for the purposes of agriculture. |
| 1965 c. 16. | The Airports Authority Act 1965. | In Schedule 4 paragraph 2(3). |
| 1965 c. 56. | The Compulsory Purchase Act 1965. | In Schedule 7 the entry relating to the Landlord and Tenant Act 1954. |
| 1965 c. 59. | The New Towns Act 1965. | Section 11 and paragraph 7 of Schedule 6 except in relation to any notice served under section 11 before the passing of this Act.<br>Section 22(1), (2), (5) and (6). |
| 1966 c. 49. | The Housing (Scotland) Act 1966. | Section 160(1) and (2).<br>Section 168.<br>Schedule 8. |
| 1968 c. 16. | The New Towns (Scotland) Act 1968. | Section 11 and paragraph 8 of Schedule 6 except in relation to any notice served under section 11 before the passing of this Act.<br>Section 22(1), (2), (5) and (6). |

SCH. 3

| Chapter | Short Title | Extent of Repeal |
|---|---|---|
| 1968 c. 34. | The Agriculture (Miscellaneous Provisions) Act 1968. | Sections 15(1) and 42 except in relation to compensation falling to be assessed by reference to prices current on a date before the passing of this Act and except for the purposes of section 48(6) of this Act. |
| 1969 c. 33. | The Housing Act 1969. | Section 32(3) and (4). |
| 1969 c. 34. | The Housing (Scotland) Act 1969. | Sections 63 and 64. |
| 1971 c. 78. | The Town and Country Planning Act 1971. | Section 130(1), (2), (4) and (5).<br>In section 193, in subsection (1)(*c*) the words "since the relevant date" and subsection (3) except in relation to a blight notice served before the passing of this Act.<br>In section 194(6) the words following paragraph (*b*) as far as the semi-colon.<br>In section 201(1)(*b*) the words "since the relevant date (within the meaning of section 193 of this Act)" except in relation to a blight notice served before the passing of this Act.<br>In section 207(1) the definition of "highway land acquisition powers". |
| 1972 c. 47. | The Housing Finance Act 1972. | Section 94. |
| 1972 c. 52. | The Town and Country Planning (Scotland) Act 1972. | Section 120(5) and (6).<br>In section 182, in subsection (1)(*c*) the words "since the relevant date" and subsection (3) except in relation to a blight notice served before the passing of this Act.<br>In section 190(1)(*b*) the words "since the relevant date (within the meaning of section 182 of this Act)" except in relation to a blight notice served before the passing of this Act. |

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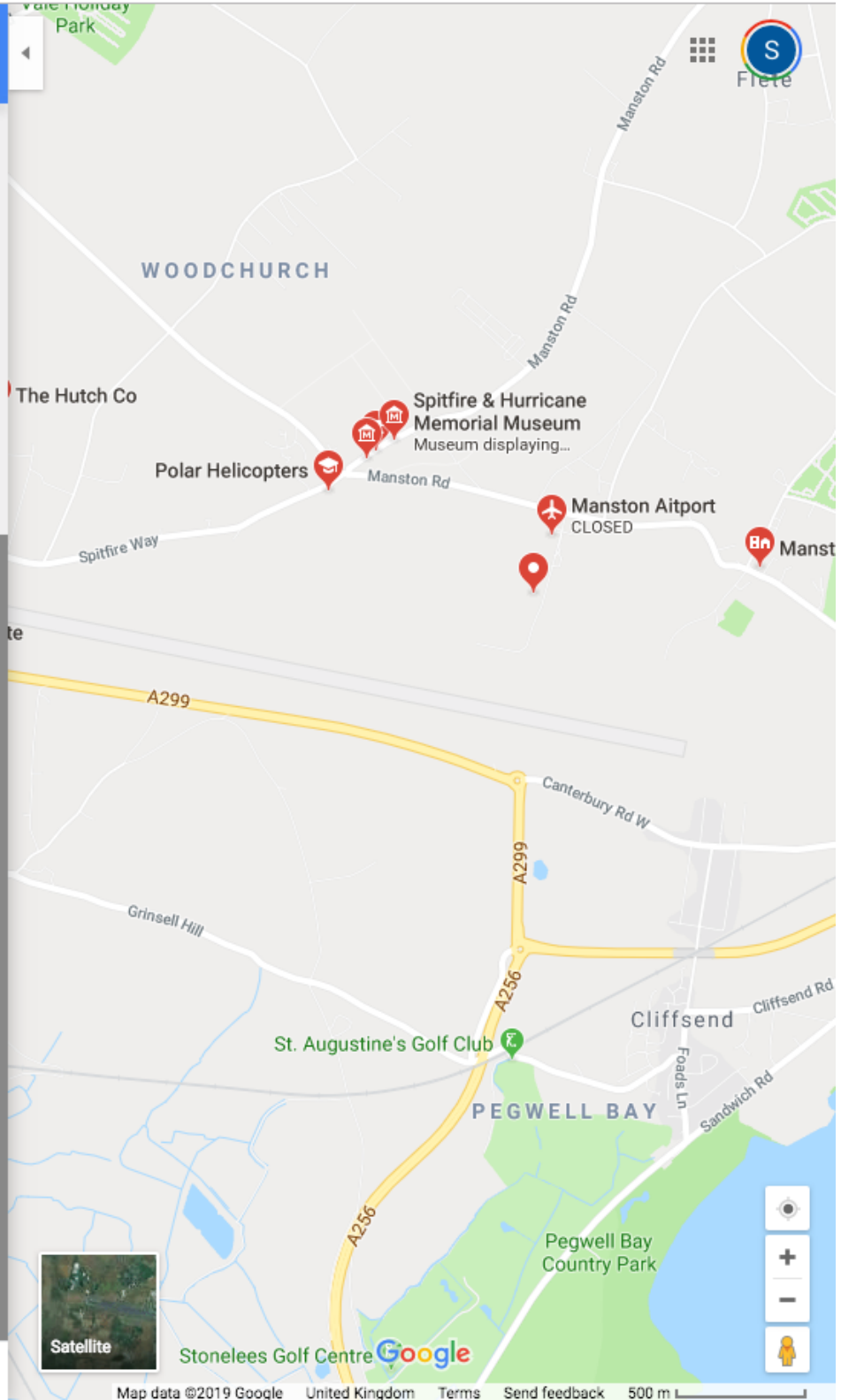

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- North Ronaldsay - EGEN
- Norwich - EGSH
- Nottingham - EGBN
- Oban - EGEO
- Old Buckenham - EGSV
- Old Sarum - EGLS
- Old Warden - EGTH
- Oxford - EGTK
- Papa Westray - EGEP
- Pembrey - EGFP
- Perth/Scone - EGPT
- Rochester - EGTO
- Sanday - EGES
- Sandtoft - EGCF
- Scatsta - EGPM
- Scilly Isles/St Mary's - EGHE
- Sherburn-in-Elmet - EGCJ
- Shobdon - EGBS
- Shoreham - EGKA
- Sleap - EGCV
- Southampton - EGHI
- Southend - EGMC
- Stapleford - EGSG
- Stornoway - EGPO
- Stronsay - EGER
- Sumburgh - EGPB
- Swansea - EGFH
- Tatenhill - EGBM
- Thruxton - EGHO
- Tiree - EGPU
- Warton - EGNO
- Wellesbourne Mountford - EGBW
- Welshpool - EGCW
- Westray - EGEW
- West Wales/Aberporth - EGFA
- White Waltham - EGLM
- Wick - EGPC
- Wickenby - EGNW

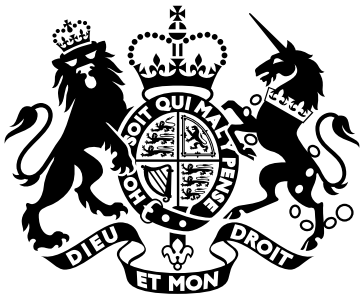
- Cumbernauld - EGPG
- Denham - EGLD
- Derby - EGBD
- Doncaster Sheffield - EGCN
- Dundee - EGPN
- Lashenden/Headcorn - EGKH
- Leeds Bradford - EGNM
- Leeds East - EGCM
- Lee-on-Solent - EGHF
- Leicester - EGBG
- Lerwick/Tingwall - EGET
- Peterborough/Conington - EGSF
- Prestwick - EGPK
- Redhill - EGKR
- Retford/Gamston - EGNE
- Wolverhampton/Halfpenny Green - EGBO
- Wycombe Air Park/Booker - EGTB
- Yeovil/Westland - EGHG

Department for Transport

# UK Airspace Policy: A framework for balanced decisions on the design and use of airspace

**Moving Britain Ahead**

February 2017




# UK Airspace Policy: A framework for balanced decisions on the design and use of airspace

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

February 2017

CM 9397



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# Ministerial Foreword

Aviation matters – it connects us with the world, enabling us to travel to visit our friends and family, to do business and go on holiday. The UK's aviation sector is a global success story, supporting and creating jobs, driving social mobility and contributing to the country's economy and progress.

Achieving this success can only be done if we continue to balance the benefits of a thriving aviation sector with its impacts on local communities and the environment. In other words, growth must be sustainable.

Sustainable growth is important because, like the rest of our transport network, demand is increasing and capacity is filling up. Across our rail, road and other networks we are supporting the increased demand through record levels of investment and using new technologies to make journeys easier, faster and more reliable.

Aviation is no different. We have already taken steps to increase capacity on the ground by supporting a new runway at Heathrow, and we have seen significant investment in the way airspace is managed. However, the sky is increasingly congested and we need to think again about how we best manage our airspace.

It is my belief that airspace modernisation is overdue. By taking steps now to future-proof this vital infrastructure, we can harness the latest technology to make airspace more efficient, reducing the need for stacking, making journeys faster and more environmentally friendly. This will demonstrate the UK's position at the forefront of global aviation and send a clear signal that Britain is open for business.

At a local level, the changes we are proposing here also offer the chance to address some of the least acceptable impacts of aviation on those living near our airports – in particular the effects of noise.

Modern technology is making aircraft quieter. Newer generation aircraft coming into service have a noise footprint typically 50% smaller on departure than the ones they are replacing, and at least 30% smaller on arrival.

However, there is more we can do. Our recent research has given us a greater understanding of the effects of noise on local areas and I've also met with representatives of communities impacted. That is why our proposals to improve how these communities can engage, and make sure that their voices are heard, are so important.

It is my intention to establish an Independent Commission on Civil Aviation Noise. I believe that such a Commission will be able to build relationships between the industry and communities, improve communication, embed a culture of best practice, and also ensure a fair process for making changes to airspace.

The Secretary of State's new call-in function for airspace changes, similar to that used by the Secretary of State at the Department for Communities and Local Government for planning applications, will create the democratic back-stop in the most significant decisions, much called for by communities.

It is my view that these proposals aim to strike a balance between unlocking the economic and social benefits of modernised airspace, and addressing the local impacts of aviation. I am confident these objectives are achievable, and that these changes will secure the UK's position as a world leader in aviation.

Lord Ahmad of Wimbledon
Parliamentary Under Secretary of State for Transport (Minister for Aviation)

# 1. Introduction

1.1 The Aviation industry is a positive force for the UK's economy. It is a major contributor to the economy, brings people together and shows the world Britain is open for business. Indeed, Britain's aviation sector is a global success story, supporting thousands of jobs and delivering billions of pounds in economic benefits.

1.2 As this sector grows, and we seek to improve regional, national and international connectivity, we need to do so with due consideration of the impact of this growth on local communities. This requires that all those involved with the sector work collectively in improving communication, assessing and adapting to the need to address environmental challenges, whilst ensuring the concerns of local communities are addressed.

1.3 Aviation creates jobs and supports economic growth. It directly supports around 230,000 jobs with many more employed indirectly and contributes around £20bn annually to UK economy[1]. It supports the movement of goods, workers and tourists, and drives business innovation and investment. In 2015, UK airports handled around £155bn of air freight to and from countries outside the EU[2], and aviation supported an inbound tourism industry across the UK worth nearly £19bn[3].

1.4 The UK will benefit if aviation is able to grow sustainably. And the sector has already taken significant steps to address some of the least acceptable impacts of flying. For example, last year saw a ground-breaking international agreement to tackle carbon emissions from aviation. Advances in technology are making planes quieter, helping reduce the number of people affected by high levels of noise near our airports.

1.5 As demand increases, capacity is at a premium – both at our airports and in the sky. The way our airspace is managed based on arrangements which are almost 50 years old. This means it can be both inefficient and ineffective, leading to unnecessary delays for passengers and excessive impacts on the environment and those living near our airports. Change is needed in the sector to enable the UK to keep pace with the rest of the world in exploiting the newest technology and meeting demand.

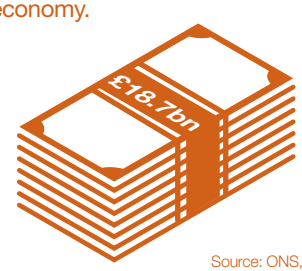
1 Annual Business Survey, 2014 and ONS, Input-output tables, 2014. Of the 230,000 jobs, 120,000 were in air transport and 110,000 related to aerospace.

2 HMRC Trade Statistics, 2016

3 Estimates of the Economic Importance of Tourism 2008-2013, Office for National Statistics, December 2014.

The Government's primary objective is to achieve long-term economic growth. The aviation sector is a major contributor to the economy.


Aviation contributed **£20 billion** of economic output in 2013, Air Transport Sector contributed **£11 billion** and the Aerospace Sector **£9 billion**.




In 2015, nearly three quarters of foreign visitors to the UK arrived by air. These visitors spent **£18.7 billion** or **85%** of the total expenditure by foreign visitors in 2015.

Source: ONS, Overseas Residents Visits to the UK

The Aviation Sector had an annual turnover of **£61 billion** in 2014, Air Transport Sector contributed **£33 billion** and the Aerospace Sector **£28 billion**.

The UK is an outward-looking nation: an island economy that for centuries has owed its prosperity to the transport and trade routes linking it with the rest of the world. The future of the UK will continue to be shaped by the effectiveness of its international transport networks.

The UK is very well connected, with direct weekly services to **over 370 international airports** and direct daily services to **200 international airports in 2015** (Weekly/daily service: at least 52/361 passenger flight departures a year.)

Aviation brings many wider benefits to society and individuals, including travel for leisure and visiting family and friends.

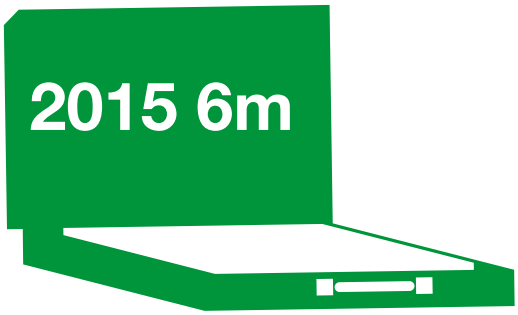
Passenger numbers at UK airports increased by **5.5%** in 2015,

reaching a record level of 251 million terminal passengers.

About **a third of passengers are visiting friends or family** and around a **fifth are travelling for business.**

In 2015, around 6 million visits from overseas residents to the UK were for business trips.

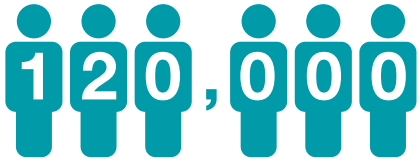
UK airports are well connected to business destinations worldwide.



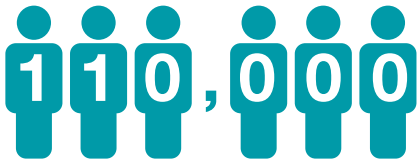

Aviation benefits the UK economy through its direct contribution to gross domestic product (GDP) and employment, and by facilitating trade and investment, manufacturing supply chains, skills development and tourism.


Although aviation accounts for **less than 1%** of international freight at UK ports by tonnage, air freight tends to be high value, accounting for **over 40% of extra EU freight by value.**

The aviation sector employed around **230,000** people in 2014, of which around




**people are employed directly by the air transport sector and**




**by the aerospace sector.**

- Over 20 UK airports have daily flights to **Amsterdam**
- **Frankfurt** and **New York** are served daily by 7 and 4 UK airports respectively
- Many others including **Hong Kong**, **U.A.E** and **Zurich** are connected with daily services from at least one UK airport

1.6 The Government welcomes the recent levels of investment in our airspace which have delivered real improvements, but advances in technology mean we can do even better. Modernising our airspace is about exploiting the latest technology to unlock the national social and economic benefits which a thriving aviation sector offers.

1.7 Encouraging growth in our aviation sector is good for our country and our standing in the world, but we must provide the right policy framework to ensure this success can be realised in a sustainable way.

1.8 That is why the Government is reviewing our range of aviation policies, and we plan to update our overarching strategy for the sector over the coming months. This will ensure we are in the best position to respond to future challenges, and make the most of a range of opportunities, including building a new runway at Heathrow and building on the recent ground-breaking International Civil Aviation Organisation agreements on carbon emissions for aviation.

1.9 How we handle airspace is a vital part of this strategy: balancing growth in its use with effective management of the local impacts around our airports – in particular noise.

1.10 If no action is taken to modernise our airspace, passenger delays are forecast to increase sharply as traffic levels increase. Analysis commissioned by the Department for Transport (DfT) and carried out by NATS (the UK's main provider of air traffic control services) predicts total short notice cancellations to increase to 8,000 per year and delays from air traffic management to rise to 4.4 million minutes by 2030, equivalent to 3,100 days of delays. This is 50 times the delays seen in 2015, leading to increased noise on the ground, and increased carbon emissions per flight through wasted fuel[4].

1.11 Taking action now can bring real improvements:

- For passengers – reduced delays;
- For the environment – reduced emissions; and
- For local communities most affected by aircraft noise – reduced need for stacking and quicker climbing aircraft.

1.12 But decisions which change flightpaths are not easy and we acknowledge that the policy framework needs improvement so that communities can have confidence that the impacts of aviation are being properly taken into account when airspace use is changed, and in the way noise is managed in day-to-day operations.

1.13 The Government's role is to set the policy framework which governs those decisions. Our proposals will not determine specific airspace arrangements. **They will ensure that these important decisions are made in the right way. This will be underpinned by the need to provide balance and transparency throughout the process, ensuring that there is consistency in how industry acts as the best neighbour, putting in place the best solutions to manage its impacts.** We have listened to communities which have experienced the effects of changes, and our proposals are designed to reflect the lessons learnt and to respond to their concerns.

4 See 'Upgrading UK Airspace: Strategic Rationale' p.59

1.14 We are therefore bringing forward proposals designed to balance the interests of all involved and build trust in how noise is handled. Our proposals will bring a number of benefits:

- Greater clarity and transparency in decision making and the way noise is managed;
- Improvements in the evidence used to inform how airspace decisions are made, particularly the noise impacts;
- Greater focus on industry and communities working together to find ways to manage noise which work best for local circumstances;
- Clarity and consistency in who makes airspace decisions, and why;
- Greater certainty for industry that the airspace change framework provides what they need to deliver beneficial change; and
- Ambitious noise management outside of airspace change, taking advantage of the latest technological developments.

1.15 We build on the best practice which is already being demonstrated at many airports across the UK, and the changes to the airspace change process which the Civil Aviation Authority (CAA) is making. Recognising that a 'one size fits all' approach is unsuitable, our proposals focus on decisions being informed by the needs of each area, using robust local evidence from those who know the situation best. The new approach will be coupled with measures to improve transparency and challenge industry to drive standards up and engage effectively.

1.16 The effect of the changes proposed will be that decisions can be made which better support the effective management of airspace and the noise impacts which its use can create. Everyone will have their part to play in making reforms to how airspace is managed a success, including airports, airlines, air navigation service providers, local authorities, community representatives and the CAA. Our proposals create clear and appropriate roles, and a system which can support the UK in maximising the benefits of aviation.

## Aims of the Consultation

1.17 With this consultation, the Government wishes to support airspace modernisation in order to deliver benefits for the UK economy, for passengers and for communities affected by aircraft noise. We wish to see the use of technology and environmental controls keep pace with leading practice and to incentivise ambitious and innovative approaches for managing noise in the aviation sector.

1.18 To do that, we recognise the need to be able to properly balance our economic and environmental needs in the important decisions which must be taken. This is at the heart of our proposals, which aim to create a modern and effective framework for decisions on the design and use of airspace.

1.19 We are therefore seeking your views on a range of proposals, including:

- Establishing an Independent Commission on Civil Aviation Noise to make sure noise impacts are properly and transparently considered;
- Providing industry with ways to assess noise impacts and choose between route options to help them manage change more effectively;
- Bringing compensation policy for airspace changes in line with policy on changes to aviation infrastructure; and
- Offering greater flexibility to three of London's major airports, so that they can adapt their noise management to the needs of their local communities, as other airports across the UK already can.

# 2. Information on the Consultation

## Current Policy Framework

2.1 The current legal and policy framework for airspace and aviation noise is a complex and comprehensive suite of information and documents, ranging from the top-down policy setting approach from the International Civil Aviation Organization, to the national policy and legal frameworks that reflect the UK Government's vision for the aviation industry.

2.2 We refer to elements of the policy framework throughout the consultation document. At Annex A, you will find a summary of the key documents and frameworks that the aviation sector operates within. A glossary of terms can also be found at Annex C.

## Fit with wider Aviation Policy

2.3 The Government's current aviation policy is set out in the Aviation Policy Framework (APF). The APF sets out the sector's objectives and policies and its role in driving growth, creating jobs and facilitating trade, while addressing a range of environmental impacts.

2.4 The Government is working on a new Aviation Strategy that will set out the Government's vision for the wider aviation sector. This will replace the 2013 APF and will be subject to a separate consultation process.

2.5 This consultation on UK Airspace Policy forms a key pillar in the development of the Aviation Strategy.

2.6 The policies proposed within the airspace consultation will influence what happens at airports across the country, but they do not determine specific airspace arrangements: the Government will not decide on a particular flight path or procedure for a particular airport. Instead, the Government will decide on the policy principles which will govern those decisions.

### Consultation on the draft Airports National Policy Statement

2.7 In parallel to this consultation on UK Airspace Policy, the Government has published its consultation on a draft Airports National Policy Statement. This sets out the proposed framework against which a planning application for a Northwest runway at Heathrow Airport can be brought. The consultation outlines the Government's policy on the need for increased airport capacity, and the requirements Heathrow Airport Limited will need to meet in order to gain development consent.

2.8 The Government is bringing forward the two consultations at the same time because of the relationship between them. The policy principles set out in this airspace consultation will influence decisions taken later in the planning process for a Northwest runway at Heathrow, including how local communities can have their say on airspace matters and how impacts on them are taken into account. Some of the proposals, for example the role of a new Independent Commission on Civil Aviation Noise, are also needed to influence decisions on noise management measures.

2.9 To respond to the consultation on the draft Airports National Policy Statement, please visit www.gov.uk/dft/heathrow-airport-expansion

### Consultation on night flights regime

2.10 A separate consultation on the next night flights regime at the designated airports (Heathrow, Gatwick and Stansted) began on 12 January and runs until 28 February 2017. These restrictions come into effect in October 2017 and the Government is proposing that they last for a period of five years. This period would end before a proposed new runway would be operational at Heathrow.

2.11 If you would like further details on the night flights consultation, including on how you can respond, then please visit: https://www.gov.uk/government/consultations/night-flight-restrictions-at-gatwick-heathrow-and-stansted.

## UK Airspace Policy consultation: the suite of documents

2.12 This consultation document sets out the policy principles and proposals we consider optimum to meet our objectives. Alongside this, a range of supporting documents have also been published:

- **Draft air navigation guidance: guidance on airspace & noise management and environmental objectives.** The aim of this is to enable those who would like to understand how our policies would be implemented the opportunity to see draft guidance. Respondents to the consultation will be able to provide feedback on the draft guidance as well as the high level policies should they wish.
- **Survey of Noise Attitudes**. This report describes the main findings of a research study to obtain new and updated evidence on attitudes to aviation noise around airports in England. The study has been published by the CAA but was commissioned by the DfT, and builds on earlier non-aviation specific noise attitude surveys commissioned by the Department for Environment, Food & Rural Affairs (Defra).
- **Upgrading UK Airspace: Strategic Rationale.** This report describes the strategic national importance of an industry led investment programme to upgrade the UK's airspace structure. The report was commissioned by the DfT and carried out by the CAA, with technical input from NATS. The purpose of the report is to describe in general terms why the UK's airspace is being upgraded and how.

## How to Respond

2.13 The consultation period began on 2nd February and will run until 25th May 2017. Please ensure that your response reaches us before the closing date. An electronic response form is available at www.gov.uk/government/collections/uk-airspace-policy. Alternative formats (Braille, audio CD, etc.) and copies of this consultation document can be provided on request. You can also contact 0800 689 4968.

Alternatively, please send consultation responses to:

Freepost UK AIRSPACE POLICY CONSULTATION

Phone number: 0800 689 4968

Email address: airspace.policy@dft.gsi.gov.uk

2.14 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## Policy Engagement

2.15 We have been supported in development of this package by a wide range of stakeholders who have generously provided their views and expertise. We intend to continue this dialogue through the consultation period and beyond.

2.16 We are inviting stakeholders to discussions around the country on our proposals during the consultation period. We have also formed a new Airspace and Noise Engagement Group (ANEG), which brings together representatives from local authorities, community and environmental groups, airports, airlines, air navigation service providers and sectoral bodies. Please contact us if you would like to know more about your representatives for these activities, or how to apply to observe an ANEG meeting.

## Freedom of Information

2.17 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004. If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

2.18 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

2.19 The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Territorial Extent and Scope

2.20 Aviation and airspace are reserved matters. Our proposals relating to the design or change of airspace are therefore applicable to the whole of the UK. The new Independent Commission on Civil Aircraft Noise (ICCAN) would be a nationwide body with regards to its functions on airspace change. While noise policy for aerodromes is a devolved matter in relation to Scotland and Northern Ireland and planning is generally a devolved matter, noise policies proposed in this document, which are based on the Noise Policy Statement for England, shall apply where they are relevant to reserved airspace matters, such as the consideration of noise in airspace changess.

2.21 ICCAN's remit beyond airspace change, for example in providing best practice guidance on noise management will be finalised with the Devolved Administrations during this consultation.

2.22 Some of our proposals relate to how noise is managed at individual airports and use of the Government's powers to set noise controls at airports, as well as controls set through the planning system. As these powers are devolved in relation to Scotland and Northern Ireland and the planning system is also generally devolved, specific proposals, such as the implementation of EU Regulation 598/2014 on the ICAO balanced approach (page 73) will be for the Devolved Administrations to formulate policy on.

2.23 The scope of the measures in this consultation document is the civil aviation sector. This means that none of the measures here concern airspace arrangements and environmental and noise impacts associated with military aircraft use or the military airfields from which they operate. Environmental considerations relating to military aircraft and their airspace use remain the responsibility of the Ministry of Defence.

## European Union

2.24 One of the proposals in this consultation is related to the implementation of European legislation. On 23 June 2016, the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

## Transition Arrangements

2.25 Many of the proposals within this consultation will require the Government to take steps to implement changes and the CAA to integrate into its policies and procedures. We will therefore work closely with the CAA following the consultation to agree an implementation date and detailed transition arrangements. Where relevant e.g. for airspace change, we would expect to mirror the transition arrangements set out by the CAA in its recent consultation on the Airspace Change Process: any change proposal

which has yet to be consulted on before the introduction of the revised process should adhere to the new process from the implementation date.

2.26 In Chapter 4 we make proposals on how compensation policy should apply to airspace changes. Chapter 5 discusses how decisions on airspace can be made transparently and how noise can be assessed, particularly within thinking on route options for airspace change. We consider much of what we say in these sections to be best practice, and would stress that current policies do not restrict the approaches set out being used. We would therefore encourage industry to consider our thinking in any relevant activities, such as change proposals or reviews of noise management, in advance of any Government response or implementation of change.

## What will happen next?

2.27 A summary of responses and a Government response to the consultation will be published at www.gov.uk/government/collections/uk-airspace-policy. Paper copies will be available on request. At this time, we will also take any actions necessary to implement final decisions taken, such as the publication of new guidance, making Directions under the Government's powers as appropriate and bringing forward secondary legislation.

2.28 WebTAG guidance on appraising airspace proposals will be consulted on in due course[5].

2.29 If you have questions about this consultation please contact:

Department for Transport
33 Horseferry Road
London SW1P 4DR

Phone Number: 0800 689 4968

Further background information can be found at
www.gov.uk/government/collections/uk-airspace-policy.

## Consultation Principles

2.30 The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at https://www.gov.uk/government/publications/consultation-principles-guidance

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR

Email consultation@dft.gsi.gov.uk

5 https://www.gov.uk/guidance/transport-analysis-guidance-webtag

# 3. Airspace

### What is Airspace?

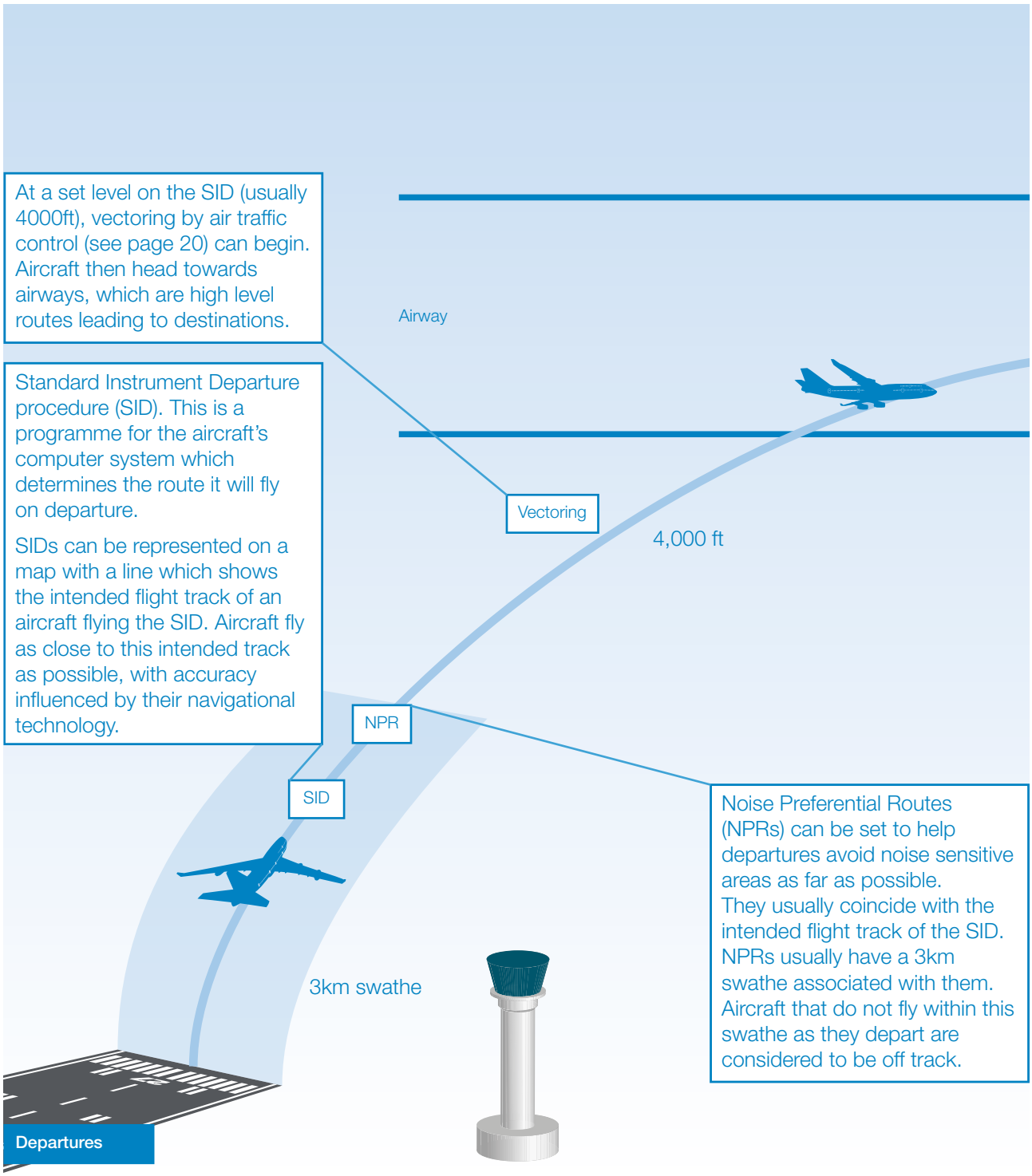
3.1 Airspace is the volume of space above ground level and extends as far as aircraft can fly. Just as the UK's roads are used by pedestrians, cyclists, cars and other motorised vehicles, so our skies are occupied with aircraft of many kinds, both military and civilian. As with roads, airspace has to be managed so that those using it can do so safely and efficiently. To achieve this management, there are rules on who can use airspace and how.

3.2 In the UK, airspace is either considered to be "controlled" or "uncontrolled". In controlled airspace, there is a system of structured routes and aircraft are managed by air traffic control services ('ATCs'). They oversee the airspace and monitor the separation of aircraft in order to keep them safe as they head towards their destinations. Most commercial aircraft operate in controlled airspace. By contrast, a large volume of airspace in the UK is uncontrolled and this is where the pilot of the aircraft does not receive a service from the ground but has to "see and avoid" other aircraft and also navigate independently. Most light aircraft and some military and commercial aircraft operate in this airspace. All arrangements for UK airspace follow internationally agreed safety and operational practices and requirements.

### Airspace Routes

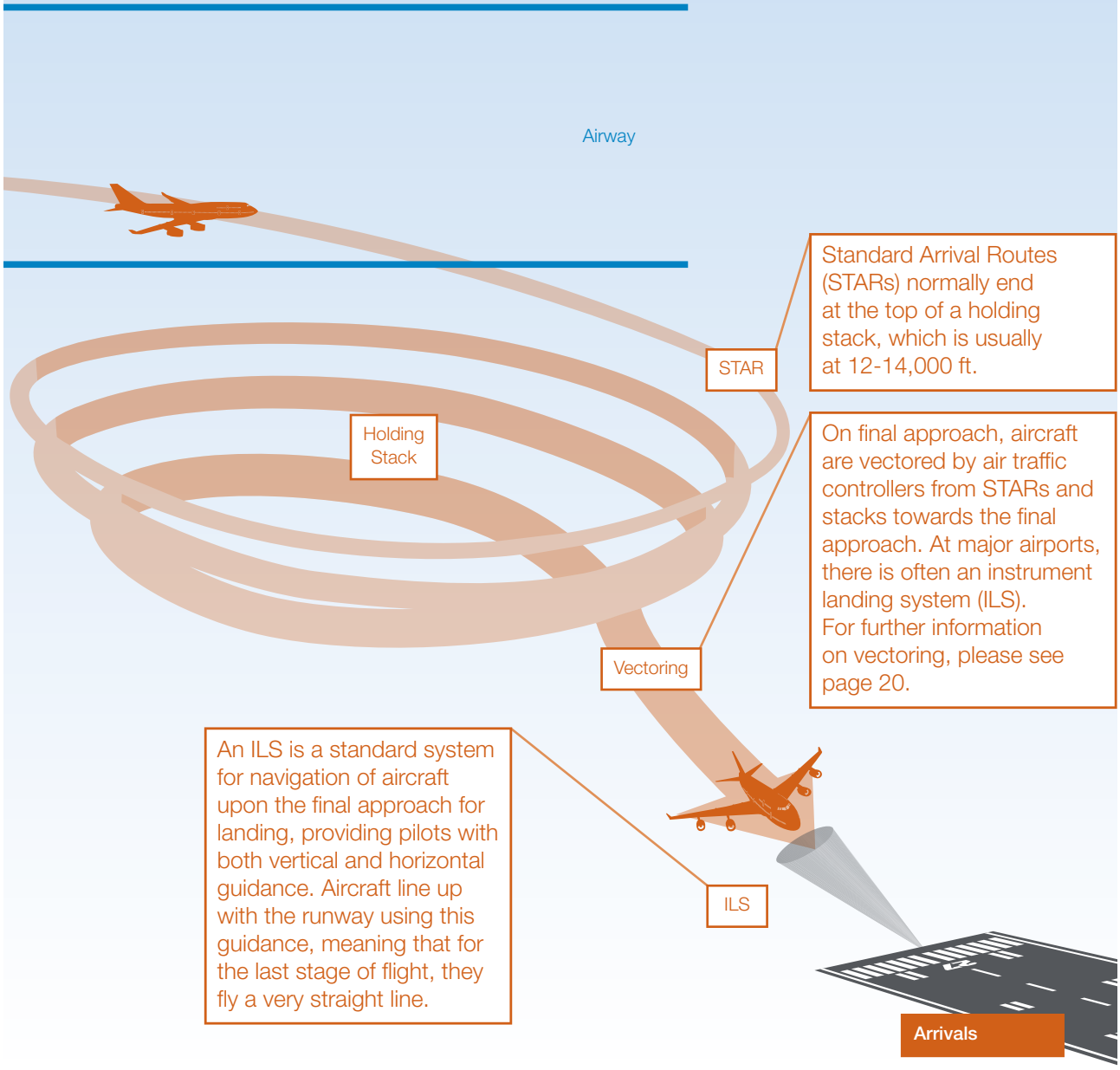
3.3 Within controlled airspace, commercial aircraft fly within permanent structures, as set out in the UK's Aeronautical Information Publication (AIP). These structures include departure and arrival routes as illustrated in the diagram on pages 17/18. After take-off from the runway, aircraft will typically follow a pre-defined route up to a given altitude above ground level (usually 4,000 feet). This route is determined by the Standard Instrument Departure procedure (SID), which is a programme on the aircraft's computer system. Next, the aircraft will be directed (or 'vectored', see diagram on page 18) by air traffic controllers until they reach an airway. Airways are high-altitude routes which aircraft follow to their eventual destination.

3.4 During landing, aircraft leave their airway and enter a Standard Arrival Route (STAR). They may be 'held' in a stack until it is safe to bring them in for landing. Once it is safe, the aircraft are vectored with the assistance of air traffic control to safely approach the runway. For safety reasons, this closing stage requires aircraft to fly in a very straight line on their final approach. An Instrumental Landing System ('ILS'), is often used to assist with this. It helps pilots to line up with the runway by providing vertical and horizontal guidance, even when they cannot physically see the runway.




## Airspace structures

Airways are corridors of airspace where aircraft fly at higher altitudes (usually 7,000 feet and above) on their way to a destination. These corridors often take the most efficient routes. When aircraft are flying in airways, they are always separated by 1,000 feet vertically and 7-10 NM horizontally.



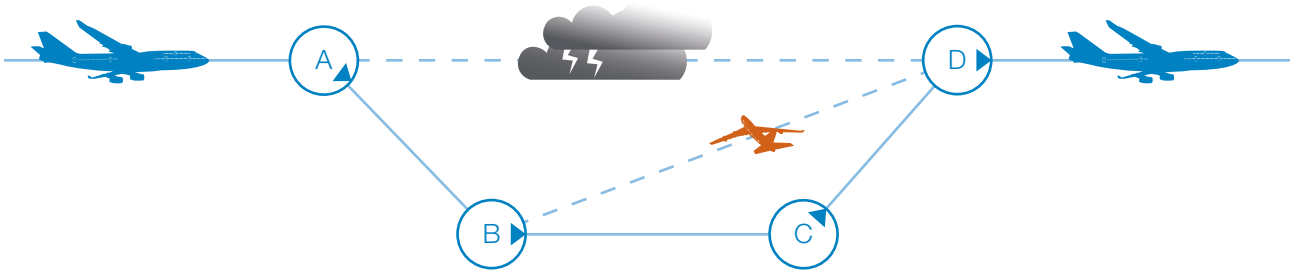

Standard Arrival Routes (STARs) normally end at the top of a holding stack, which is usually at 12-14,000 ft.

On final approach, aircraft are vectored by air traffic controllers from STARs and stacks towards the final approach. At major airports, there is often an instrument landing system (ILS).
For further information on vectoring, please see page 20.

An ILS is a standard system for navigation of aircraft upon the final approach for landing, providing pilots with both vertical and horizontal guidance. Aircraft line up with the runway using this guidance, meaning that for the last stage of flight, they fly a very straight line.

Vectoring is the practice of a controller giving a pilot a “heading”. A heading is a direction to travel towards, as a step on the way to a destination.

Controllers give headings depending on a number of factors such as the position of other aircraft, weather, etc.




In this scenario, the aircraft is unable to fly to most direct route due to bad weather. The controller gives a heading A.

At point B, the aircraft could turn towards its destination, avoiding the bad weather. But it cannot fly the most direct route (blue dotted line) because it would come too close to other aircraft (orange aircraft) in the airspace, so the controller gives it a heading towards point C.

At point D, the controller gives a new heading which allows the aircraft to continue to its destination.

Standard procedures

To some extent, the headings given depend on circumstances in the moment i.e. they are tactical. Air Navigation Service Providers (ANSPs) also have standard procedures, which may influence the headings a controller may give. ANSP standard procedures are published in:

- MATS Part I – standard to all ANSPs and published by the CAA. It is not location specific, and provides a general set of rules on vectoring for air traffic controllers.
- MATS part 2 – is an internal document, specific to an individual Air Navigation Service Provider (e.g. NATS). It gives location specific instructions.

## Vectoring

## Airspace Modernisation

3.5 Airspace is an essential, but largely invisible, part of the UK's transport network. We depend upon it in order for our aviation sector to operate safely and make its crucial contribution to economic growth. Yet it is in need of modernisation, since most of the core infrastructure and procedures supporting landing and take-off, for example the use of ground based beacons, and the location of numerous flightpaths and holding stacks have remained largely unchanged in the UK for over 40 years. This prevents us from realising the full potential of modern satellite navigation technology which is fitted to today's aircraft.

3.6 In the absence of airspace modernisation, operational delays and cancellations are expected to increase as our skies get busier. Analysis commissioned by the DfT and carried out by NATS (the UK's main provider of air traffic control services) predicts total delays from air traffic management to rise from 78,000 minutes[6] in 2015 to 4.4 million minutes by 2030 and approximately 8,000 cancelled flights.[7] This delay is roughly equivalent to 3,100 days or 8.4 years lost to flight delays each year.

3.7 In addition, by 2030, the cumulative effect of several years of consistent delays would be expected to lead to almost 25,000 services that would otherwise have been scheduled no longer being run.[8]

3.8 Clearly, our airspace arrangements are expected to constrain the growth of aviation and the benefits it could bring unless they are modernised.

3.9 The diagram on pages 22 & 23 outlines how the benefits of airspace modernisation will be realised in practice. The combination of improved, satellite-based aircraft tracking will allow ATCs to exercise much higher levels of precision over the landing and take-off of aircraft, avoiding unnecessary taxiing on runways and eliminating the waste of both time and fuel. Through this, the modernisation of airspace initiative will help secure:

- Reduced delays through better planning of how airspace is used in real time;
- Cuts to per flight aviation emissions and savings on fuel through more direct routings and more fuel-efficient flying;
- Reduced noise from aircraft overflying communities, with less 'holding' at lower altitudes;
- Further enhancements to aviation safety.

3.10 The Government recognises that if we want our aviation industry and UK Plc to remain competitive and successful, we must upgrade our airspace structure.

6 Delays are flight minutes

7 See 'Upgrading UK Airspace: Strategic Rationale' p.59

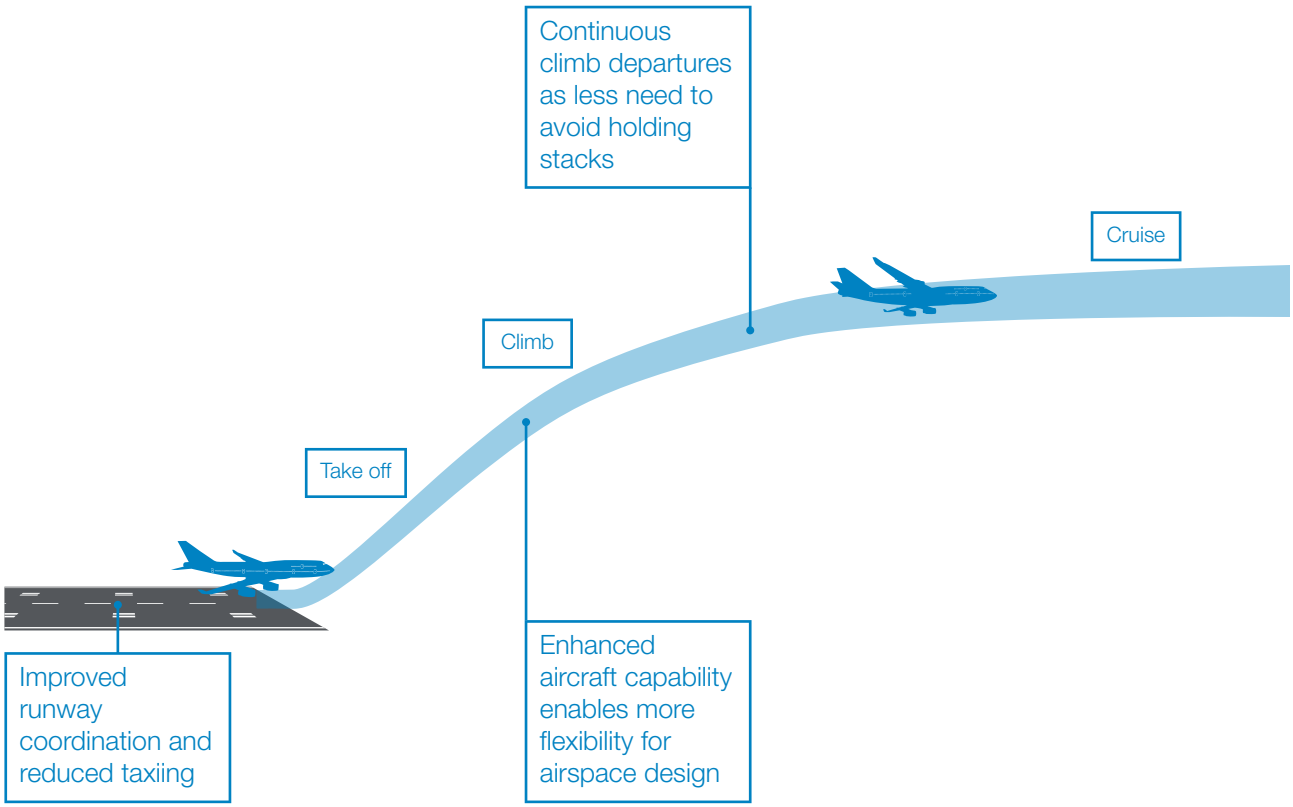
8 See 'Upgrading UK Airspace: Strategic Rationale'

Airspace modernisation is a programme designed to update our airspace and air traffic management systems, some of which have been in place for around 50 years. This will bring our airspace in line with international best practice, and will enable us to improve performance and accommodate the forecasted growth in aircraft movements expected by 2030. Overall, airspace modernisation will mean enhanced safety, fewer delays, improved resilience to disruption, better passenger experience, lower costs and reduced environmental impact through less fuel burn and less noise per flight. The programme involves airlines, airports, air navigation service providers and many other aviation stakeholders working together on projects which bring in the use of modern technologies and procedures. Examples of these projects are illustrated below and on the following page.

Airspace Modernisation will see improved communication between Air Traffic Controllers ('ATCs') and aircraft. This will result in less need for controller intervention and will allow for better resilience in air operations, meaning that when there are difficult conditions (such as bad weather, or a problem with the runway which needs to be dealt with), airports will be able to recover more quickly.

Starting at the airport itself, better tracking technology will reduce the need for taxiing on the runway and avoid wasted runway slots.

Departures will benefit because aircraft will be able to follow more precise departure routes, making it easier to optimise routes and avoid flying over people.

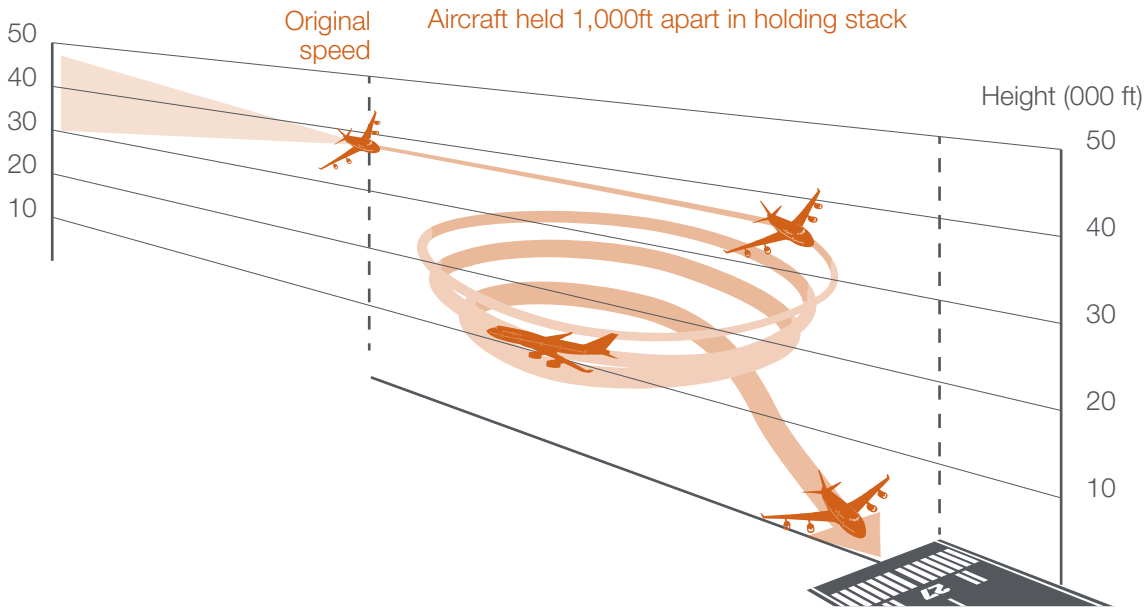



Reduced use of holding stacks will create more airspace which will enable aircraft to adopt a smoother and more continuous climb profile, thereby reducing jarring engine noise.

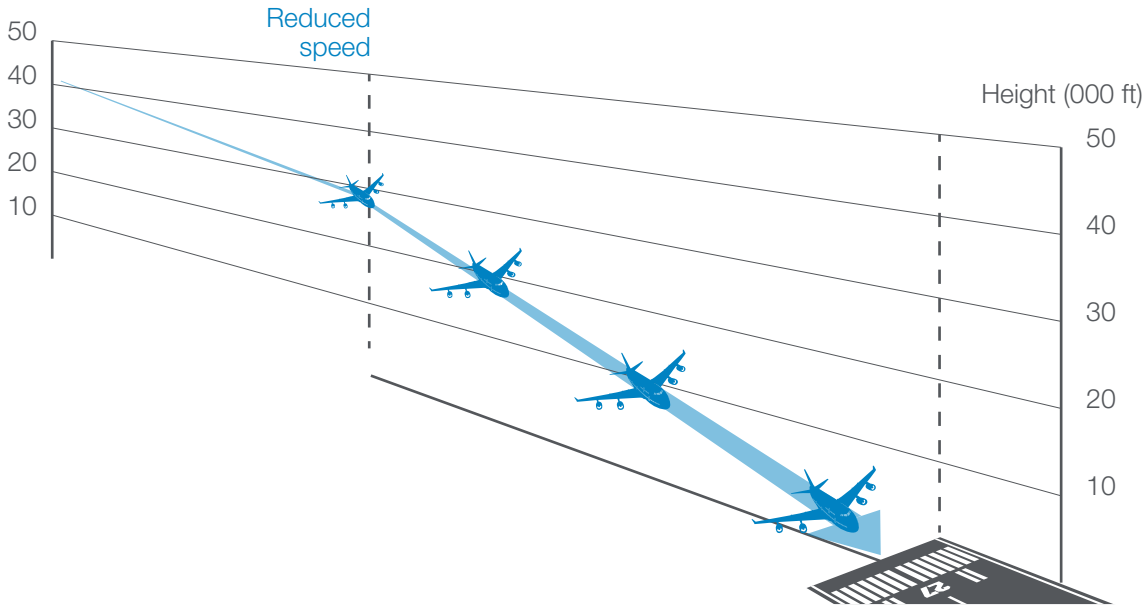
## Airspace Modernisation

The use of holding stacks will be reduced because of improved arrival and landing arrangements. On approach to land, ATCs have traditionally only been able to see aircraft when they come onto their radar. New technology will allow aircraft to be constantly tracked from their original departure point and directed to adjust their speed so as to make the best possible use of airspace. This will enhance efficiency, including by greatly reducing the need to delay landing by keeping aircraft in holding stacks when the runway is busy.

Now




Future




For example, an aircraft might be instructed to slow down in its cruise and descent phases to absorb a delay, staying higher for longer and only descending when the airport is ready. Once cleared for landing, systemisation and advanced navigational capability will also will mean that ATCs are able to guide aircraft to land at a controlled rate, using continuous descent, allowing for maximum use of runway capacity.

### Challenges arising from airspace use and modernisation

3.11 Advances in aircraft technology have allowed for great improvements in the environmental performance of aircraft frame design and engines, in terms of noise and carbon emissions. This has had a substantial effect on the noise experienced on the ground. For example new generation aircraft such as the Airbus A350 and Boeing 737-MAX have a noise footprint that is typically 50% smaller on departure and 30% on arrival than the aircraft they are replacing. Overall, aircraft noise is expected to continue to fall in the future compared with today's levels. This trend has the potential to outweigh the noise from increases in traffic, for example as a result of the proposed airport expansion at Heathrow Airport.

3.12 However, even as aircraft get quieter, there are challenges that new aviation technology will bring. One of the major components of airspace modernisation is Performance-Based Navigation (PBN) which allows aircraft to fly far more accurately than with previous navigation techniques (see Diagram on page 41). While this has obvious benefits in terms of noise, as populated areas can be better avoided, it also pose challenges – particularly the effects for those directly underneath flight paths experiencing a greater concentration of aircraft. Reaction to recent airspace changes has shown that the impacts of these changes can be especially noticeable in areas further away from airports where, although individual aircraft are comparatively quiet, there are more of them than was previously the case when traffic was more dispersed.

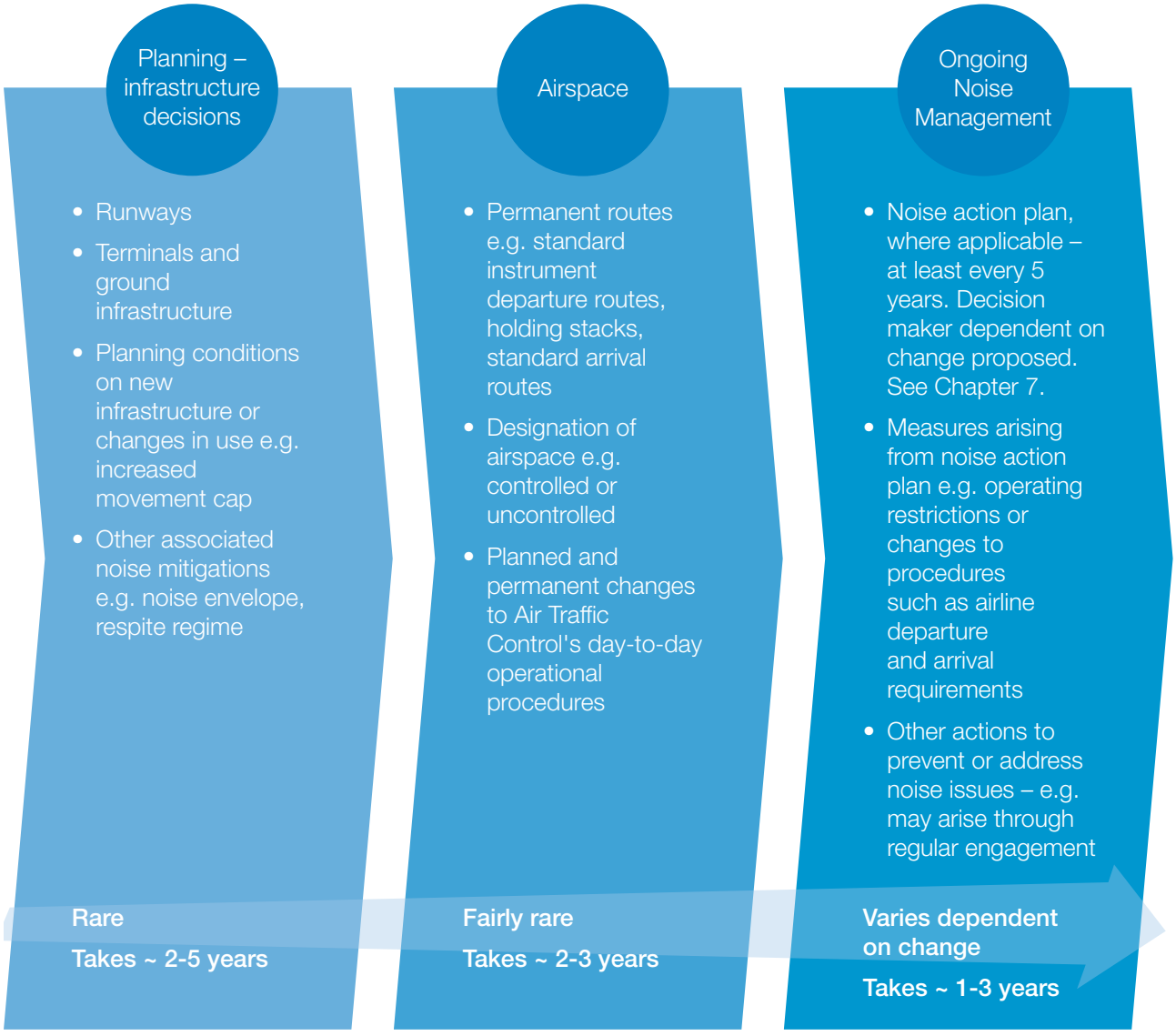
3.13 The Government recognises the work already being done by the aviation sector to manage its environmental impacts responsibly and to address the impacts aircraft noise can have on communities. For example: Sustainable Aviation is a unique coalition from across the sector who work together on initiatives to improve environmental performance; and recent airspace changes at Stansted Airport were developed with local communities involved from the outset – this has seen the benefits available from PBN harnessed effectively and as a result there has been a dramatic reduction in the number of people being overflown. However, there are also examples of changes where noise and community interests should have been better considered. The Government wants to be clear that it expects industry to be primarily responsible for seeking improvements in its noise performance and for ongoing engagement with communities.

3.14 Industry should, as far as is practical, proactively seek to avoid, minimise and mitigate adverse noise impacts, building on existing best practice. This is consistent with the overarching policy principle that the benefits of noise reduction brought about by new technology should be shared between industry and those affected by aircraft noise. This means that communities should benefit from noise reductions, while industry should have space to grow sustainably and serve passenger demand.

3.15 Alongside benefits to the UK associated with airspace modernisation outlined above, there are challenges; change in itself can be difficult, and while many communities will have reduced noise in the future, it is inevitable that some will remain for others. Even with the potential gains arising from new technology and airspace modernisation fully realised, we therefore recognise that there will be communities close to airports and flight paths who will continue to be directly impacted by noise emissions from aircraft. The aviation industry has an obligation to manage these impacts effectively, and make sure that impacts are properly considered when airspace changes are made. The Government has a role in setting out a suitable framework to enable this. The proposals in this consultation document are designed to create a better framework in which noise impacts can be considered and acted upon appropriately.

## Decisions on Airspace and Noise Management

3.16 There are many decisions in the lifetime of an airport which affect how airspace is used and how noise is managed. These range from the initial stages of airport design or expansion, through to their continuous operation once up-and-running. The most important consideration in all decisions on airspace use is always safety. Providing the use of airspace is safe, decision makers will also consider a range of other factors, including: efficiency; the needs of aircraft owners and operators; the interests of other people such as communities on the ground; protecting the environment, such as by reducing carbon and noise emissions; the interests of the military; and national security.




**Decision timeline**

3.17 It is important that there is clarity for communities about when they can influence decisions which will affect them. The diagram on page 25 shows a basic timeline of when decisions affecting airspace and noise management are made: during the planning process; during airspace change processes; and in ongoing noise management, informed by local engagement. This timeline applies for any airport but it is demonstrated directly in the timeline which the Government has set out for the proposed development of a new runway at Heathrow Airport.[9]

**Infrastructure**

3.18 Effective planning sets the parameters for subsequent decisions by ensuring that the environmental impacts which could result from new or increased aviation capacity, or other airport development, are properly accounted for at the outset. The decision to grant planning permission includes consideration of what the maximum acceptable environmental impact should be, taking into account the full range of planning factors and the different measures available to manage noise under the Balanced Approach (See Chapter 7 on Ongoing Noise Management). The planning process also identifies and addresses problems by preventing unacceptable impacts from occurring, and by minimising other adverse impacts through effective mitigation. This is therefore the best opportunity to consider whether operating restrictions are required to support development of new aviation capacity. Operating restrictions may include a cap on movements, night flight restrictions or a noise envelope, which can provide certainty to communities about the maximum noise that will be experienced.

3.19 If a planning decision means that new airspace arrangements will be needed (for example when there is a new runway or amendments to an existing one), the planning process can serve as a precursor to the airspace change process. Final decisions on the structure of the UK's airspace and detailed route design following new planning decisions need to go through the CAA's Airspace Change Process to ensure that all factors are properly balanced. However, the planning process can consider indicative routes and their potential impacts. Through planning, informed by engagement with local communities, the potential routes are developed to provide a picture of likely noise impacts. It is therefore through the planning and airspace change processes that aircraft routes needed for the operation of new infrastructure are developed from indicative to final, with further detail being established at each stage.

**Airspace**

3.20 Airspace changes may, of course, be needed outside of changes to infrastructure. All changes to the formal airspace structures for civil aviation are overseen by the CAA, as the UK's independent regulator of airspace. The framework provided by Government requires that change proposals must be safe and must balance the needs of those affected, including communities on the ground. The process is informed by formal consultation. The CAA is currently reviewing its process for airspace change and it is expected to bring forward proposals on new guidance later this year[10]. Later in this consultation document, we bring forward proposals on how the full range of changes to airspace use should be handled, such as those brought about when Air Navigation Service Providers (ANSPs) amend their operational procedures.

9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562915/heathrow-airport-expansion-summary-document.pdf

10 CAA response following consultation on proposals for a revised airspace change process 21st October 2016

**Ongoing Noise Management**

3.21 Outside of planning and airspace changes, airports, working with airlines and air traffic control providers should engage in continuous activity to review and improve their noise performance. The current requirement for larger airports to produce a noise action plan at least every five years feeds into this. Such plans can take into account growth or changes in activity that have occurred at an airport since planning and airspace arrangements were put in place. There are also examples of airports working with their communities to solve specific problems outside of their regular noise action planning. Through this ongoing noise management, industry responds to changes that could lead to noise problems and identifies ways to share the benefits that the growth of aviation and improvements in technology bring.

## The Decision Making System

3.22 In addition to clarity on when and how decisions affecting airspace use and noise take place, we recognise that there must be a clear picture of who is responsible for those decisions and why. The foundations of the decision making system that we are aiming to create are:

- That the level at which decisions are made should strike an appropriate balance between the different factors that must be considered and between local and national needs; and
- That for decisions to be effective, they must be informed by engagement at the local level, and we expect decisions to be taken locally or informed by local circumstances wherever possible.

3.23 Throughout this consultation document, we make proposals which aim to put in place a clear system for decision making, based on these principles, as well as the need for appropriate processes for each type of decision.

# 4. Changes to Airspace

4.1 There is a range of decisions which are taken about airspace. Other events, such as changes in demand, can also affect its use. It is important that there are the right levels of scrutiny and transparency in place in relation to these if we are to be able to balance the needs of passengers, industry and communities on the ground. For communities, it is particularly important that changes to airspace which create changes to noise impacts are properly communicated and that decisions are taken with proper oversight. At the moment, there is not a clear set of standards which provide for suitable levels of scrutiny and engagement for the different types of changes which can occur in airspace use.

4.2 The Government recognises that when any change occurs to the noise levels that a community experiences, it is not necessarily important to that community how the change came about. Airspace is hugely complex and there are many layers of structures and procedures. However, the Government is clear that there should be suitable and proportionate levels of local engagement and transparency for the various types of changes that come about.

4.3 To help set suitable policies in these areas, we have described three tiers of airspace-related changes and the processes we would expect to be associated with them.

- **Tier 1:** Changes to the permanent structure of UK airspace – these changes are already covered by the CAA's formal airspace change process, which is currently undergoing significant improvement. The process would be further strengthened by the proposals in this consultation, such as the introduction of ICCAN, and guidance on how to assess significant noise impacts.
- **Tier 2:** Planned and permanent changes to ATC's day-to-day operational procedures (e.g. vectoring practices) – these procedural changes can have a very similar effect to changes to the permanent airspace structure because they may result in planned and permanent redistributions of aircraft traffic (PPR). Our objective is for there to be a suitable and proportionate change process in place for these changes and we set out detailed proposals on these kinds of changes, below.
- **Tier 3:** Changes to operations – for example significant shifts in the distribution of flights on particular routes. These may not be planned decisions to change the use of airspace, but shifts over time and in response to changes in demand. However, recognising both the need for the public to be informed and the need to avoid excessive bureaucracy, we would expect airport and air navigation service providers to engage and act transparently with regards to these kinds of changes.

4.4 This chapter deals with who the decision makers should be, and how suitable processes should be established in respect of each of these three tiers of change.

## Current Situation

### Tier 1 airspace changes

4.5 The CAA determines the process which must be undertaken by sponsors of an airspace change proposal. The Government influences the contents of that process via its Directions to the CAA on air navigation and its guidance to them on how to take into account their environmental objectives. The process includes how sponsors must engage with all interested and impacted parties, and details how the CAA makes its decisions to approve or reject proposals within the legal and policy framework set by Government, and in accordance with ICAO and EASA requirements.

4.6 The Secretary of State (SofS) currently has role in tier 1 airspace changes, approving any airspace change proposal which is anticipated to have significant detrimental effect on the environment. This limits involvement of the SofS to a very specific circumstance, and does not reflect the full range of central Government's strategic national interests in airspace change. In addition, the trigger for SofS's involvement in an airspace change is not clear, as there is no guidance on what would be considered a significant detrimental effect on the environment.

### Tier 2 airspace changes

4.7 Air traffic controllers give instructions to pilots on the exact route they should take. This practice is called "vectoring" and it usually happens near the beginning and towards the end of a flight, to get aircraft going in the right direction, or to bring them in to land. The practice is illustrated in more detail in the diagram on page 18.

4.8 Vectoring patterns are to some extent random, as they depend on the specific circumstances on the day, for example the weather, the time of day, the volume and location of air traffic, and the individual decisions of air traffic controllers. However, each air navigation service provider (ANSP) has a locally specific manual (MATS Pt II) which underpins how its air traffic controllers manage aircraft, and in turn influences their vectoring decisions. This manual heavily influences the consistent patterns of aircraft traffic that are created by vectoring.

4.9 Recently, several communities have raised concerns as to why changes to the formal airspace structure are subject to the CAA's airspace change process, and need to be consulted on, whereas changes to consistent vectoring practices can be implemented without any need to consult. This can be the case even when the noise impacts may be similar.

### Tier 3 airspace changes

4.10 There are no formal arrangements currently in place for tier three airspace changes within the Government framework. We are aware of both good practice in this area, and examples of where tier 3 changes have caused issues for communities in terms of the noise they experience.

## Analysis

### Role of the CAA in airspace change

4.11 The CAA is the UK's independent regulator of airspace, and the Government believes that it should continue to be so. The CAA is the only body with the expertise to effectively balance all the factors which must be considered in regulating airspace. These factors are set out in detail in section 70 of the Transport Act 2000 (see Annex A), which gives the CAA its statutory duty in relation to its air navigation functions. This

requires the CAA to give priority to safety and then to balance the needs of everyone affected by airspace change, including a duty to take into account the guidance on environmental objectives we provide.

4.12 We recognise that in recent years, some groups have expressed their mistrust of the CAA and around its focus on environmental impacts; we also recognise the CAA's work to address those issues. Our aim is to better support the CAA to put in place processes and rules which are clear, robust and proportionate, and which allow for balanced decisions in the regulation of airspace.

4.13 With this in mind, we see the CAA as having a role within airspace changes falling within each of the tiers outlined above. Our draft guidance provides detail on how we expect these roles to be carried out to ensure transparency throughout, for instance through the publication of an environmental statement with their decisions, to help communities understand how different factors have been weighed against one another.

**Tier 1 airspace change**

4.14 We acknowledge the need for an updated role for the SofS in tier 1 airspace changes. Our overall objective is to develop a strategic role for the SofS, consistent with our vision for the decision making system as described on page 27. To provide certainty for industry and minimise the costs of beneficial change, we also see it as a priority to clarify the circumstances under which the SofS would be involved in airspace change and how the decision would be taken.

4.15 The role of the SofS in tier 1 airspace changes should be:

- Proportionate;
- Transparent; and
- Defined

4.16 The SofS's role should also be reserved for cases that are considered to be of strategic national importance. This is because the CAA is best placed to make decisions on airspace changes in most cases. It has the required expertise to analyse and balance the impacts of changes on safety, operations and the environment, and to balance the needs of all those affected. Furthermore, we are strengthening our guidance to the CAA, including on the Government's environmental priorities, which must be factored into decision making. This will limit where Government intervention adds value over and above the CAA fulfilling its role to matters where the national interest comes into play.

**Tier 2 airspace changes**

4.17 The Government has considered when local communities should be engaged with about changes to vectoring practices which may affect the level of noise they hear, and what kind of change process should apply. *We accept that the current situation does not provide an appropriate level of transparency.*

4.18 We also recognise that vectoring by controllers is essential for the operation of the aviation sector, and will need to continue unless and until systemisation can offer viable alternatives. It is expected that as airspace modernisation progresses, there will be greater systemisation, and we can expect the use of vectoring practices to decline. For example, trials of new navigational technology (PBN) have shown that intervention by controllers at the early stages of the departure flight path are much reduced, possibly by as much as 90%. So there would be a gradual reduction in the overall amount of

vectoring as modern routes are implemented on departures, and the potential realised for much less direct controller intervention on arrivals in the future.

4.19 Overall, we have concluded that a proportionate change process for when ANSPs amend their procedures would help to:

- Ensure that local communities are better informed by ANSPs of their current and future vectoring practices, thereby increasing transparency in how vectoring areas are being used;
- Increase the level of oversight undertaken by the CAA of changes to air traffic procedures that redistribute aircraft tracks and noise impact;
- Ensure that the needs of communities affected by aircraft noise are properly balanced with the needs of industry and passengers in decisions on PPRs; and
- Remove the anomaly in engagement levels caused by technical differences between different types of changes.

**Tier 3 airspace changes**

4.20 With regard to these kinds of changes, the Government believes that industry should take care to be more aware of the impacts associated with these changes and should take them into due consideration in communicating with its stakeholders, including local communities. There are structures in place which can help with this, such as Airport Consultative Committees and other relevant groups used to engage and inform their communities as appropriate.

4.21 The Government would not wish to unintentionally constrain development of new markets or reduce efficiency unacceptably by over-regulating tier 3 airspace changes. Rather, the approach here must be proportionate, taking into account the impacts of the changes and the local circumstances. For example, it can cause more disturbance to local communities to reverse a change in pattern which has happened slowly over time and which people are accustomed to. This is because often the most severe reactions to noise occur when the experience of it changes. As part of their ongoing noise management approach, airports should give due consideration to tier 3 airspace changes and whether any mitigations would be appropriate. Any such mitigations must be carefully thought through, and discussed with local communities, to avoid creating additional unintended consequences.

## Proposals

**Tier 1 airspace changes**

4.22 Our proposal is to create a new call-in role for the SofS, and to ensure that the criteria to trigger this is set at a level which means that it would be only for airspace changes deemed to be of national importance. This would create the right function for Government, retaining the SofS's important role in determining the most significant proposals while minimising Government intervention and making sure that it is clear when and how that involvement could take place. As in the planning system, there would be no obligation on the SofS to agree to call-in a specific airspace change application, rather, it would be at his or her discretion.

4.23 It is proposed that the only environmental trigger would be the likely noise impact on local communities. This is because noise is a key priority in airspace change proposals below 4,000 feet above mean sea level (amsl) and it remains a substantial factor below 7,000 feet amsl. Environmental factors other than noise may be important to an airspace proposal, but these would only be a factor in a call-in decision if their impact was

expected to be as significant as envisaged in the criteria proposed in paragraph 4.24 below.

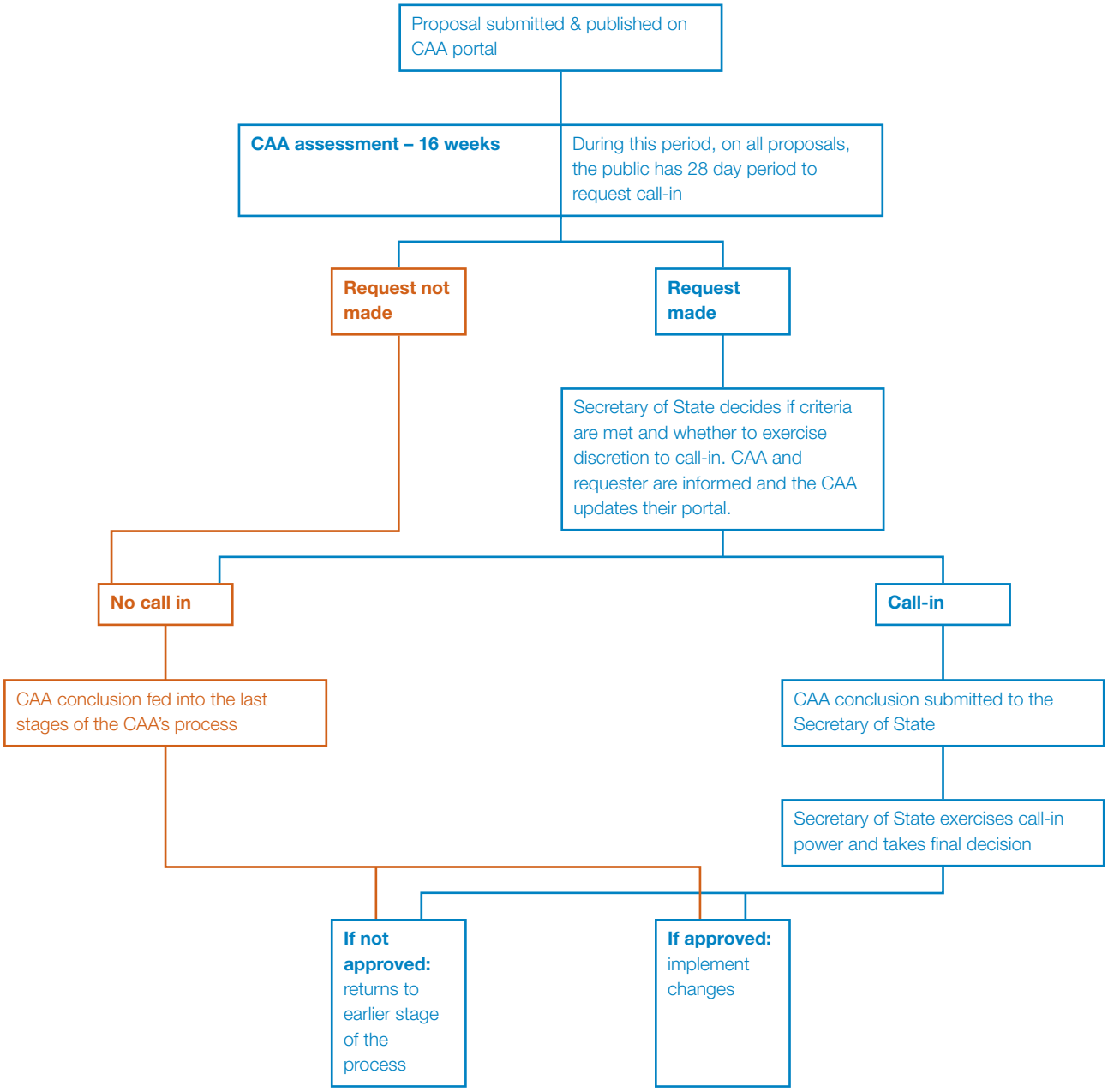
4.24 Any party can ask for the SofS to call-in a proposal. If an airspace change proposal met the call-in criteria, the SofS will have a discretion whether or not to call it in. The proposed criteria for the SofS to call-in an airspace change proposal are that:

- It is considered to be of strategic national importance and was not linked to a planning decision which had already been determined by the SofS; or
- The proposal could have a significant impact (positive or negative) on UK economic growth; or
- It could lead to a change in noise distribution resulting in a 10,000 net increase in the number of people subjected to a noise level of at least 54 dB LAeq 16hr[11] as well as having an identified adverse impact on health and quality of life.[12]

11 100% mode LAeq 16h noise exposure.

12 The assessment of the numbers of people affected and the associated adverse impacts on health and quality of life of the airspace change proposal should be carried out by the sponsor in accordance with the requirements set out in this Guidance.

Please note that this is the fifth stage in the CAA's new Airspace Change Process. There are stages prior to this which govern the development of a proposal in the run up to a CAA assessment and decision.




## Proposed tier 1 airspace change process indicating the proposed role of the Secretary of State

4.25 The process we are proposing for the SofS call-in function in tier 1 airspace change is illustrated in the diagram above. Any party could ask for the SofS to call-in a decision in the first 28 days after the proposal has been submitted to the CAA. If a request were made during that period, the SofS would make a decision as to whether the criteria for call-in were met and whether he/she agreed to the call-in request on the basis of the information supplied by the proposer. This decision would be communicated to both the CAA and the requestor before the CAA had finished its own assessment.

4.26 If the proposal was not called in, the CAA would continue its process to conclusion and its decision would be final. For a called-in proposal, the CAA would be expected to carry out a full analysis and provide an expert opinion, but the final decision would be left to the SofS to make. To help this process, it is expected that the SofS would ask ICCAN (please see Chapter 6 for more detail) for its help with the consideration of any noise aspects of the proposal. The sponsor of the proposal would also have an opportunity to make their views known to the SofS on why they think the airspace change should be approved. More information on the proposed process can be found in the draft guidance published alongside this consultation document.

4.27 The call-in role would need to be exercised within the context of any relevant planning decision already agreed. In such cases, the airspace change process will need to consider whether the planning consent included references to airspace matters. If it did, the assumption is that the airspace change process should not override the original planning consent, but would seek to work within the framework granted by the planning consent. For example, in developing its application for a Development Consent Order (DCO) for its proposed new runway, Heathrow Airport Limited is expected to use indicative airspace arrangements, which will be considered and decided upon by the SofS. Any subsequent consideration of the airspace arrangements for a new runway by the SofS would not revisit what was agreed at the DCO stage, but would examine the further detail that had been developed in light of the planning agreement.

4.28 It is recognised that the call-in option has some drawbacks, such as:

- adding costs and delay to some airspace change processes; and
- creating uncertainty as a result of the possibility that the SofS may in some cases balance competing factors differently from the CAA in the national interest.

4.29 We acknowledge that delay and uncertainty are significant disadvantages for change sponsors and communities alike, and we would not want to delay the benefits of a change, including noise reductions. It is considered that some of these drawbacks can be mitigated within the process for the call-in function whilst ensuring that the key advantage of retaining a direct role for the SofS in the airspace change process is retained.

4.30 Overall, a call-in would continue to provide a strategic role for the SofS and democratic accountability in the airspace change process. It would enable the SofS to determine whether an airspace change proposal should be approved or not if the substance of that application is considered particularly important i.e. if it met the criteria for call-in.

**Tier 2 airspace changes**

4.31 The Government considers that it is right for ANSPs to assess whether a proposal to amend MATS Pt II could amend vectoring practices in such a way as to lead to a permanent and planned redistribution of aircraft (PPR). We therefore propose that:

- When changes are likely to cause a PPR and create a certain level of noise impact below 7000 feet amsl, ANSPs should engage with affected communities as appropriate on the proposal;
- The CAA should asses the proposal in terms of the factors set out at s70 of the Transport Act 2000, and in terms of sufficient engagement activity having been conducted. The CAA should give its approval for the procedural change before it is implemented; and

- The CAA should establish a policy on an appropriate change process for tier 2 airspace changes in line with their duties under the Transport Act 2000, and to be consistent with better regulation principles and practices. This will include the level of engagement which is considered suitable, including where consultation is appropriate.

4.32 It is recognised that the suggested approach needs to be proportionate. Most changes to air traffic control procedures do not markedly affect the distribution or impact of noise and a balance does need to be made to ensure that the proposed increase in regulatory requirements does not have unintended consequences, particularly for smaller airports and their ANSPs.

4.33 We therefore propose to put in place a number of exclusions to reflect these concerns, including when there is an overriding need to maintain air safety, purely short-term airspace requirements, or military air activities. In addition, in order to provide clarity for ANSPs, we propose to provide guidance which will assist ANSPs and the CAA in determining when a PPR may create an impact that would mean it should be subject to consultation/engagement. More detail, including on the proposed exclusions, can be found in the draft guidance to ANSPs and CAA published alongside this consultation document.

### Tier 3 airspace changes

4.34 The Government proposes that the CAA should put in place a suitable policy for industry to follow in respect of tier 3 airspace changes. This should include setting out expectations on transparency and engagement with communities, including on potential ways to mitigate adverse impacts. We wish to see the CAA take a light-touch approach here, working in conjunction with the new Independent Commission on Civil Aviation Noise to disseminate best practice and improve transparency where necessary. This is included in the draft guidance published alongside the consultation.

### Summary

| Tier | Decision Makers | Process |
|---|---|---|
| 1 | CAA in the majority of cases. | Change process established by the CAA under Government's framework. |
| | SofS can call-in proposals if they meet the criteria. | Call-in process established by the Government. |
| 2 | Where there is a PPR, CAA. | Change process established by the CAA under Government's framework. |
| 3 | Airports, where decisions are taken. | Policy on appropriate engagement established by the CAA, under Government's framework and in conjunction with ICCAN. |

**Proposed Airspace Change Processes**

## Compensation in Airspace Change

4.35 Industry should always seek the best noise outcomes possible in airspace change, taking into account the full range of factors which must be considered. Our policies on noise assessment, set out in the next Chapter are designed to assist with this. But there will sometimes be communities which are adversely impacted by noise as a result of airspace changes. As a fall-back, therefore, it is right that industry can seek to mitigate its impacts through compensation. Our priority is that the right balance can be struck between the economic and environmental effects of airspace change.

### Current Situation

4.36 The Government and airports have received many complaints regarding aviation noise in recent years. These have sometimes highlighted, amongst other issues, that residents do not feel they are being adequately compensated for changes to noise. A particular point raised is the discrepancy between the treatment of noise impacts associated with use of new airport infrastructure, where compensation is payable, and noise from airspace changes where no statutory compensation rights or government policy exists.

4.37 Legal obligations for compensating noise impacts for airport developments of new runways or airport aprons (ground movement areas) are set out in the Land Compensation Act 1973 and policy on compensation metrics are found in the current Aviation Policy Framework (see Annex D). The APF includes an expectation of a minimum of financial assistance towards insulation to residential properties where a development leads to an increase in noise of 3dB or more which leaves people exposed to levels of noise of 63dB LAeq16h or more, or assistance with the costs of moving if the property is exposed to levels of 69dB LAeq16h or more. As an illustration a 3dB increase in average continuous noise (the LAeq metric) is equivalent to a doubling of aircraft movements of the same noise level or a doubling of the average noise energy per event or some intermediate changes in each.

### Analysis

4.38 In general, airports can and do go beyond minimum standards and it is right that decisions on what is proportionate and appropriate are made as part of the planning and airspace change processes. We would like airports and airspace change sponsors to look at examples at other airports to consider how their own compensation rules could be enhanced when changes are proposed which affect noise impacts.

4.39 The Government wishes to ensure that the right balance is struck between fair compensation for those affected by aviation noise and proportionate costs on the aviation sector. In turn, this could help facilitate beneficial change.

4.40 Our proposals in Chapter 5 include a requirement for airspace change promoters to produce an options analysis. This would help with consideration of any compensation offered; the expected financial benefits of any airspace change will inform whether and at what levels compensation may be realistic. In particular, clarity that compensation should apply to airspace change may help when options for multiple routes are considered (see Chapter 5). This is because options analysis may show that the fairest way to minimise the impacts of noise would be to affect fewer people by concentrating air traffic, while focussing compensation on those affected.

#### Noise Levy

4.41 The Airports Commission (AC) stated that ‘the Government should introduce a noise charge or levy at major UK airports to ensure that airport users pay more to compensate local communities’.

4.42 Since the AC’s Final Report, we have carried out further work on the noise levy recommendation. We have concluded that a noise levy applied to all major airports regardless of whether they are expanding would not be proportionate, particularly because:

- A national noise levy would count as a tax, and its application only at one or selected airports would have likely State Aid implications;

- Many UK airports already provide ongoing compensation funding to their communities via existing section 106 agreements (under planning law) and voluntary payments; and
- Evidence collected on airport complaints suggests no strong case for further compensation at airports that are not expanding.

4.43 We therefore are not proposing moving forward with a national noise levy. Instead, the Government supports the development of an ongoing Community Compensation Fund at an expanded Heathrow Airport. Please see the draft National Policy Statement consultation, published in parallel to this document, for further detail.

### Proposals

4.44 We propose four changes to aviation noise compensation policy, to improve fairness and make it more transparent. The purpose of this proposal is to incorporate airspace changes into the existing compensation policy so that compensation policy would be the same for all changes which affect noise impacts regardless of whether they are a result of infrastructure change or a tier 1 or 2 airspace change overseen by the CAA. In addition, we are proposing some refinements to existing policy with the aim of making it fairer to those impacted by higher noise levels.

4.45 The four proposed changes to current policy are:

1 Change the policy wording to remove the word 'development' in terms of when financial assistance towards insulation is expected so that compensation is applicable regardless of the type of change (infrastructure or airspace change);

2 Change the policy wording to allow for financial assistance towards insulation in the 63dB LAeq level or above to be applicable regardless of the level of change that causes a property to be in that noise contour level (i.e. remove requirement for a minimum 3dB change);

3 Inclusion of additional wording in the policy to encourage an airspace change promoter to consider compensation for significantly increased overflight as a result of the change based on appropriate metrics, which could be decided upon according to the local circumstances and economics of the change proposal; and

4 Include a requirement of an offer of full insulation to be paid for by the airport for homes within the 69dB LAeq or more contour, where the home owners do not want to move.

4.46 Changing the policy wording to remove the word 'development' would ensure that airspace changes would be taken into account in the same way infrastructure changes are now. This aims to address the lack of clarity with the term 'development' in the APF. It is not currently expected that airspace changes would fall under the definition, creating uncertainty for communities and industry, and potentially meaning that the benefits of an airspace change may not be shared. This option would clarify Government's intention that airspace changes should be included in the compensation policy.

4.47 Changing the policy wording to remove the 3dB change requirement would create a fair and consistent approach to compensation for those newly exposed in the same noise contour. Currently, someone who was impacted at the 61dB level before the change, and is subsequently in a 63dB contour would be treated differently to someone who was in the 59dB contour and is subsequently in the 63dB. In practice, this would mean

that everyone newly exposed to noise at the 63dB level would be treated in the same way in regards to noise insulation compensation.

4.48 We recognise that the first two changes to policy mentioned in paragraph 4.45 would not in practice apply to many airspace changes. This is because in most cases, there are not usually many people close enough to the airport to be affected by the highest levels of noise. Often, impacts will be felt further from the airport, where noise levels are lower and increased frequency can also be an issue. For this reason it has been suggested that compensation for should be considered communities affected by increased frequency of planes overhead.

4.49 The third proposal is therefore intended to encourage airspace change sponsors to have a flexible approach to compensation, working with communities to establish a fair balance between the economic and environmental impacts of a change. This may be particularly important where the noise assessment and options analysis processes set out in chapter 5 indicate that a concentrated route is the best way to meet noise policy objectives. By using an approach to compensate communities affected by increased frequency of aircraft noise, change sponsors may be able to focus funds where they are needed most in order to limit and where possible reduce the number of people significantly affected by aircraft noise. To determine when compensation for a tier 1 or 2 change may be appropriate, change proposers could consider N- above contours, which measure the number of aircraft noise events per day exceeding a specified noise level, or overflight metrics as discussed in Chapter 5.

4.50 The fourth proposal would enable a home owner experiencing severe noise impacts the option of continuing to live in the same house with the full costs of insulation covered, if they would prefer not to move. Although airports are not currently precluded from making such an offer, current policy states that the minimum which should be offered to those who live in the 69dB contour would be assistance with insulation costs (rather than full costs) if they did not want to move. Latest DfT statistics show there are currently 3,400 people living within this noise contour, the majority of whom are around Heathrow, with the remainder around Gatwick and Manchester. Given that this is a relatively small number, extending the policy to cover those already living within the contour should not entail great financial cost, not least because we would expect most of these houses already to have some level of insulation.

**Questions on Chapter 4**

**Q1. Please provide your views on:**

**a. the proposed call-in function for the Secretary of State in tier 1 airspace changes and the process which is proposed, including the criteria for the call-in and the details provided in the draft guidance.**

**b. the proposal that tier 2 airspace changes should be subject to a suitable change process overseen by the Civil Aviation Authority, including the draft guidance and any evidence on costs and benefits.**

**c. the proposal that tier 3 airspace changes should be subject to a suitable policy on transparency, engagement and consideration of mitigations as set out by the Civil Aviation Authority.**

**d. the airspace change compensation proposals.**

# 5. Making Transparent Airspace Change Decisions

### Current Situation

5.1 The existing airspace change process has always balanced the factors which must be taken into account under the CAA's duty.[13] This means that decisions have been informed by the needs of all those affected by airspace changes, and the CAA has overseen decisions comprehensively. However, it has not always been easy for those not directly involved in the change to see how decisions have been arrived at, and how the different factors have been weighed against one another. The CAA has already done a lot to address this, including through its new Airspace Change Process, and through publishing their decisions.

### Factoring Noise into Airspace Decisions

5.2 When decisions on airspace design and use are made, noise impacts are among the most difficult to assess and communicate effectively. The Government recognises the challenges that industry and the regulator face in being able to engage effectively with communities on the issue and to properly weigh noise considerations against other factors.

5.3 There are three primary policy considerations that inform how noise is taken into account in the design of airspace:

- The Government's policy on how different environmental factors should be balanced – known as the altitude based priorities (ABPs);
- The Government's overall policy on aviation noise (which is discussed in more detail later in this document); and
- The Government's policy on how noise impacts should be distributed – including whether it is better to concentrate noise over a single flight path or to share over multiple routes.

5.4 The ABPs state that noise should be the environmental priority for route design up to 4,000 feet amsl. They go on to say that noise and carbon emissions should be balanced between 4,000-7,000 amsl, and that above 7,000 feet amsl, noise is no longer an environmental priority. See pages 19 to 20 of the draft air navigation guidance for more information. We consider these to remain appropriate.

13 s70 of the Transport Act 2000. Please see Annex A for more detail.

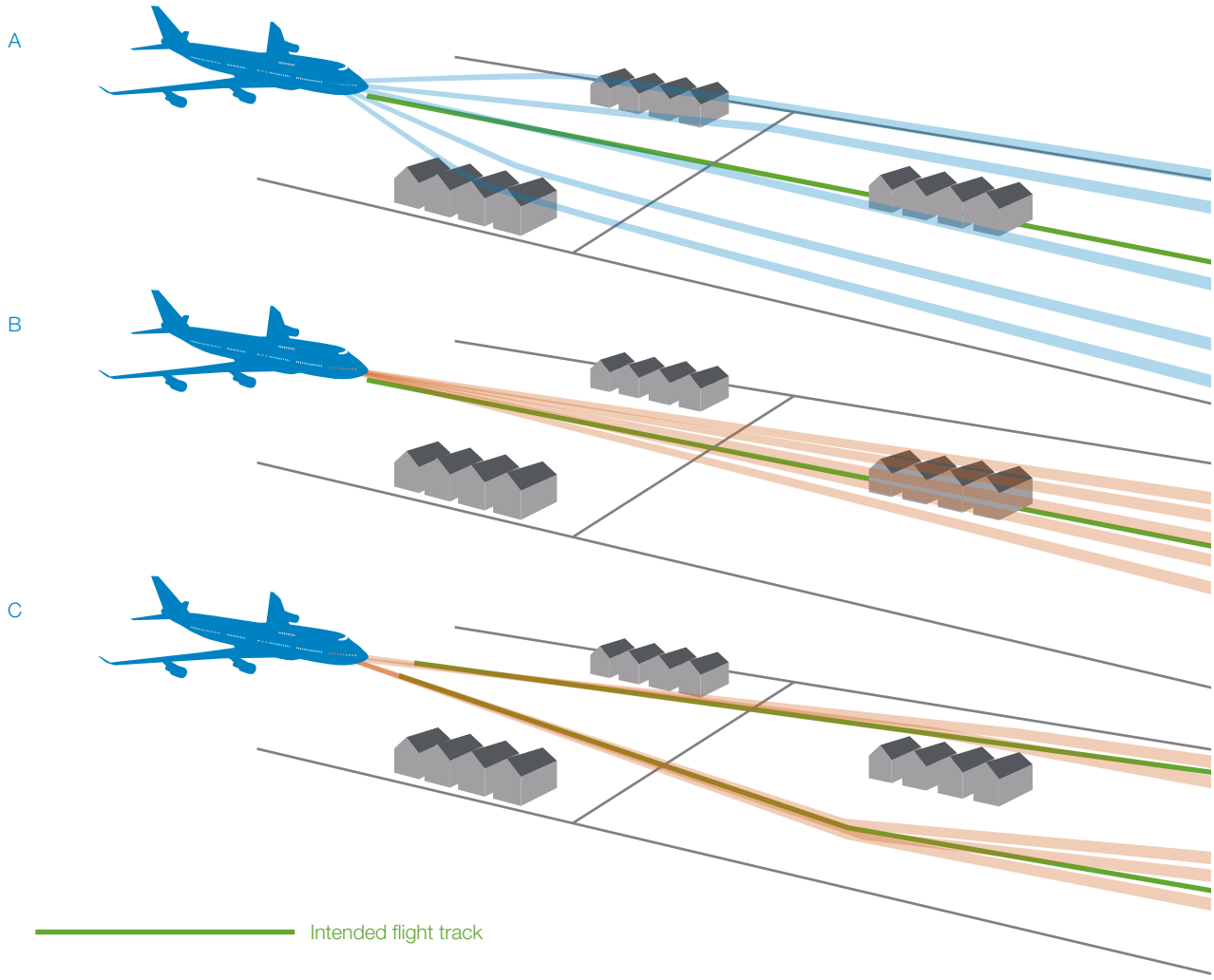
5.5 The Government's existing policy on concentration, as set out in the 2013 Aviation Policy Framework (APF) is that "in most circumstances, it is desirable to concentrate aircraft along the fewest possible number of specified routes" as is practicable, in order to limit the number of people significantly affected by aircraft noise. The APF went on to state however, that "where there is intensive use of certain routes, and following engagement with local communities, it may be appropriate to explore options for respite which share noise between communities on an equitable basis, provided this does not lead to significant numbers of people newly affected by noise."[14]

5.6 We are revisiting this wording as a result of the changes brought about through the introduction of new navigational technology. With conventional navigation, even when concentrating aircraft over as few routes as possible, there has been a degree of dispersal around the intended flight track. This meant that the effects of noise were shared somewhat among different communities. A key part of airspace modernisation has been the introduction of satellite-orientated Performance Based Navigation (PBN), which means that aircraft can fly their intended route far more accurately than before (see diagram on page 41).

5.7 The increased accuracy of PBN means that it is easier to avoid overflying certain areas and 'thread' routes between populated areas. While this can bring noise benefits, it can also have negative effects for some communities – particularly those closest to PBN flight paths who can experience increased concentration of aircraft. PBN also allows for multiple flight paths to be created that share noise.

14 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/153776/aviation-policy-framework.pdf

Aviation is moving towards a system that relies on Performance Based Navigation (PBN). PBN is satellite-oriented navigation, and will replace conventional navigation, which uses ground-based beacons. Conventional navigation is significantly less accurate than PBN which means that aircraft naturally disperse, or fan out, when using this technology. With PBN, there is less of this natural dispersal because aircraft are consistently able to follow a flight path very accurately. PBN flight paths therefore produce more concentrated traffic, because every aircraft flying a particular route is likely to be within a very narrow corridor.




A The natural dispersal created by conventional navigation means that aircraft flying a route are within a wide corridor. This means that a wider area is affected overall, but in a less concentrated way. This natural dispersal will not be possible with PBN.

B The increased accuracy of PBN will allow for flight paths to be routed very accurately to avoid impacting communities on the ground as far as possible. However in some cases, communities may be affected by more concentrated traffic.

C In these cases, it may be possible to create multiple concentrated PBN routes that are designed to disperse aircraft to some degree and provide relief or respite to communities exposed to noise. As multiple routes will have to be placed a minimum distance apart to offer a reduction in noise that can be heard, there will be limitations in how many routes it is possible to introduce within a given area without compromising safety or leading to a congested or inefficient airspace.

## Performance-Based Navigation

5.8 Taking into account the challenges and opportunities presented by PBN, as well as calls for greater clarity on how the altitude based priorities can be applied, we recognise there is a need for:

- Greater clarity on Government's approach to whether single or multiple routes are better; and
- A clear framework that allows the pros and cons of different options for route design to be compared against one another.

### Analysis

5.9 In many Government and regulatory decisions, including decisions on transport investment, options analysis, following HMT Green Book guidance,[15] is used to show transparently how decisions have been reached and why. It can be used to demonstrate that several options have been thought through in terms of their costs and benefits, and that the one which strikes the best balance has been chosen. Options analysis is considered best practice in decision making, and the Government considers it appropriate for airspace change decisions. We recognise that in practice, options analysis has been taking place already in airspace change, but the discounted options may not always be presented in consultation and our view is that there are ways to improve transparency.

5.10 The Department for Transport publishes formal guidance on appraising transport schemes, known as WebTAG.[16] This is a peer reviewed, transparent and regularly updated toolkit which allows transport schemes to be assessed on an even basis, in both qualitative and monetary terms. It provides advice on best practice, as well as spreadsheet tools to assess impacts including aircraft noise and their effects on local communities.

### Factoring Noise into Airspace Decisions

5.11 Options analysis would be an important tool in showing that noise has been properly taken into account in airspace decisions, including that the environmental factors have been accounted for according to the altitude based priorities. In order for noise to be factored into options analysis, there would need to be appropriate ways to assess noise impacts. We discuss this in more detail further on in this Chapter.

5.12 One of the key decisions that options analysis can assist with is whether single or multiple routes are appropriate. This is because the Government's view is that local circumstances and engagement should inform decisions on how noise can best be distributed and whether single or multiple routes are better in a given situation. For noise, single and multiple routes both have costs and benefits associated with them (see Figure on pages 43 & 44). A single route will tend to expose fewer people to noise compared to multiple routes. It may mean, however, that those people are exposed to higher levels of noise where there is a greater risk of adverse effects. Options analysis will be a mechanism for weighing up the costs and benefits of single and multiple routes.

15 See https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent

16 See https://www.gov.uk/guidance/transport-analysis-guidance-webtag

**Options for route design**

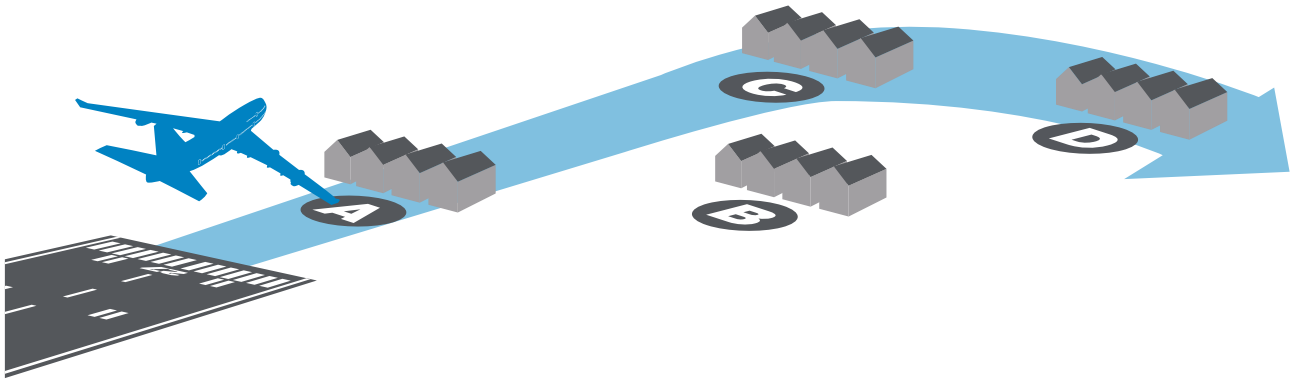
There are lots of different factors that need to be taken into account when a decision is made on airspace change, including on whether there should be single or multiple routes. Even in terms of just noise, there will be lots of trade-offs involved with deciding whether new flight paths should be concentrated over as few routes as possible, or whether multiple routes should be used to share noise amongst communities.

The three hypothetical scenarios below illustrate how there are different options for new flight paths, that will mean some communities may benefit from a reduction in noise from changes to airspace, while others will experience no change or experience new noise. Given these complexities and different local factors that will exist in each situation, how the noise impacts of airspace changes are distributed among communities is a decision that communities themselves should be engaged in.

If multiple routes are chosen, the exact mechanisms for how relief or respite could be offered to communities should ideally be agreed locally. The options for multiple flight paths illustrated below in options 2 and 3 might either operate on alternating days, or for alternating departures on the same day. Options to do this will be constrained by both the amount of airspace available in an area – due to safety purposes for instance, and also by the distance routes would need to be from one another to actually offer noticeable respite.

**The scenario below is based on three hypothetical options for replacing a conventional navigation departure route with PBN departure routes and illustrates the difficult choices about who experiences more noise and who experiences less.**

**Option 1 for a single concentrated PBN departure route, replicating the conventional navigation flight path.**



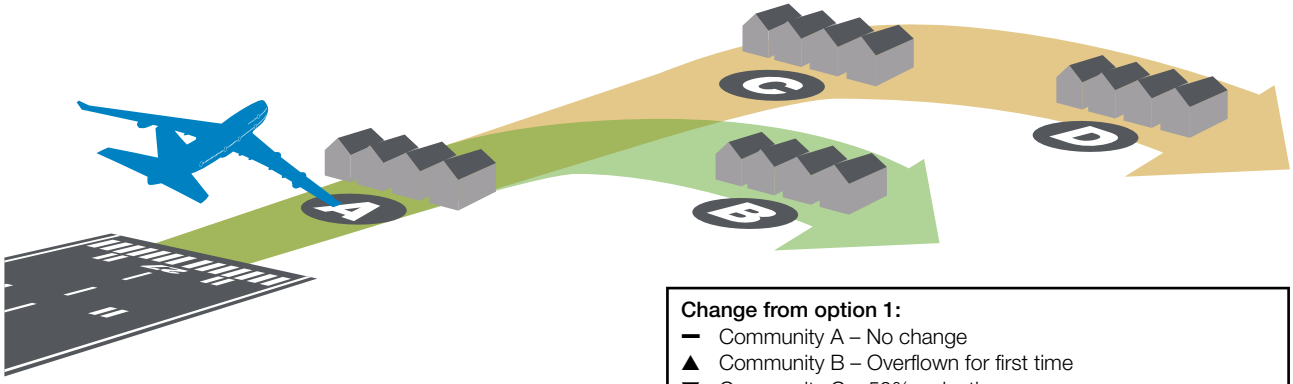

Communities A, C and D are under a concentrated flight path which is used by 100 planes a day. As these are now PBN routes they will be less dispersed than they previously were meaning those directly under the flight path would be expected to experience more noise than before.

Community B is situated away from the flight path, and while closer to the airport than communities C and D, they are not directly overflown by any aircraft, but may still experience some noise from aircraft.

## Options for route design

*Diagram continues overleaf.*

**Option 2 for multiple concentrated PBN departure routes that affect new communities**



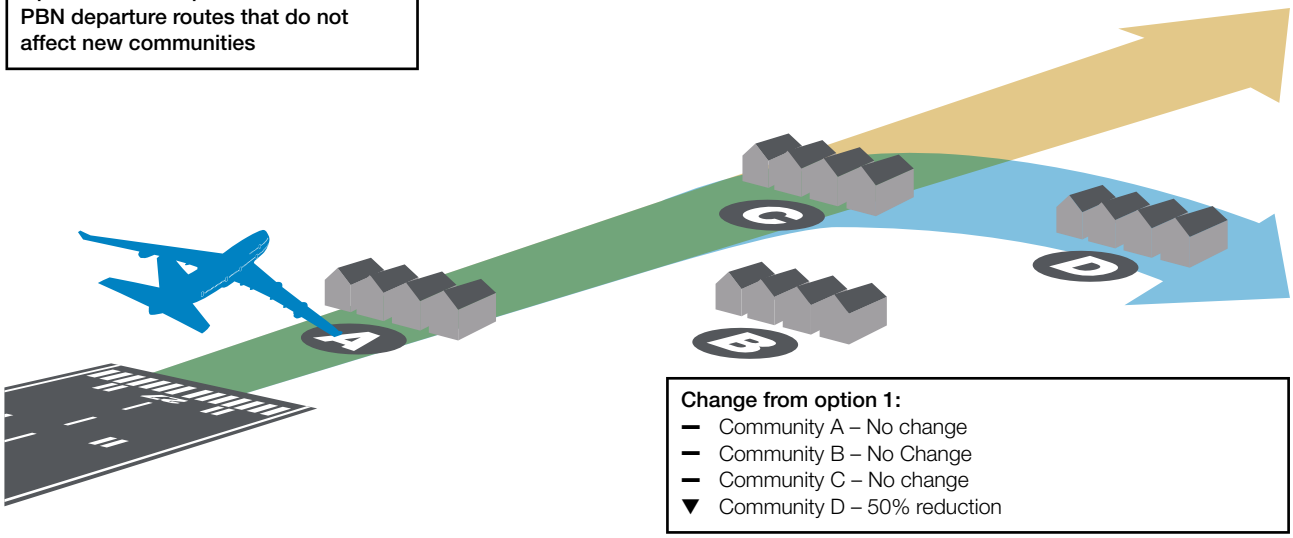

**Change from option 1:**
- — Community A – No change
- ▲ Community B – Overflown for first time
- ▼ Community C – 50% reduction
- ▼ Community D – 50% reduction

Given how close Community A is to the airport, multiple routes cannot be placed far enough so 100 planes will still use this route and will be more concentrated than under the previous conventional navigation departure routes.

Communities C and D will now experience 50 fewer flights using the route above them than they previously did, though these too will be more concentrated.

However Community B, who were never previously directly underneath a route, will now experience 50 flights a day using the route above them. As they are closer to the airport than communities C and D, these flights could be at lower heights and therefore noisier than those experience by Communities C and D.

**Option 3 for multiple concentrated PBN departure routes that do not affect new communities**




**Change from option 1:**
- — Community A – No change
- — Community B – No Change
- — Community C – No change
- ▼ Community D – 50% reduction

The route above Community A will still be used by 100 planes as it is not possible to avoid them.

Unlike in Option 2, Community C is still overflown to the same extent as in Option 1 and in a more concentrated manner than with the conventional navigation departure route.

To continue to avoid Community B, both routes still pass over Community C before they separate and flight path 2 moves away from Community D, who benefit from 50 fewer flights than in Option 1.

## Options for route design

5.13 Our noise policy is to limit, and where possible, reduce the number of people significantly affected by aircraft noise. To be consistent with this, priority should be given to reducing significant impacts rather than the number of people who will experience some aircraft noise. Therefore from a noise perspective, it will on occasions be better to have multiple concentrated routes that share noise among more people, than a single concentrated route which affects fewer people to a greater extent, providing large numbers of people are not exposed to aircraft noise for the first time.

5.14 Rather than a one size fits all approach to whether single or multiple routes are better, change proposers must consider the impacts of different options and decide what will work better in a given situation. These decisions should be informed by:

- Robust assessment of noise impacts; and
- Engagement with communities, including during the new design principles stage of the CAA's change process and during consultation.

5.15 We do not want to set hard thresholds or be over-prescriptive on when certain options should be considered – especially as some solutions may not be possible due to the other factors that need to be taken into account. Instead, we want there to be flexibility for options to be developed that take account of the needs of communities, while ensuring the CAA and airspace change sponsors know what is expected of them.

5.16 The advantages of single or multiple routes can also differ depending on the type of change that is being made:

- Concentrated routes will often be preferable from a noise perspective for airspace changes below 4,000 feet amsl. This will tend to limit the number of people exposed to higher noise levels where there are stronger associations with adverse effects on health and quality of life. When it is possible to route at this level over areas of low population, it can avoid affecting new people and allow the industry to focus mitigation and potentially compensation measures on the areas where it is most needed; and
- For changes above this height, noise levels will generally be lower, but the effects of change and concentration can be keenly felt. This is because aircraft have typically been more dispersed at these levels, due to vectoring. Therefore, greater consideration should be given to how aircraft are distributed further from the airport when designing routes, as options in which it is feasible to provide relief or respite may be beneficial in these instances. We discuss suitable metrics for assessing the frequency of noise events in the next section.

5.17 In all instances, the impacts on efficiency or other environmental factors will need to inform decisions and there will be limitations as to what can be achieved in terms of noise:

- In some cases, concentrated flight paths will never be fully able to avoid all communities or populated areas;
- The finite amount of airspace may mean multiple concentrated routes cannot be situated far enough from one another to offer perceptible relief or respite from noise; and
- Multiple concentrated routes could result in large numbers of new people being affected.

5.18 This discussion relates primarily to options for departure flight paths. For arrivals, aircraft will always have to be aligned with the runway at the minimum safe distance which may limit the options available for route designs. There may however be opportunities to vary where an aircraft joins the final approach that could share noise to some extent. The future systemisation of airspace and new technology over the coming years may also allow new opportunities for sharing noise or better avoiding populated areas – for both arrivals and departures.

### Proposal

5.19 We propose that options analysis should be carried out as part of change processes for airspace, as appropriate. This options analysis would allow communities to understand the options which have been considered, and the evidence that has informed a decision, including on whether single or multiple routes are appropriate in the circumstances. It would bring the appraisal of airspace changes in line with those for Government decisions on transport investment, including airport infrastructure. Options analysis will demonstrate an objective approach, and thereby ensure that the needs of different groups have been treated equally. This is particularly important when some groups are more able to engage with the change process than others. For example, when communities from different socio-economic groups or backgrounds are affected by an airspace change, some groups may have more time and ability to feed in their views than others.

5.20 Decisions on how aircraft noise is best distributed should be informed by local circumstances and consideration of different options. Consideration should include the pros and cons of concentrating traffic on single routes, which normally reduce the number of people overflown, versus the use of multiple routes which can provide relief or respite from noise.

5.21 Alongside noise impacts, assessment should also consider the impacts on carbon and air quality and explain how these have been balanced in line with the altitude-based priorities. There is also safety, and non-environmental factors such as, efficiency and impacts on other airspace users that will inform the eventual decision on which option is chosen. Single and multiple routes also have costs and benefits for these factors. For example multiple routes may mean it is not possible for aircraft to take the most efficient route, leading to increased fuel consumption. Alternatively multiple routes could offer greater resilience, or allow more aircraft to travel on a more efficient route to their destination.

5.22 The CAA should build this into its change processes, in line with guidance issued by the Government. They should publish an environmental statement with each of their decisions to further improve transparency. The CAA's Airspace Design Guidance[17] will also help sponsors and communities to understand some of these trade-offs associated with different options, as well as the technical capabilities of PBN, and should be used to inform the development of route options.

5.23 The guidance which accompanies this consultation document gives further details of how options analysis should be carried out to inform airspace change decisions.

17 CAP 1378 Airspace Design Guidance: Noise mitigation considerations when designing PBN departure and arrival procedures

## Assessing Aviation Noise

### Current Situation

5.24 The Government's overall policy on aviation noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise as part of a policy of sharing benefits of noise reduction with industry. Feedback from stakeholders has suggested that the meaning of this policy is not always clear – especially the meaning of 'sharing benefits' and 'significantly affected'.

5.25 The Government currently considers a daytime aviation noise level of 57 dB LAeq 16hr[18] as marking the approximate onset of significant community annoyance. There are several issues with our use of this definition:

- This value is based on evidence dating back to the 1980s;
- There has been confusion as to whether our definition means that we only consider significant effects to occur above that level, and therefore whether the interests of those impacted below this threshold are deprioritised. It has also been misunderstood to imply that all people are significantly affected above this level of noise exposure;
- The focus on annoyance has led to criticism that health impacts are being overlooked; and
- It may encourage options for airspace design which prioritise reducing the number of people within the 57dB LAeq 16hr contour, even if it means those within it are affected to a greater extent by concentrating noise impacts on a smaller population.

### Analysis

5.26 Our view is that our existing policy remains the correct aspiration. It is consistent with wider noise policy, and aims to balance economic, social and environmental priorities, which include noise impacts. However, we recognise that for the policy to be effective, we should set a clearer direction on how it should inform decisions so that the needs of communities affected by aircraft noise are properly taken into account, especially when it comes to airspace design.

5.27 First, we wish to clarify that sharing the benefits of noise reduction means sharing between industry and communities in support of sustainable development. We will therefore use this wording in the future.

5.28 We wish to be clear that our objectives in limiting and where possible reducing the number of people significantly affected by aircraft noise are to:

- Avoid significant adverse impacts on health and quality of life;
- Mitigate and minimise adverse impacts on health and quality of life; and
- Where possible, contribute to the improvement of health and quality of life.

5.29 It is important that noise is properly taken into account along with the various other factors that need to be considered in options analysis for airspace change. But noise impacts are among the most difficult to assess and communicate effectively because of their technical nature. The Government recognises the challenges that industry and the regulator face in being able to engage effectively with communities on the issue and

18 See glossary for explanation of db LAeq.

to properly weigh noise considerations against other factors. So we have considered how we can assist in improving the quality of noise data and how it is used in decision making.

5.30 In this context, and in light of the issues raised above with the use of the 57 dB LAeq 16hr contour, we recognise the need to define what we mean by levels of noise exposure which affect people significantly. There is also a need for a range of tools to use in assessing noise impacts so that the objectives above can be pursued when industry bring forward plans to change airspace and manage noise. We have examined a range of evidence sources in order to inform guidance on what levels of noise exposure should be considered significant and how noise impacts can be properly assessed.

**Assessing the Adverse Effects of Aviation Noise**

5.31 In recent years, evidence has emerged on the link between exposure to noise from all sources and chronic health outcomes. These include an increased risk of heart attacks, hypertension – which is a risk factor for stroke and dementia – as well as the risk associated with sleep disturbance.

5.32 Annoyance from aircraft noise is also believed to act as a risk factor for some of these health outcomes. Research has shown that it is possible to predict the likelihood of an individual or community experiencing significant impacts such as these as a result of different levels of aircraft noise exposure.

5.33 Noise can also impact quality of life. Quality of life is a difficult term to define, but can be considered as a subjective measure that refers to people's emotional, social and physical wellbeing. The effects of noise on quality of life can be small changes in behaviour such as occasionally turning up the volume of the television or speaking more loudly. Significant impacts on quality of life are those that cause larger changes in behaviour, such as having to keep windows closed at all times, or that prevent people enjoying the outdoors and natural environment. Research has shown that the effect of noise on quality of life at certain levels of noise exposure varies widely across the population and not everyone is affected in the same way.

5.34 In 2014 the Government commissioned a Survey of Noise Attitudes (SoNA) to investigate attitudes towards aviation noise and whether these have changed over the years. The results of this study have been published by the CAA[19]. It should be noted that SoNA's findings relate to quality of life effects described by annoyance and consequently for health impacts it only considers self-reported health ratings compared to noise exposure and reported annoyance. Within that context, SoNA suggests that:

- Some adverse effects of annoyance can be seen to occur down to 51dB LAeq 16hr; and
- Sensitivity to aircraft noise has increased, with the same percentage of people being highly annoyed at 54dB LAeq 16hr in SoNA as there was at 57dB LAeq 16hr in a past study that influenced aviation noise policy.

5.35 For night time noise, the World Health Organisation, in their 2009 Night Noise Guidelines for Europe, note that effects start to be witnessed as low as 40 dB Lnight. Furthermore, the Guidelines stated that above 55 dB Lnight, the situation is considered increasingly dangerous for public health.

19 http://www.caa.co.uk/cap1506

*Using a risk-based approach to noise assessment*

5.36 In addition to the concept of significant community annoyance, the following terms have been used to refer to different levels of effects associated with noise, following the publication of the Noise Policy Statement for England:[20]

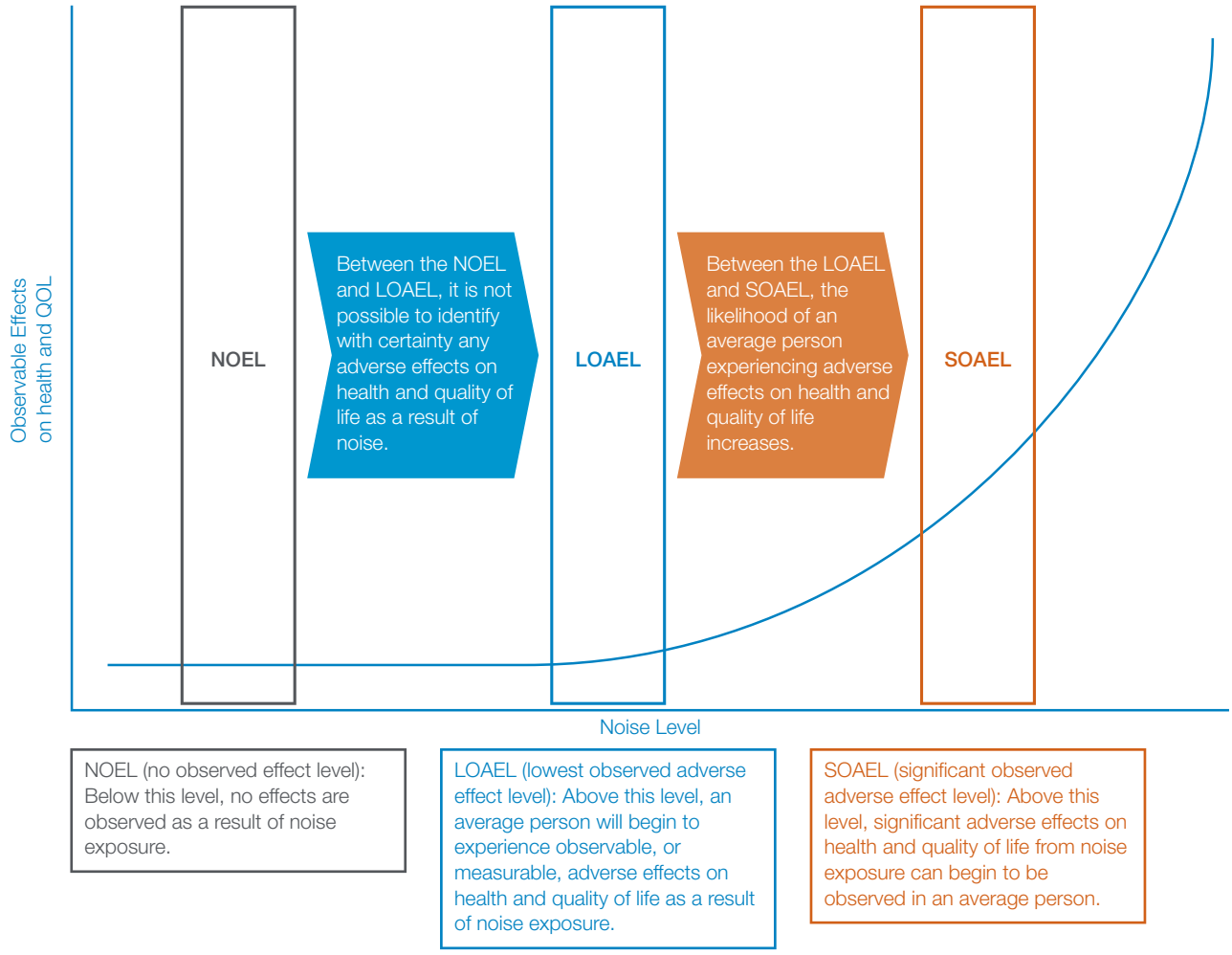
- NOEL – No Observed Effect Level: This is the level below which there is no detectable effect on health and quality of life due to the noise. In most situations, this is broadly the level at which noise is audible;
- LOAEL – Lowest Observed Adverse Effect Level: This is the level above which adverse effects on health and quality of life can be detected;
- SOAEL – Significant Observed Adverse Effect Level: This is the level above which significant adverse effects on health and quality of life occur.

5.37 Research has shown, however, that it is still difficult to set a level at which all people will experience an adverse effect, as this will be determined by many individual factors including the number and pattern of the aircraft they hear or if they have recently experienced a change in noise levels. Therefore, with regards to quality of life effects such as annoyance, it is not always possible to characterise the effect on an individual with a single indicator. However, a single value can be used to determine a LOAEL for a whole community.

5.38 Setting a LOAEL in this way allows the adoption of a risk-based approach to assessing aircraft noise. The advantage of such an approach is that it accounts for the subjective nature of how noise is experienced differently by individuals. This allows the risk of a person being significantly affected by noise at different levels to be properly reflected, rather than simply saying that at a given level of exposure, all people will or will not be significantly affected.

5.39 The LOAEL can therefore be regarded as the point at which adverse effects begin to be seen on a community basis. At any noise level above the LOAEL, there will be a proportion of the population adversely affected. As noise increases further above the LOAEL, there will be an increased risk that someone will suffer significant adverse effects. In line with this increase in risk, the proportion of the population likely to be significantly affected can be expected to grow as the noise level increases over the LOAEL. The SOAEL is the point at which the average person would be expected to begin to experience significant adverse impacts on health and quality of life. The diagram below explains this concept in more detail.

20 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf




## Observable noise impacts

5.40 Using this risk profiling approach, it is possible to predict the expected proportion of the population likely to be significantly affected by a certain noise exposure. Further, these effects can be quantified in terms of the costs of adverse impacts on health and quality of life. This means that it is possible to generate an estimation of the costs associated with a population experiencing a particular level of noise exposure.

5.41 WebTAG (see textbox on the following page) includes a module for assessing the impacts of noise,[21] including specifically from aviation, on health and quality of life. This allows decisions on transport schemes to take account of the costs and benefits of different options with regards to noise.

5.42 WebTAG can provide a monetised value for the impact of changes in noise exposure, based on Disability Adjusted Life Years (DALYs).[22]

21 WebTAG noise unit A3, available at: https://www.gov.uk/government/publications/webtag-tag-unit-a3-environmental-impact-appraisal-december-2015

22 One DALY can be thought of as one lost year of "healthy" life. The sum of these DALYs across the population, or the burden of disease, can be thought of as a measurement of the gap between current health status and an ideal health situation where the entire population lives to an advanced age, free of disease and disability. http://www.who.int/healthinfo/global_burden_disease/metrics_daly/en/

WebTAG is the Department for Transport's guidance on appraising transport schemes. TAG Unit A3 includes an approach to analysing the possible health effects associated with aviation noise, based on WHO guidance and research reports from Defra and the Interdepartmental Group on Costs and Benefits (Noise). There is also an appraisal process for taking account of new evidence and incorporating it into the webTAG methodology. This means that the tool remains up to date with the latest evidence.

WebTAG considers the following impacts with relation to noise on health and quality of life:

- Sleep disturbance
- Amenity/annoyance (used interchangeably in this context)
- Acute myocardial infraction (AMI)
- Hypertension, through increased risk of stroke and dementia

*Assessing the frequency of aircraft noise occurrences*

5.43 As explained above, a small number of people may consider themselves adversely affected by aircraft noise at levels below the LOAEL. Reactions to recent airspace changes and trials have clearly indicated that increases in the number of aircraft that people are exposed to can be noticeable and can annoy individuals, even at a noise exposure below 51dB LAeq 16hr. We have therefore considered which additional metrics for assessing aviation noise could be included in our guidance.

5.44 N-above metrics have been suggested as a way to take account of the number of aircraft noise occurrences at or above a given noise level. For example, the N60 metric indicates the number of noise events exceeding 60 dBA over a given period. This metric is often used to assess the impact of noise at night as 60 dBA corresponds to an indoor noise level of approximately 45 dBA and the WHO 1999 Guidelines for Community Noise recommend that individual noise events at night exceeding 45 dBA should be avoided[23].

5.45 There is insufficient evidence to link chronic outcomes on health with event-based noise metrics, and SoNA 2014 found these performed less well than LAeq 16hr as a predictor of annoyance. However the findings from SoNA do suggest it may be appropriate to use N65 as supplementary measure for daytime noise, which is recorded more often than N70 in areas with lower levels of noise exposure, as a metric to help understand the impact on those who will be affected by an airspace change. It also may help those who are affected to understand the impacts of proposals.

5.46 As well as N-above metrics, the CAA has proposed a definition of 'overflight' which is based on whether an individual will perceive an aircraft as overflying them.[24] This offers the opportunity to take account of overflight as it is actually experienced by those on the ground, including those outside of traditional noise contour areas – better reflecting the number of times an individual will feel like they have been overflown. It can therefore be used to explore the differences between different airspace arrangements, such as those based on single and multiple route options.

23 World Health Organisation. WHO Guidelines for Community Noise (1999) http://www.who.int/docstore/peh/noise/guidelines2.html

24 www.caa.co.uk/CAP1498

## Proposals

### Assessing Adverse Effects of Aviation Noise

5.47 Our intention is to provide further guidance on our aviation noise policy in order to be clear about how it should inform decisions on airspace design and use. We want industry to be confident on how they go about complying with the policy, and we want communities to understand how noise has been assessed in decisions. We believe it is important for noise assessment to clearly relate to the real-life impacts of noise exposure.

5.48 We propose that our policy should be interpreted to mean that the number of people experiencing adverse effects as a result of aviation noise should be limited and, where possible, reduced. Adverse effects are considered to be those related to health and quality of life. These adverse effects should be assessed using a risk-based approach above the LOAEL, using webTAG. This is consistent with the approach endorsed by the World Health Organisation's methodological guidance for estimating the burden of disease from environmental noise.[25] It will ensure that effects on health and wellbeing can be assessed objectively, meaning that different people affected by a change can be shown to have been treated equally.

5.49 So that the potential adverse effects of any airspace change can be properly assessed, we propose that 51 dB LAeq 16hr should be regarded as the LOAEL for daytime noise. We also propose that a LOAEL of 45 dB Lnight should be set for assessing the impact of aviation noise during the night, in line with current webTAG methodology and consistent with the WHO 'Methodological guidance for estimating the burden of disease from environmental noise'. This will ensure that wherever it is possible to quantify noise impacts, they inform options for airspace structure and use.

5.50 A major advantage of this system would be in the development of airspace changes. Use of the risk-based noise assessment outlined above will allow options for airspace change to be compared quantitatively against each other, in terms of noise performance. We discuss how noise assessments can be used to inform options analysis in the following section.

### Assessing the frequency of aircraft noise occurrences

5.51 To take account of people who may be significantly affected by aviation noise at levels that do not exceed the LOAEL, we propose to supplement the risk-based approach with guidance on metrics which can be used to assess the frequency of noise events. This will enable frequency to be one of the factors taken into account when airspace decisions are made. We propose that the CAA's metric for overflights should be used for this purpose as a means of understanding and explaining how noise will be experienced by those on the ground and that for night noise, N65 daytime and N60 night time metrics should also be used.

5.52 In general, we believe that different metrics, including those to assess frequency, can be useful for enabling communities to understand changes that are being proposed and allowing them to engage meaningfully in the change process. So it is useful for industry to use a range of appropriate metrics to communicate noise impacts. In particular, it will be useful for the frequency of overflight to be assessed when it comes to deciding whether or not it is beneficial to design multiple routes in order to disperse aircraft traffic.

25 Low exposure levels (Lnight < 45 dB(A)) were excluded from the analyses that contributed to their report, 'Burden of disease from environmental noise' because it was deemed 'the assessment of those noise levels was relatively inaccurate and other sources may be more important in situations with these low levels. http://www.who.int/quantifying_ehimpacts/publications/e94888/en/

5.53 Draft guidance on our proposals has been published alongside this consultation document. Page 21 of that guidance deals with noise assessment. Guidance on the appraisal of airspace change proposals will be available on webTAG[26] in due course.

| **Questions on Chapter 5** |
| --- |
| **Q2. Please provide your views on:**<br>**a. the proposal to require options analysis in airspace change processes, as appropriate, including details provided in the draft guidance.**<br>**b. the proposal for assessing the impacts of noise, including on health and quality of life. Please provide any comments on the proposed metrics and process, including details provided in the draft guidance.** |

26 https://www.gov.uk/guidance/transport-analysis-guidance-webtag

# 6. Independent Commission on Civil Aviation Noise

### Current Situation

6.1 In support of our policy objectives, the Government wishes to create a system for the design and regulation of airspace and noise which promotes effective local engagement and locally-informed decision making. Having the right decision-making structures in place, and a framework for good use of noise data are important steps towards our vision. However, if this new system is to work effectively, we recognise that there are gaps which need to be filled to improve trust and promote the consistent use of best practice.

### Analysis

6.2 It is in the interests of industry to have a positive relationship with local communities and many UK airports have stable and productive relationships with their neighbours. But the Airports Commission's engagement and findings from recent experience at airports where changes or trials have taken place have shown that trust between communities and airports can easily be lost. It is clear that tensions are highly likely to arise when airport operations change or intensify in a way which changes how local communities experience noise impacts on the ground. It is therefore appropriate to consider how to manage airspace changes in a way which builds trust in the processes including ensuring a transparent and well informed way to make decisions.

6.3 We will therefore establish an Independent Commission on Civil Aviation Noise. We see the following as success criteria for the body:

- It establishes a credible and authoritative voice on aviation noise issues;
- Communities have and feel they have a greater stake in any process which proposes to make noise changes;
- Processes which change aviation noise impacts better and more transparently balance the needs of all parties, thereby making these processes fairer and less adversarial;
- Greater public confidence in the noise data published by the aviation industry and in the impartiality of the airspace change process;
- Industry is challenged to enhance its approach where necessary on assessing and mitigating noise impacts and engaging with communities;
- Improved relations and trust underpin local decision making on noise controls; and

- The SofS is effectively supported in his role with regards to noise within strategically significant decisions.

6.4 It is important to note that ICCAN's Terms of Reference should make it very clear that it should not have a role in representing the interests any particular group. This is because the body's objectives are not to act as a lobby group or to oppose changes. Rather, it should have a role in facilitating industry and communities to communicate effectively with one another in order to reach balanced decisions and to provide expertise on noise management.

**Structure and Governance**

6.5 In establishing an ICCAN capable of delivering on the objectives outlined above, Government recognises that independence, credibility and accountability will be key. Timing is also a priority, as there will soon be live issues, such as the planning process for Heathrow's proposed third runway, should the Government's proposed National Policy Statement be adopted, and the urgent need for airspace modernisation. ICCAN could have a positive impact on these, and we wish to see the influence taking effect as quickly as possible. Proposals to establish ICCAN must also be considered in the context of wider Government policy of reducing spending and ensuring efficiency.

6.6 In addition to noise expertise, ICCAN would need access to a range of specialist skills to function effectively. We therefore anticipate ICCAN needing to attract good noise advisors, highly skilled communication and engagement experts, as well as a strong figurehead with excellent leadership skills for the Head Commissioner role itself. The Head Commissioner and ICCAN board do not need to be noise experts, as they can learn about noise impacts and management techniques as they progress and will have a strong secretariat and expert panel to guide them. The main characteristics of the Head Commissioner will be neutrality, strong leadership, effective communication skills and open mindedness to all sides of the issues ICCAN will face. ICCAN will also need the support of a secretariat and administrative functions.

6.7 The Government has considered several options to achieve the intended benefits of ICCAN when they are most needed i.e. to provide an independent voice on noise matters at the same time as to advise on airport development and airspace modernisation in the near future:

- A non-departmental public body established by the Department for Transport: This would have advantages in terms of greater independence in delivering its functions, with clear accountability for its use of public funds. It may however require legislation to create and would be more costly in comparison to adding functions to an existing body. It may also take longer to set-up than any of our other options described here and be challenging for a small body to attract the necessary people and expertise;
- An Expert or Advisory Committee of the Department for Transport: This model would be comparatively easy to set up and benefit from economies of scale for administrative functions. It could be supported by contracted CAA expert resource. However, it may be more difficult to demonstrate independence from Government if the body is both Government-funded and sitting within a Government department;
- Adding to the existing functions of an existing non-departmental public body: There are limited options which meet the necessary criteria for adding to functions within an existing NDPB. It would need to have the authority to do the work in the whole of the UK, as airspace is a reserved matter. It would also need to be able to give adequate

priority to such a high profile function relative to the body's existing functions and noise would need to be a complementary function to its current remit; and

- A separate legal entity attached to an existing non-governmental body: As with adding to the existing functions of an NDPB, there are limited options which meet the necessary criteria. It would need to have the authority to do the work in the whole of the UK, as airspace is a reserved matter. If the funding, appointments and Terms of Reference of ICCAN were controlled by the Secretary of State, it is likely that the new body would itself need to be treated as a function of central government. In this instance, to avoid conflicts with the interests of the parent body in the way it is governed and accounts for its use of public funds, it would be necessary to ensure that routes for the flow of funding and accountability comply with Government controls on the existence of public bodies and the use of public money.

6.8 The primary purpose of ICCAN is to help rebuild the trust lost in industry by communities and to advise on upcoming airspace and infrastructure changes. If ICCAN is successful, ultimately there may be little need for a separate entity to continue some of its functions in future years. Any functions that would need to continue once trust is rebuilt could be transferred to a body that currently exists. This should be a consideration, since it is good practice to set review periods to look at objectives and success and ICCAN should be no exception.

6.9 Given the potentially time limited nature of our proposal, ICCAN should be funded via public funds. The benefit of using public funds is that ICCAN can be set up relatively quickly while maintaining independence from industry. Cost recovery was a consideration but would require legislation, which would be impractical in the short term.

## Proposals

### Functions

6.10 We propose that in order to achieve the success criteria above, ICCAN should have functions in the activities set out in the table below. For each of these activities, we expect that ICCAN would:

- Advise on the best noise management techniques;
- Advise on the accessibility of noise information, making communities better placed to engage and comment on proposals;
- Verify noise forecasts and noise data; and
- Influence proposals through best practice guidance.

| Activity | ICCAN Role |
|---|---|
| Airspace change | • Respond to all formal airspace consultations to advise that the most appropriate and best available noise mitigations have been considered appropriately. ICCAN would not choose between different route options. This is because there would be other non-noise factors at play such as safety and efficiency, and these also need to be taken into account when deciding on a best option.<br>• Where a change sponsor has deviated from ICCAN advice on any noise management techniques, the sponsor should describe their reasoning behind their decision not to follow the advice. The CAA would take into account any relevant ICCAN advice in its environmental assessment, and in doing so, can decide on whether a change sponsor's reasoning for deviating from the advice is justified.<br>• If the proposal in Chapter 4 is taken forward, an airspace change decision could be called-in by the Secretary of State. If a decision were to be called in under the proposed new system ICCAN would give any expert advice required.<br>• Consulted as part of the CAA's Post-Implementation Review process following a change taking place e.g. to assess the outcomes of any noise mitigations. |

| | |
|---|---|
| Planning and Ongoing Noise Management | • Advise airports and relevant competent authorities in the process to agree operating restrictions including advising the competent authority whether they consider the ICAO balanced approach to have been followed.<br>• As an example, ICCAN should have a role in advising on the design of noise envelopes (see glossary) where one is being developed, such as has been suggested at Heathrow for the proposed new northwest runway.<br>• Advise local authorities when requested when they are considering noise implications of an airport's planning application.<br>• Provide input to planning inquiries relating to airport infrastructure as appropriate. |

6.11 Outside of ICCAN's roles in these particular activities, we propose that they have broad functions that would help to improve relationships and drive up standards across the board.

6.12 **Best Practice** – ICCAN should publish and promote best practice guidance including on noise management, engagement on noise issues, use of enforcement tools, and the role of conciliation in disputes. Best practice should be produced in a manner which allows for local circumstances to be taken into account, and should not create onerous demands on airports that already demonstrate good noise management practice. As the CAA also develops best practice in many areas of aviation, the two should work together to ensure their work is complementary. ICCAN should also propose further areas where it may be beneficial for the CAA to use its information powers to encourage transparency and to drive improvements. For example, through the publication of airline statistics on noise related matters. The development of best practice will be instrumental in helping to increase industry's awareness and drive improvement in their behaviours on noise impacts.

6.13 **Research** – ICCAN should review recent research and where gaps in evidence exist, undertake or commission independent research, collaborating with and learning from others where possible. This could include evidence on the best means of monitoring and reporting aircraft noise, as well as its association with annoyance and impacts upon human health and possible mitigation measures.

6.14 **Monitoring and Quality Assurance** – ICCAN should work to monitor and quality assure airports' noise measurements and reporting. This would help to re-gain lost trust between communities and airports and improve the credibility and transparent nature of the information. In many cases current voluntary or required practices could benefit from an independent review. A good example of when this may be useful is when airports create plans to manage noise at the local level. As the current noise information is compiled and published by the airport, if communities do not trust it, there could be a lack of trust in the information and the plan could be undermined. ICCAN would be able to quality assure the information that will be used and published to ensure it is fit for purpose and follows best practice.

6.15 Our view is that the functions outlined above are the right ones to allow ICCAN to address the issues identified; namely, issues around trust and consistency in the standards of noise management. These functions complement the rest of the package outlined in this consultation, for example the emphasis we have placed on industry's obligations to manage noise effectively and the broad role we have described for the CAA.

6.16 With ICCAN advising on best practice in the use of compliance mechanisms as discussed in Chapter 7, and with the CAA as the UK's independent regulator of airspace, there will be the right incentives and mechanisms for industry to effectively

manage their noise impacts. This means that ICCAN would be working with industry and communities to develop and promote best practice in noise management and the use of compliance tools. We believe that compliance activities other than developing best practice on the subject would potentially conflict with this work to drive up standards through collaboration, and so enforcement activities should continue where they already exist. Also, as ICCAN's remit would be limited to noise, they would not be best placed to investigate breaches. This requires a broad understanding of the context for individual breaches, such as safety and air navigation matters, to ensure that decisions take into account all factors. We discuss the enforcement mechanisms available, and the advisory role of the CAA in Chapter 7 and at Annex E.

6.17 ICCAN's role in change processes should apply whenever a change is proposed which is subject to the CAA's approval i.e. tier 1 and 2 airspace changes, including smaller aerodromes (for example leisure and business jet airports). Also, although it will focus on larger aerodromes for its other functions, as that is where the most severe noise impacts are felt, smaller aerodromes should consider how they could apply the best practice disseminated by ICCAN. ICCAN should not be responsible for advising the Ministry of Defence (MoD) on noise impacts from military flights, but the MoD may wish to consider the best practice developed by ICCAN and use it where appropriate.

**Structure and Governance**

6.18 The Government's lead option is to establish ICCAN as an independent body within the CAA. The major advantages to ICCAN being attached to the CAA would be faster set-up and economies of scale for a small organisation. A further advantage is that highly technical aviation noise expertise already exists in the CAA and by moving much of that expertise to ICCAN, it would be well placed for quick and relatively easy operation. Under ICCAN's independent leadership, this would allow those experts to focus on the objectives of ICCAN and build up its knowledge base quickly and efficiently.

6.19 If we were to pursue this route of establishing ICCAN, we recognise the expectation that ICCAN should be able to function independently from the CAA if it is to be successful in building trust, so have examined governance models which could achieve this. We would therefore propose to direct the CAA under our legislative powers to establish ICCAN as a separate legal entity. In order to ensure the necessary independence from the CAA yet still work towards the objectives of ICCAN, we propose that the Secretary of State would set Terms of Reference, establish the appointment process for the Commissioner and Board members of ICCAN, and agree its funding. To maintain credibility however, it would be up to ICCAN's Board to set a yearly work programme based on the Terms of Reference and its agreed funding.

6.20 For public accounting purposes it is likely that a new body established in this way would be classified as a function of central Government, this may require bespoke arrangements to ensure Parliament's expectations of accountability for the use of public funds are maintained. Should the final proposal for ICCAN have the effect of creating a new central Government arm's length body (ALB) then this is likely to need to go through a separate Government approval process.

6.21 One of the Board members would be a senior official from the Department for Transport with a limited remit to ensure that ICCAN's work programme remained consistent with the Terms of Reference. ICCAN's governance would include total functional separation between it and the CAA: they would work on separate work streams with no cross-over. As a subsidiary of the CAA, the CAA Board would maintain appropriate financial oversight of ICCAN. Although ICCAN's views would be a relevant factor in any event,

it is expected that the CAA would be required by the Secretary of State to take the outcome of some of ICCAN's work streams into account when the CAA is performing its own functions. The CAA Board would also be formally responsible to DfT for the funding passed through the CAA to ICCAN. Through this structure, the ICCAN board would decide on the work programme without interference from the CAA Board or the Government as long as it remained within its Terms of Reference. Arrangements would also include separate IT, data storage and website from the CAA.

6.22 There are benefits and disbenefits to all the options we have considered, but the Government believes that the model above can allow for ICCAN to function effectively as an independent entity and to deliver on its objectives. We realise that although ICCAN may not appear sufficiently independent as an arm of CAA to some, we believe that it can be independent by following the governance steps as set out. None of the options however are rejected outright, but we see this as the most expedient and logical option to make quick progress.

6.23 To ensure consistency in its delivery and accountability against its Terms of Reference, we propose that ICCAN would report annually to government. This report would cover its proposed work programme for the year ahead, and its achievements in the year just gone.

6.24 The work of ICCAN would be subject to a sunset review after five years. The review would allow Government to consider the ongoing role for ICCAN. If ICCAN were to meet its objectives during this period, to support change, build trust and drive up standards, the need for an independent aviation noise body might reduce, and its functions could be placed elsewhere. Alternatively depending on the outcome of the review, its functions could potentially be expanded.

*Summary*

6.25 If our lead option were taken forward, in order to make ICCAN's set-up within the CAA a success, we would propose:

- Total separation of CAA's and ICCAN's functions, set out in clear and robust governance;
- That the ICCAN Board is responsible for developing and delivering against a work programme in line with terms of reference set by Government and is accountable to Government, with a sunset review after five years; and
- That ICCAN is funded publicly in the first instance.

| **Questions on Chapter 6** |
| --- |
| **Q3. Please provide your views on:**<br>**a. the Independent Commission on Civil Aviation Noise's (ICCAN's) proposed functions.**<br>**b. the analysis and options for the structure and governance of ICCAN given in Chapter 6, and the lead option that the Government has set out to ensure ICCAN's credibility.** |

# 7. Ongoing Noise Management

## Current Situation

7.1 The decision timeline on page 25 described the processes of ongoing noise management which airports carry out. For example, they respond to emerging noise issues and engage regularly with communities on what improvements can be made. Under the Environmental Noise Directive, and implementing domestic legislation[27] some airports are required to perform regular noise mapping and to consider measures to address noise every 5 years within a noise action plan.

7.2 Noise management methods could include:

- Traditional mitigation measures, such as noise bunds and barriers to mitigate for ground noise;
- The provision of assistance towards double glazing or secondary glazing, acoustic vents and loft insulation;
- Economic incentives such as landing charges structured according to certified noise levels of aircraft;
- Operational procedures, which govern how an aircraft will fly, such as a noise preferential route or minimum climb gradient; and
- Operating restrictions, which limit the capacity of an airport, such as a night flight restriction or a cap on the number of movements allowed.

## The Balanced Approach and Noise Management

7.3 As explained in the diagram on page 73, ICAO's Balanced Approach lays down a common framework for managing noise. The Balanced Approach requires a noise problem to be addressed in the most cost effective way, and identifies four pillars for managing noise; reduction of noise at source, land-use planning, operating procedures and finally operating restrictions – which should only be applied if no other measure can address the noise problem.

7.4 While reduction of noise at the source and good land-use planning are the most effective tools for preventing noise problems, they may not be able address all current or predicted noise impacts. These are also areas that are largely beyond the control of individual airports. Therefore operational procedures that determine how and where

27 SI 2006/2238 – The Environmental Noise (England) Regulations (EN(E)R) 2006, as amended.

aircraft fly, and operating restrictions, such as night flight restrictions, also represent effective tools for airports in managing noise.

7.5 A new EU Regulation came into force on 13 June 2016 requiring a competent authority to be appointed to oversee decisions on noise-related operating restrictions at major airports[28]. The role of the authority is to ensure noise is assessed on a regular basis, and where operating restrictions may be required to address a problem, to ensure that the Balanced Approach is followed, that the cost effectiveness of potential restrictions is assessed and appropriate consultation takes place, and to inform the European Commission and other Member States before restrictions are introduced. The authority must also follow up and monitor the implementation of operating restrictions and make relevant information available.

7.6 This competent authority must be independent of any organisation which could be affected by noise or the restriction, so airports cannot carry out the role as is currently the case. We make proposals, below, on appointing this competent authority.

**The Designated Airports**

7.7 Currently in the UK, there are different mechanisms for managing noise at different airports. Most airports have historically been responsible for their own noise controls, either on a voluntarily basis or more often as locally agreed conditions of planning permission. The Secretary of State, for airports in England and Wales, and Scottish and Northern Ireland Ministers in relation to airports in their respective territories, are also able to set noise controls for the purposes of avoiding, limiting or mitigating the impacts of noise. The Government has designated Heathrow, Gatwick and Stansted for these noise control purposes since 1971.

7.8 Controls set at the designated airports by the Government are similar to those in place at many other airports. They include:

- The night flights regime – operating restrictions that limit the number of flights that can take place and the amount of noise that can be emitted during the night, as well as restrictions on the types of aircraft that can operate;
- Noise preferential routes (NPRs). The use of NPRs is an operational procedure that seeks to avoid noise sensitive areas as far as possible and give certainty about where aircraft can be expected to be heard; and
- Other noise operating procedures, such as departure noise limits and requirements for continuous climb and descent that require aircraft to be flown in a manner which minimises noise for those on the ground.

7.9 Due to the regulatory nature of these controls and the associated processes any changes need to go through, the noise operating procedures set by Government at the designated airports have not changed for many years and now represent minimum industry practice. Therefore, they do not necessarily reflect the latest developments in noise management or the measures that an airport could put in place if they were not bound by the Government's controls.

7.10 Specific issues have been noted with the noise preferential routes at the designated airports. For example: they were designed for aircraft with different capabilities and so flying them now can create unintended consequences; and they have begun to inhibit

28 The airports in the UK which currently meet the definition of major airport in the Regulation are Heathrow, Gatwick, Stansted, Manchester, Edinburgh, Luton and Birmingham.

the use of more effective noise control measures. By contrast, the Government is aware that there are examples of non-designated airports who use their NPRs to very good effect in their local engagement and noise management strategies.

7.11 NPRs at the designated airports have their origins in the 1960s, when the Government owned and operated these airports. Over the years a number of other airports have established NPRs. Some of these were set voluntarily by the airport, whilst others were created following local planning (Section 106) agreements with local authorities as has been undertaken, for example, at Luton and Manchester airports.

### Analysis

7.12 The Government wishes for ongoing noise management tools to be used to best effect, and for the right balance to be struck between economic and environmental considerations. As such, our aim is to ensure that noise management strategies are developed and decided upon locally wherever possible, and that Government's involvement is focussed where there are strategic decisions to be made. This, along with ICCAN's new functions, will help ensure that controls are:

- Optimum for the local circumstances;
- Balance local and national needs where appropriate;
- Keep pace with best practice; and
- Innovative and ambitious.

#### The Balanced Approach and Noise Management

7.13 The Government believes that the most effective way for appropriate operating restrictions to be considered is to align decisions with the land use planning process when airport development takes place. The planning process requires a full consideration of the environmental impacts associated with any development, including consideration of the maximum level of noise that affected communities should be exposed to – and therefore when operating restrictions will be necessary. In practice it has historically been the case that most new or amended operating restrictions at airports have come about through the land use planning process. However, there will also be instances when operating restrictions may be required separately from any planning decision, for example following development of a noise action plan.

#### The Designated Airports

7.14 The designation of Heathrow, Gatwick and Stansted for noise management purposes was previously reviewed as part of the Aviation Policy Framework in 2013 and at that time it was decided not to make any changes to these arrangements.

7.15 In light of the requirement to appoint a competent authority to comply with Regulation (EU) 598/2014, and the noise controls that will form part of the eventual decision on the expansion of Heathrow Airport, the Government has again reviewed the rationale of designation. We think that strategic importance remains the right criteria for Government intervention and that in most instances, proposals on noise management will be best developed locally. Therefore, we have concluded that it would be best to determine Government involvement according to the significance of the decision, rather than the airport in question, in line with our aims for the decision making system described on page 27.

7.16 As with operating restrictions, other noise controls associated with new infrastructure may be considered as part of planning decisions. However, it is also important that

airports have the ability to update these in response to changes that take place at an airport, or following improvements in technology. It is clear that the current centrally imposed noise controls can inhibit more ambitious or effective noise management measures being set. Engagement with the designated airports and their communities strongly points to the desire for more innovative and responsive approaches to mitigating noise. The last few years have seen both Gatwick and Heathrow drawing on the experiences of those living near these airports to develop community driven approaches to managing noise, and Stansted work with communities to develop an airspace change. Our view is that greater local control over how noise is managed at the designated airports would see this trend continue and solutions to problems developed more quickly and with fewer obstacles.

**The Role of the CAA in Ongoing Noise Management**

7.17 The Government sees the regulator's strategic role as complementary to ICCAN's role and the role of airports as outlined throughout this Chapter. We want the CAA to influence the aviation industry's performance in ongoing noise management through its leadership, advisory role and its duty regarding the publication of information on the environmental effects of UK air travel and mitigations for them. Through its Information Duty, the CAA is already able to request that existing environmental information be shared with the CAA, which it can then publish. The CAA should set out how it aims to influence airports to develop and implement better noise management approaches as they work with their airline customers, contracted ANSPs and their local communities. In doing so, the CAA should have regard to the factors outlined in their duties in relation to air navigation. We intend to direct the CAA to perform this function. This means the CAA could provide leadership at a strategic level, and could advise airports, airlines or ANSPs to take action if they are presented with compelling evidence and conclude that the factors are not appropriately balanced. For example, this could be because the right balance is not being struck in the way noise is being accounted for in operations, in the noise control measures being used or in how airports are incentivising airline or ANSP behaviours.

7.18 In the case of noise, the CAA could be informed by ICCAN's work in the new system we are proposing. For example, the CAA could consider ICCAN's best practice guidance when it is seeking to establish if noise has been adequately taken into account following evidence being presented to them. ICCAN could also allow the CAA to focus predominantly on this balance, because it would independently verify the way noise is assessed and handled.

7.19 We would not expect the CAA to become involved in every issue across the country relating to noise management. This would be disproportionate, and would not be consistent with our focus on local relationships for resolving issues. We would expect the CAA, alongside ICCAN, to influence the sector through their guidance to balance the factors which are important in airspace and noise management. We would also expect the CAA to be consistent with better regulation principles and practices and to use risk assessments to assess and prioritise issues in order to determine when they should provide advice. If the CAA felt that its advice on appropriate balance was not being given proper consideration and appropriately followed by industry, we would consider the need for further regulation.

**Compliance with Noise Controls**

7.20 Once noise controls are in place at airports, communities will want assurance that the aviation sector is adhering to these controls and all parties will want assurance that the

effectiveness of the controls is kept under review. It is therefore important that all noise controls are accurately monitored, performance levels are reported, and that appropriate compliance regimes are in place to incentivise continuous improvement in performance and potentially to sanction poor performance. Transparency is key, so we expect airports to publish clear and accurate data on performance against all noise controls which can be scrutinised by interested parties.

7.21 Information is a key tool to incentivise better performance and we encourage airports to publish comparative performance information, such as Heathrow's Fly Quiet League Table. In some cases, penalties may be appropriate to incentivise performance and to show that breaches are taken seriously. Annex E sets out the powers available to airports to set penalties for breaches of noise controls along with examples of how these powers are used. This shows that airports do make use of these powers, though we recognise the perception that airports, for commercial reasons, may be reluctant to fine their customers. We expect the use of these powers to be kept under regular review in order that enforcement of noise controls is proportionate and targeted in response to performance. We also expect ICCAN to develop best practice in the field of noise controls and compliance in a way which would raise standards. With the CAA using its influence as the UK's independent regulator of airspace to advise industry and provide leadership, and ICCAN advising on best practice in the use of the full range of compliance mechanisms available to airports, there will be the right incentives and mechanisms for industry to effectively manage their noise impacts.

7.22 In the case of controls which are set through the planning process, the various provisions and other requirements that a S106 agreement contains are usually enforceable by the local planning authority in whose area the development takes place. Enforcement for S106 agreements is undertaken by seeking an injunction through the Courts. Enforcement of planning conditions is more straightforward since it generally involves the use of the planning enforcement system.

## Proposals

### The Balanced Approach and Noise Management

7.23 We propose two different routes for decisions on operating restrictions being taken within the planning process. In most cases for both routes, the airport itself would be expected to lead the development and consultation on any proposed restrictions, with the competent authority ensuring the correct process is followed.

7.24 For operating restrictions which are associated with planning decisions in England and Wales:

- **Operating restrictions associated with strategically significant decisions:** The SofS would be appointed competent authority for all operating restrictions delivered through the planning process in the case of Nationally Significant Infrastructure Projects (NSIPs), as well as any local planning decisions that are called-in by the Secretary of State.
- **All other planning-related operating restrictions:** The local authority deciding on a planning application would be appointed competent authority.

7.25 As the Scottish and Northern Irish devolved administrations have separate powers to set noise controls, and the planning system is also devolved, these administrations will wish to make their own arrangements for appointing a competent authority for any airports within their territories that fall within the scope of the EU Regulation.

7.26 For those occasions when operating restrictions may be brought forward by an airport outside of the planning process, such as those resulting from Noise Action Plans or similar processes, we propose that the CAA would be appointed in the role of competent authority for approving any such restrictions.

7.27 More detailed information on what is required by the competent authority and how this role should be performed is included at Annex F.

*Operating Restrictions at the Designated Airports*

7.28 These proposals would have implications for future night flight regimes at Gatwick, Heathrow and Stansted where the Government has historically set restrictions. In line with our proposed policy that Government involvement should be determined according to the significance of the decision, rather than the airport in question, our objective would be that night flight restrictions are considered through the planning process or otherwise agreed locally where possible.

7.29 Expected developments at some of these airports provide such an opportunity. The draft Airports National Policy Statement includes an expectation for a night flight ban at Heathrow Airport, subject to consultation with local communities and relevant stakeholders in accordance with the International Civil Aviation Organisation's Balanced Approach to noise management. The Secretary of State would therefore have a role in approving these restrictions in line with our proposal. Stansted also expects to be bringing forward a planning application later this year to seek an increase in the level of its planning cap so that it can make maximum use of the capacity provided by the existing runway. This would provide an opportunity for local consideration of the future conditions on night flights, as well as other noise controls.

7.30 In the meantime, we need to ensure that existing controls do not lapse, which is why the Government is currently consulting on what night flight restrictions should apply until 2022. We have made clear in our night flights consultation that we do not want to preclude more bespoke arrangements being put in place at each airport – either through arrangements tied to the planning process or other means. If such locally agreed arrangements, which have been subject to appropriate consultation and take account of the Balanced Approach, can be put in place before the end of this proposed five year period, we believe it would in principle be appropriate for the Government controls to end before October 2022. If no such arrangements have been agreed by the end of this period we will consider the future role for Government at that time.

**Other Noise Controls at the Designated Airports**

7.31 In order to allow the designated airports to manage noise in the way that best reflects the issues faced by their communities, we propose that responsibility for setting other types of noise controls is transferred to the airport. They could then be agreed locally or decided through the planning process or airspace change processes, making use of ICCAN's best practice in the future. This would be consistent with the situation at other airports, and with our aim to ensure that solutions are developed locally where possible.

7.32 Under this approach, there would still be a role for the Secretary of State in approving any noise controls associated with Nationally Significant Infrastructure Projects, such as the development of a new runway at Heathrow Airport. There would also be a similar role for local planning authorities in local planning decisions. Outside of the planning process, airports would be able to make changes to these controls as and when they are needed, so that they continue to reflect best practice.

7.33 Our proposal would incentivise airports to engage and consult with their local communities and other industry partners to develop innovative and bespoke solutions to managing specific noise problems. Because the current controls set by Government are minimum industry practice, we would not expect them to be removed unless improved controls are introduced in their place. We envisage that the airports would build upon the existing controls and respond more quickly to any future issues as a result of the removal of Government bureaucracy. Airports will be incentivised in this through ICCAN's best practice and Government's clear agenda for industry set out in this consultation.

7.34 The Government would retain its powers to set noise controls at these airports, should it be necessary again in the future.

*Noise Preferential Routes at the designated airports*

7.35 We propose to transfer the ownership of the NPRs at the designated airports (Heathrow, Gatwick and Stansted) to the respective airports, as with the other noise management measures (other than operating restrictions) discussed above. At the same time, we are proposing that these airports should publish data on their departure routes and track keeping performance – more details can be found in the revised draft guidance published alongside this consultation document. This would assist in providing greater transparency to communities about where aircraft are actually flying, how often, and would make it easier to see changes over time. We also intend to encourage all other major UK airports to publish similar data in the interests of transparency where practicable. But the exact amount of information provided should be determined by the respective airports and in consultation with their local communities.

7.36 It is important to recognise that the proposal relating to the NPRs at the designated airports would not change existing flightpaths, how they are amended, or where aircraft are actually flying. This because an NPR is an administrative tool, and distinct from the standard instrument departure (SID) which aircraft actually fly. Any subsequent changes to flightpaths will still require the CAA's airspace change process to be followed, and the views of respondents taken into account by the proposer. The three designated airports would be able to retain and manage the NPRs if they wished to, and would be able to do so in a way that was more suited to their individual circumstances, through local engagement. If this policy is progressed, the Department would engage with all three airports to ensure that at the point of transfer the future arrangements are clear and publicly available.

7.37 The three designated airports could decide to retain, amend or create NPRs to best reflect the needs of their local communities. And the relevant planning authorities, as part of any relevant planning processes, could create or amend NPRs which are appropriate for the development under consideration. This is consistent with the situation at other airports, and will enable noise issues to be addressed more thoroughly at the local level than is currently the case.

## Summary

| Type of Control | Competent authority for the application of the Balanced Approach and decision maker for other controls: *In Planning Process* | *Outside of Planning Process* |
|---|---|---|
| Operating Restriction | Planning authority:<br>– usually Local Authority<br>– Secretary of State for NSIPs or called-in planning applications. | The CAA[29] |
| Other controls including operating procedures | Planning authority:<br>– usually Local Authority<br>– Secretary of State for NSIPs or called-in planning applications. | Airport |

### Ongoing Noise Management

**Questions on Chapter 7**

**Q4. Please provide your views on:**

**a. the proposal that the competent authority to assure application of the balanced approach should be as set out in Chapter 7 on Ongoing Noise Management and further information at Annex F.**

**b. the proposal that responsibility for noise controls (other than noise-related operating restrictions) at the designated airports should be as set out in Chapter 7 on Ongoing Noise Management.**

**c. the proposal that designated airports should publish details of aircraft tracks and performance. Please include any comments on the kind of information to be published and any evidence on the costs or benefits**

**d. whether industry is sufficiently incentivised to adopt current best practice in noise management, taking into account Chapter 7 on Ongoing Noise Management, and the role of the Independent Commission on Civil Aviation Noise in driving up standards in noise management across the aviation sector.**

29 With the exception of operating restrictions set by the SofS under s78 of the Civil Aviation Act 1982, should they choose to exercise these powers, in which case the SofS would be the competent authority.

# 8. Conclusions

8.1 The Government's aim is to ensure that the airspace policy framework is up to the challenges ahead in modernising airspace and delivering the new northwest runway at Heathrow. To do that we have made proposals to achieve:

- Greater transparency in decision making and the way noise is handled;
- Increased focus on engagement and locally-informed solutions;
- Improvements to the evidence base which informs how airspace decisions are made, particularly evidence on the noise impacts; and
- Clarity and consistency in the level at which decisions are made, and why.

8.2 The diagram on the next page illustrates our intended framework for airspace and noise management decisions.

**Nationally significant decisions**
The Government sets the national policy and decides on issues that are nationally or environmentally significant

- Approves noise related operating restrictions for Nationally Significant Infrastructure Projects (NSIPs)
- Assesses called-in airspace change proposals, and makes decisions to accept or reject them
- Approves Noise Action Plans

**The UK's independent regulator of airspace**
The CAA balances the interests of all parties in delivering their functions and ensures that decisions they oversee are in line with Government policy

- Sets processes for airspace change
- Assesses change proposals, and makes decisions to accept or reject them
- Submits called-in airspace changes to the Secretary of State with its conclusion on the proposal
- Sets expectations for industry engagement with communities on operational changes which affect noise
- Can advise that action should be taken if it is deemed that key factors (e.g. noise and efficiency) are not being appropriately balanced in ongoing noise management

**Locally significant decisions and ongoing noise management**
Industry, communities and their representatives work together to manage noise, informed by local circumstances and with the objective to share the benefits of improvements to aircraft technology

- Ongoing engagement and transparency, including engagement with communities on operational changes which affect noise
- Develops and consults on Noise Action Plans, and implements them
- Agrees noise controls, including certain operating restrictions for non-NSIPs
- Monitors and enforces noise controls
- Identifies options/goals for airspace changes and makes proposals informed by local circumstances and engagement and in accordance with the CAA's processes


**Independent Commission on Civil Aviation Noise**

Enables effective decision making at all levels by assuring noise information and improving how communities can engage with proposals. Drives improvement in noise management standards through best practice guidance

- Advises airspace change sponsors about noise management options
- Responds to airspace change consultations
- Promotes the use of best practice e.g. noise operating procedures or noise envelopes
- Back-stop role in conciliation of high-level disputes
- Advises industry on how noise information and concepts can be communicated accessibly

## The decision making system

8.3 The diagram shows that ongoing noise management and locally significant planning decisions should be taken at the local level, informed by engagement with all stakeholders, including communities. We wish to be clear that we expect industry to continuously seek improvements in its noise performance where practicable, to engage with communities and to consider noise when delivering airspace modernisation.

8.4 Airspace change decisions must be taken by the CAA, as it has the expertise to ensure that decisions prioritise safety while balancing all of the factors that must be taken into account, including local views. There will also be some occasions when it is appropriate for the Government to intervene directly. Some planning decisions at airports, including that to expand Heathrow Airport, are clearly significant for the whole of the UK. As the Government has responsibility for whether such Nationally Significant Infrastructure Projects (NSIPs) should go ahead, it is also right that Government ensures that communities are properly protected during such development, while the benefits of increased capacity are secured. And in the airspace change process, there will be some decisions which could have significant impacts on the environment or the UK's wider interests. Again, it remains important that Government has a role in balancing these complex and competing priorities. We have therefore developed a criteria for when decisions go beyond those which are best made through the local or regulator processes and require Government to intervene.

8.5 The new Independent Commission on Civil Aviation Noise (ICCAN) will support the decision making system across the board, underpinning them through assurance and best practice. It will improve the foundations of decisions by facilitating more effective engagement and accessible communication of noise impacts and management options. This improved dialogue will feed into decisions not only at a local level, but through the CAA and Government alike. ICCAN will also drive improvements in the standards of ongoing noise management, providing best practice so that decisions on noise controls can be made based on the latest information and options available.

8.6 The proposals in this consultation set out our view on how decisions on airspace and noise should be made, and by whom. The changes proposed would ensure that decisions can be made which better support the effective management of airspace and the noise impacts which its use can create.

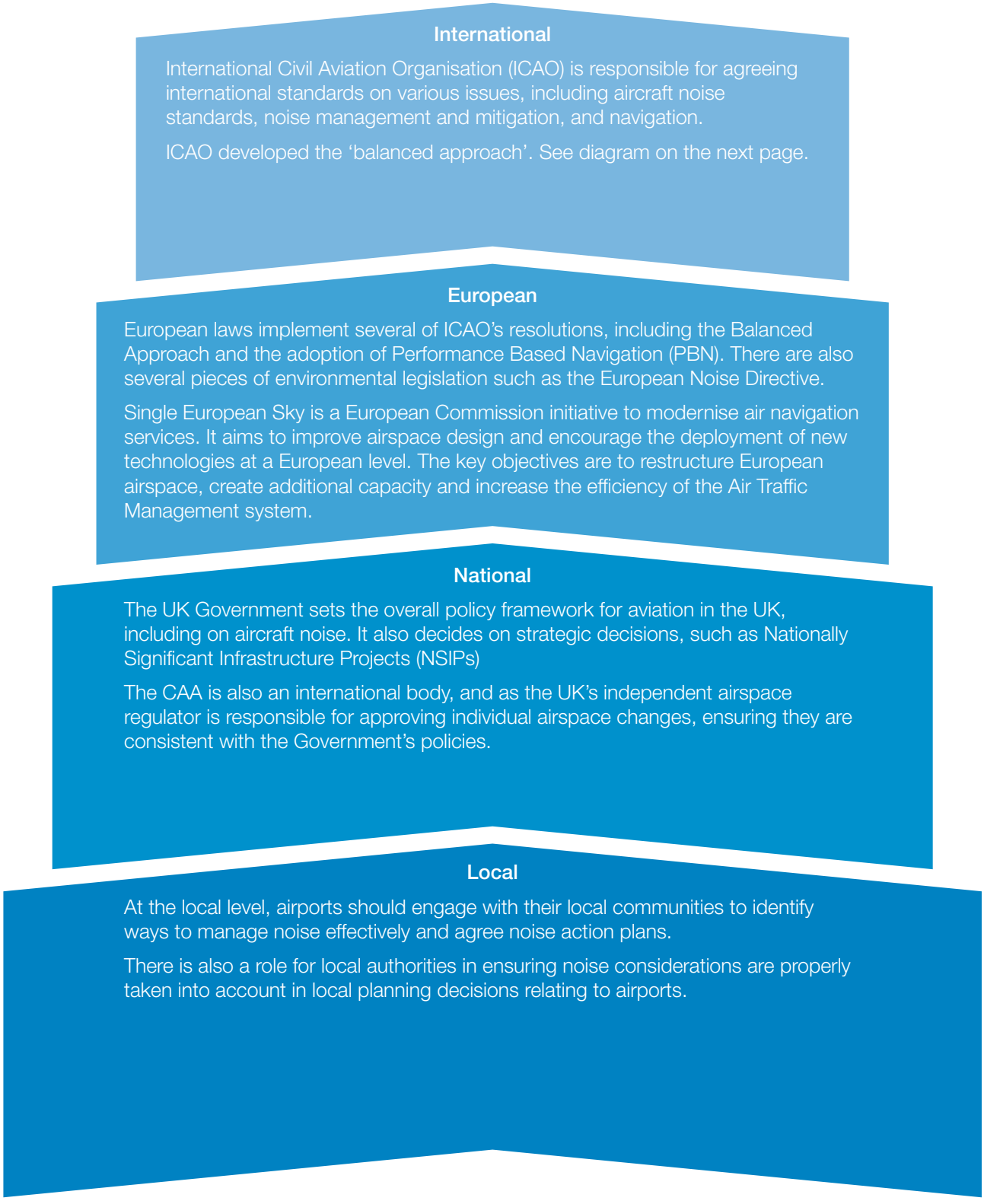
# Annex A: Current Policy

A.1 Throughout this consultation we make reference to the overarching policy and legal framework that is in place for airspace and aviation noise. A summary is provided below.

## Current Policy and Legal Framework

### International and Domestic Context

A.2 Aviation is clearly an international sector. Much of the rules and regulations which govern its operation are necessarily international, in order to ensure that aircraft can fly with ease between different countries. The diagram below shows how the international framework feeds through to domestic and local controls. The table below gives more detail about the arrangements in place in the UK governing airspace and noise.




## Current framework

**The Balanced Approach**

The Government's approach to managing aircraft noise is based on the principles of International Civil Aviation Organization's (ICAO) Balanced Approach. The goal of the Balanced Approach is to address noise problems on an individual airport basis and to identify the noise-related measures that achieve maximum environmental benefit most cost-effectively using objective and measurable criteria. The measures identified under the Balanced Approach for addressing noise are:

1. **Reduction of noise at source:** Much of ICAO's effort to address aircraft noise over the past 40 years has been aimed at reducing noise at source. Aeroplanes and helicopters built today are required to meet the noise certification standards adopted by the Council of ICAO. The latest standards which the UK was instrumental in agreeing, includes the requirement for large civil aircraft, from 2017, to be at least 7dB quieter on average in total, across the three test points, than the current standard. Standards for smaller aircraft will be similarly reduced in 2020.

2. **Land-use planning:** Land-use planning and management is an effective means to ensure that the activities nearby airports are compatible with aviation. Its main goal is to minimize the population affected by aircraft noise by introducing land-use zoning around airports. Compatible land-use planning and management is also a vital instrument in ensuring that the gains achieved by the reduced noise of the latest generation of aircraft are not offset by inappropriate residential development around airports.

3. **Noise abatement operational procedures:** Noise abatement procedures enable reduction of noise during aircraft operations to be achieved at comparatively low cost. There are several methods, including preferential runways and routes, as well as noise abatement procedures for take-off, approach and landing. The appropriateness of any of these measures depends on the physical lay-out of the airport and its surroundings, but in all cases the procedure must give priority to safety considerations.

4. **Operating restrictions:** Under the Balanced Approach, an operating restriction is defined as "any noise-related action that limits or reduces an aircraft's access to an airport." Examples of operating restrictions include restrictions on the number of flights allowed during certain periods, such as at night, or those which place restrictions on noisier types of aircraft

**How is it used?**

Where there is a noise problem at an airport, **European legislation requires it to be addressed in accordance with the Balanced Approach and to** be managed in the most cost efficient manner.

Operating restrictions should only be introduced at airports if there are no other ways of achieving the desired benefits.

There may be occasions that operating restrictions are necessary, but the process for deciding on these should be performed in accordance with the Balanced Approach **and EU requirements**.

## Balanced Approach

| Legislation, Policy or Framework | Details |
|---|---|
| Aviation Policy Framework (APF) | The APF, published in March 2013, outlines the Government's objectives, principles and guidance on the issues which will challenge and support the development of aviation across the UK at a local and regional level. This guidance covers: noise impacts, air quality, environmental impacts, the roles of industry and the Government, and the aims for local collaboration with all key aviation stakeholders (including communities). The APF sets out that the Government's 'overall objective on noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise.'<br><br>It includes the statement that 'we expect the aviation industry to make extra efforts to reduce and mitigate noise from night flights through use of best-in-class aircraft, best practice operating procedures, seeking ways to provide respite wherever possible and minimising the demand for night flights where alternatives are available.' The proposals in this consultation would update and ultimately replace the noise elements of the APF. |
| Transport Act 2000 | The Transport Act 2000 sets out the Secretary of State's and the CAA's high level duties with respect to air navigation, and the Secretary of State's power to issue Directions to the CAA and ANSPs. Section 70 sets out a general duty for the CAA with respect to its air navigation functions. More details below. |
| Section 70 of the Transport Act 2000 | Section 70 of the Transport Act sets out a general duty for the CAA with respect to the exercise of its air navigation functions.<br><br>The general duty requires the Civil Aviation Authority (CAA) to exercise its air navigation functions so as to maintain a high standard of safety in the provision of air traffic services as a priority. Section 70 then goes on to set out that the CAA must exercise its air navigation functions in the manner it thinks best calculated to achieve a number of factors (and where a conflict arises between these factors to apply them in the manner it thinks is reasonable). The factors are:<br><br>• to secure the most efficient use of airspace consistent with the safe operation of aircraft and the expeditious flow of air traffic;<br><br>• to satisfy the requirements of operators and owners of all classes of aircraft;<br><br>• to take account of the interests of any person (other than an operator or owner of an aircraft) in relation to the use of any particular airspace or the use of airspace generally;<br><br>• to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section;<br><br>• to facilitate the integrated operation of air traffic services provided by or on behalf of the armed forces of the Crown and other air traffic services;<br><br>• to take account of the interests of national security;<br><br>• to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification). |
| Air Navigation Directions | The Secretary of State imposes duties and confers powers on the CAA with regard to air navigation in a managed area. It also sets out the current arrangements for the SofS's role in airspace change.<br><br>The Air Navigation Directions outline specific consultation requirements for an airspace change using the same criteria above, whereby the sponsor of the change needs to 'ensure that the manager of the aerodrome, users of it, any local authority in the neighbourhood of the aerodrome and any other organisation representing the interests of persons in the locality, have been consulted…' It also requires consultations with the manager of aerodromes and local authorities for airspace changes that have the same effect under the arrival tracks and departure routes followed by aircraft. |
| Guidance to the Civil Aviation Authority on Environmental Objectives Relating to the Exercise of its Air Navigation Functions (Air Navigation Guidance, ANG) | Refreshed in 2014, the Air Navigation Guidance to the CAA takes into account policy and technical developments, including providing clarity to the CAA and the aviation community on the Government's environmental objectives relating to air navigation. It sets out the key objectives on improving efficiency in airspace, mitigating the environmental impact of aviation noise (including the altitude based priorities) and reiterates the need to consult local communities when airspace changes are being made at airports. The guidance also reflects significant developments such as the creation of the Future Airspace Strategy, the Single European Skies, and the Aviation Policy Framework. |

| Legislation, Policy or Framework | Details |
|---|---|
| Civil Aviation Act 1982 | The Civil Aviation Act 1982 includes the ability for the Government to designate individual airports and set specific noise controls. This has led to the Government introducing operating restrictions at airports, and other technical controls, such as a minimum height requirement and noise limits for departing aircraft. The most significant controls currently set through these powers are the night flight regimes at Heathrow, Gatwick and Stansted.<br><br>This Act also gives the SofS a power to direct any with reference to its charges for the purpose of encouraging quieter aircraft.<br><br>Section 84 gives the CAA power to obtain information for certain purposes, including information on the number of aircraft and passengers passing through a licensed aerodrome. |
| Civil Aviation Act 2012 | Section 84 of the Civil Aviation Act 2012 contains provision for the CAA to publish, or arrange for the publication of information and advice it considers appropriate relating to:<br><br>• the environmental effects of civil aviation in the United Kingdom;<br><br>• how human health and safety is, or may be, affected by such effects; and<br><br>• measures taken, or proposed to be taken, with a view to reducing, controlling or mitigating the adverse environmental effects of civil aviation in the United Kingdom.<br><br>The CAA may also publish guidance and advice with a view to reducing, controlling or mitigating the adverse environmental effects of civil aviation in the United Kingdom.<br><br>Section 85 gives the CAA a power to obtain information in order to perform the function under section 84.. |
| Integrated Aeronautical Information Publication (AIP) | Aeronautical Information Publication (or AIP) is a document produced to inform those operating aircraft in the UK's airspace. It is designed to be a manual containing thorough details of regulations, procedures and other information necessary for flying aircraft in the particular country to which it relates, for example routes and landing procedures. The UK's AIP is published by NATS, under authority from the CAA and Government. It is regularly updated. The format and contents of the AIP is set by ICAO, and all members produce one. |
| EU Environmental Noise Directive | Under European law, Member States are required to publish a strategic noise map for the main sources of environmental noise (including roads, railways, airports etc.) every five years. Major airports are required to produce Noise Action Plans which must be based on the results of the noise mapping, and they must review these plans at least every five years. Plans must be designed to manage noise issues and effects, including noise reduction if necessary and; meet the objectives in Article 1(c) of Directive 2002/49/EC (Environmental Noise Directive, END); amongst other aims. |
| Land Compensation Act 1973 | The Act provides that compensation can be claimed for residential property that has been reduced in value due to physical factors such as noise and pollution caused by public works (including airports), even though no land is acquired. |

**Current Policy and Legal Framework**

# Annex B: Full list of consultation questions

| Question Number | Chapter | Question |
|---|---|---|
| 1 | Changes to Airspace | Please provide your views on:<br>a. the proposed call-in function for the Secretary of State in tier 1 airspace changes and the process which is proposed, including the criteria for the call-in and the details provided in the draft guidance.<br>b. the proposal that tier 2 airspace changes should be subject to a suitable change process overseen by the CAA, including the draft guidance and any evidence on costs and benefits.<br>c. the proposal that tier 3 airspace changes should be subject to a suitable policy on transparency, engagement and consideration of mitigations as set out by the Civil Aviation Authority.<br>d. the airspace change compensation proposals. |
| 2 | Assessing Noise in Airspace Decisions | Please provide your views on:<br>a. the proposal for assessing the impacts of noise, including on health and quality of life. Please provide any comments on the proposed metrics and process, including details provided in the draft guidance.<br>b. the proposal to require options analysis in airspace change processes, as appropriate, including details provided in the draft guidance. |
| 3 | Independent Commission on Civil Aviation Noise | Please provide your views on:<br>a. the Independent Commission on Civil Aviation Noise's (ICCAN's) proposed functions.<br>b. the analysis and options for the structure and governance of ICCAN given in Chapter 6, and the lead option that the Government has set out to ensure ICCAN's credibility. |
| 4 | Ongoing Noise Management | Please provide your views on:<br>a. the proposal that the competent authority to assure application of the balanced approach should be as set out in Chapter 7 on Ongoing Noise Management and further information at Annex F.<br>b. the proposal that responsibility for noise controls (other than noise-related operating restrictions) at the designated airports should be as set out in Chapter 7 on Ongoing Noise Management.<br>c. the proposal that designated airports should publish details of aircraft tracks and performance. Please include any comments on the kind of information to be published and any evidence on the costs or benefits.<br>d. whether industry is sufficiently incentivised to adopt current best practice in noise management, taking into account Chapter 7 on Ongoing Noise Management, and the role of the Independent Commission on Civil Aviation Noise in driving up standards in noise management across the aviation sector. |
| 5 | Guidance | Please provide any comments on the draft Air Navigation Guidance: guidance on airspace & noise management and environmental objectives published alongside this consultation. |

# Annex C: Glossary

| Acronym | Term | Meaning |
|---|---|---|
| A-Weighted Scale | | The A-weighted scale incorporates a frequency weighting approximating the characteristics of human hearing |
| ACP | Airspace Change Process | The Civil Aviation Authority's airspace change process which is set out in its Civil Aviation Publication 725 (CAP 725). |
| AIP | Aeronautical Information Publication | A document which sets out the detailed structure of the UK's airspace and which is also intended to satisfy international requirements for the exchange of aeronautical information. |
| AND | Air Navigation Directions | "The Civil Aviation Authority (Air Navigation) Directions 2001 (incorporating variation Direction 2004)". These directions set out the CAA's air navigation duties and were jointly issued by the SofS for Transport and the SofS for Defence. |
| ANG | Air Navigation Guidance | The document which provides guidance to the aviation industry and the CAA on air navigation. |
| ANSP | Air Navigation Service Provider | A public or private entity providing air navigation services for general air traffic |
| ATC | Air Traffic Control | The service provided by controllers to prevent collisions between aircraft and to expedite and maintain an orderly flow of air traffic. |
| ATM | Air Traffic Management | The combination of the airborne and ground-based functions (air traffic services, airspace management and air traffic flow management) to ensure the safe and efficient movement of aircraft during all phases of air operations. |
| ATMs | Air Transport Movements. | The landings or take offs of aircraft engaged in the transport of passengers or freight on commercial terms. |
| ATS | Air Traffic Services | The various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services). |
| | Airspace Design | The process by which airspace change sponsors develop their proposals for amending the UK's airspace structure. |
| | Airspace Structure | The detailed airspace layout and procedures as set out in the AIP. It is overseen by the CAA and any changes to it need to follow the CAA's airspace change process. |
| | Airspace Management | A planning function with the primary objective of maximising the utilisation of available airspace. |
| | Airspace Users | All aircraft operated as general air traffic. |
| CAA | Civil Aviation Authority | The statutory body which oversees and regulates all aspects of civil aviation in the United Kingdom. |
| CAT | Commercial Air Transport | Any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire |

| | | |
|---|---|---|
| | Concentration | This is where aircraft are instructed by controllers or follow procedures which mean that they fly the same route consistently with minimal dispersion. |
| dB (or dBA) | Decibel | Units describing sound level or changes of sound level. Expressed as dBA when it relates to the A-weighted scale. |
| Defra | Department for Environment, Food & Rural Affairs | The lead UK Government Department for overall environmental policy |
| DfT | Department for Transport | The lead UK Government Department for aviation policy and the author of the Air Navigation Guidance. |
| | Dispersion/ Dispersal | Dispersal is the consequence of either natural variation from a flight path as a result of navigational limitations, or tactical vectoring of individual aircraft by ATC. |
| EASA | European Aviation Safety Agency | The European Aviation Safety Agency (EASA) is an agency of the European Union (EU) with regulatory and executive tasks in the field of civilian aviation safety |
| EC | European Commission | The executive body of the European Union responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU.[2] |
| | Engagement | A catch all term that covers a variety of activities such as consulting, seeking feedback, and informing stakeholders. It can also involve meetings, workshops, town hall meetings etc. |
| ERCD | The Environmental Research and Consultancy | The team in the CAA which, as part of its activities, estimates the noise exposures around London airports (Heathrow, Gatwick and Stansted) on behalf of the Department for Transport |
| EU | European Union | The union of 28 European member states. |
| FAS | Future Airspace Strategy | The agreed UK plan to modernise airspace by 2030. |
| | General Aviation | Any civil aircraft operation other than commercial air transport or aerial work. |
| GAT | General Air Traffic | All movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of the ICAO. |
| | Holding stacks | A fixed circling pattern in which aircraft fly whilst they wait to land. When airports are busy, there can be a build-up of aeroplanes waiting to land. |
| ICAO | International Civil Aviation Organisation | The international aviation body established by the 1944 Chicago Convention on International Civil Aviation. |
| ICCAN | Independent Commission on Civil Aviation Noise | The independent UK body responsible for creating, compiling and disseminating best practice to the aviation industry. |
| ILS | The Instrument Landing System | The standard system for navigation of aircraft upon the final approach for landing. |
| LAMP | London Airspace Management Programme | The NATS led project to modernise the airspace structure across southern England. |
| LDEN | | The 24-hrLeq calculated for an annual period, but with a 5 decibel weighting for evening and a 10 decibel weighting for night to reflect people's greater sensitivity to noise within these periods. |
| Leq (or LAeq) | Equivalent sound level | The measure used to describe the average sound level experienced over a period of time (usually 16hr for day and 8hr for night) resulting in a single decibel value. Leq is expressed as LAeq when it refers to the A-weighted scale. |
| Lnight | | The equivalent sound level between 2300 and 0700 over the course of a year. |
| | Multiple Route Options | The availability to the airspace user of more than one routing option on the ATS route network.<br>Options for airspace design that are based on multiple flights paths. These can potentially offer relief or respite from aircraft noise. |

| | | |
|---|---|---|
| MATS II | Manual of Air Traffic Services Part II | The document containing the ATC operational procedures used by the ANSP. It does not change the notified structure of the UK's airspace. |
| NATS | National Air Traffic Services | The UK's en-route air navigation service provider which also provides services at many UK airports. |
| | Navigation Services | The facilities and services that provide aircraft with positioning and timing information. |
| | Noise Contours | These are areas on a map showing where equal levels of noise are experienced. |
| | Noise Envelope | A concept that creates balance between aviation growth and noise reduction and incentivises the reduction of noise at source. A noise envelope should be agreed among stakeholders, take account of new technology and be appropriate for the airport in question. Noise envelopes can give local communities more certainty about the levels of noise they may expect in the future and could take the form of a movement cap, a maximum contour size, a quota count system or a limit on passenger numbers among others. |
| | Noise Respite | The principle of noise respite is to provide planned and defined periods of perceptible noise relief to people living directly under a flight path. |
| NPRs | Noise Preferential Routes | Noise Preferential Routes (NPRs) set the overall framework within which the flightpaths at a number of airports, including Heathrow, Gatwick and Stansted, were originally designed to mitigate noise impacts. |
| PBN | Performance Based Navigation | A concept developed by ICAO that moves aviation away from the traditional use of aircraft navigating by ground based beacons to a system more reliant on airborne technologies, utilising area navigation and global navigation satellite systems. |
| PPR | Permanent and Planned Redistribution | This is where an ANSP makes a conscious decision to amend an air traffic control procedure which results in the permanent shift of some air traffic. |
| | Relief | This is when multiple routes are designed and operated far enough apart to offer a perceptible reduction in noise for communities. Respite is one form of relief, but multiple flight paths could also be operated at the same time but with an alternating pattern of operation. |
| | Route Network | The network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services. |
| | Routing | The chosen itinerary to be followed by an aircraft during its operation. |
| SEL | Sound Exposure Level | The steady noise level, which over a period of one second contains the same sound energy as the whole event. It is equivalent to the Leq of the noise event normalised to one second. |
| SI | Supplementary Instruction | This is the means by which a proposed permanent change to ATC procedures is incorporated into the next MATS II edition. |
| | Sustainable development | Economic development that is conducted without depletion of natural resources. |
| SIDs | Standard Instrument Departure routes | These are the established departure routes which are published in the AIP and which must be flown by aircraft when departing airports which have SIDs. |
| STARs | Standard Terminal Arrival Routes | These are the established arrival routes for aircraft which are published in the AIP. They end at holding stacks. |
| | Swathe | A specific area and volume of airspace in which controllers are vectoring aircraft or, as in the case of NPRs, in which track keeping of aircraft is being monitored. |
| s106 | | Section 106 Agreements of the Town and Country Planning Act 1990, which allows interested people to ask for conditions to be applied to particular planning applications. |
| | Vectoring | This is where an air traffic controller directs the pilot of an aircraft to fly a specific compass heading which can be off the normal airspace route structure. |

# Annex D: Compensation Policy and Legislation

## Extract from Aviation Policy Framework – Noise insulation and Compensation

D.1 *"The Government continues to expect airport operators to offer households exposed to levels of noise of 69 dB LAeq,16h or more, assistance with the costs of moving.*

D.2 *The Government also expects airport operators to offer acoustic insulation to noise-sensitive buildings, such as schools and hospitals, exposed to levels of noise of 63 dB LAeq, 16h or more. Where acoustic insulation cannot provide an appropriate or cost-effective solution, alternative mitigation measures should be offered.*

D.3 *If no such schemes already exist, airport operators should consider financial assistance towards acoustic insulation for households. Where compensation schemes have been in place for many years and there are few properties still eligible for compensation, airport operators should review their schemes to ensure they remain reasonable and proportionate.*

D.4 *Where airport operators are considering developments which result in an increase in noise, they should review their compensation schemes to ensure that they offer appropriate compensation to those potentially affected. As a minimum, the Government would expect airport operators to offer financial assistance towards acoustic insulation to residential properties which experience an increase in noise of 3dB or more which leaves them exposed to levels of noise of 63 dB LAeq, 16h or more.*

D.5 *Any potential proposals for new nationally significant airport development projects following any Government decision on future recommendation(s) from the Airports Commission would need to consider tailored compensation schemes where appropriate, which would be subject to separate consultation.*

D.6 *Airports may wish to use alternative criteria or have additional schemes based on night noise where night flights are an issue. Airport consultative committees should be involved in reviewing schemes and invited to give views on the criteria to be used."*

## Current Policy

### Compensation for loss of value

D.7 Part 1 of the Land Compensation Act 1973 provides that compensation can be claimed for residential property that has been reduced in value due to physical factors such as noise and pollution caused by public works (including airports), even though no land is acquired. Claims cannot be made until a period of 12 months from the date of opening/ adoption has passed. The Limitation Act 1980 provides that a person who is entitled to make a claim must do so within six years of the first claim day.

D.8 This form of compensation will potentially be most relevant to new runways. The most recent examples of its application to airports were Manchester's second runway and runway extensions at East Midlands and Southend Airports. Difficulties arise with the compensation process of this Act however, in proving loss of value due to noise disturbance (which requires a detailed analysis of the factors affecting the local housing market), and the difficulty in separating new noise disturbance caused by use of the new infrastructure from noise made by additional movements which may have occurred without the development.

D.9 The Land Compensation Act 1973 specifically excludes the claiming of compensation where there has been intensification of use. There is no statutory requirement for compensation to be paid to those who live next to public works, such as roads and railways, purely because traffic has increased. The view is taken that those who purchase property near existing roads or railways do so in the knowledge that traffic can change in composition or volume, and that it would not be right to require the relevant authorities to pay compensation solely because traffic patterns have altered in this way.

### Non-statutory compensation

D.10 Most major airports currently have discretionary schemes which offer financial assistance towards noise insulation to properties near the airport. Each airport's scheme has different criteria but in most cases will comply with the minimum criteria set out in the APF (see above extract from Aviation Policy Framework – Noise insulation and Compensation)

## Current compensation offers

D.11 Many airports have gone beyond the policy and legislated compensation amounts. In April 2014 Gatwick introduced a new noise insulation scheme which is calculated on the 60dB LAeq (daytime) noise contour based on airport operation at maximum capacity handling 45 million passengers per annum. The contour boundary has been amended to reflect local geographic layout resulting in an uneven boundary line. The airport has decided to extend this line 15km, both east and west outside the furthest contour to reflect aircraft noise impacts from all arriving aircraft established on the centre line. In practice this extends eligibility to some properties within the 51dB LAeq contour. The scheme pays up to £3,000 per property for double glazing or acoustic loft insulation. Around 2,000 homes are eligible.

D.12 Birmingham have a section 106 planning obligation in place that requires them to fully insulate for sound within the 63dB LAeq contour from 2002 although that contour has shrunk in size since.

D.13 Bristol have a section 106 planning obligation in place that requires them to have a community fund linked to passenger numbers (£130, 000 in 2015) available each year which provides noise insulation grants. 100% grants (up to £5,000) are available to residents within the 63dB LAeq contour. Residents within the 60dB LAeq and 57dB LAeq contours can apply for grants for 50% of costs (up to £2,500). Grants are for high specification acoustic double glazing for windows and doors for habitable rooms.

D.14 Luton provides insulation works, determined on an annual basis, to any habitable rooms at homes that are:

- Within the 63 dB LAeq, 16h summer daytime contour based on actual aircraft movements at the airport for the summer period (16th June to 15th September) in the immediately preceding calendar year.
- Any bedrooms at homes within the 55 dB LAeq, 8h summer night-time contour based on actual aircraft movements at the airport for the summer period (16th June to 15th September) in the immediately preceding calendar year.
- Any bedrooms at homes where the airborne noise level in excess of 90 dB SEL occurs at an annual average frequency of once or greater during the night-time (23.00 to 07.00).

## Additional runway capacity offers

D.15 Heathrow's compensation package offer for its proposed North-West runway scheme applies to homes within the future 55db Lden or 54 dBLeq contour, whichever is the greater, that would be eligible for noise insulation. This is expected to stretch to Windsor in the west and Richmond in the east and over 160,000 homes could be eligible. Homes close to the airport would qualify for full costs paid with those further away receiving up to £3,000. Heathrow has also proposed compensation of 25% above market value, all legal fees, and stamp duty costs for a new home for anyone whose home needs to be purchased (about 750 homes), and has extended this offer to homes in villages close to the new runway which will not be compulsorily purchased (about 3,750 properties would be eligible).

# Annex E: Compliance Mechanisms

**Introduction**

E.1 The Government's overall policy on aviation noise is to limit and where possible reduce the number of people significantly affected by aircraft noise. In support of this policy, we expect industry to continuously strive for best practice and to be transparent in how it does this (consultation, noise action plans) and on its performance (monitoring and information).There are a number of levers in place to incentivise noise reduction, right up to sanctions, and most airports use a range of these.

E.2 Airspace and noise issues are often at the forefront of community concerns around airports. Complaints are often raised that current compliance measures are not transparent, and that communities are unaware of what steps have been taken, or are being taken, to rectify an issue. To help with this, as seen in the main body of this consultation document, the new noise body, ICCAN should encourage best practice, including in the use of compliance mechanisms and should be part of the airspace change process to ensure noise impacts and mitigation options are properly considered. We do not consider at this stage that ICCAN should have a direct enforcement function in respect of individual breaches of noise controls. This is primarily because its remit would be limited to noise and understanding the reasons for individual breaches would require a wider investigation function, potentially encompassing air navigation and safety matters. It is also important that enforcement of noise controls does not create perverse incentives leading to worse outcomes in other areas such as emissions, safety or efficiency.

E.3 This paper aims to set out the mechanisms, standards and policies currently available to the Government, local authorities, airports, and other interested bodies as well as how these are used.

**Compliance Levers – International, EU and National**

*International Noise Controls*

E.4 ICAO, as part of the UN, set standards and regulations for environmental protection from impacts due to aviation, and in particular noise certification standards which apply to new aircraft types. The definition of the specification that an aircraft needs to reach are detailed in the relevant Chapter in Annex 16 of the 'Environmental Technical Manual on the use of Procedures in the Noise Certification of Aircraft'.[30] The latest standard, known

30 ICAO, Aircraft Noise, http://www.icao.int/environmental-protection/pages/noise.aspx

as 'Chapter 14' requires new types of large civil aircraft, from 2017, to be at least 7dB quieter in total, across the three test points, than the current standard. Airports are able to set noise charges based on these standards.

E.5 Noise Abatement Departure Procedures (NADP) are a series of airline operational techniques that help reduce noise, which are endorsed by ICAO. A recent review of these procedures can be found through ICAO[31]. ICAO also encourage Member States to adopt a 'balanced approach' with regards to the decision making process around aircraft noise and its environmental impacts, which has been explained above.

*European Noise Controls*

E.6 In order to ensure a regulated and fully functioning single air transport market between EU Member States, the European Commission issues Directives and Regulations, including in the field of noise regulation. For further information on the status of these regulations as a result of the referendum on the UK's membership of the EU, please see page 15 of the consultation document.

| Regulation | Description | Where or How is it Used? |
|---|---|---|
| Regulation of the operation of aeroplanes (EC Directive 2006/93 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988)) | To ensure that all civil subsonic jet aircraft landing at their airports comply with at least the standards in Chapter 3 | At all airports |
| Rules and procedures with regards to the introduction of noise-related operating restrictions with a balanced approach (EU Regulation 598/2014) | Wider definition of operating restrictions in order to facilitate the implementation of operational measures which could reduce noise impacts without affecting operational capacity | Came into force in June 2016 and will be applicable for any new changes that require operating restrictions |
| Assessment and management of environmental noise (EC Directive 2002/49 relating to the assessment and management of environmental noise implemented by the Environmental Noise (England) Regulations 2006) | Create noise maps for relevant[32] airports to then create a Noise Action Plan | Undertaken every 5 years[33] |
| Common rules for the allocation of slots at Community airports (Council Regulation (EEC) No 95/93 (as amended)) | Administer a scheme of sanctions to control air carriers who repeatedly and intentionally misuse airport slots at the UK's six coordinated airports (currently Heathrow, Gatwick, Stansted, Manchester, Luton and London City, with Birmingham to be added summer 2017). | ACL, the slot coordinator applies these sanctions (last update 2015) |

**EU regulations for Compliance**

31 http://www.icao.int/environmental-protection/Documents/ReviewNADRD.pdf

32 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276226/noise-action-plan-airport-operators-guidance-201401.pdf

33 The Action Plan must be designed to manage noise issues and effects, including plans for noise reduction if necessary. Action Plans must: Be designed to manage noise issues and effects, including noise reduction if necessary; Aim to preserve quiet areas in agglomerations; Address priorities which must be identified having regard to guidance; Apply to the most important areas as established by strategic noise maps; Include consultation with the public, whereby they must be given early and effective opportunities to engage with the creation and review of the plans.

*National Noise Controls*

E.7 The competent authority for designated airports is the Secretary of State, giving him the powers under section 78 of the Civil Aviation Act 1982 to consult and decide on noise controls, including abatement procedures and the night flight regime. Non-designated airports have equivalent powers in section 38A-38C of the Civil Aviation Act 1982 (not Northern Ireland) to impose controls that mitigate noise impacts. Local authorities can also secure similar noise controls through the planning system, either as conditions on airport development or as planning agreements known as section 106 agreements. The proposed implementation of the recent EU regulation on the balanced approach referred to above would make local authorities the competent authority for non-strategically significant decisions. Competent authorities must ensure that decisions on operating restrictions have followed the Balanced Approach and that appropriate consultation has taken place.

| Name | Description | Where applicable |
|---|---|---|
| Penalty scheme<br>Section 78A Civil Aviation Act 1982 | A designated airport can establish a penalty scheme if the operator of an aircraft does not comply with any of the requirements imposed under section 78(1) of the Civil Aviation Act 1982 in relation to aircraft taking off or landing. | Heathrow, Gatwick and Stansted |
| Non-designated Airports Section 38A Civil Aviation Act 1982 (except Northern Ireland)<br>Regulate noise and vibration | Powers to regulate noise & vibration from aircraft similar to those conferred to the Secretary of State under section 78. Airports can establish penalty schemes for the failure to comply with these requirements. | Birmingham, Bristol, Luton, London City, Manchester |
| The Town and Country Planning Act 1990 – Section 106 agreements | Allows local planning authorities to include a legally-binding planning obligation or agreement with a landowner alongside the granting of planning permission. These can often include operational restrictions which can lead to noise abatement. The various provisions and other requirements that a S106 contains is usually enforceable by the local planning authority in whose area the development takes place. Enforcement for S106 agreements is undertaken by seeking an injunction through the Courts. Enforcement of planning conditions is more straightforward since it generally involves the use of the planning enforcement system.[34] | Birmingham, Bristol, Luton, London City, Heathrow, Gatwick, Stansted, Manchester |

## National Regulations for Compliance

### Airports' Use of Compliance Mechanisms

E.8 Airports have several mechanisms that they can use to manage and reduce noise. Legal mechanisms arise from section 38-38C powers or Section 106 planning agreements as outlined above, while some are voluntary on the part of the airport. If they are not adhered to, it is the local planning authority who has the legal right to challenge the non-compliance and will have levers in place to stop the unwanted behaviours. In addition to legal mechanisms which compel airline behaviour there are also economic incentives,

34 http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/planning-enforcement-overview/

such as differential landing charges which favour the use of quieter and cleaner aircraft, and 'soft' measures such as the publication of comparative information to drive better performance, (the CAA has published a report on the use of environmental landing charges at UK airports in 2013 ). We provide examples below to illustrate current use of the potential compliance mechanisms. These are given as representative examples: there are many other airports also managing and reducing noise in similar ways across the country.

| Breaches for Departure Noise Limits | Flying off track or persistently flying outside NPRs |
|---|---|
| Heathrow | Stansted |
| Gatwick | Manchester |
| Stansted | Bristol14 |
| Birmingham | Southend |
| East Midlands (night only) | Luton |
| Bristol | |
| Luton | |
| London City | |
| Manchester | |

### Airports that fine for breaches

#### Heathrow

E.9 In addition to the noise action plan outlined above, the introduction of a 'Fly Quiet League' table was put in place to encourage airlines to use their newest fleets at the airport and operate them in a quieter manner. Whilst there are no sanctions directly tied to the league table, Heathrow believe that airlines want to be at the top of the table , and report that airlines who have featured near the bottom have sought advice on how to improve. They have a number of noise mitigation schemes which can be accessed on their website[35] along with the most recent Fly Quiet League table.

E.10 Heathrow is aiming to ensure that all movements are ICAO Chapter 4 compliant by 2020 meaning the technology used for noise reduction will be some of the most modern available. Their 'Quieter planes' scheme includes variable landing charges depending on the chapter of aircraft. For example, Peak Landing charges are £8,977.84 for Chapter 3 'high' aircraft, and £1,760.77 for Chapter 4 'high' aircraft.[36]

E.11 Heathrow also have a NOx emission charge, where airlines pay £8.82 for each kg of NOx emissions.[37]

35 Heathrow Airport Limited, 'Environmental Noise Directive, Noise Action Plan 2013-2018, http://www.heathrow.com/file_source/HeathrowNoise/Static/Noise_Action_Plan.pdf, p. 21

36 Heathrow Airport Charges 2016, http://www.heathrow.com/file_source/Company/Static/PDF/Partnersandsuppliers/heathrow_airport-airport_charges_decision_2016.pdf

37 Heathrow Airport Limited, Conditions of Use, Schedule 5, http://www.heathrow.com/file_source/Company/Static/PDF/Partnersandsuppliers/HAL-Conditions-of-Use-Amendment-SCHEDULE5-Up_date-25April2014.pdf

### Gatwick

E.12 In addition to the noise action plan, Gatwick restricts operations of marginally Chapter 3 aircraft (Chapter 3 high (least noise efficient of Chapter 3)) so that they cannot operate at Gatwick. From 2015 it expects that at least 83% of aircraft movement will be Chapter 4 or equivalent aircraft.

E.13 They have now introduced a 'fly quiet and clean' programme in conjunction with airlines. They will then be ranked in a league table and measured on metrics such as compliance with abatement techniques, fleet age, engine fit and passenger loads per km.

E.14 All fines for breaches of noise abatement requirements are paid annually to The Gatwick Airport Community Trust, which then invests the money into the local community. Gatwick will continue to fine aircraft who breach departure noise limits and are seeking to increase the fining levels in order to penalise repeat offenders.

### Stansted

E.15 Besides their noise action plan, Stansted fine airlines when their aircraft fly 'persistently' outside the NPRs, and send all funds to the Stansted Airport Community Trust Fund. Stansted have also raised fines for daytime breaches and doubled it for night time breaches.

E.16 As part of their most recent noise action plan, Stansted have introduced a tiered fining level (beginning at £1,000) for breaches over the 94dB daytime limit.

### Southend

E.17 Southend also fine aircraft that continue to operate off of NPRs despite previous warnings. They assign the level of the fine based on the Quota Count of the aircraft (see below for more information on Quota Count).[38]

| Scale of Fines | 1st Fine | 2-5 Fines | 5+ Fines |
|---|---|---|---|
| Aircraft QC1 or less | £500 | £1,000 | £2,000 |
| Aircraft QC1-QC2 | £1,000 | £2,000 | £4,000 |
| Aircraft QC2+ | £2,000 | £4,000 | £8,000 |

Stansted Fine Levels

### Luton

E.18 Luton have introduced navigational technology which is designed to keep aircraft within the NPR. As a result they fine operators when a track-keeping infringement occurs. Luton believes that this effectively incentivises operators to stay within the swathe, which was modified in 2015 to be more effective. This is enforced as part of their section 106 agreement.

38 London Southend Airport Ltd, Noise Action Plan, http://www.southendairport.com/images/corporatecommunity/environmentalresponsibility/pdfdownloads/NAP-2014.pdf

### Quota Count

E.19 The Quota Count system[39] was designed for the night flight regime at the three designated airports (Heathrow, Gatwick and Stansted) and applies from 2330 to 0600. The QC system allows aircraft to be classified separately for landing and taking off according to their noise performance and limits the amount of noise generated by aircraft during night time operations. Some other airports now have similar regimes in place. The current night flight regime for the designated airports ends in October 2017 and the government is currently consulting on options for the next regime.

E.20 Airlines are incentivised to use quieter aircraft by use of the quota count system in order to maximise the number of movement that can take place. The quieter the aircraft according to the quota count system, the more flights an airline can fly at night, subject to the overall movement limits. The airports however, are given flexibility to manage their allowance, and may carry-over unused movements or quota from one season to another, or may over-run in one season which leads to a deduction in the following season. At no time has this ever been exceeded, but if it were the airports would lose twice as much quota in the following season as it used,[40] so it is incentivised not to exceed the seasonal limits.

### Airport Coordination Limited (ACL) – Slot sanction scheme

E.21 ACL, the appointed coordinator of the UK's coordinated airports, has powers to deal with misuse of slots by imposing fines upon airlines. The UK's slot coordinated airports are currently Heathrow, Gatwick, Stansted, Manchester, Luton and London City, with Birmingham to be included summer 2017. This can help control slots being used at the wrong times which either cause noise at unexpected times or congestion that also leads to increase noise impacts. This is particularly useful to incentivise against late running into the night period.

E.22 ACL introduced the UK's sanction scheme in 2007 and has developed it over time. Under the scheme ACL can impose fines upon airline operators who intentionally and repeatedly use slots in a way differently from that for which they were allocated, or else operate without a slot. The five types of misuse ACL fine for can be found on their website.[41] The fine amounts vary between £1k and £20k per operation.

E.23 The scheme has proved very successful in driving compliance by operators but continues to be required to maintain compliant behaviour. It is not straight forward to accurately calculate the overall effect the scheme has had on slot adherence when considering operational times that are different from the allocated slot time as there are several reasons why air services do not follow their schedule. However, what can be seen is that there has been a general improvement in the number of ad hoc movements. A better measure than time differences of how effective this has been is how the number of un-allocated slot operations has reduced. In the first year of the scheme the number of operations without allocated slots dropped overall by 85.5%. ACL has seen this level of adherence maintained in 2014/15.

39 For more information, see page 26 of: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66837/consultation-document.pdf.

40 The absolute maximum overrun is 20% of original limit

41 http://www.acl-uk.org/UserFiles/File/Enforcement%20Code%20Report%202014_15_v2.pdf

E.24 The scheme is intended to promote good practice and compliance, and not as a means to generate revenue. ACL constantly reviews the effectiveness of the fines, and should they conclude that the current fines are no longer dissuasive, they will consider increasing the fine level or, as an alternative sanction, withdraw specific slots from airlines.

**Conclusion**

E.25 There are numerous ways that airports and airlines can be incentivised to adopt noise reducing practices, from the use of section106 planning obligations, self-enforcement, and slot-sanctioning to the Quota Count system and powers under the Civil Aviation Act.

E.26 The commercial aviation sector has and will continue to have responsibility for its impacts and Government expects it to strive to reduce those impacts. As the industry grows, more changes will be necessary to increase efficiency and capacity in the air and on the ground. This in itself will help incentivise industry to use best practical means to reduce noise as there will be continued pressure to do so if it wants to pursue that growth.

E.27 The compliance and review provisions outlined in this paper will be complemented by the introduction of ICCAN which will be able to provide an independent view of best practice and any gaps in regulation and encourage the aviation industry to improve its noise performance where needed.

# Annex F: Guidance on the introduction of noise-related operating restrictions

## Overview

F.1 This guidance is relevant only for when airports in England or Wales, with more than 50,000 civil aircraft movements per calendar year, are considering the introduction of operating restrictions. The power to set noise controls are devolved to the Scottish and Northern Irish administrations. The Competent Authority responsible for the introduction of operating restrictions will depend on the process by which operating restrictions are being considered. For operating restrictions which are associated with planning decisions in England or Wales, the Competent Authority shall be the body responsible for deciding on the planning decision:

- The SofS is the proposed Competent Authority for all operating restrictions associated with Nationally Significant Infrastructure Projects (NSIPs), as well as any local planning decisions that are called-in by the SofS; and
- The local planning authority deciding on a planning application is the proposed Competent Authority for all other operating restrictions associated with planning decisions.

F.2 For operating restrictions associated with noise action plans, or other processes which identify a noise problem, the CAA shall be the appointed Competent Authority, unless the Government chooses to exercise its powers under s.78 of the Civil Aviation Act 1982.

## Process for deciding on operating restrictions

F.3 When a planning application for development at an airport may lead to a noise problem, but does not meet the criteria for a NSIPs under sections 14(1)(i) and 23of the Planning Act 2008, the local planning authority shall ensure that the airport has assessed noise in accordance with Directive 2002/49/EC[42]. The local planning authority shall also ensure that the airport has consulted on measures to address noise in line with the requirements under Regulation (EU) 598/2014 (See 4.7 to 4.9 below).

42 The airport is the Competent Authority for assessing noise under the END, except for the non-designated airports where it is the SofS.

F.4 If the SofS decides to call-in a local planning application, he shall ensure that the airport has assessed noise in accordance with Directive 2002/49/EC. This will include ensuring that the airport has consulted on measures to address noise in line with the requirements under Regulation (EU) 598/2014[43] given in the following pages.

F.5 For NSIPs, the SofS shall ensure that the requirements under Regulation (EU) 598/2014 are complied with.

F.6 For operating restrictions that are considered separate from any planning application, and which are not set under the Government's s.78 powers, the CAA shall ensure that the airport has assessed noise in accordance with Directive 2002/49/EC. The CAA shall also ensure that the airport has consulted on measures to address noise in line with the requirements under Regulation (EU) 598/2014.

## Requirements under Regulation (EU) 598/2014

F.7 The common requirements below also apply to the Competent Authority for all types of operating restrictions.

F.8 If the noise assessment indicates new operating restrictions may be required to address a noise problem, the Competent Authority shall ensure that the airport has satisfied all requirements identified under Regulation (EU) 598/2014, including that:

- Each type of measure to address noise under the Balanced Approach is assessed in line with the requirements set out in Annex I of the Regulation;
- Technical co-operation is ensured to examine best noise mitigation measures;
- Local residents or representatives are consulted and local authorities providing relevant technical information;
- The cost effectiveness of the different measures to address noise is assessed in Accordance with Annex II of the Regulation;
- The Consultation process is organised in an open and transparent manner with a minimum of three months for consultees to respond before operating restrictions are adopted; and
- That operating restrictions are only introduced if the other measures identified to manage noise are unable to achieve the environmental objective established for that airport.

F.9 Before any new operating restrictions are introduced the Competent Authority shall ensure that:

- The Member States, the Commission and the relevant interested parties are given six months' notice, this notice must end two months prior to determining the boundaries of slot co-ordination for the airport's scheduling period;

43 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0598

- A written report is provided along with the above notification outlining the reasons for the introduction of operating restrictions, the noise abatement objective being established, measures being considered in meeting this objective and an evaluation of its cost-effectiveness; and
- If reviewed and notified by the Commission that the operating restrictions do not follow regulations the Competent Authority must examine the notification and inform the Commission of intentions before introducing the proposed operating restrictions.

## Right of appeal against decisions on operating restrictions

F.10 Following the adoption of operating restrictions, there shall be 21 days to launch an appeal against their adoption.

- For appeals against operating restrictions introduced as conditions attached to local planning permission, the SofS shall act as the appeal body. If the planning decision as a whole is appealed to the SofS, appeals on operating restrictions will be heard as part of this process; and
- For appeals against operating restrictions associated with an NSIP or local planning decision called in by the SofS, the right to appeal shall be Judicial Review.

## Other requirements

F.11 Competent Authorities shall ensure that Implementation of operating restrictions is followed up and monitored and action is taken where required and relevant information is provided free of charge to residents and is readily available

F.12 Competent Authorities may, to avoid economic hardship in the case of developing counties, exempt marginally compliant aircraft from noise operating restrictions. This can only be done on the provision that these aircraft are:

- Granted noise certification to the standards specified under the Chicago Convention[44];
- Were operated in the European Union during the five year period preceding its entry into force of the regulation;
- Were on the register of the developing country concerned in that five year period; and
- Continue to be operated by a natural or legal person established in that country.

F.13 In some cases, Competent Authorities may authorise individual operations in respect of marginally compliant aircraft which could not otherwise take place under this regulation, these exemptions are to be decided on a case by case basis.

44 The Convention on International Civil Aviation, signed in Chicago, 7 Dec 1944 which established the International Civil Aviation organization.

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ramsgate

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| **Abbots Hill, Ramsgate, CT11**<br>CT11 8HN | — | £240,000 |
| **Addington Place, Ramsgate, CT11**<br>CT11 9JG | — | £205,000 |
| **Addington Street, Ramsgate, CT11**<br>CT11 9HU, CT11 9JJ, CT11 9JL, CT11 9JQ | £295,000 | £243,000 |
| **Adelaide Gardens, Ramsgate, CT11**<br>CT11 9HH | — | £304,000 |
| **Albert Court, York Street, Ramsgate, CT11**<br>CT11 8FG, CT11 9DN, CT11 9DS, CT11 9HD | — | — |
| **Albert Road, Ramsgate, CT11**<br>CT11 8DR, CT11 8DW | £466,666 | £220,000 |
| **Albert Row, Royal Esplanade, Pegwell, Ramsgate, CT11**<br>CT11 0GF | £275,000 | £317,000 |
| **Albert Street, Ramsgate, CT11**<br>CT11 9BF, CT11 9EX, CT11 9HD, CT11 9HG | £133,500 | £218,000 |

| Street/Postcode ☐ | Avg. price paid | Zed-Index |
|---|---|---|
| **Albion Court, Ramsgate, CT11**<br>CT11 8HT | — | £209,000 |
| **Albion Hill, Ramsgate, CT11**<br>CT11 8HG | — | £280,000 |
| **Albion Mews, Ramsgate, CT11**<br>CT11 8HH | — | £217,000 |
| **Albion Place, Ramsgate, CT11**<br>CT11 8HQ | — | £500,000 |
| **Albion Road, Ramsgate, CT11**<br>CT11 8DJ, CT11 8LD | £190,000 | £344,000 |
| **Alexandra Road, Ramsgate, CT11**<br>CT11 7HX, CT11 7HY | £168,000 | £163,000 |
| **Alland Grange Lane, Manston, Ramsgate, CT12**<br>CT12 5BX, CT12 5BZ | — | £428,000 |
| **Allenby Road, Ramsgate, CT12**<br>CT12 6AU, CT12 6AX, CT12 6BA, CT12 6BB | — | £171,000 |

| Street/Postcode ☐ | Avg. price paid | Zed-Index |
|---|---|---|
| **Alliance Road, Ramsgate, CT11**<br>CT11 8JB | £205,000 | £183,000 |
| **Alma Place, Ramsgate, CT11**<br>CT11 8PZ | — | — |
| **Alma Road, Ramsgate, CT11**<br>CT11 7PA, CT11 7PB | £161,500 | £154,000 |
| **Alpha Road, Ramsgate, CT11**<br>CT11 9QS, CT11 9QT | £220,000 | £218,000 |
| **Anns Road, Ramsgate, CT11**<br>CT11 7NL | — | £180,000 |
| **Anthony Close, Ramsgate, CT12**<br>CT12 6EP | — | — |
| **Apsley Court, Ramsgate, CT11**<br>CT11 8HD | — | £181,000 |
| **Archway Road, Ramsgate, CT11**<br>CT11 9EN, CT11 9FP | — | £926,000 |

| Street/Postcode ☐ | Avg. price paid | Zed-Index |
|---|---|---|
| **Arklow Square, Ramsgate, CT11**<br>CT11 8PS | £315,000 | £246,000 |
| **Armadale Villas, Southwood Road, Ramsgate, CT11**<br>CT11 0AR | — | — |
| **Artillery Road, Ramsgate, CT11**<br>CT11 8PT, CT11 8PU | £182,500 | £182,000 |
| **Arundel Road, Cliffsend, Ramsgate, CT12**<br>CT12 5DZ | — | £316,000 |
| **Ash Court, Cliffsend, Ramsgate, CT12**<br>CT12 5JZ | — | £366,000 |
| **Ashburnham Road, Ramsgate, CT11**<br>CT11 0BH, CT11 0BJ, CT11 0BL, CT11 0BN | — | £212,000 |
| **Ashley Close, Ramsgate, CT12**<br>CT12 6BP | £186,000 | £186,000 |

| Street/Postcode ☐ | Avg. price paid | Zed-Index |
|---|---|---|
| **Auckland Avenue, Ramsgate, CT12**<br>CT12 6HY, CT12 6HZ, CT12 6JA, CT12 6JF, CT12 6JG | £207,000 | £190,000 |
| **Augusta Place, Ramsgate, CT11**<br>CT11 8JN | — | £239,000 |
| **Augusta Road, Ramsgate, CT11**<br>CT11 8JP, CT11 8JS | £96,500 | £194,000 |
| **Augustine Road, Minster, Ramsgate, CT12**<br>CT12 4DG, CT12 4DH, CT12 4DQ | £284,250 | £282,000 |
| **Avebury Avenue, Ramsgate, CT11**<br>CT11 8BB | — | £373,000 |
| **Avenue Road, Ramsgate, CT11**<br>CT11 8EP, CT11 8ES, CT11 8ET | £202,260 | £210,000 |
| **Ayton Road, Ramsgate, CT11**<br>CT11 9QJ | — | £168,000 |

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