

Summary Report in plain English

Compulsory Acquisition of Land

Our Plain English Overview only provides a summary of our Report on Compulsory Acquisition of Land. It is a guide to make our Report more accessible. It is not comprehensive. To see the Commission's definitive recommendations, you should consult the full Report.

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What is the Law Reform Commission?

1. What does the Law Reform Commission do?

The Law Reform Commission reviews the law and recommends changes to it. The Commission also works to make the law easier to:

- access
- understand
- follow.

Introduction

1. This Report looks at what changes might be made to the law on the compulsory purchase of land. This is usually done by a compulsory purchase order (CPO). A CPO lets a government body or agency (an acquiring authority) buy land, even if the owner does not agree to the sale. A CPO is used when land is needed for public purposes, for example, to build roads, hospitals, or airports. Many acquiring authorities have CPO powers, for example local authorities, the National Roads Authority, Transport Infrastructure Ireland, Electricity Supply Board Network and Gas Networks Ireland. An acquiring authority will compensate owners for the loss of their land.
2. The Report looks at how and when the land will be taken and how much the owner will be compensated for the loss of their land.
3. Our recommendations aim to:
 - (a) make the process for the compulsory purchase of land faster,
 - (b) make the system fair for owners and acquiring authorities, and
 - (c) reduce the cost of compulsory purchase of land.
4. Some parts of the law on CPO are very old. They were made before the foundation of the State in 1922. Two of the most important laws are:
 - the Lands Clauses Consolidation Act 1845 (the “1845 Act”) and
 - the Acquisition of Land (Assessment of Compensation) Act 1919 (the “1919 Act”).
5. The 1845 Act describes the procedure for acquiring land by CPO. Many laws have incorporated parts of it. The 1919 Act deals with how owners will be compensated. This law is applicable to most CPOs. These laws are difficult to understand for a modern reader. They were written a long time ago and have been amended many times. We think the 1919 Act and some provisions of the 1845 Act should be replaced with new provisions should be written to simplify the procedures for:
 - compulsory purchase of land and
 - compensation of owners.

What is this Report about?

6. We published an Issues Paper in 2017 seeking views on 23 issues related to CPO, including:
 - (a) the notice to treat (this is a document sent to owners after a CPO has been confirmed, informing them that the acquiring authority has decided to acquire the land),
 - (b) the power of an acquiring authority to use land before it pays compensation to the owner,
 - (c) the principles and rules for assessing compensation, and
 - (d) the arbitration process.
7. These issues are considered in this Report. We engaged again with key stakeholders in 2020 to discuss possible reforms to the CPO system.
8. We initially intended to cover the entire process of a CPO in this report. However, we became aware that the Government was preparing a Planning and Development Bill that would replace the current Planning and Development Act 2000. That Bill contains provisions related to making and confirming CPOs. As a result, we decided to focus on the steps following the approval of the CPO, as the Planning and Development Bill 2022 does not deal with this. Because of this, the Report looks at fewer issues than originally planned.
9. We have looked at compulsory purchase of the whole or part of land. There are other types of compulsory purchase also:
 - **Temporary possession of land.** For example, to store building materials or machinery. This is not permanent, because once the project is completed the land will be returned to the owner. We have not looked at this issue.
 - **A right to use a portion of the land.** For example, to install pipes or electricity cables on someone's land. In these cases, the acquiring authority does not buy the land.
10. The draft Bill attached to the Report is separate from the Planning and Development Bill and does not depend on it becoming law. The Report presents the law as of 29 March 2023, before any changes that might be made by the Planning and Development Bill 2022.

How does the draft Bill in the Report relate to existing compulsory purchase law?

11. Once a CPO is confirmed, acquiring authorities send a document (known as a notice to treat) to the owners of land that is being purchased. This document does not transfer the ownership of the land. It does three things:
 - (a) it tells the owner that the acquiring authority wants to make a compulsory purchase of their land;
 - (b) it tells the owner which parts of their land it wants to purchase;
 - (c) it asks the owner to send documentation proving their interest in the land and the amount of compensation they are asking for.
12. The acquiring authority will own the land when:
 - (a) the owner proves they own the land and
 - (b) the authority pays compensation to the owner.
13. A second document (called a notice of entry) tells the owner that, after a specific period, the acquiring authority may enter the land to start work. For example, an owner will not be able to use their land anymore if the acquiring authority starts the work to build a new road. For most CPOs, an owner must be told at least 14 days before work begins. The notice of entry, once given to the owner, allows the authority to take possession of the land. This is allowed to happen without further warning to tell the owner exactly when the authority will actually take possession.
14. There are problems with the notice to treat procedure:
 - (a) There is no time limit to serve a notice of entry. An owner knows that their land will be acquired as they received the first document (a notice to treat). However, they do not know **when** they will lose the use of their land.
 - (b) The acquiring authority does not have to pay compensation when the owner loses the use of their land.

Example: to speed up the construction of a new road, an acquiring authority may ask an owner to leave their land before they agree on the compensation. This means that an owner may have to pay to relocate their home or business before receiving any money for the loss of their land.

- (c) The land is valued at the date the notice to treat is served on owners.

This may be unfair to either the owner or the acquiring authority if there is a long delay.

Example: If the value of land goes up between the beginning and end of the compulsory purchase process, the owner will not get the increase in value. If the value goes down, the acquiring authority will not be able to buy the land for the lower price.

15. We recommend removing the notice to treat procedure and replacing it with a vesting order procedure. A “vesting order” is a legal document that transfers ownership of land to an acquiring authority, even if the owner does not agree. In exchange, the acquiring authority must pay some compensation to the owner much earlier than they do now.
16. The advantages of the recommended new procedure are:
 - (a) It is simpler and quicker.
 - (b) Owners will know for certain when their land will be taken.
 - (c) The period between the valuation date of the land and the date of the transfer of ownership is shorter. This period cannot be later than 6 months from when the vesting order is given to the owner.
17. However, removing the notice to treat procedure means that several laws will have to be changed. Before that happens, there will have to be a review by people who know a lot about those laws. We think that each relevant government department responsible for the various schemes should do this review before replacing old laws.
18. To allow government departments time to do this review, we have written our draft Bill to apply to all CPOs (whether the purchase is under old laws or the proposed new law). This means that improvements we have recommended can apply to all compulsory purchases. These improvements include:
 - (a) paying a large amount of money as compensation in advance (before the final amount of compensation is agreed or decided).
 - (b) replacing the property arbitration process so that decisions on compensation will be made by the Valuation Tribunal, and
 - (c) the principles of compensation to help assess the compensation due to owners.

Vesting Order Procedure

19. A vesting order procedure is already available to acquiring authorities in some situations where they need to buy:
 - (a) derelict sites, (properties that are in ruins or in dangerous condition),
 - (b) protected structures (a structure that is especially important from an architectural, archaeological, artistic, cultural, scientific, social or technical point of view),
 - (c) open spaces (when an obligation to provide or maintain an open space was included in planning permission), or
 - (d) where there has been a delay in buying lands using the notice to treat procedure.
20. However, we believe that the vesting order procedure should become the only way for acquiring authorities to take land by compulsory purchase.
21. We examined CPO procedures in other countries, including the United Kingdom, Australia, and Canada. Those countries use vesting orders.

Time Limits

22. The recommended vesting order procedure must include clear time limits. This will benefit both owners and acquiring authorities.

An acquiring authority must decide to buy the land within 12 months from the date a CPO is operative.

23. The period of 12 months is shorter than the existing 18-month or three-year period under the notice to treat procedure. The Commission believes that owners should know at an earlier time when they will lose their land. When land is subject to a CPO, owners can find themselves in a difficult situation. They might not be able to sell their land, because it is unlikely that anybody will want to buy land that may be compulsorily purchased. They cannot invest in their land either as it might be taken shortly. A shorter time limit will reduce this period of uncertainty.
24. The Commission realises that the 12-month period may be too short for major infrastructure projects. Under the Commission's draft Bill, the Minister can extend the 12-month period. It can also be extended with the agreement of all the owners.

- (a) An owner must be given at least three months' notice before leaving their land.
- (b) The vesting date cannot be later than six months from the date the acquiring authority serves the vesting order.

The ownership of the land is transferred on the vesting date specified in the vesting order. This is the date that the owner loses ownership and possession of their land. The vesting date must be between three and six months from when the owner is given the vesting order.

Example: if a vesting order was given to the owner on 15th January 2023, they can stay on their land until at least 15th April 2023. The vesting date cannot be later than 15th July 2023, unless both parties agree on a later date.

- 25. We recommend removing the existing vesting procedures and replacing them with the Commission's recommended vesting order procedure. This procedure is summarised in the attached "Vesting Order" graphic on page 16.

Advance Payment

- 26. We recommend the introduction of advance payments. An acquiring authority must pay a large amount of money before compensation is agreed or determined, if the owner:
 - (a) requests it, and
 - (b) gives documents to the acquiring authority that prove they own the land or a right on the land (such as a lease).
- 27. Acquiring authorities do not have to make advance payments to owners in Ireland now. Advance payments are common in many other countries (such as England, Wales, Northern Ireland, some parts of Canada, and Australia).
- 28. We recommend that the acquiring authority should pay some of the compensation to the owner before the final compensation has been agreed upon or decided.
- 29. The advantages of an advance payment regime are:
 - (a) Owners will get some compensation around the time they lose their land.
 - (b) Acquiring authorities will have to pay less interest on the compensation. Under the law as it is now, interest must be paid for the

period from the date the land is taken until the compensation is paid to the owner. If that is a long period of time there is a lot of interest to be paid.

30. The amount of the advance payment must be at least 90% of the acquiring authority's estimate of the amount of compensation to be paid to the owner.
31. You can find a summary of the advance payment process recommended by the Commission in the graphic on page 17.

Where owners cannot be found or cannot prove they own the land

32. We recommend a payment into court procedure where:
 - (a) an acquiring authority cannot identify or find the owner of the land, or
 - (b) a person who says they are the owner of the land cannot provide evidence to the acquiring authority that they own the land or that they have a right to the land.
33. These situations are described in the examples below. Example 1 shows how things might happen if an acquiring authority cannot find or identify an owner. Example 2 shows how things might happen if a person says they own land, but they are not able to show enough evidence that they do.

Example 1 An owner inherited land 40 years ago. On the Land Registry (a public register that contains information on lands such as the owner's name and address), the owner's address has not been updated when they moved to a new property. The acquiring authority is not able to contact them and pay them compensation for the acquisition of their land. If the owner realises 10 years later that their land was acquired by the acquiring authority, they are entitled to receive compensation then and they may apply to the High Court to have the money given to them.

Example 2: A farmer owns the land that the acquiring authority wants to acquire. On the Land Registry, the farmer is registered as the full owner. They have provided evidence of their ownership. However, the farmer's neighbour contacted the acquiring authority because they have a right on the land that has not been registered on the Land Registry. The neighbour claims that they should receive compensation. If the acquiring authority believes that there is a dispute regarding the ownership or a right to it, it will pay compensation into the High Court. The party that proves to the High Court that they own the right to the land may apply to have the money given to them.

34. Under the recommended new procedure:
- (a) the acquiring authority must pay the estimated compensation into the High Court;
 - (b) an owner must apply to the High Court to receive their compensation within 25 years of the money being paid into the High Court by the acquiring authority;
 - (c) an owner must prove they own the land or a right to the land;
 - (d) an owner can apply to the Valuation Tribunal to ask it to decide whether they should be paid a further sum of compensation (see next section on "Who should determine compensation");
 - (e) where the owner does not claim the money within 25 years, the acquiring authority may ask the High Court to return any money left in Court to it.
35. You can find a summary of the payment into court process recommended by the Commission in the graphic on page 18.

Who should decide on compensation?

36. When an acquiring authority acquires land, it will compensate owners for the loss of their land. Usually, the acquiring authority will negotiate with the owner to agree on the amount of compensation. If no agreement is reached, the acquiring authority or the owner may apply for a property arbitrator to be appointed to decide on how much money should be paid to compensate the owner for loss of the land.
37. Most people who shared their views with the Commission on the current system of determining compensation pointed out many problems including:
- (a) the current process is too long;
 - (b) different property arbitrators make different decisions that are not consistent with one another;
 - (c) decisions are hard to find and are not available online; and
 - (d) the process is too expensive and complicated.
38. We recommend replacing the current arbitration process with the Valuation Tribunal ("Tribunal") because:
- (a) it is a permanent body that already carries out similar functions;

- (b) its members include lawyers and chartered surveyors that are experts in land valuation;
 - (c) it has procedural rules that are publicly available. This promotes consistency and transparency, and
 - (d) its members are appointed following a competitive recruitment process.
39. The Commission also recommends making the process of deciding compensation faster and less expensive by:
- (a) requiring the Tribunal to try to make its decision within six months;
 - (b) making the rules of compensation clearer to help the Valuation Tribunal in deciding on compensation;
 - (c) making the decisions of the Tribunal publicly available.
40. We recommend that the Tribunal should decide on compensation for all CPO cases, regardless of the acquisition procedure (notice to treat or vesting order) used to acquire the land.
41. You can find a summary of the determination of compensation process recommended by the Commission in the graphic on page 19.

Principles of Compensation

42. The rules on compensation for compulsory purchase are difficult to understand because the law is very old. We recommend that the rules of compensation should be clear and use modern language.
43. Deciding on the amount of compensation is guided by two principles.
- (a) **Value to landowner.** The value of the land means its value to the owner rather than its value to the acquiring authority. The value of the land to the owner is not just its market value, but also personal loss for the owner by the forced sale.
 - (b) **Principle of equivalence.** The owner forced to sell their land should be given an amount of compensation that puts them in the same financial position they would have been in if their land had not been taken by the acquiring authority.
44. These principles are achieved by applying the rules of compensation. We recommend that the rules of compensation should be brought together in our

draft Bill. In our draft Bill, the following rules of compensation have been clearly stated:

(a) Value of the land acquired

The value of the land is the amount that an owner would expect to get if they sold the land on the market.

(b) Consequential loss (previously known as disturbance)

This is the compensation paid to owners for various expenses they may have incurred because of the compulsory acquisition of their land, such as:

- fees paid to valuers or lawyers;
- moving to a new house;
- moving a business (if the business cannot be moved, the compensation includes the value of the business).

(c) Equivalent reinstatement

This rule applies if the land taken by the acquiring authority has been adapted or changed and used for a purpose that has no general market. In these situations, the compensation given to the owner will be based on how much it would reasonably cost to put other land or property to a similar use for the same purpose.

Example: an acquiring authority purchased a building that had a very distinctive architectural design. The owners wanted to preserve this architectural design. As compensation, the owners were given an amount equivalent to the cost of dismantling and reconstructing the front part of the building in a new location, rather than the value of acquiring a completely different building with a similar size and purpose.

(d) Severance (this is when the land is broken up)

This rule applies if the compulsory acquisition of the land by an acquiring authority splits the owner's remaining land into separate parts. This might lower the value of that land because buyers may be less likely to pay for the two smaller and separate portions of land or it is more expensive or inconvenient to use the land.

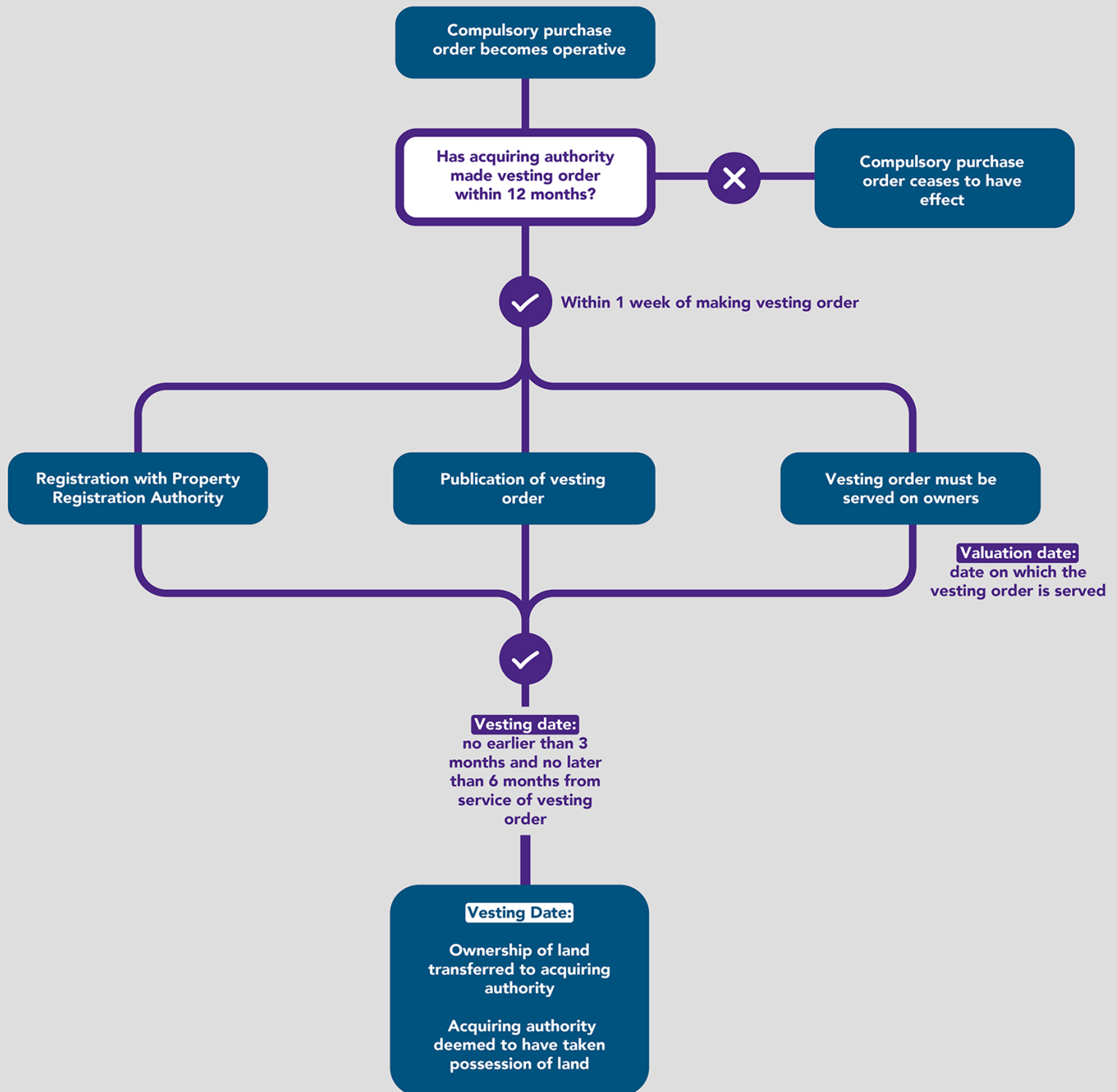
Example: a farmer's land is worth €400,000. It is divided into two plots by a CPO to build a road. The farmer gets €50,000 for the land used to build the road. The two remaining plots are now valued at €150,000 each. This means the total worth of the farmer's remaining land is only €300,000. They receive €50,000 for the land used for the road and can recover an additional €50,000 as severance for the loss in value of the two remaining plots.

(e) **Injurious affection (this is when land that you keep after the compulsory purchase goes down in value)**

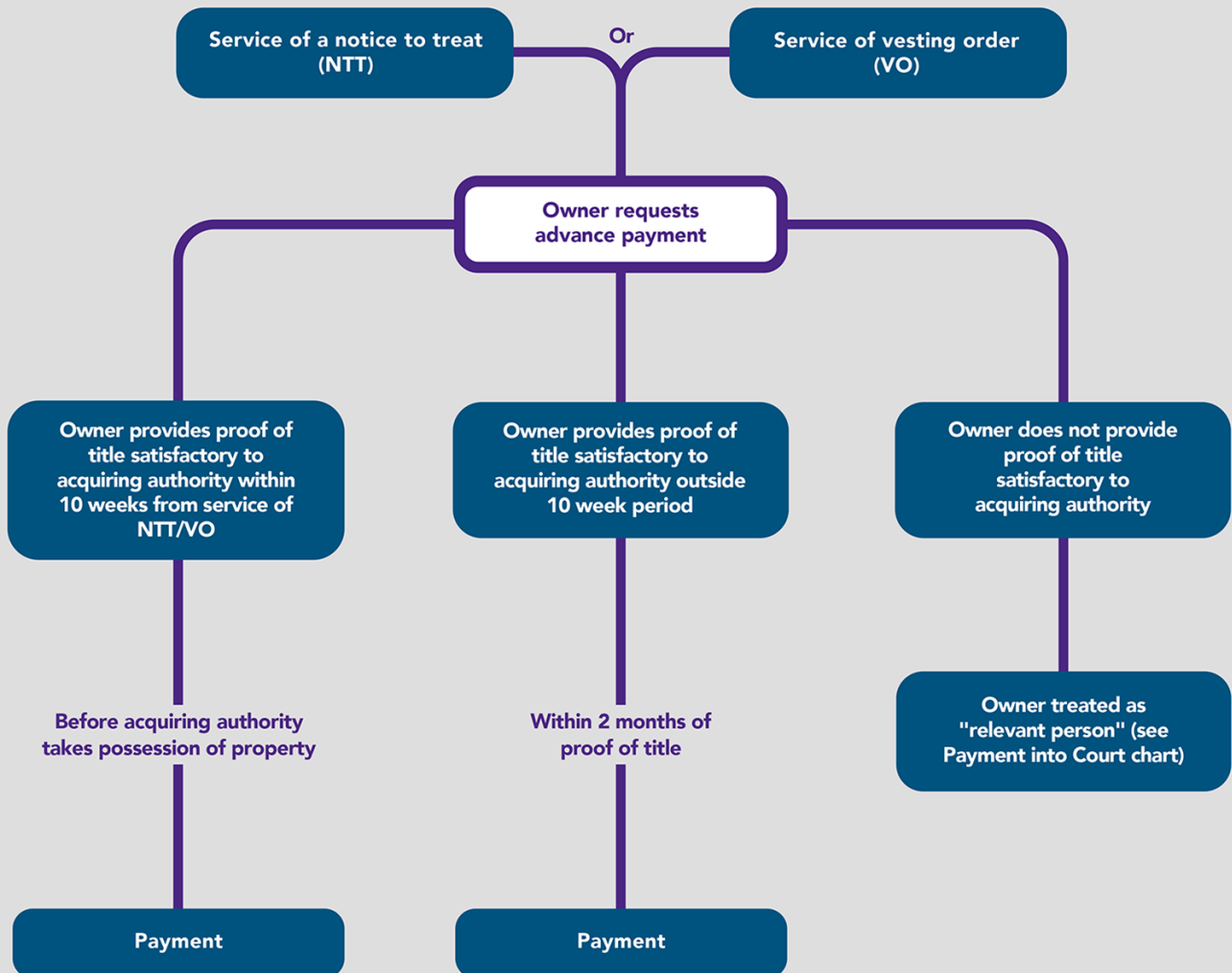
This rule applies if the land kept by the owner decreases in value because of how the acquiring authority uses the other portion of the land taken from the owner.

Example: an acquiring authority takes a portion of an owner's land to build an embankment next to a road. This embankment obstructs the light that comes into the owner's house. The owner can claim any reduction in the value of their property from this loss of light as injurious affection. However, they cannot claim for reduction in value because of, for example, noise from the road.

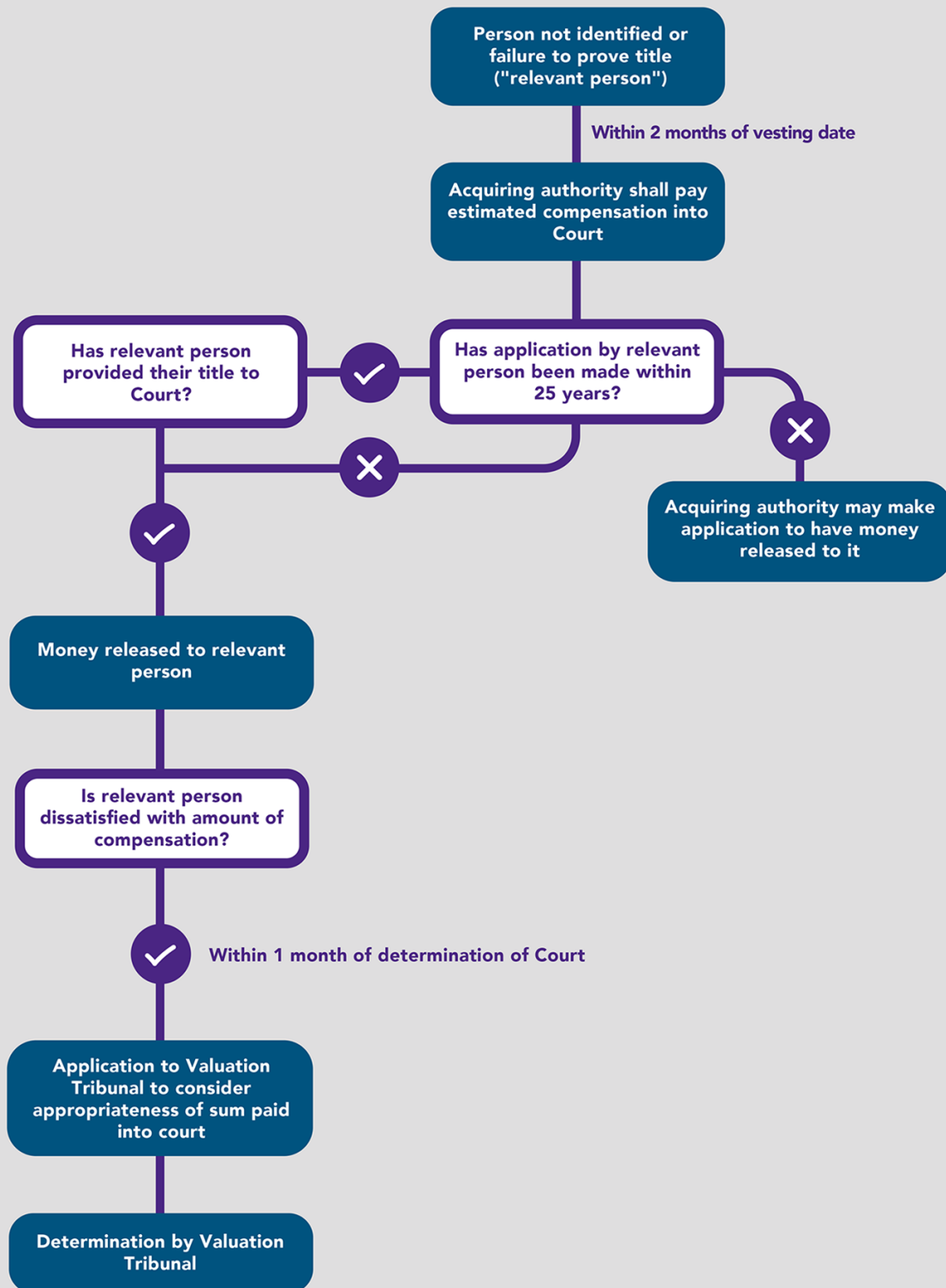
Vesting Order Procedure



Advance Payment Regime



Payment into Court



Determination of Compensation by the Valuation Tribunal

