

# OVERVIEW AND EXECUTIVE SUMMARY

## 1. Introduction

1. This Report is exclusively concerned with what might be described as the second half of the compulsory purchase process. It is not concerned with whether a compulsory purchase order should be permitted but how and when the land will be taken and the amount the owner will be compensated for the loss of their land.
2. In making its recommendations, the Commission's core goal is to replace the existing law with a modern and simple legislative structure that would significantly reduce the existing delays at the acquisition stage. The Commission has worked hard to ensure its proposed system adequately balances the rights of owners whose land is being acquired, including the right to compensation, against the entitlement of acquiring authorities to quickly and efficiently acquire land the subject of a compulsory purchase order so that the purpose of the acquisition can be progressed in the public interest. The Commission has sought to minimise the legal and administrative costs of acquiring authorities in achieving acquisition, while ensuring that owners have their costs, including the costs of assessing compensation, covered by the acquiring authority.
3. The report consists of the Commission's proposed draft Bill, entitled the Acquisition of Land Bill 2023 as well as five chapters explaining the approach behind the Bill.
4. Before describing the content of the report and the draft Bill, it is important to briefly describe what the Bill is intended to replace. Parts of Irish law on compulsory acquisition of land or interests in land after the compulsory purchase order is made pre-date the foundation of the State in 1922. In particular, two important pre-1922 compulsory acquisition codes were inherited and carried over: the Lands Clauses Consolidation Act 1845 (the "1845 Act"), as modified and applied in different legislative schemes and the Acquisition of Land (Assessment of Compensation) Act 1919 (the "1919 Act"). These Acts remain the principal legislative frameworks that apply in Ireland for compulsory acquisition and compensation, respectively. Many Acts, although not all, providing for compulsory purchase in various contexts incorporate the provisions of these two basic codes. Where those codes do form the basis of the law, they have been overlaid with many amendments that make the law

difficult to properly understand. As noted, this Report deals only with the transfer of the land and compensation after the compulsory purchase order becomes operative. That necessitates entirely repealing the 1919 Act and some provisions of the 1845 Act.

## **2. Scope of the Report**

5. The scope of the Commission's examination of compulsory purchase law was initially wider and extended to the process leading up to the making of the compulsory purchase order as well as the steps taken after it. An Issues Paper on Compulsory Acquisition of Land was published by the Commission in 2017 as part of the Commission's Fourth Programme of Law Reform. It concerned a review of the current law on compulsory acquisition of land with a view to the clarification, reform and consolidation of the principles and rules that underlie the process. The Issues Paper contained 23 issues on which the Commission sought views. The Commission identified a number of those issues as being of special importance, including the notice to treat and the date when the property is valued, the power of entry onto land before payment of compensation, the principles and rules to be applied to assess compensation, the arbitration process and the consolidation of compulsory acquisition legislation. All those issues are covered in whole or part in this Report. The Commission received submissions in response to its Issues Paper and commenced work on the project. In late 2020 the Commission designated this project as a high priority to complete. Because of the length of time that had elapsed since publication of the original Issues Paper, a renewed consultation process with stakeholders was engaged in and the Commission received further observations.
6. However, during this latter period of review, the Commission became aware that the Government was preparing a revised Planning and Development Bill and that provisions relating to compulsory purchase orders, that is, the process up to the confirmation stage of a compulsory purchase order, would be included in that revised legislation. This Planning and Development Bill 2022 addresses in very significant part the procedure for making and confirming a compulsory purchase order as it applies to local authorities, including in the context of road schemes. Given the proposed scope of the Planning and Development Bill 2022 as far as compulsory acquisition was concerned, the Commission decided to focus its efforts on the areas of law reform not being addressed by the Planning and Development Bill 2022, that is, the process after confirmation of the compulsory purchase order.
7. For this reason, the scope of this Report is narrower than anticipated in the 2017 Issues Paper. For example, it does not deal with the question, upon which a number of submissions were made, as to whether compulsory

purchase powers should be extended to permit acquiring authorities to acquire land and interests owned by State bodies, as opposed to private bodies only, as is the current position. It might be noted that this bifurcated approach to reforming compulsory acquisition has been adopted in other jurisdictions. For example, in 2003 the Law Commission of England and Wales, in its review of compulsory purchase law, published a Report addressed entirely to the question of compensation and followed it the year after with a separate report on aspects of procedure.

8. In this Report and the draft Bill appended, the Commission has attended principally to the case of an acquiring authority taking land permanently and in freehold. However, it is aware that other modalities of acquisition—for example, temporary acquisition, and the acquisition of lesser interests in land or the imposition of burdens on land—are significant aspects of the practice of compulsory acquisition. The Commission has drafted its Bill to include, so far as possible and particularly with regard to the principles of compensation, these other modalities. This is in line with the approach taken in the Planning and Development Bill 2022. However, it is aware that such acquisitions may raise further questions that may require refinement to some proposals or the addition of other provisions.
9. The draft Bill appended to this Report is quite separate to the Planning and Development Bill 2022 and does not depend on the adoption of that Bill. In this Report, the law is stated as of 29 March 2023, that is, prior to any changes that may be introduced by the Planning and Development Bill 2022. However, the Commission has sought to achieve consistency of language with that used in relation to compulsory purchase in the Planning and Development Bill 2022.

### **3. Interaction between the Commission's draft Bill and existing compulsory acquisition legislation**

10. At present, once a compulsory purchase order becomes operative, the acquisition of the land is achieved by use of the notice to treat procedure, which includes an entitlement on the part of the acquiring authority to enter into possession of the land prior to it being conveyed to the authority. Chapter 1 of this Report identifies the multiple deficiencies in the notice to treat procedure. Chief among these are:
  - (a) that there is no time limit within which an acquiring authority must serve a notice of entry following service of a notice to treat;
  - (b) where a notice of entry is served, the period in which the acquiring authority may enter possession is not limited; and
  - (c) no compensation is payable at the time when the owner loses possession but only much later when compensation is determined (although interest

is payable on the compensation sum from the date of possession by the acquiring authority).

11. Perhaps the most serious problem with the notice to treat procedure is that the date upon which the land is valued to assess compensation is the date on which the notice to treat is served, yet the owner will lose possession on a different, later date, and the compensation will not be assessed until a considerably later date again. Therefore, unlike the position in a voluntary conveyance, the owner is not compensated on the basis of the value of the land at the date of transfer, or loss of possession, but at a date prior to those events. That rule may operate unfairly depending on how land values fluctuate over the relevant time period.
12. Because of those and other disadvantages with the notice to treat procedure, the Commission believes it should be repealed in its entirety and replaced with the vesting procedure recommended in its draft Bill. That procedure has been designed to avoid delays in compulsory acquisition, to provide good title to authorities, to ensure owners lose possession of their land only when title has been vested in the acquiring authority, and to remove the uncertainty for owners as to when their land will be acquired. The land is valued for the assessment of compensation at the date of service of the vesting order, and the vesting date (being the date upon which the authority obtains title and is entitled to possession) must be no more than six months later. This avoids the problem described above of the gap between the date of valuation of the property and the loss of possession, and conveyance of the land.
13. However, the repeal of the notice to treat procedure is a very significant exercise due to the multiplicity of compulsory purchase schemes for different acquiring authorities. The Commission has identified over 50 different legislative schemes containing compulsory acquisition powers or similar powers.<sup>1</sup> Some of these schemes explicitly include notice to treat provisions.

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<sup>1</sup> Sections 14 and 15 of the Railway Regulation Act 1842, the Lands Clauses Consolidation Act 1845 (which is incorporated entirely or in part by many of these Acts); section 203 of the Public Health (Ireland) Act 1878; section 1 of the Dublin Reconstruction (Emergency Provisions) Act 1924; section 68 of the Local Government Act 1925; section 4 of the Shannon Electricity Act 1925; section 5 of the River Owenmore Drainage Act 1926; section 7(c) of the Barrow Drainage Act 1927; sections 45, 47, and 83 of the Electricity (Supply) Act 1927; section 8 of the National Monuments Act 1930; section 5 of the Electricity (Supply) (Amendment) (No 2) Act 1934; section 37 of the Slaughter of Cattle and Sheep Act 1934; sections 41 and 43 of the Air Navigation and Transport Act 1936; section 17 of the Air Raid Precautions Act 1939; section 5(i) and para 19(e) of the Schedule to the Hospitals Act 1939; section 19 of the Tourist Traffic Act 1939; section 57(1)(a) of the Land Act 1939; sections 21 and 22 of the Saint Laurence's Hospital Act 1943; section 14 of the Arterial Drainage Act 1945; section 8 of the Tuberculosis (Establishment of Sanatoria) Act 1945; sections 7, 15 and 30(2)(a) of the Electricity

Others avail of the notice to treat procedure identified at section 18 of the 1845 Act or that under section 79 of the Housing Act 1966 (the “1966 Act”). To comprehensively repeal all notice to treat provisions, it would be necessary to individually consider each legislative scheme. The Commission considers that task is better left to the individual government departments responsible for the various schemes. Pending such repeal, the Commission has designed a system whereby acquiring authorities that have granted to them by any enactment a power to compulsorily acquire relevant land or an interest in land will be able to make a vesting order, thus providing the vesting process as an alternative to the notice to treat process.

14. The Commission strongly recommends that all acquiring authorities operating under diverse compulsory purchase legislation replace the provisions providing for the notice to treat procedure with a vesting procedure. However, this may take some time and/or proceed at an uneven pace. To ensure maximum application of the Commission’s draft Bill pending these wider changes, the draft Bill is designed so that the provisions on advance payment, the replacement of the property arbitrator by the Valuation Tribunal and the principles of compensation apply to all acquisitions, whether done by way of the vesting procedure established by this Report—the approach endorsed by the Commission—or by way of the existing notice to treat procedure.

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(Supply) (Amendment) Act 1945; section 29 of the Turf Development Act 1946; section 82 of the Local Government Act 1946; section 78 of the Health Act 1947; section 2 of the Garda Síochána (Acquisition of Sites and Retention of Premises) Act 1948; section 17 of the Transport Act 1950; section 7 of the Tourist Traffic Act 1952; section 2 of the Local Government (Sanitary Services) (Joint Burial Boards) Act 1952; section 33 of the Defence Act 1954; section 4 of the National Monuments (Amendment) Act 1954; section 23 of the Petroleum and Other Minerals Development Act 1960; section 10 of the Local Government (No 2) Act 1960; section 11(1)(c) of the Coast Protection Act 1963; section 6 of the Local Government (Sanitary Services) Acts 1964; section 76 and the Third Schedule of the Housing Act 1966; section 3 of the Fishery Harbour Centres Act 1968; sections 32 and 39 of the Gas Act 1976; section 44 and the Second Schedule to the Postal and Telecommunication Services Act 1983; sections 16(1)(a), 16(1)(b) and paras 1 to 7 of the Third Schedule to the Industrial Development Act 1986; sections 14 and 19 of the Derelict Sites Act 1990; section 2(f) and the Schedule to the Shannon Navigation Act 1990; sections 19(7)(b) and 52 of the Roads Act 1993; section 11(1) of the National Monuments (Amendment) Act 1994; section 7 of the Casual Trading Act 1995; section 16 and the Fourth Schedule to the Harbours Act 1996; section 13 of the Transport (Dublin Light Rail) Act 1996; section 27 of the Dublin Docklands Development Authority Act 1997; section 17 and the Second Schedule to the Air Navigation and Transport (Amendment) Act 1998; section 12 of the British–Irish Agreement Act 1999; section 213 of the Planning and Development Act 2000; section 45 of the Transport (Railway Infrastructure) Act 2001; section 3(1)(a) of the Minister for Community Rural and Gaeltacht Affairs (Powers and Functions) Act 2003; section 91(5)(b)(iii) of the Water Supplies Act 2007; section 44(1)(c) of the Dublin Transport Authority Act 2008; section 158 of the National Asset Management Agency Act 2009; sections 60 and 61 of the Inland Fisheries Act 2010 and section 26 and Schedule 2 of the Sport Ireland Act 2015.

15. The only exception in the draft Bill to this approach are the provisions on unidentified owners or owners who cannot prove title. These provisions apply only where the Commission's recommended vesting procedure is used. Where the notice to treat process is used the acquiring authority may execute a deed poll to address the situation where owners cannot be found/title cannot be established.

## **4. Vesting Procedure**

16. Chapter 1 of the Report introduces an entirely new system for acquiring compulsorily land by using a vesting order procedure. It is true that under existing statutory provisions, compulsory acquisition of land may be achieved by using vesting in narrowly defined circumstances, for example, in respect of derelict sites, protected structures and open spaces, as well as in cases of delay in conveying title where the notice to treat procedure has been used. However, a vesting procedure is not available to acquiring authorities save in the limited cases identified above.
17. This Commission considers a vesting order procedure should be the default way of acquiring property compulsorily given its clear advantages. Most obviously, it permits the acquiring authority to obtain an unencumbered title since it operates not by conveying the existing title, but rather by vesting in the acquiring authority any relevant land or interest to which the vesting order relates in fee simple free from encumbrances and all estates, rights, titles and interests on the vesting date. A further advantage is that, because of the nature of the proposed vesting order procedure, title can pass to the acquiring authority prior to compensation being determined and this allows the authority to go into full possession of the land in a reasonably short period after the confirmation of the compulsory purchase order. From an owner's point of view, vesting provides certainty as to when and how its land will be acquired.
18. These advantages of vesting have meant that it has become the model of choice for acquiring authorities in compulsory acquisition schemes around the world. Extensive comparative research was carried out by the Commission in respect of schemes in:
  - (a) England and Wales;
  - (b) Northern Ireland;
  - (c) Australia including the Federal State, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia;
  - (d) Canada including the federal state, Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Quebec.

19. That research shows that in the various states of Australia and Canada, as well as in Northern Ireland, all compulsory purchase takes place by way of vesting order. In England and Wales, an acquiring authority may choose between vesting and the traditional notice to treat procedure.
20. The Commission has taken the view that, to ensure the recommended procedure works to the benefit of both acquiring authorities and owners, the following features need to be part of the vesting order procedure. First, clear time limits need to be put in place to ensure that vesting delivers efficient acquisition of properties. The Commission has recommended that the acquiring authority will have 12 months from the date that the compulsory purchase order becomes operative to decide whether it wishes to proceed with the acquisition. If it does not proceed, and did not reach an agreement to extend the 12-month period with owners affected by a vesting order, then the compulsory purchase order will lapse. This 12-month period is shorter than the current 18-month or 3-year period under the notice to treat procedure. This is because the Commission considers that, once land is the subject of compulsory acquisition, it effectively sterilises the use of that land for the owner. The owner cannot easily sell or let the land during that period. The owner should know within a relatively short period if the compulsory acquisition is going ahead, with due regard to the entitlement of the acquiring authority to have time to decide whether to proceed with the compulsory purchase order.
21. The Commission is aware that some acquiring authorities may need longer than 12 months to decide whether to proceed, as they may not know whether they will need certain land covered by the compulsory purchase order. This difficulty is most pronounced in the case of major infrastructure projects, for example, Metro North. However, the Commission takes the view that specific situations should not determine the general approach. Accordingly, the Commission's draft Bill permits the Minister to make regulations extending the 12-month period for particular types of acquisition.
22. Time limits also come into play once the acquiring authority has decided to proceed with the acquisition by the service of a vesting order. An owner must be given at least three months' notice of the authority's decision to proceed so that they can organise their affairs and put in place the necessary arrangements. But there is also an outer limit within which to complete the vesting process; the authority must ensure that the vesting takes place no later than six months from the date it serves the vesting order. This means that once an owner is aware that the acquiring authority is going ahead with the acquisition, they know that the acquisition will be completed within six months. This deadline also offers predictability of acquisition date for the authority. Nonetheless, the Commission is aware that sometimes, it will suit both parties to have a longer vesting date. For that reason, the Commission

has provided in its draft Bill that the six month completion deadline may be extended by the agreement of both parties.

23. Separately, the Commission has concerns about the present notice to treat system, which allows an authority to go into possession of land, potentially on a permanent basis, by serving a notice of entry without providing any interim monetary compensation pending the final resolution of compensation and the conveyance of the land. Experience suggests that these latter steps can take many years following the notice of entry. It is true that the owner is entitled to interest on the compensation amount ultimately awarded or agreed upon. Nonetheless, requiring an owner to give up possession without making monies available to them either when the authority enters onto the land or shortly thereafter is obviously undesirable. For that reason, the Commission has recommended a system of advance payment that will, subject to proof of title being provided by the owner, ensure interim compensation is made available when the authority takes possession on the vesting date, or shortly thereafter.
24. As noted above, existing compulsory purchase legislation provides for vesting procedures in narrowly defined situations. The Commission recommends that such legislation should be repealed as acquiring authorities will be entitled to use vesting in all compulsory purchase scenarios. Moreover, if acquisition is effected using existing vesting legislation, no advance payment will be available as the Commission's draft Bill provides for same only where the vesting procedure proposed by the Commission is used.
25. The Commission's recommended vesting order procedure is summarised in the Vesting Order Flowchart appended at the end of this Executive Summary.

## **5. Advance Payment**

26. Chapter 2 of the Report deals with the issue of advance payment. This is a novel concept in Irish law but not in other comparable jurisdictions. The Commission's wide-ranging research on this point demonstrates that advance payment regimes are a feature of compulsory purchase procedures in England and Wales, Northern Ireland, Canada and Australia. In fact, Ireland is something of an outlier by not providing for advance payment. The advantages of advance payment are obvious in the Commission's view. First, from the owner's point of view, it provides immediate, albeit partial, compensation at or near the time the owner loses title through the vesting process, and therefore possession of its land. This allows more scope for the owner to mitigate the effects of the loss of their land. Second, from the point of view of the acquiring authority, advance payment has the advantage that a significant portion of the compensation ultimately payable is paid out when the authority receives title, thus avoiding the need to pay a significant amount



of interest on compensation sums that may often not be determined until many years later.

27. The Commission's proposal is that, as with similar schemes around the world, the authority will estimate the award of compensation based on material provided by the owner which provides proof of title and details of compensation sought. The authority will pay no less than 90% of the estimated amount, where a request has been made by the owner, and will be obliged to explain how it has arrived at the compensation figure. An authority will not be obliged to make an advance payment where it is not satisfied as to the title of the purported owner or where the owner does not ask for an advance payment. In all other situations the authority is obliged to make an advance payment.
28. In many compulsory acquisition situations, once the owner has provided information on title and made a compensation claim, it will be possible for the parties to agree the amount of compensation. But that is not possible in all cases and sometimes it is necessary for the compensation to be assessed by an expert body. In those situations, the determination of compensation will take place in a context where the owner has already received partial compensation by way of an advance payment and the authority has already paid out a portion of the monies that will be due. Indeed, the making of an advance payment may make it easier for compensation claims to be resolved at the determination stage, as by that stage, title will have vested in the acquiring authority (unlike the present situation where title does not pass until after compensation is determined) and the owner will have received an interim amount of compensation. That state of affairs may promote settlement.
29. As noted above, the Commission has designed the advance payment provisions so that they are applicable whether the vesting procedure—the option endorsed by the Commission—or the notice to treat procedure is used.
30. The Commission's recommended advance payment regime is summarised in the Advance Payment Flowchart appended at the end of this Executive Summary.

## **6. Where owners cannot be found or fail to prove title**

31. Chapter 3 focuses on the situation where the acquiring authority is using the vesting procedure and cannot identify the owner of land sought to be acquired, or where a person claiming ownership fails to provide evidence of title to the acquiring authority's satisfaction. The approach adopted by the Commission, that is, a requirement that the acquiring authority pay into court

the full amount of its estimate of the amount of compensation due, is not new. A similar procedure exists under the 1845 Act although in that situation the land is transferred by way of deed poll rather than by way of vesting order.

32. Under the payment into court system contained in the Commission's draft Bill, a person claiming the money paid into court will have 25 years to make an application to the court to have the monies released to them. In making an application, the person claiming to have an interest in respect of which the money was paid into court, must provide the Court with proof of title to secure the release of the money. Once the Court orders the distribution of the money, the owner may make an application to the Valuation Tribunal where they are dissatisfied with the sum paid into Court (the acquiring authority's estimate). Where the money paid into court is not claimed within 25 years, under the Commission's proposed scheme the acquiring authority may request that the monies be released to it.
33. The Commission's recommendations regarding situations where owners cannot be found or fail to provide title are summarised in the Payment into Court Flowchart appended at the end of this Executive Summary.

## **7. Who should determine compensation**

34. Chapter 4 considers the optimum process for resolving disputes as to the amount of compensation payable by the acquiring authority. At present, where the parties cannot agree compensation, the amount is adjudicated upon by an arbitrator, known as the property arbitrator. Under the 1919 Act, such disputes as to compensation are to be resolved by an arbitrator appointed by the Land Values Reference Committee ("the Reference Committee") consisting of the Chief Justice, the President of the High Court and the President of the Society of Chartered Surveyors. Little or no change has been made to that system of arbitration since 1919. Essentially, it takes the private law concept of arbitration—normally a voluntary process that parties agree to submit to—and places it in a public law context, where the parties have no choice but to have recourse to the property arbitrator if they cannot agree on compensation.
35. The Commission received a substantial volume of submissions from diverse bodies and individuals in the course of its extensive consultation process. A very large percentage of the submissions commented upon the unsuitability of the current arbitration model as a means for determining compensation, pointing to various challenges with the system, including long delays in having a case fixed for hearing, lack of consistency among arbitrators, lack of transparency in circumstances where the reasoning for the awards is not publicly available and the expense and complexity of the system. Since 2021,

property arbitrators are drawn from a panel of property arbitrators established by the Reference Committee with the assistance of the Courts Service.

36. The Commission took the view that arbitration in the modern era, being primarily a private law arrangement (albeit one subject to statute in certain respects), is not the most suitable way to determine compensation disputes. A permanent adjudicative body established by statute with expertise in matters of valuation and with transparent rules relating to procedural matters such as hearings, witnesses, written decisions, costs and other related matters was considered a more suitable forum in which claims for compensation could be heard and determined. The Commission was anxious to avoid recommending the establishment of a new body, given the relatively limited number of applications to appoint an arbitrator each year, typically between 50 and 100 each year, and the even smaller number that are not settled and that go to hearing.
37. Having considered various existing statutory bodies, the Commission was persuaded that the Valuation Tribunal (the "Tribunal") was a suitable body to recommend due to its existing functions in valuing property for rating purposes. The Commission therefore recommends the ending of the functions of the property arbitrator by repealing the entirety of the 1919 act and proposes the Tribunal as the body responsible for determining compensation.
38. Members of the Tribunal are appointed by the Minister of Housing, Planning and Local Government after a competitive recruitment process by the Public Appointment Service. The Commission considers that it is of the upmost importance that the Tribunal members are perceived as wholly independent in the carrying out of their functions. For this reason, the Commission's draft Bill provides that the Tribunal shall be independent in the performance of its functions in relation to determining compensation for land compulsorily acquired.
39. In respect of the approach to determining compensation, the focus of the Commission has been on simplifying the compensation process and ensuring the determination of claims in a timely and low-cost fashion. The Commission has identified that the Tribunal will endeavour to deliver its decision within six months from the date it receives an application to determine compensation. This approach emphasises the desirability of prompt disposal of claims, consistent with good decision-making. Second, as discussed below, the Commission has for the first time in Irish law codified the principles governing the assessment of compensation. It is hoped that the clarity and certainty this will bring to the determination of claims will permit claims to be resolved without an oral hearing where appropriate, or, at an oral hearing without lawyers where appropriate, for example, where no disputed issue of legal principle arises. The Commission is conscious of the expertise of surveyors in

valuing land and the assistance they can provide to the Tribunal in this respect. The requirement in the Commission's draft Bill that decisions are to be made available to the public (with the necessary redactions to protect the confidentiality of parties) will also assist in promoting understanding of the applicable principles.

40. As with advance payment, the Commission considered that even where the notice to treat procedure remains in use in respect of certain acquisitions, owners whose land is acquired by that procedure should be entitled to have their compensation determined where necessary by the Tribunal. Moreover, where the 1919 Act is to be repealed in its entirety, it would not be practicable or desirable to re-enact a property arbitrator system simply for acquisitions under the notice to treat procedure. The Commission's draft Bill therefore provides for determination of compensation by the Tribunal irrespective of which procedure is used to acquire the land.
41. The determination of compensation process as recommended by the Commission is summarised in the Determination of Compensation by the Valuation Tribunal Flowchart appended at the end of this Executive Summary.

## **8. Principles of Compensation**

42. The final chapter, Chapter 5, proposes a much overdue codification of the existing principles governing the evaluation of compensation claims. Those principles were contained in part in the 1919 Act and were subsequently developed over the next hundred years through case law of the English, Irish and Welsh courts. The codification exercise in the Commission's draft Bill is inspired in part by the equivalent exercise carried out by the Law Commission of England and Wales in its 2003 Report but has departed from this approach in certain key respects having regard to Irish jurisprudence. Certain submissions received by the Commission suggested a codification exercise having regard to the antiquity of the existing statutory provisions.
43. In codifying the legislation, the Commission has borne in mind that these principles of compensation identified in the 1919 Act have stood the test of time and therefore it has been careful to retain the core principles, in particular, in relation to market value, disturbance, equivalent reinstatement, severance and injurious affection where those are still in daily use and well understood by practitioners in the area. For that reason also, the Commission decided not to change the description of the heads of claim, although some of the language, such as injurious affection, is not in common usage in 2023.
44. Changes in the uses for which land is zoned as well as proposed developments to that land may significantly alter the market value of land and, thus, the compensation due to the owner. The existing rules 11 and 13 in

the 1919 Act, and the case law on those rules, address how such changes in value should be accounted for. Rule 11 requires disregard of actual or potential schemes of development to land by acquiring authorities, and rule 13 requires disregard of the reservation of land for a specific purpose other than that for which it is zoned or that for which the land around it is zoned. Both of these important rules are included in the Commission's proposed code in its draft Bill.

45. The rules relating to injurious affection (that is, loss or damage to land retained by the owner, lessee or occupier from whom other land is compulsorily acquired), including the *McCarthy* rules and the rule in *Edwards v Minister of Transport*, are not in need of significant change but would benefit from codification. The Commission proposes a codification of these rules in its draft Bill.
46. The rules relating to disturbance—which the Commission terms “consequential personal loss”—are among the most in need of codification as they do not currently have a statutory basis (they were taken as implied by the 1845 Act and subject to a saver in the 1919 Act). Consequently, the Commission proposes a codification of these rules in its draft Bill.
47. The rules relating to equivalent reinstatement—which arises less frequently than other heads of compensation—are broadly satisfactory. The Commission proposes some additional provisions to address the issue that arose in *Dublin Corporation v The Building and Allied Trade Union* (the “Bricklayers’ Hall” case); however, in the main, what is proposed is a codification of existing principles. This codification is contained in the draft Bill.
48. Certain rules (rules 8, 9, 10 and 14) under the 1919 Act require a property arbitrator to specifically have regard to certain matters when considering the market value of land. In the Commission's view these matters are all now well-established and would be taken as a factor in the valuation of land even in the event of an ordinary sale. This being the case, they could likely be safely omitted from a new code and the Commission has not provided for them in its draft Bill.
49. In other jurisdictions it is common to offer an additional payment, over and above the standard measures of compensation, to people displaced from their homes by compulsory acquisition. The Commission proposes that an additional payment of this kind should be considered in this jurisdiction; however, as this raises many issues of policy it is a question that should be resolved by the Oireachtas.
50. Certain rules under the 1919 Act (the second clause of rule 3 and the entirety of rule 16) no longer have any application and should be omitted from a modern code. The Commission's draft Bill omits these rules.

51. As with advance payment, the provisions on determination of compensation in the Commission's draft Bill apply to acquisitions carried out both by way of vesting and by way of notice to treat.

## **9. Uplift in value of land/acquisition below market value**

52. The Commission acknowledges that this project is set against a background of considerable debate concerning the use of land in the State, particularly with a view to providing housing. The compulsory acquisition of land by the State is one of various measures that Government may employ in response to these issues. Current compulsory purchase law permits the acquisition of land by authorities for purposes connected with housing.
53. However, the Commission emphasises that this Report is concerned with particular policy debates regarding the use of land. It is addressed only to the legal principles and procedures that govern compulsory acquisition. Nonetheless, the consolidation and reform proposals in this Report would, in the Commission's view, streamline the use of compulsory purchase to achieve public policy objectives in general.
54. Section 2(2) of the 1919 Act defines market value as the value that the land would be expected to realise if sold in the open market by a willing seller. The Commission has adopted this same understanding of market value for the purposes of this Report and attached Bill. The Commission understands that to be the standard approach in valuing land in the context of compulsory acquisition in several common law jurisdictions. This also follows the approach of the case law under the Constitution and the European Convention on Human Rights. Insofar as that case law may be easily summarised, it suggests that, as a matter of general principle, compensation to full market value is normally required, but that it is possible that just compensation in particular circumstances could be less than the market value of the acquired property, having regard, in particular, to the provisions of the Constitution on property rights.
55. In some cases, part of what constitutes market value of a property may be considered "betterment" or an "unearned increment". This is value attributable to infrastructural circumstances rather than direct investment in the property. The most common source of this is public works enhancing land by providing it with enhanced amenity, utilities connections or public transport. Decisions about the possible future use of land—for example, zoning decisions or planning permission—may also generate value without requiring much or any direct investment in improving the land.
56. Since in so many cases this additional value is generated by State action, it is a general question in land-use policy the extent to which, and how, this value

should go to the State and not to the private landowner who would otherwise get the benefit. This is a complex constitutional and policy question that goes well beyond the compulsory acquisition context (although compulsory acquisition is one way in which the State can pursue its land-use policy). However, it is more common to pursue land-use objectives through negative incentives such as contributions under Part V of the Planning and Development Act 2000 (and those contemplated in the Scheme of the Land Value Sharing and Urban Development Zones Bill 2021) or taxation measures such as the residential land tax.

57. It should be emphasised that existing rules on assessing compensation, which are codified in the Commission's draft Bill, prevent the fact of compulsory purchase for the purposes of a scheme being taken into account when valuing the land for compensation purposes. The no-scheme rule—as established by the *Pointe Gourde* case and under rule 13 of the 1919 Act—means that when valuing the land, the valuer is obliged to disregard the effects of action taken by an acquiring authority wholly or mainly for the purposes of the project for which the land is being acquired. The Commission has included a more detailed codification of the no-scheme rule in its Bill.
58. In its Issues Paper, the Commission did not address the general issue of capturing “betterment” value. Because of the complex and difficult questions of socio-economic policy that arise in this context, which extend well beyond the area of compulsory acquisition, the Commission considers it is a matter more appropriate for resolution by the Government and by the Oireachtas.
59. In summary, the Commission has not considered the question of whether the law should provide for the assessment of land at a value below market value. This is because the question of whether a social good should be achieved by way of obliging owners to sell their property to the State at below market value, either to take into account “betterment” or more generally, is a question of policy more properly addressed by the Executive and the Legislature.

# Vesting Order Procedure

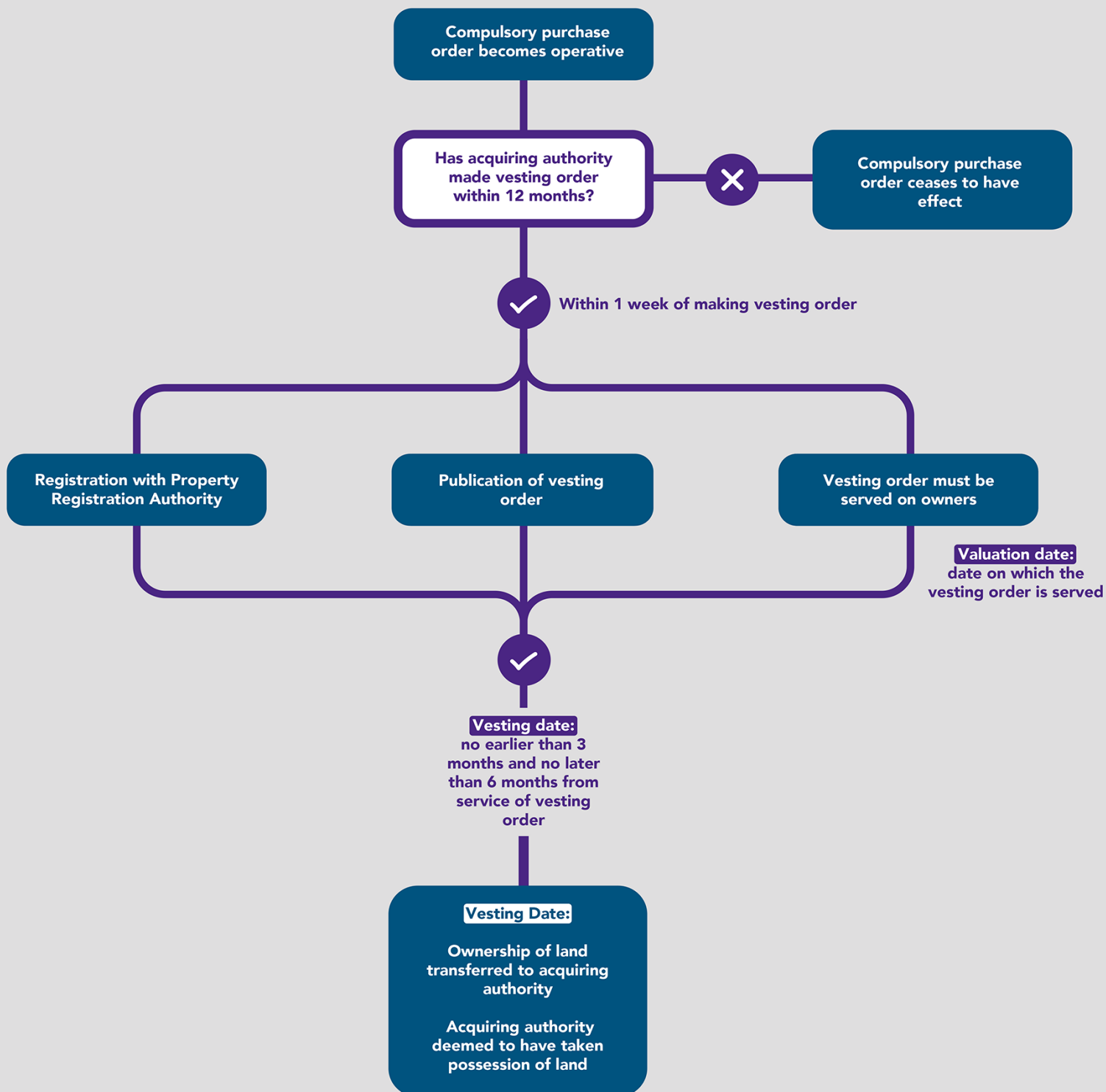


Figure 1 Flowchart of vesting order procedure



# Advance Payment Regime

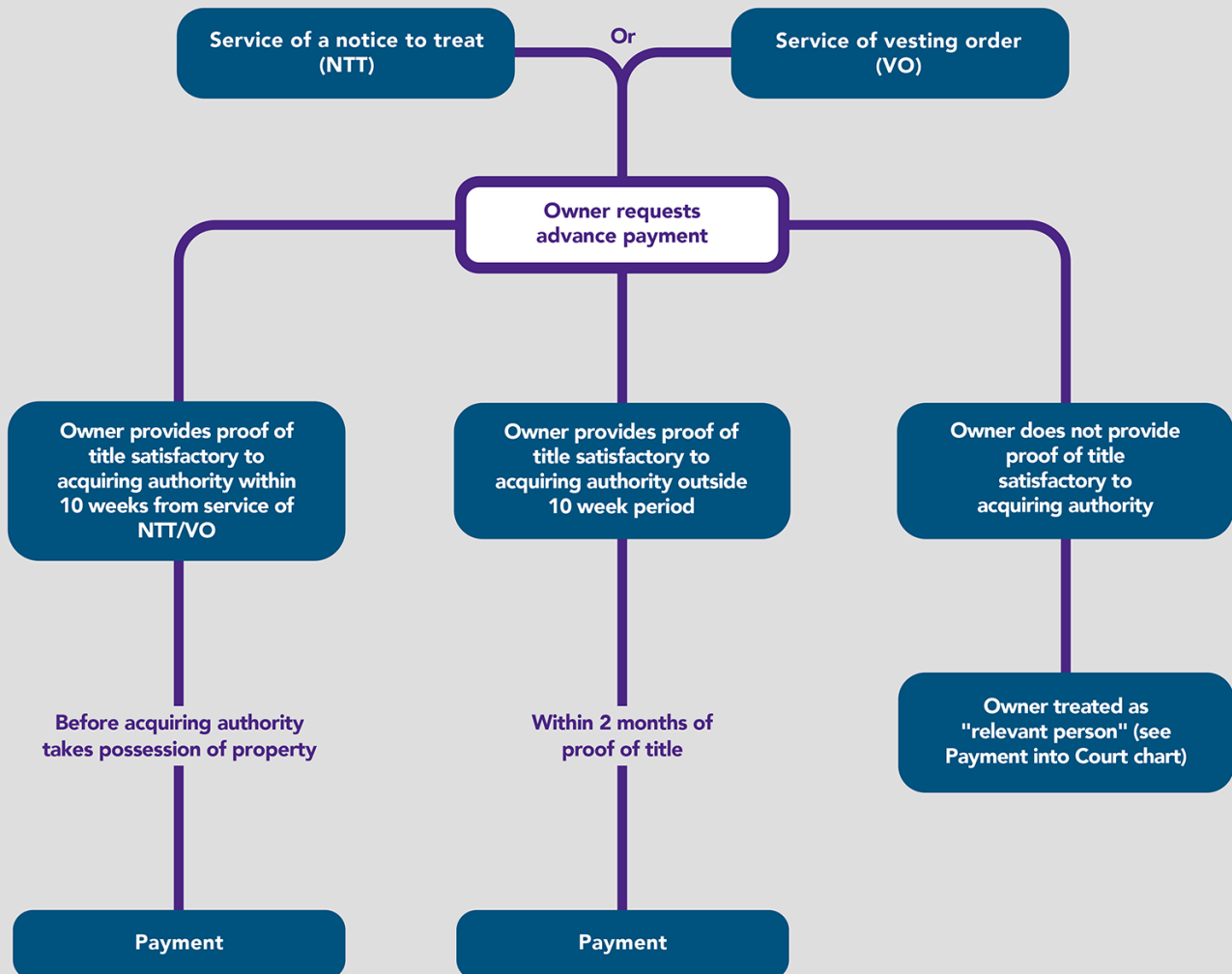


Figure 2 Flowchart of advance payment procedure

# Payment into Court

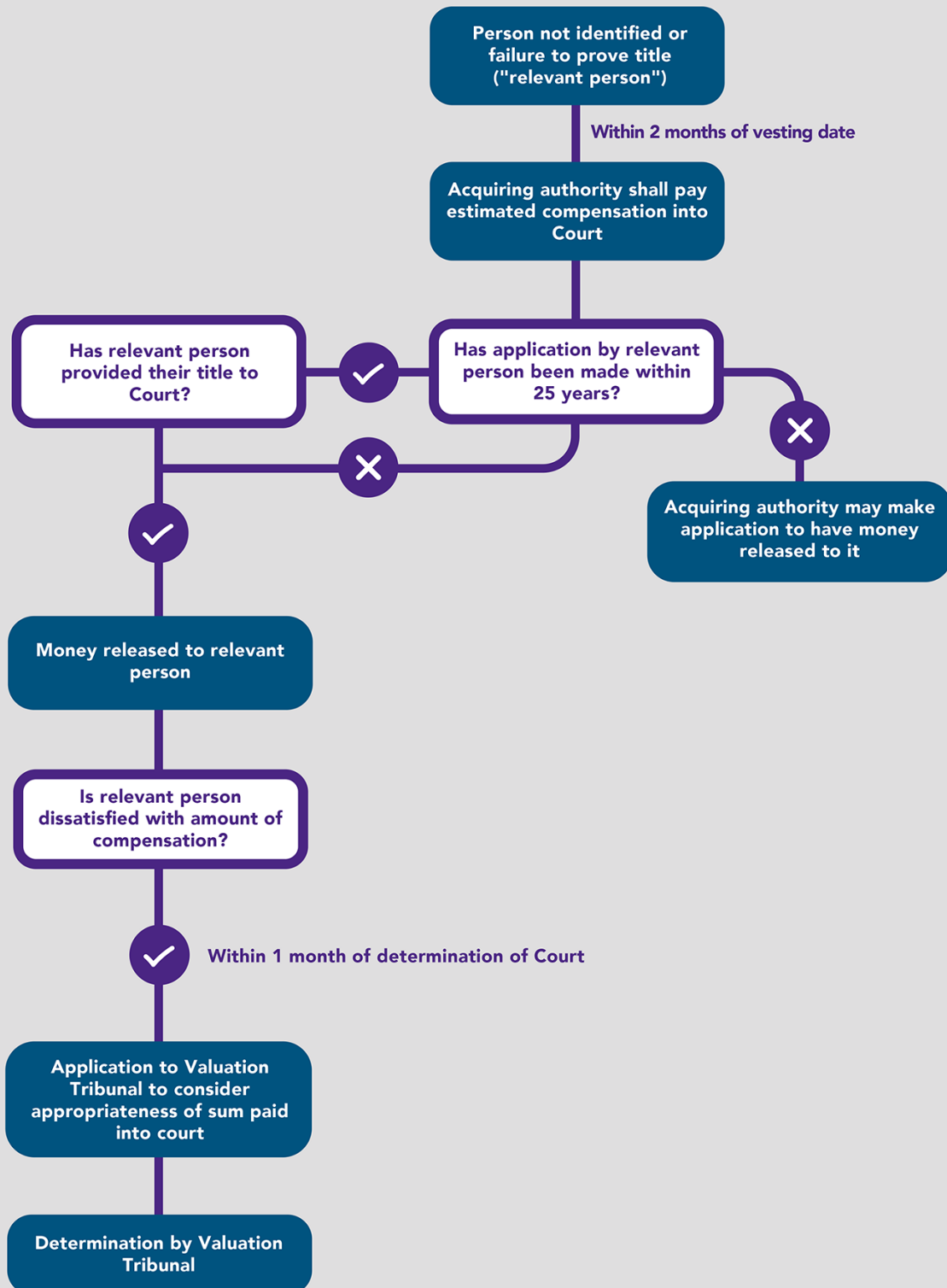


Figure 3 Flowchart of payment of money into court

# Determination of Compensation by the Valuation Tribunal

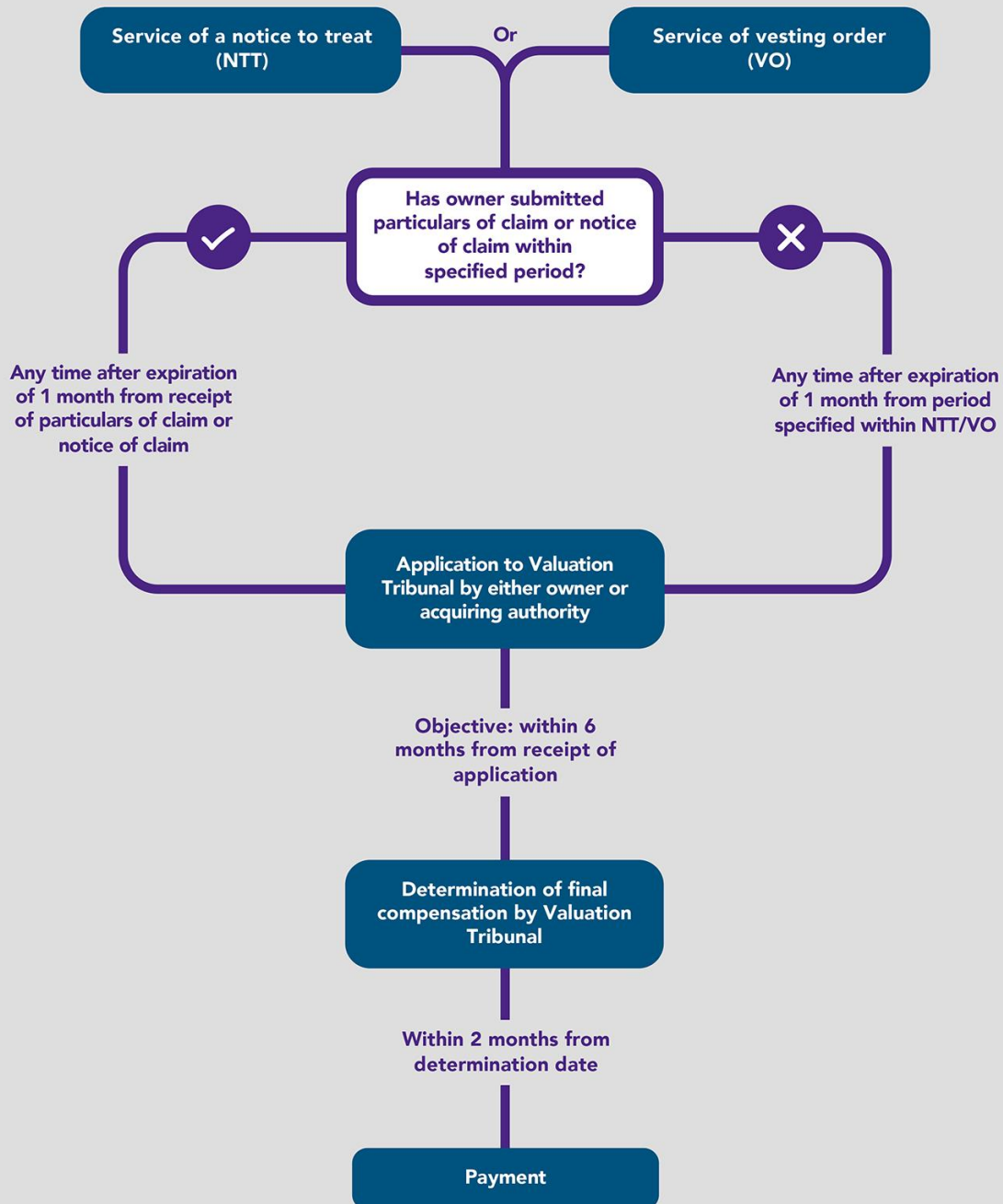


Figure 4 Flowchart of process for determination of compensation



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# ACQUISITION OF LAND BILL 2023

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## ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919 (9 & 10 Geo.) c. 5

Companies Act 2014 (No. 38)

Debtors (Ireland) Act 1840 (3 & 4 Vict.) c. 105

Lands Clauses Consolidation Act 1845 (8 & 9 Vict.) c. 18

Land and Conveyancing Law Reform Act 2009 (No. 27)

Legal Services Regulation Act 2015 (No. 65)

Planning and Development Act 2000 (No. 30)

Property Values (Arbitrations and Appeals) Act 1960 (No. 45)

State Property Act 1954 (No. 25)

Valuation Act 2001 (No. 13)



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## ACQUISITION OF LAND BILL 2023

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# Bill

*entitled*

An Act to provide for the assessment of compensation payable on account of the compulsory acquisition of land; to provide for the acquisition of land by vesting order; to provide for the making of advance payments to owners, lessees and occupiers on account of compensation owed to them as a consequence of the compulsory acquisition of land; to provide for the transfer of functions relating to the assessment of compensation for compulsorily acquired land to the Valuation Tribunal; for those purposes to repeal the Acquisition of Land (Assessment of Compensation) Act 1919; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the Acquisition of Land Act 2023.  
(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

##### **Definitions**

2. In this Act—
  - “acquiring authority” means any body corporate, unincorporated body of persons or individual that has granted to it by any enactment a power to compulsorily acquire relevant land or a relevant interest;
  - “advance payment” has the meaning given to it by *section 32*;
  - “award of compensation” is to be construed in accordance with *section 63*;
  - “Board” means An Bord Pleanála;
  - “compulsory purchase order” means any instrument, scheme or order made under or pursuant to a provision of any enactment that authorises an acquiring authority to acquire compulsorily relevant land or a relevant interest described in, or designated by, that instrument, scheme or order;
  - “consequential loss” has the meaning given to it by *section 68*;

“costs and expenses” includes—

- (a) legal and professional fees, and
- (b) costs incurred by the execution or production of necessary documents;

“Court” means the High Court;

“lessee” means the person, including a sublessee, in whom a tenancy created by a lease is vested;

“Minister” means the Minister for Housing, Local Government and Heritage;

“notice to treat” means—

- (a) a notice described as a “notice to treat” under any other enactment, or
- (b) a notice, other than a notice in *paragraph (a)*, issued by an acquiring authority pursuant to any enactment stating that authority’s willingness to treat for the purchase of relevant land or a relevant interest that is subject to a compulsory purchase order;

“occupier”, in relation to land, means—

- (a) any person in or entitled to immediate use or enjoyment of the land,
- (b) any person entitled to occupy the land, and
- (c) any other person having, for the time being, control of the land;

“owner” means—

- (a) a person, other than a mortgagee not in possession, who is, whether in his or her own right or as trustee or agent for any other person, for the time being entitled to dispose of—
  - (i) in the case of relevant land, the fee simple of the land, or
  - (ii) in the case of a relevant interest, the fee simple of the land to which the interest relates,whether in possession or reversion, and
- (b) a person who holds or is entitled to the rents and profits of—
  - (i) in the case of relevant land, the land, or
  - (ii) in the case of a relevant interest, the land to which the interest relates,under a lease or agreement, the unexpired term of which exceeds 3 years;

“particulars of claim” has the meaning given to it by *section 5*;

“person” includes an individual, a company and any other body of persons;

“relevant interest” means, in relation to relevant land, an easement, profit a prendre, public or private right of way, wayleave or any other like right or interest, in, over or relating to the land;

“relevant land” includes—

- (a) any estate or interest in or over land other than a relevant interest,
- (b) any estate or interest, other than a relevant interest, in, over or relating to the substratum below the surface or any part thereof whether or not owned in horizontal, vertical or other layers apart from the surface of the land,

- (c) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land,
- (d) land covered by water,
- (e) buildings or structures of any kind affixed to land and any part of them, whether the division is made horizontally, vertically or in any other way,
- (f) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,
- (g) any part of land;

but does not include—

- (i) “state land”, within the meaning of section 2(1) of the State Property Act 1954,
- (ii) land owned by a “state authority” within the meaning of section 2(1) of the State Property Act 1954,
- (iii) any part of the maritime area;

“Tribunal” means the Valuation Tribunal;

“vesting date” means the date specified in a vesting order as the date on which the estates and interests in land specified in that order are to vest in the acquiring authority;

“vesting order” has the meaning given to it by *section 13*.

### **Regulations**

3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary, or expedient for the purposes of the regulations.
- (3) Every regulation made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 3 weeks on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Time periods**

4. In relation to a time period referred to in this Act, the Minister may by regulation, where it appears to him or her to be necessary to do so for reasons of public importance in connection with the scale and complexity of a category of acquisition, vary or modify a time period in relation to such class of acquisitions as may be prescribed other than that provided for this Act, and the reference to such time periods shall be read in accordance with the time periods so prescribed.

### **Particulars of claim**

5. (1) An owner, lessee or occupier shall, in making a claim under this Act for—
- (a) compensation in respect of relevant land or a relevant interest,
  - (b) an advance payment of such compensation, or
  - (c) both compensation in respect of a relevant land or relevant interest and an advance payment of such compensation,
- provide the acquiring authority, and the Tribunal where the matter is referred to the Tribunal, with particulars (in this Act referred to as “particulars of claim”) in accordance with this section.
- (2) The particulars of claim shall include:
- (a) evidence of the exact nature of the owner, lessee or occupier’s interest in land subject to the compulsory acquisition, and
  - (b) details of the compensation claimed.
- (3) The Minister shall prescribe the form of particulars of claim to be submitted by the owner, lessee or occupier, where his or her land or interest is acquired using the vesting order procedure under this Act.

### **Service of notices and vesting order**

6. (1) Where a notice or a vesting order is required to be served on a person under this Act, it shall be addressed to him or her and shall be served on him or her in one of the following ways:
- (a) where it is addressed to him or her by name, by delivering it to him or her;
  - (b) by leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (c) by sending it by post in a prepaid registered letter addressed to him or her at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (d) where the address at which he or she ordinarily resides cannot be ascertained by reasonable inquiry by delivering it to some person over sixteen years of age resident or employed on such land or premises or by affixing it in a conspicuous position on or near such land or premises.
- (2) Where a notice or vesting order is required to be served on an owner or occupier under this Act and the name of the owner or occupier cannot be ascertained by reasonable inquiry, it may be addressed to “the owner” or “the occupier”, as the case may require, without naming him or her.
- (3) For the purposes of this section, a company within the meaning of the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

### **Time limit for claiming compensation**

7. (1) Subject to *subsection (2)*, a claim for compensation under this Act shall be brought by a person within 20 years from:
- (a) in case a notice to treat was served, or deemed to have been served, on him or her, the date on which the acquiring authority entered into possession of the land;
  - (b) in case a copy of a vesting order was served, or deemed to have been served, on him or her, the vesting date;
  - (c) in any other case, the date on which the acquiring authority entered into possession of the land.
- (2) Where a claim for compensation relates to moneys paid into Court under *section 25*, that claim must be brought by a person within 25 years from the date on which those moneys are paid into Court.

### **Withdrawal of notice to treat**

8. (1) Where under any enactment a notice to treat has, after the commencement of *section 10*, been served on a person the provisions of this section apply.
- (2) An acquiring authority may, within six weeks from the receipt of particulars of claim from an owner, lessee or occupier, withdraw a notice to treat that was served on that owner, lessee or occupier.
- (3) Where an acquiring authority withdraws a notice under *subsection (2)* it shall be liable to pay compensation to the owner, lessee or occupier for any loss or expenses reasonably incurred by him or her as a result of the notice to treat having been given to him or her and withdrawn.
- (4) Compensation awarded under this section shall, in default of agreement, be determined by the Tribunal.

### **Agreement between parties**

9. Nothing in this Act shall prevent the acquiring authority and the owner, lessee or occupier coming to an agreement on the acquisition of relevant land or a relevant interest or the compensation payable, and interest attaching to such compensation, for that land or interest by means of a process provided for other than in this Act.

### **Repeals and revocations**

10. (1) The Acts referred to in *column (2)* of *Schedule 1* are repealed to the extent specified in *column (3)* of that Schedule.
- (2) The instruments referred to in *column (2)* of *Schedule 2* are revoked to the extent specified in *column (3)* of that Schedule.

### **References**

11. (1) A reference in any enactment or instrument made under any enactment, other than this Act, to:
- (a) a property arbitrator or official arbitrator appointed by the Land Values Reference Committee, shall be construed as a reference to the Tribunal;

- (b) the Acquisition of Land (Assessment of Compensation) Act 1919 shall be construed as a reference to this Act.
- (2) A reference in the European Communities (Assessment and Management of Flood Risks) Regulations 2010 (S.I. No. 122 of 2010) to a Panel of Property Arbitrators shall be construed as a reference to the Tribunal.

### **Transitional arrangements**

- 12.** Notwithstanding the repeal of a provision by *section 10(1)* or the revocation of a provision by *section 10(2)*, where, prior to that repeal or revocation, an acquiring authority, the Board, a property arbitrator or other person as the case may be, has taken any step or exercised any power or function under any such enactment in respect of any relevant property, that Act and applicable regulations, shall continue to apply until the completion of any process for the compulsory acquisition of such relevant property set out in such enactment.

## **PART 2**

### **VESTING ORDERS**

#### *Chapter 1*

#### *Procedure*

### **Making and effect of vesting order**

- 13.** (1) Where a compulsory purchase order in respect of relevant land or a relevant interest becomes operative, the acquiring authority may by order (in this Act referred to as a “vesting order”) acquire the relevant land or relevant interest.
- (2) The effect of a vesting order shall be to vest any relevant land or relevant interest to which it relates in the acquiring authority in fee simple free from encumbrances and all estates, rights, titles and interests of whatsoever kind on the vesting date.
- (3) An acquiring authority shall not, without the consent, expressed in writing, of each owner, lessee or occupier that would be affected by the order, make a vesting order in respect of relevant land or a relevant interest at any time after the period of 12 months has elapsed from the date on which the compulsory purchase order authorising acquisition of that land or interest becomes operative.

### **Service of a vesting order**

- 14.** Where the acquiring authority makes a vesting order under *section 13(1)*, it shall serve, no later than one week after the order was made, on any owner, lessee or occupier of land whose land or interest is included in the vesting order—
- (a) a copy of the order, and
  - (b) a notice informing the owner, lessee or occupier of his or her—
    - (i) obligation under *section 17* to provide particulars of claim to the acquiring authority, and

- (ii) entitlement to receive an advance payment under *section 32*.

**No service of vesting order where notice to treat served**

- 15.** An acquiring authority shall not serve a copy of a vesting order on an owner, lessee or occupier if it has served a notice to treat on that owner, lessee or occupier and has not validly withdrawn that notice.

**Form of vesting order**

- 16.** A vesting order shall be in a form to be prescribed, provided that such order shall—
- (a) state the effect of the vesting order,
  - (b) state clearly the vesting date, and
  - (c) have attached to it a map showing the land to which it relates.

**Provision of particulars of claim to acquiring authority**

- 17.** A person on whom a copy of a vesting order is served shall, within 10 weeks from the date of service, provide to the acquiring authority such particulars of claim as shall be prescribed.

**Vesting date**

- 18.** (1) The vesting date shall be—
- (a) a date that both the owner, lessee or occupier and acquiring authority agree in writing to designate as the vesting date, or
  - (b) a date—
    - (i) no earlier than 3 months, and
    - (ii) no later than 6 monthsfrom the date on which the copy of the vesting order was served on the owner lessee or occupier.
- (2) The acquiring authority shall be deemed to have taken possession on the vesting date and shall be liable to pay interest from that date in accordance with *section 79*.

**Compulsory purchase order of no effect where vesting date later than 6 months from vesting order**

- 19.** Where the vesting date does not fall within the period specified in *section 18(1)(b)*, the compulsory purchase order in pursuance of which the vesting order was made shall cease to have effect unless the owner, lessee or occupier and acquiring authority agree another vesting date.

### **Publication of service of vesting order**

20. Within one week from the date on which it makes the vesting order, an acquiring authority shall publish in one or more newspapers circulating within the State or the area to which the compulsory purchase order relates, and in *Iris Oifigiúil*, a notice stating that the order has been made, describing the land that shall be vested in the acquiring authority on the vesting date and naming a place where a copy of the order may be seen at all reasonable times.

### **Registration of vesting order**

21. Where an acquiring authority makes a vesting order in relation to relevant land or a relevant interest, it shall send the order to the Property Registration Authority and the Property Registration Authority shall cause the acquiring authority to be registered as owner of the land or interest in accordance with the order.

### **Amendment of vesting order**

22. (1) Where an acquiring authority is satisfied that the order contains a minor error, a misdescription or omission, whether occasioned by the acquiring authority by whom such vesting order was made or otherwise, the acquiring authority may, by order, amend such a vesting order, provided that the error or mistake may be rectified without injustice to any person.
- (2) Where an acquiring authority makes an order under this subsection amending a vesting order, the Property Registration Authority shall, on the lodgement with them of a copy of such amending order, rectify the register in such manner as may be necessary to make the register conformable with such amending order.

## *Chapter 2*

*Persons who cannot be found or ascertained, or who fail to provide evidence of title*

### **Application of this Chapter**

23. This Chapter applies where an acquiring authority—
- (a) has made a compulsory purchase order that has become operative, and
  - (b) intends to make a vesting order in accordance with *section 13*.

### **Definitions (Chapter 2)**

24. In this Chapter—

“moneys” includes, where the moneys are invested, the sum of the principal moneys invested and any gain or loss arising from that investment;

“relevant person” means—

- (a) an owner, lessee or occupier who holds title to relevant land or a relevant interest that is subject to a vesting order made by an acquiring authority and who cannot be found or ascertained after reasonable inquiry by that authority, and



- (b) a person served with a copy of a vesting order who claims to hold title to relevant land or a relevant interest but who fails to provide evidence to the satisfaction of the acquiring authority of such title.

#### **Payment of moneys into court in respect of a relevant person**

- 25. Where the acquiring authority is satisfied that a person whose land or interest it seeks to compulsorily acquire is a relevant person, and an application has not been made to the Tribunal under *section 46(1)*, it shall estimate the compensation payable in respect of the land or interest compulsorily acquired and shall pay moneys equal to the amount of that estimate into Court within 2 months of the vesting date.

#### **Reasoned statement (moneys paid into court)**

- 26. The acquiring authority shall produce and preserve a reasoned statement of the estimate under *section 25* and shall, where requested to do so, give a copy of the statement to the relevant person to whom the estimation relates.

#### **Application to Court for release of moneys**

- 27. (1) A relevant person may, subject to this section, apply to the Court to have moneys paid into Court under *section 25* released to him or her where those moneys were paid in respect of land or an interest to which he or she claims to hold, or have held, title on—
  - (a) the date on which the application to Court is made, or
  - (b) the date immediately before the vesting date,whichever is earlier.
- (2) A relevant person shall, at the same time as making the application under *subsection (1)*, provide evidence to the Court of his or her title to the land or interest concerned, along with any other particulars as may be set out in rules of court.
- (3) On the application of a relevant person or several relevant persons under *subsection (1)* claiming any part of the moneys paid into Court, the Court shall, where satisfied as to the title of the relevant person or persons, order the distribution of the moneys as compensation according to the estate, title or interest of the relevant person or the respective estates, titles or interests of the several relevant persons.
- (4) Where moneys are paid into Court under *section 25* by the acquiring authority, any costs and expenses payable by or to the acquiring authority or the relevant person or persons shall be at the discretion of the Court.

### **Application to Tribunal by relevant person**

28. (1) Where the Court has ordered the distribution to a relevant person of money paid into Court in accordance with *section 27(3)* and the relevant person considers that the moneys so distributed do not provide him or her with full compensation for the land or interest compulsorily acquired, he or she may make an application, on notice to the acquiring authority, to the Tribunal within one month of the date on which the Court ordered the distribution of the moneys as compensation under *section 27(3)*, to determine whether the moneys paid into Court are sufficient or whether a further or lesser sum of compensation ought to be paid.
- (2) Where an application is made to the Tribunal under *subsection (1)*, the Tribunal shall:
- (a) where it determines that a further sum of compensation ought to be paid to the relevant person, order the acquiring authority to pay the person the further sum no later than 2 months after the determination of the Tribunal;
  - (b) where it determines that a lesser sum of compensation ought to be paid to the relevant person, order the relevant person to repay the excess amount to the acquiring authority no later than 2 months after the determination of the Tribunal.

### **Costs and expenses in respect of application by relevant person**

29. (1) Where a relevant person applies to the Tribunal for a determination under *section 28*, the reasonable costs and expenses, properly incurred by the relevant person or the acquiring authority, in respect of the determination by the Tribunal under this section shall be borne by—
- (a) where the Tribunal determines that the moneys paid into Court are sufficient to compensate the relevant person, either or both of the relevant person and acquiring authority as the Tribunal may determine,
  - (b) where the Tribunal orders the acquiring authority to pay a further sum to the relevant person, the acquiring authority, or
  - (c) where the Tribunal determines that the relevant person is entitled to a sum lower than that which was paid into Court, the relevant person,
- and the Tribunal may determine the amount of such costs and expenses.
- (2) Where the Tribunal orders the relevant person to pay the costs and expenses, or any part of the costs and expenses, of the acquiring authority, the acquiring authority may deduct, where possible, the amount so payable by such person, from the amount of compensation payable to him or her by the acquiring authority.

### **Release of moneys to acquiring authority**

30. Where moneys paid into Court under *section 25* are not claimed within the period specified in *section 7(c)*, the acquiring authority may make an application, on notice to the relevant person where he or she is known to the acquiring authority, to the Court to have the moneys released to him or her.

### **No interest payable on moneys paid into Court**

31. The acquiring authority shall not be liable to pay interest on any moneys paid into Court, or any further sum as determined by the Tribunal, from the date it pays the moneys into Court.

## **PART 3**

### **ADVANCE PAYMENT**

#### **Right to advance payment of compensation**

32. (1) An acquiring authority shall make a payment (in this Act referred to as an “advance payment”) to an owner, lessee or occupier on account of compensation payable by it for the compulsory acquisition of relevant land or a relevant interest if the owner, lessee or occupier has made a request to it under *section 35* and—
- (a) the authority has made or intends to make a vesting order under *section 13* in respect of the land or interest, or
  - (b) the authority has served or intends to serve a notice of entry onto the relevant land or the land to which the interest relates following the service of a notice to treat under any other enactment.
- (2) Subject to *section 42*, the amount of an advance payment shall be no less than 90 per cent of:
- (a) where the acquiring authority and owner, lessee or occupier agree on—
    - (i) an award of compensation, or
    - (ii) an amount of one or more of the several amounts constituting an award of compensation,the agreed award of compensation or the amount of that part of the award, as the case may be;
  - (b) where the acquiring authority and owner, lessee or occupier do not agree on—
    - (i) an award of compensation, or
    - (ii) the amount of one or more of the several amounts constituting that award,the acquiring authority’s estimate, based on the information available to it, of the award of compensation, or amount of that part of the award, likely to be awarded to the owner, lessee or occupier by the Tribunal.

#### **Advance payment conditional on satisfactory demonstration of title**

33. (1) Where the acquiring authority is satisfied as to the title of an owner, lessee or occupier, having regard to any evidence in support of the owner, lessee or occupier’s claim to title that may be offered by him or her, including by submission of particulars of claim, the acquiring authority shall pay that owner, lessee or occupier an advance payment.

- (2) Where the acquiring authority is not satisfied that the person upon whom the copy of the vesting order or the notice to treat is served has established title to its satisfaction, the acquiring authority shall not pay that person an advance payment and shall, where the person was served with a copy of a vesting order, treat him or her as a relevant person within the meaning of *section 24*.

**Offer of advance payment does not prejudice certain matters**

- 34.** An offer by the acquiring authority, and receipt or rejection of that offer by the owner, lessee or occupier, of an advance payment is without prejudice to:
- (a) the entitlement of either party to make an application to the Tribunal to determine a claim for compensation;
  - (b) the validity of the vesting order, a copy of which was served on the owner, lessee or occupier.

**Request for advance payment**

- 35.** (1) Where—
- (a) a copy of a vesting order, or
  - (b) a notice to treat,
- has been served on an owner, lessee or occupier, he or she may request, by submitting to the acquiring authority such form as may be prescribed, that the acquiring authority make an advance payment to him or her.
- (2) Subject to *subsection (3)*, an owner, lessee or occupier shall make a request for advance payment no later than 10 weeks from the date on which either—
- (a) the copy of the vesting order, or
  - (b) the notice to treat,
- was served on him or her.
- (3) Where an owner, lessee or occupier has not made a request for advance payment within the time provided under *subsection (2)*, he or she may do so at any time up to the determination of compensation by the Tribunal pursuant to the provisions of this Act.
- (4) Within one month of receiving a request for an advance payment, the acquiring authority shall determine whether it has enough information available to it to make an advance payment, and, if it determines that it requires more information, it shall require the owner, lessee or occupier to provide such further information as it requires.

**Reasoned statement (advance payment)**

- 36.** In making an advance payment, an acquiring authority shall, upon the owner, lessee or occupier's request, provide to him or her a reasoned statement for the amount of the advance payment.

**Time within which advance payment to be made where request made within 10 weeks**

37. Provided an owner, lessee or occupier has made a request for advance payment not later than 10 weeks from the date on which either the copy of the vesting order or the notice to treat has been served, an advance payment requested under *section 32* to which the owner, lessee or occupier is entitled shall be made before the end of—

- (a) the day on which the authority takes possession, or is deemed to have taken possession, of the land, or
- (b) the period of 2 months beginning with the day on which the authority received any further information requested by it under *section 35(4)*,

whichever date is later.

**Time within which advance payment to be made where request made after 10 weeks**

38. Where an owner, lessee or occupier has not made a request for advance payment within the time provided under *section 35(2)*, an advance payment requested under *section 35* which the owner, lessee or occupier is entitled shall be made before the end of the period of 2 months beginning with the day on which the authority received—

- (a) the request for the advance payment, or
- (b) any further information requested by it under *section 35(4)*,

whichever date is later.

**Repayment of advance payment**

39. (1) Where the amount of any advance payment made on the basis of the acquiring authority's estimate of the compensation exceeds the compensation finally determined by the Tribunal or agreed between the parties, the owner, lessee or occupier shall repay the excess amount to the acquiring authority.
- (2) If, after any advance payment has been made to a person, it becomes apparent to the acquiring authority that the person was not entitled to the advance payment, the person shall be required to repay a sum equivalent to the amount of the payment in full to the acquiring authority.
- (3) Any repayment to which an acquiring authority is entitled under this section shall be recoverable as a simple contract debt in a court of competent jurisdiction.

**Conditions for advance payment in respect of mortgaged land**

40. (1) This section applies if—

- (a) the acquiring authority is required to make an advance payment, and
- (b) the owner, lessee or occupier's land is subject to a mortgage the principal of which does not exceed 90 per cent of the value of compensation agreed upon or estimated.

- (2) The advance payment due to an owner, lessee or occupier shall be reduced by the amount the acquiring authority thinks will be required by it to secure the release of the interest of each mortgagee.
- (3) The acquiring authority shall pay to the mortgagee the amount the acquiring authority thinks will be required by it to secure the release of the mortgagee's interest, if—
  - (a) the owner, lessee or occupier of the mortgaged land so requests, and
  - (b) the mortgagee consents to the making of the payment.
- (4) If there is more than one mortgagee in respect of the land—
  - (a) *subsection 40(3)* applies to each mortgagee individually, but
  - (b) payment shall not be made to a mortgagee before the interest of each mortgagee whose interest has priority to his or her interest is released.
- (5) The amount of the advance payment made to the owner, lessee or occupier and the amount of the payments made to mortgagees under this section shall not in aggregate exceed 90 per cent of the value of compensation.

#### **Land subject to more than one mortgage**

- 41.** If relevant land is subject to more than one mortgage, the reference in *sections 40(1)(b), 42(1)(c) and 42(4)(b)* to the principal is to the aggregate of all mortgagees' principals.

#### **Mortgage exceeding 90 per cent of estimated or agreed compensation**

- 42.** (1) This section applies if—
- (a) the acquiring authority would be required by *section 32* to make the advance payment if it were not for this section,
  - (b) the owner, lessee or occupier makes a request for an advance payment under *section 35* in respect of his or her land, and
  - (c) the land is subject to a mortgage the principal of which exceeds 90 per cent of the value of compensation agreed upon or estimated.
- (2) Where this section applies, no advance payment is to be made to the owner, lessee or occupier in respect of relevant land or a relevant interest acquired.
- (3) But the acquiring authority shall pay to the mortgagee the amount specified in *subsection (4)*, if—
- (a) the owner, lessee or occupier so requests, and
  - (b) the mortgagee consents to the making of the payment.
- (4) The amount is whichever is the lesser of—
- (a) 90 per cent of the value of the land;
  - (b) the principal of the mortgagee's mortgage.
- (5) The value of the land is the value—
- (a) agreed by the owner, lessee or occupier and the acquiring authority, or
  - (b) in the absence of such agreement, estimated by the acquiring authority.

- (6) For the purposes of *subsection (5)* the value of the land is to be calculated in accordance with provisions of *Chapter 2 of Part 4* of this Act.
- (7) If there is more than one mortgagee, payment shall not be made to a mortgagee until the interest of each mortgagee whose interest has priority to their interest is released.
- (8) But the total payments shall not, in any event, exceed 90 per cent of the value of the land.

## PART 4

### COMPENSATION

#### **Application of this Part**

- 43.** This Part applies to any compulsory acquisition of relevant land or a relevant interest under any enactment, whether enacted before or (save where the application of this Act is expressly disappplied) after this Act.

#### *Chapter 1*

##### *Determination of compensation by Tribunal*

#### **Applicant**

- 44.** In this Chapter, “applicant” means the owner, lessee or occupier or the acquiring authority, as the case may be, who makes an application to the Tribunal under *section 46*.

#### **Compensation to be determined by the Tribunal**

- 45.** (1) Where, under any enactment, relevant land or a relevant interest is authorised to be compulsorily acquired the compensation payable for that acquisition shall, in default of agreement, be determined by the Tribunal in accordance with this Act.
- (2) The Tribunal shall, subject to this Act, be independent in the performance of its functions under this Act.

#### **Application to Tribunal**

- 46.** (1) An application to the Tribunal to determine a claim for compensation shall be made in writing and may be made by the applicant—
  - (a) where the owner, lessee or occupier submitted particulars of claim to the acquiring authority, at any time after the expiration of one month from the date the acquiring authority receives the particulars of claim, or
  - (b) where the owner, lessee or occupier did not submit particulars of claim within the period within which the copy of the vesting order or notice to treat, as the case may be, required him or her to submit particulars of claim to the acquiring authority, one month after the expiry of that period.

- (2) Where the applicant makes an application under *subsection (1)*, the applicant shall, as soon as may be after making the application, send a copy of the application alongside all other necessary documents to any relevant parties to the application.
- (3) No application shall be made to the Tribunal to determine a claim for compensation under *subsection (1)* where money has been paid into Court by the acquiring authority pursuant to *section 25*.
- (4) The Minister shall prescribe the fees payable to the Tribunal in relation to the making of an application under this section.

#### **Form and content of application**

- 47.** (1) An application made under *section 46(1)* shall include—
- (a) a statement of estimate as defined in *subsection (3)*, and
  - (b) any other information or documents as may be specified by the Tribunal under *section 52(1)*.
- (2) The Tribunal shall specify the form and content of an application in rules made by it under *section 52(1)*.
- (3) In this section, “statement of estimate” means—
- (a) in case the owner, lessee or occupier submitted particulars of claim to the acquiring authority, those particulars of claim, or
  - (b) in case the owner, lessee or occupier did not submit particulars of claim to the acquiring authority—
    - (i) where the application is made by the owner, lessee or occupier, a statement containing the owner, lessee or occupier’s estimate of the compensation owed to him or her, or
    - (ii) where the application is made by the acquiring authority, a statement containing the authority’s estimate of the compensation owed to the owner, lessee or occupier.

#### **Power of the Tribunal to order a stay**

- 48.** (1) Where a dispute as to title arises between the parties before the Tribunal, the Tribunal shall, upon the application of the acquiring authority, stay the determination process.
- (2) Where the Tribunal orders a stay of the determination, in accordance with *subsection (1)*, the person claiming compensation may make an application to the Court to determine title.
- (3) An application under *subsection (2)* shall be made in accordance with such rules of court as may be made.

#### **Consolidation of claims**

- 49.** (1) An applicant may make an application to the Tribunal to consolidate claims related to—



- (a) more than one interest in or attaching to the same land, where applications have been made to the Tribunal under *section 46(1)* in respect of each interest in the land, or
  - (b) land held with other land, in circumstances where determining an award of compensation in respect of each claim would cause serious and unfair prejudice to the awards if done in respect of each claim separately.
- (2) An application under *subsection (1)*, shall be made on notice to—
  - (a) where the application is made by any owner, occupier or lessee, the acquiring authority, and
  - (b) all parties whose land or interest would be affected, for the purposes of determining an award of compensation, by the consolidation of claims.
- (3) A person notified under *subsection (2)* may make submissions to the Tribunal in respect of an application to consolidate the claims and the Tribunal shall have regard to any such submission in making a determination under *subsection (3)*.
- (4) Where an application is made to it under *subsection (1)*, the Tribunal shall determine whether it is expedient and appropriate for it to consolidate and determine together some or all of the claims in respect of which the application is made.

### **Composition of Tribunal**

- 50.** Notwithstanding paragraph 3(4) of Schedule 2 of the Valuation Act 2001, the composition (including the number of members) of any division of the Tribunal to determine a claim for compensation under this Act, shall be at the discretion of the chairperson of the Tribunal and in establishing a division, the chairperson shall have regard to—
- (a) the need for expertise in determining compensation for land compulsorily acquired,
  - (b) the complexity of the anticipated proceedings,
  - (c) the potential for a balance of skills in the division, and
  - (d) the need for consistent decision-making.

### **Basis of determination**

- 51.** (1) The Tribunal may determine compensation under this Part by way of—
- (a) an oral hearing, or
  - (b) subject to *subsection (2)*, a document-based determination.
- (2) The Tribunal may, on its own motion or on an application by any party to proceedings before it, determine compensation based on written documentation submitted to it, provided that the Tribunal shall direct that submissions be made by the parties on the question of whether the determination should proceed on the basis of written documentation.
- (3) The Tribunal shall take into consideration any submissions made by the parties pursuant to *subsection (2)*, before it decides to proceed with a document-based determination.

- (4) An oral hearing before the Tribunal shall be held in public, unless the Tribunal, on its own motion or on application by either party, determines that due to the existence of special circumstances, the hearing or part of the hearing should be held otherwise than in public.

### **Procedures of the Tribunal**

- 52.** (1) The procedures of the Tribunal in determining compensation under this Part shall, subject to this Act, be determined by the Tribunal by rules made by it, with the consent of the Minister, provided such procedures provide for—
- (a) the information and documents to be included with an application in accordance with *section 47(1)(b)*,
  - (b) the form and content of the application in accordance with *section 47(2)*,
  - (c) notifying the owner, lessee or occupier and the acquiring authority of the date, time and place for oral hearings, where required,
  - (d) appropriate case management procedures,
  - (e) amending statements of claim,
  - (f) enabling each party before the Tribunal to present its case in person or through a representative including, where the Tribunal is determining the claim on the basis of a document-based determination in accordance with *section 51(1)(b)* and *sections 51(2)* and *(3)*, the arrangements with respect to the submission of documents in writing,
  - (g) the number of expert witnesses that may be called by a party,
  - (h) the giving of notice in writing to every affected party to a determination of the Tribunal of the fact of the determination having been made and the effect of the determination on that party,
  - (i) procedure for the making of an interim determination in accordance with *section 55* and application to the Tribunal to determine the remaining compensation
  - (j) procedure for determining costs and expenses in accordance with *section 57*, and
  - (k) the making of sufficient record of the proceedings of the Tribunal.
- (2) Without prejudice to the generality of *subsection (1)*, the rules of the Tribunal in relation to appeals determined by it made pursuant to the powers conferred on it by paragraph 11 of Schedule 2 of the Valuation Act 2001, may be adapted and applied, with appropriate modifications, to determinations made by it under this Act.
- (3) The Tribunal may take evidence and receive submissions by or on behalf of either the owner, lessee or occupier or the acquiring authority or any other person appearing to the Tribunal to have an interest in or to be likely to be affected by the determination.
- (4) The Tribunal may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in proceedings under this section and to produce to the Tribunal any documents in his or her possession, custody or control that relate to any matter to which those proceedings relate.

- (5) A person to whom notice under *subsection (4)* is given shall be entitled to the same immunities and privileges as those to which he or she would be entitled if he or she were a witness in proceedings before the High Court.
- (6) A person to whom a notice under *subsection (4)* has been given who—
  - (a) fails or refuses to comply with the notice, or
  - (b) refuses to give evidence in proceedings to which the notice relates or fails or refuses to produce any document to which the notice relates,shall be guilty of an offence and shall be liable, on summary conviction, to a class E fine.
- (7) The Tribunal may require a person giving evidence in proceedings before the Tribunal to give such evidence on oath or affirmation and, for that purpose, cause to be administered an oath or affirmation to such person.
- (8) A person who, in or for the purpose of proceedings under this section, gives a statement material in the proceedings while lawfully sworn as a witness that is false and that he or she knows to be false shall be guilty of an offence and shall be liable—
  - (a) on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding ten years, or both.

#### **Determination should be made within 6 months**

- 53.** The Tribunal shall endeavour to make a determination of compensation under *section 45(1)* within 6 months from the date of its having received an application to determine compensation.

#### **Publication of reasons for determination**

- 54.** (1) A determination of compensation by the Tribunal shall contain the reasons for the determination and, subject to *subsections (2) and (3)*, the Tribunal shall publish on its website every determination made by it with any redactions the Tribunal considers necessary on grounds of the personal, confidential or commercially sensitive nature of any part of the determination.
- (2) Where, by reason of a direction by the Tribunal under *section 51(4)* that a hearing be held otherwise than in public, the Tribunal considers that the determination made by the Tribunal pursuant to that hearing should—
- (a) not be published,
  - (b) be published in part only, or
  - (c) be published with parts of the determination redacted,
- it may decide to decline to publish, or publish in partial or redacted form only, that determination.

- (3) In making a decision under *subsection (2)* or *subsection (3)* to decline to publish a determination or to publish it in partial or redacted form only, the Tribunal shall endeavour to publish as much of the determination as the circumstances allow, having regard, in the case of a decision under *subsection (3)*, to the special circumstances under *section 51(4)* grounding its determination to hold the hearing otherwise than in public.

#### **Interim determination by the Tribunal**

- 55.** (1) Where for reasons connected to the non-completion of the works for which the relevant land was compulsorily acquired, the Tribunal is unable to determine a final amount of compensation, the Tribunal may make an interim determination of compensation.
- (2) Where the Tribunal has made an interim determination of compensation in accordance with *subsection (2)*, either the owner, lessee or occupier or the acquiring authority may make a subsequent application to the Tribunal to determine the remaining compensation, once it is possible to assess the remaining amount.
- (3) The procedure for the making of an interim determination and application to the Tribunal to determine the remaining compensation, may be set out in rules by the Tribunal, under *section 52(1)*.

#### **Appeal to Court**

- 56.** (1) Subject to a right of appeal to the Court on a point of law under *subsection (2)*, the determination of the Tribunal under *section 45(1)* shall be final.
- (2) Section 39 of the Valuation Act 2001 shall apply to a determination of compensation under *section 45(1)* as it applies to determinations of appeals under that Act, subject to the following modifications:
- (a) a reference to an appeal made to the Tribunal under that Act shall be construed as a reference to an application to the Tribunal under this Act;
  - (b) a reference to a determination of an appeal made to the Tribunal under that Act shall be construed as a reference to a determination made by the Tribunal under this Act.

#### **Costs before the Tribunal**

- 57.** (1) The Tribunal shall order that the reasonable costs and expenses properly incurred by an owner, lessee or occupier shall be paid by the acquiring authority, unless the Tribunal is satisfied that there are good reasons for not doing so.
- (2) In determining whether there are good reasons for not making an order under *subsection (1)*, the Tribunal shall have regard to the conduct of the owner, lessee or occupier, including any failure to submit, or delay in submitting, particulars of claim or revised particulars of claim to the acquiring authority, and any other matter that the Tribunal considers relevant.

- (3) Notwithstanding *subsection (1)*, where the acquiring authority has made an offer in writing of any sum as to compensation to any owner, lessee or occupier and the sum awarded by the Tribunal to that owner, lessee or occupier does not exceed the sum offered, the Tribunal shall, unless it is satisfied that there are good reasons for not doing so, order the owner, lessee or occupier to bear his or her own costs and expenses and to pay the costs and expenses of the acquiring authority so far as they were incurred after the offer was made.
- (4) In making an order under *subsection (1)*, the Tribunal shall have regard to the costs and expenses incurred by the owner, lessee or occupier in connection with the valuation process including but not limited to—
  - (a) providing particulars of claim to the acquiring authority,
  - (b) seeking an advance payment from the acquiring authority,
  - (c) preparing for, and hearing of, the determination before the Tribunal,
  - (d) considering an offer made by the acquiring authority to settle compensation.
- (5) The Tribunal may determine the amount of costs (including legal costs) and expenses under this section.
- (6) Where the Tribunal does not determine the amount of legal costs, the Tribunal shall make an order for the adjudication of legal costs pursuant to Chapter 4 of Part 10 of the Legal Services Regulation Act 2015.
- (7) Where the Tribunal orders the owner, lessee or occupier to pay the reasonable costs and expenses properly incurred, or any part of the costs and expenses, of the acquiring authority, the authority may, where possible, deduct the amount so payable by the owner, lessee or occupier from the amount of compensation payable to him or her.
- (8) Save where otherwise provided in this Act, the Tribunal may determine the procedure for determining costs and expenses in rules made by it under *section 52(1)*.
- (9) Without prejudice to the generality of *subsection (8)*, any rules on the procedure for determining costs and expenses made by the Tribunal by virtue of the powers conferred on it by paragraph 11 of Schedule 2 of the Valuation Act 2001 may be adapted and applied with any necessary modifications to costs and expenses determined by the Tribunal under this Act.

#### **Time limit for payment of compensation**

- 58.** The compensation as determined by the Tribunal under *section 45(1)* shall be paid no later than 2 months after the determination is made unless—
- (a) the Tribunal otherwise directs, or
  - (b) an appeal on a point of law of the Tribunal's determination is brought in accordance with *section 56(2)*, in which case the compensation shall be paid no later than 2 months after the determination of that appeal.

## **Enforcement of compensation determination**

- 59.** Compensation determined by the Tribunal under *section 45(1)* shall be recoverable as a simple contract debt in any court of competent jurisdiction.

## *Chapter 2*

### *Principles of compensation*

## **Definitions and interpretation (Chapter 2)**

- 60.** (1) In this Chapter—

“development” has the same meaning as it has in the Planning and Development Act 2000;

“development plan” has the same meaning as it has in the Planning and Development Act 2000;

“retained land” means relevant land that is—

(a) not subject to a compulsory purchase order, and

(b) held with land that is subject to a compulsory purchase order;

“special amenity area order” has the same meaning as it has in the Planning and Development Act 2000;

“subject land” means relevant land that is subject to a compulsory purchase order;

“unauthorised structure” has the same meaning as it has in the Planning and Development Act 2000;

“unauthorised use” has the same meaning as it has in the Planning and Development Act 2000;

“valuation date” means, in respect of a compulsory purchase order—

(a) where the compulsory acquisition is effected by a notice to treat or by a vesting order under this Act, the date on which the notice to treat or the copy of the vesting order is served on the owner, lessee or occupier, and

(b) where the compulsory purchase order is effected otherwise than by notice to treat or by vesting order under this Act and—

(i) there is a date designated by a provision of an enactment applying or attaching to the compulsory purchase order as the date on which relevant land or a relevant interest is to be valued for the purposes of compensation, that date,

(ii) there is no date to which *subparagraph (i)* applies and there is a statutory requirement applicable or attaching to the compulsory purchase order to notify the owner, lessee or occupier that the acquiring authority is proceeding with the compulsory acquisition authorised by or under that order, the date on which such notice was served on the owner, lessee or occupier, or

- (iii) there is no date to which *subparagraph (i)* applies and no statutory requirement to notify the owner, lessee or occupier to which *subparagraph (ii)* applies, the date on which, according to the terms of the compulsory purchase order or a provision of any enactment applicable or attaching to the compulsory purchase order, the acquiring authority becomes legally bound to proceed with the acquisition;

“works” has the same meaning as it has in the Planning and Development Act 2000.

- (2) A reference to “value” in this Chapter, except where otherwise provided, shall be construed as a reference to market value in accordance with *section 65*.

### **Entitlement to compensation**

- 61.** An owner, lessee or occupier from whom relevant land or a relevant interest is acquired pursuant to a compulsory purchase order is entitled to be paid compensation in accordance with this Chapter in respect of the acquisition.

### **No allowance for acquisition being compulsory**

- 62.** In assessing an award of compensation for relevant land or a relevant interest authorised to be compulsorily acquired, the Tribunal shall make no allowance on account of the acquisition being compulsory.

### **Award of compensation**

- 63.** An award of compensation made under this Act shall comprise the sum of such amounts of compensation as the Tribunal may award on account of—
  - (a) either—
    - (i) the market value of the owner, lessee or occupier’s land, in accordance with *section 65*, or
    - (ii) the cost of equivalent reinstatement, in accordance with *section 69*,
  - (b) a reduction in the value of retained land owned by the owner, lessee or occupier, in accordance with *section 66*, and other land owned by him or her, in accordance with *section 67*, and
  - (c) certain consequential personal losses to the owner, lessee or occupier, in accordance with *section 68*.

### **Relevant dates for assessment of compensation**

- 64.** Save as otherwise provided in this Act, compensation shall be assessed by reference to the following dates and circumstances:
  - (a) relevant land or a relevant interest shall, under *section 65* and *section 66*, and in any other case where the amount of compensation depends on the value of land, be valued as they stand at the valuation date at values prevailing on that date and in the circumstances prevailing or reasonably anticipated on that date;

- (b) compensation under *section 68* shall be assessed by reference to circumstances prevailing or reasonably anticipated at the date on which compensation is determined;
- (c) compensation under *section 69* shall be assessed by reference to the costs, or estimated costs, at the date when commencement of reinstatement work became, or is expected to become, reasonably practicable.

### **Market value**

#### **65. Subject to—**

- (a) *section 72*,
- (b) *section 73*,
- (c) *section 74*, and
- (d) *section 76*,

the market value of relevant land or a relevant interest for the purposes of this Act is the estimated amount for which that land or interest would exchange on the open market, as at the valuation date, between a willing buyer and a willing seller.

- (2) The Tribunal shall have regard to the following when assessing the market value of relevant land or a relevant interest:
  - (a) any restrictive covenant entered into by the acquiring authority when the land is compulsorily acquired;
  - (b) any restriction on the development of the land—
    - (i) in respect of which compensation has been paid under the Planning and Development Act 2000, or
    - (ii) that could, without conferring a right to compensation, be imposed under any Act or under any order, regulation, rule or bye-law made under any Act;
  - (c) any contribution that a planning authority would have required as a condition precedent to the development of the land.
- (3) The Tribunal shall not have regard to the following when assessing the market value of relevant land or a relevant interest:
  - (a) the possibility or probability of the land or other land becoming subject to a scheme of development undertaken by a local authority;
  - (b) any increase or decrease in the value of the land attributable to—
    - (i) the land, or any land in the vicinity of the land, being reserved for a particular purpose in a development plan other than a purpose for which it is zoned in that development plan, or
    - (ii) the inclusion of the land in a special amenity area order.

### **Reduction in value of retained land**

#### **66. (1) Subject to—**

- (a) *subsections (2) and (3)*,
- (b) *section 72*,



- (c) *section 73*,
- (d) *section 74*, and
- (e) *section 76*,

compensation for loss or damage to retained land shall be assessed in accordance with this section.

- (2) In assessing compensation for loss or damage to retained land the Tribunal shall have regard to—
  - (a) any decrease in the value of any interest of the owner, lessee or occupier in any part of the retained land attributable to its severance from the subject land (“severance”), and
  - (b) any decrease in the value of any interest of the owner, lessee or occupier in any part of the retained land attributable to works on subject land acquired from the owner, lessee or occupier and subsequent user of that land (“injurious affection”),but shall off set against such assessment—
  - (c) any increase in the value of any part of the retained land attributable to the nature of, carrying out, or expected use of, those works (“betterment”),so far as each is applicable to the retained land and as each stands at the valuation date.
- (3) If the parties agree or the Tribunal determines, account shall be taken of changes of circumstances (other than changes in land values) known at the date on which compensation is determined.

#### **Reduction in value of land other than retained land**

- 67.** (1) Where relevant land to which an owner, lessee or occupier has title is not retained land but is reduced in value by the compulsory acquisition, the owner, lessee or occupier may, subject to—
- (a) *section 72*,
  - (b) *section 73*,
  - (c) *section 74*, and
  - (d) *section 76*,
- claim compensation in respect of that reduction in value if—
- (i) the loss results from the lawful exercise by the acquiring authority of its statutory powers,
  - (ii) the act that causes the loss would have given rise to an independent cause of action if the authority were not exercising its statutory powers,
  - (iii) the loss relates to a reduction in value of the owner, lessee or occupier’s land and not personal inconvenience or damage to trade only, and
  - (iv) the loss arises from the execution of the works on the land compulsorily acquired and not from the authorised use of that land following completion of the works.

- (2) In determining compensation under this section, the Tribunal shall apply *section 66(2)* as if the references to retained land were references to relevant land to which this section applies.

### **Consequential losses**

- 68.** (1) Disturbance (in this Act referred to as “consequential loss”) means loss suffered or expense reasonably incurred as a result of the compulsory acquisition of relevant land or a relevant interest owned by the owner, lessee or occupier, so far as that loss or expense is—
- (a) the natural and reasonable consequence of the compulsory acquisition,
  - (b) reasonably foreseeable,
  - (c) not included in compensation based on the value of relevant land or a relevant interest under *section 65* or *section 66*, and
  - (d) incurred after the valuation date, save that compensation for earlier losses may be granted—
    - (i) by agreement, or
    - (ii) if the Tribunal determines that, having regard to the special circumstances of the case, it would be unfair to refuse compensation for those earlier losses.
- (2) Where compensation is claimed for the displacement of a business, trade or economic activity compensation shall be assessed by reference to either—
- (a) the reasonable costs of relocating the business, trade or activity (wholly or partially), loss of profits and any loss or expense incidental to relocation (the “relocation” basis), or
  - (b) the value of the business, trade or activity (or part of the business or trade) as a going concern at the valuation date, and any loss or expense incidental to closure (the “total extinguishment” basis).
- (3) The owner, lessee or occupier is entitled to claim on the relocation basis if—
- (a) it is reasonably practicable to relocate the business, trade or activity (wholly or partially),
  - (b) it has been relocated, or the owner, lessee or occupier intends to relocate it (or complete its relocation), and
  - (c) it is not shown to be unreasonable in all the circumstances for compensation to be paid on that basis.
- (4) The owner, lessee or occupier is not entitled to claim on the extinguishment basis unless he or she—
- (a) has not relocated, and does not intend to relocate, the business, trade or activity, and
  - (b) shows that it is reasonable in all the circumstances for him or her not to relocate the business, trade or activity.
- (5) In deciding what is reasonable under *subsections (3) or (4)* the Tribunal shall take into account—

- (a) the personal circumstances of the owner, lessee or occupier (including age, illness, disability or financial circumstances), and
  - (b) the fact that higher compensation is payable on the relocation basis than on the extinguishment basis does not of itself make it unreasonable for compensation to be assessed on the relocation basis.
- (6) Unless the contrary is shown, where premises acquired for relocation have a greater market value than the premises acquired from the owner, lessee or occupier, it shall be presumed that the difference in value reflects advantages for which compensation is not payable to the owner, lessee or occupier.
- (7) Without prejudice to *subsections (1) to (6)*, where land on which a business, trade or activity is carried on is severed by the acquisition, compensation shall include costs reasonably incurred in replacing buildings, plant or other installations (whether or not they were on the subject land) if or to the extent that—
- (a) they are required to enable the business, trade or activity to be continued on the retained land, or other adjacent land acquired for the purpose,
  - (b) the need for replacement is caused by the acquisition,
  - (c) the cost is not adequately included in any other head of compensation, and
  - (d) it is not shown to be unreasonable in all the circumstances for compensation to include such costs,
- provided that the compensation may be reduced to such extent (if any) as the Tribunal may determine to reflect any improvement in the facilities so obtained over those replaced.

### **Equivalent reinstatement**

- 69.** (1) An owner, lessee or occupier may claim compensation under this section for the cost of the reinstatement of an undertaking in some other place (“equivalent reinstatement”) if—
- (a) the subject land is, and but for the compulsory acquisition would continue to be, devoted to a particular purpose,
  - (b) there is no market or general demand for land for that purpose, and
  - (c) reinstatement in some other place is genuinely intended by the owner, lessee or occupier.
- (2) Where an owner, lessee or occupier claims compensation under *subsection (1)* the Tribunal may refuse to award such compensation if it is shown that the cost of reinstatement is prohibitive relative to the value of the undertaking.
- (3) Where reinstatement has not been carried out before the award of compensation has been determined, the Tribunal may make any compensation awarded under this section subject to conditions (including provision for staged payments) to ensure that the payment is used for the intended purpose or (if not) that any excess over the compensation otherwise due is repaid.

### **Value owing to unlawful or unauthorised use or structure**

**70.** The Tribunal shall, in assessing compensation under this Act, disregard any increase in the value of land that is—

- (a) attributable to—
  - (i) its use in a manner that could be restrained by any court, or
  - (ii) any unauthorised structure on the land or unauthorised use of the land,or
- (b) contrary to law, or detrimental to the health of the occupier of the land or to the public health.

### **Duty to mitigate losses**

- 71.** (1) If the Tribunal determines that the owner, lessee or occupier has, since the valuation date, unreasonably failed to take steps that were open to him or her to mitigate his or her loss, it may reduce the compensation otherwise payable by the amount of such loss as could have been avoided by taking such steps when it was reasonable to do so.
- (2) In deciding what is reasonable under *subsection (1)* the personal circumstances of the owner, lessee or occupier (including age, illness, disability or financial circumstances) shall be taken into account.

### **New interests or enhancements**

- 72.** In valuing the owner, lessee or occupier's subject land or retained land, the Tribunal shall disregard:
- (a) any new interests created over the subject land, or the retained land, between the valuation date and the date on which compensation is determined, in so far as they would increase the amount of compensation otherwise payable by the acquiring authority;
  - (b) any enhancements (by creation of interests or works on the land or otherwise) where the Tribunal is satisfied that the enhancement was undertaken with a view to obtaining compensation or increased compensation.

### **Disregard of change in value owing to reservation for particular purpose**

- 73.** The Tribunal shall not have regard to any increase or decrease in the value of land attributable to—
- (a) the land, or any land in the vicinity of the land, being reserved for a particular purpose in a development plan other than a purpose for which it is zoned in that development plan, or
  - (b) the inclusion of the land in a special amenity area order,
- when assessing the market value of relevant land or a relevant interest.

### **No-scheme rule**

- 74.** (1) In valuing the subject land at the valuation date—

- (a) it shall be assumed that the statutory project has been cancelled on that date, and
  - (b) the following matters shall be disregarded:
    - (i) the effects of any action previously taken (including acquisition of any land, and any development or works) by an acquiring authority, wholly or mainly for the purpose of the statutory project;
    - (ii) the prospect of the same, or any other, project to meet the same, or substantially the same, need being carried out in the exercise of a statutory function;
    - (iii) the possibility or probability of the land or other land becoming subject to a scheme of development undertaken by an acquiring authority.
- (2) In cases of dispute, the area of the statutory project shall be determined by the Tribunal as a question of fact, subject to the following:
- (a) subject to *paragraph (b)*, the statutory project shall be taken to be the implementation of the specific or general purpose for which the acquiring authority intends to acquire the relevant property;
  - (b) either the owner, occupier or lessee or the acquiring authority may advance evidence of a larger project than would be indicated by the application of *paragraph (a)* and the Tribunal may, on the basis of such evidence, characterise the statutory project;
  - (c) for the purposes of *paragraph (b)*, the acquiring authority may not, unless—
    - (i) the owner, lessee or occupier agrees, or
    - (ii) the Tribunal allows,
 advance any evidence of a larger project other than a larger project defined in the compulsory purchase order or the documents published with that order.
- (3) *Subsection (1)* does not require or authorise, save to the extent specified in *paragraph (b)*, consideration of whether events or circumstances at any time (before or after the valuation date) would have been different in the absence of the statutory project.
- (4) In this section, “statutory project” means a project for a purpose to be carried out in the exercise of a statutory function for which the acquiring authority has been authorised to acquire the subject land.

### **Interference with other legal interests**

75. Where, in the carrying out of the purpose for which the subject land is acquired, any legal interest within the meaning of section 11 of the Land and Conveyancing Law Reform Act 2009 affecting the subject land is extinguished, interfered with or breached in a manner that would be unlawful in the absence of statutory authority, compensation shall be payable to the owner, lessee or occupier of the legal interest by reference to the reduction (if any) in the market value of any land to which the interest was attached, so far as attributable to the extinguishment, interference or breach of the interest, and any consequential loss (applying the provisions in *section 68* with appropriate modifications).

### **Land below the surface**

76. The value of any land lying 10 metres or more below the surface of that land shall be taken to be nil, unless it is shown to be of a greater value by the owner, lessee or occupier.

## *Chapter 3*

### *Interest*

### **Principal sum**

77. In this Chapter, “principal sum” means—
- (a) where no advance payment was made to the owner, lessee or occupier, the amount of compensation agreed between the owner, occupier and lessee and the acquiring authority, or the award of compensation as determined by the Tribunal, or
  - (b) where an advance payment was made to the owner lessee or occupier, the amount of compensation agreed between the owner, occupier and lessee and the acquiring authority, or the award of compensation as determined by the Tribunal less the amount of the advance payment paid to him or her.

### **Rate of interest**

78. Except where otherwise provided, the rate or rates of interest under this Chapter shall be prescribed.

### **Interest after vesting order made**

79. (1) This section applies where an acquiring authority makes a vesting order under this Act.
- (2) Interest shall be payable on the principal sum from the vesting date to the earlier of—
- (a) the date on which the compensation is due to be paid under *section 58*, or
  - (b) the date on which compensation is paid to the owner, lessee or occupier.

#### **Interest on late payment of compensation as determined by the Tribunal**

- 80.** (1) Where the acquiring authority does not pay in full the award of compensation as determined by the Tribunal in the period specified in *section 58*, it shall be liable to pay interest on the balance of the principal sum unpaid by it from the expiration of that period to the date the balance of the principal sum is paid.
- (2) For the purposes of *subsection (1)* the rate of interest payable by the acquiring authority shall be the rate referred to in section 26 of the Debtors (Ireland) Act 1840.

#### **Interest on late advance payment**

- 81.** (1) Where an acquiring authority makes, or undertakes to make, an advance payment and it does not pay in full that payment within the period specified in *section 37* or *section 38*, as the case may be, it shall be liable to pay interest on the balance of the advance payment unpaid by it from the expiration of that period to the date the outstanding advance payment is paid.
- (2) Where the amount of an advance payment made by an acquiring authority exceeds the award of compensation determined by the Tribunal, the owner, lessee or occupier shall repay to the acquiring authority any interest paid to him or her by the acquiring authority on account of that advance payment.

## SCHEDULE 1

### *Section 10.*

#### REPEALS

Session and Chapter or Number and Year (1)	Short title (2)	Extent of Repeal (3)
8 & 9 Vict. c. 18	Lands Clauses Consolidation Act 1845	Sections 63 and 68
9 & 10 Geo. 5 c. 57	Acquisition of Land (Assessment of Compensation) Act 1919	The whole Act
No. 45 of 1960	Property Values (Arbitrations and Appeals) Act 1960	The whole Act



## SCHEDULE 2

### *Section 10.*

#### REVOCATIONS

Series, Number and Year (1)	Citation (2)	Extent of Revocation (3)
SR & O No. 600 of 1920	Acquisition of Land (Assessment of Compensation) Rules 1920	The whole instrument
S.I. No. 91 of 1961	Property Values (Arbitrations and Appeals) Rules 1961	The whole instrument
S.I. No. 115 of 1999	Acquisition of Land (Assessment of Compensation) Fees Rules 1999	The whole instrument