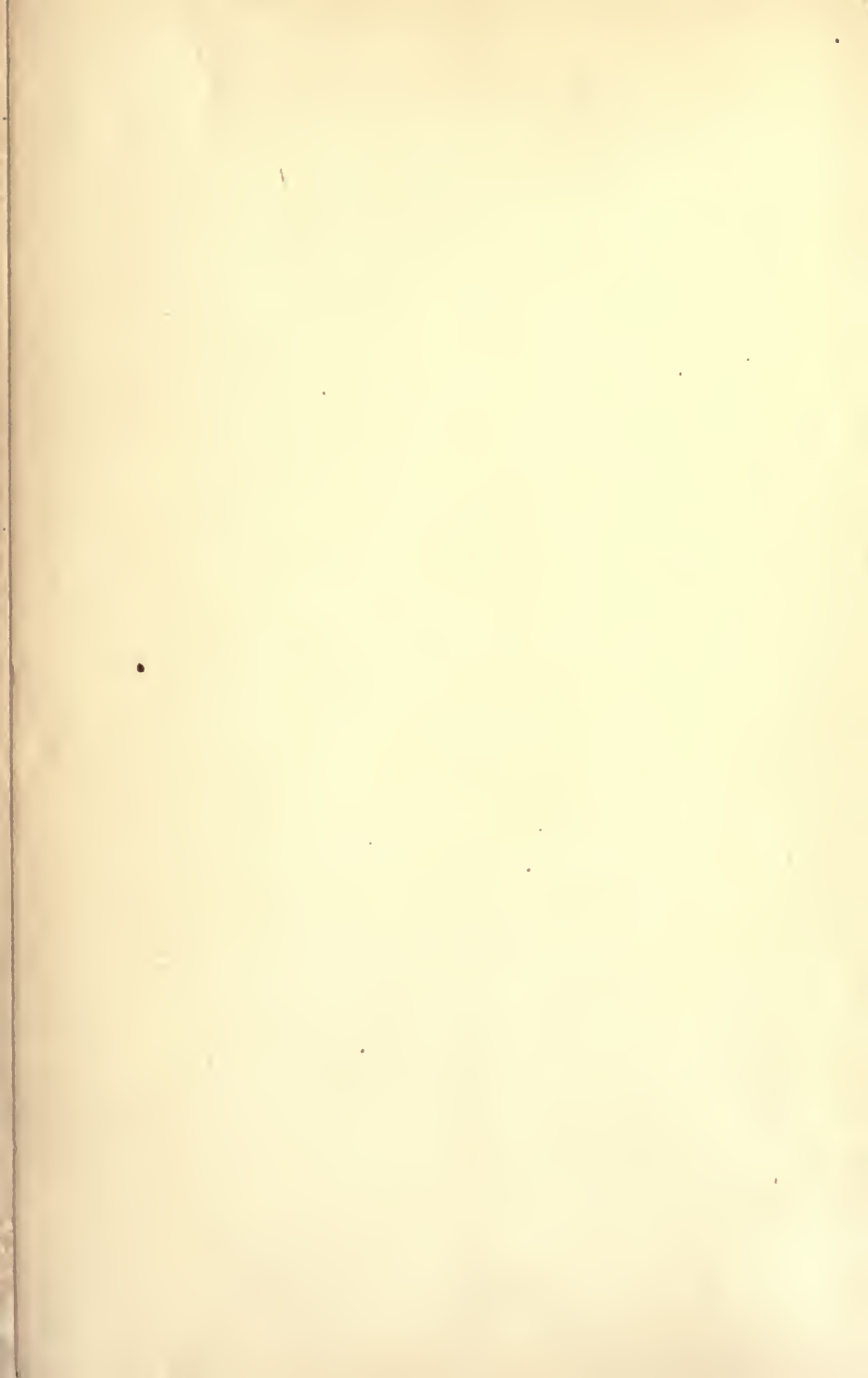




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THE LAW AND PRACTICE
OF
TOWN PLANNING.



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THE LAW AND PRACTICE OF TOWN PLANNING.

BEING

PART II. OF THE HOUSING, TOWN PLANNING, &C. ACT, 1909
(9 EDWARD VII. c. 44).

WITH INTRODUCTION, NOTES TO THE ACT, DEPARTMENTAL
ORDERS, MEMORANDA AND CIRCULARS, FORMS AND
PRECEDENTS, AND MODEL CLAUSES FOR
TOWN PLANNING SCHEMES.

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PREFACE.

THE Housing, Town Planning, &c., Act, 1909, has now been in force for three years. At the time of writing no scheme has yet been approved by the Local Government Board or placed before Parliament, but such progress has been made with a large number of schemes that it is felt that the time is now opportune for the publication of this book. It is an attempt to place before local authorities preparing or considering whether or not to prepare or adopt town planning schemes, and owners and occupiers of land for which a town planning scheme is in course of preparation or is likely to be prepared, all the legal and other useful information now available.

In Part I. of the book the procedure is explained in considerable detail. In Part II. the sections and schedules of the Act of 1909 relating to town planning and the incorporated enactments are set out with explanatory notes. In Part III. the Circulars and Orders of the Local Government Board and Board of Agriculture and Fisheries are set out. In Part IV. there are forty-three Precedents for the various documents required by the Procedure Regulations. In Part V. there are Model Clauses for Town Planning Schemes. In Part VI. there is an outline of Improvement and other Housing Schemes, and the housing and town planning powers obtained by the London County Council in their new General Powers Act have been given in full. In Part VII. there is a short account of town planning abroad.

The outline of Improvement and other Housing Schemes has been included because in many cases these schemes will be carried out in conjunction with Town Planning Schemes, and it is desirable that anyone engaged in Town Planning should have a knowledge of the provisions of the Housing Acts which relate to housing schemes. For detailed infor-

mation on this subject readers are referred to Mr. C. E. Allan's work on those Acts.

The town planning portion of the Act of 1909 does not apply to Ireland, but it does to Scotland. The principal differences between the statutory provisions and the departmental regulations in the two countries have been given in Chapter XVI. of the Introduction (*post*, pp. 67-71).

A short summary of the objects of the town planning portion of the Act, and the procedure to be followed, will be found in the Draft Clerk's Report (*post*, p. 178); and a Table has been compiled showing at a glance the various requirements in connexion with the seven maps which have to be prepared during the course of a town planning scheme (see Chapter XIV., *post*, pp. 57, 58).

The authors are indebted for much of the information contained in their work to the numerous and very valuable papers published by the National Housing and Town Planning Council; to those read at the Conference of the Municipal and County Engineers at West Bromwich in July 1911; and to that on town planning abroad, which was prepared by Mr. R. E. Willcocks for the Congress held by the Royal Institute of Public Health at Berlin in July 1912.

They also desire to express their thanks to all the local authorities that have been the pioneers in putting the town planning provisions of the Act into operation for lending documents which they have used in connexion with their schemes, and particularly to the Acton Urban District Council.

They learn, on going to press, that an application by the Bournemouth Corporation, for authority to prepare a scheme for a third area, has been refused by the Local Government Board on the ground that it related merely to a case of street improvement, which could be adequately dealt with under the Public Health Act, 1875. This is the second refusal up to the present (for the other see Chapter XV., *post*, p. 63). The applications by the Sutton Coldfield Corporation, the Ellesmere Port and Finchley urban district councils, and the Wirral rural district council (one scheme) have been granted; and further applications have been received from the Stockport Corporation, the Carshalton,

Cheadle and Gatley, and Prestwich urban district councils, and (as to a fourth scheme) the Wirral rural district council. These results bring the record given in Chapter XV. up to January 21st, 1913.

It is hoped that this work will provide members and officers of local authorities and interested owners and occupiers with just the information that they are seeking on this comparatively new branch of Local Government Law and Practice.

RANDOLPH A. GLEN.

ARTHUR D. DEAN.

January, 1913.

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PART I.
INTRODUCTION.

CHAPTER I.

THE DUTY TO PREPARE OR ADOPT A TOWN PLANNING SCHEME.

PART II. of the Housing, Town Planning, &c., Act, 1909, places a new obligation on all sanitary authorities in England, Scotland, and Wales, namely, that of considering the necessity for a town planning scheme for the whole or part of the land in, and in the neighbourhood of, the areas under their control. The authorities upon whom this obligation is placed are: in England and Wales (outside London), the borough, urban district, and rural district councils (see section 65 (1), *post*, p. 114); in London, the London County Council, unless that council consent to the matter being taken up by a metropolitan borough council or neighbouring authority (see sections 55 (3), and 66 (1), *post*, pp. 115, 116); and in Scotland, the burgh councils and, in certain cases, the county councils, district committees, and boards of police (see section 67 (3), *post*, p. 116). The Act does not apply to Ireland (see section 76 (2), *post*, p. 122).

The keynote to town planning under the Act is contained in section 54 (1) which enacts that "a town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands."

It will be noticed that the Act says that a scheme "may be made"; but this matter is intended to be a duty, for section 61 (see *post*, p. 107) provides that the Local Government Board may, as the case requires, after holding a local inquiry, order the local authority to prepare and submit

a scheme to the Board for approval, or to adopt an owner's scheme, and may enforce such order by *mandamus*.

From this it is clear that the Act requires every such local authority to consider whether there is any land in or near their district which is in course of development or is likely to be used for building purposes, and for which a town planning scheme is necessary. If there is, they must either (a) prepare a scheme themselves and submit it to the Local Government Board for their approval, or (b) adopt a scheme proposed by owners (as to owners' schemes see Chapter XIII., *post*, p. 53). There will, apparently, be no duty upon a local authority to "prepare" a scheme if they prefer to "adopt" one prepared by owners, though, in many cases where owners prepare a scheme for adoption, there will be a duty upon the local authority to prepare a scheme for a larger area. In such a scheme they will, no doubt, find it advisable to incorporate the scheme prepared by the owners.

The first step which a local authority must take is, therefore, to ascertain whether there is in their district any land "in course of development or likely to be used for building purposes." The meaning of the two expressions is discussed in the note to section 54 of the Act (see *post*, p. 76). It should be observed that two classes of land are referred to. There is, however (see section 54 (3), *post*, p. 74), a third kind of land which comes within the scope of this Part of the Act, namely land which, whether it is already built upon or is not likely to be used for building purposes, "is so situated with respect to any land likely to be used for building purposes that it ought to be included" in a scheme, and with regard to this land provision may be made "for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect." If the demolition or alteration is likely to be extensive, the authority should consider whether or not an improvement or other scheme under the Housing of the Working Classes Acts should be carried out in conjunction with a town planning scheme (as to schemes under these Acts, see *post*, pp. 256 *et seq.*).

Every sanitary authority should, therefore, carefully

consider whether there is in or near their district any land of the three kinds above mentioned. If they find that there is, they should then decide whether a town planning scheme is required in order to secure proper sanitary conditions, amenity, and convenience in connexion therewith (as to the meaning of these three expressions, see the note to section 54, *post*, p. 77).

The Local Government Board exercise very large arbitrary powers under the Act, and local authorities should pay particular attention to the observations in the Board's Circular of the 31st December 1909 (set out *post*, pp. 135-142); and in cases of doubt they may with advantage communicate with the Board, who in the same circular say that, if it is thought that the assistance or advice of any of the Board's experts might tend to save labour or expense, the Board will be quite ready to arrange for such assistance or advice being given.

It is said by some that the housing question is of more pressing importance than town planning, but in most cases town planning should be resorted to first, principally as a means of preventing the necessity for future costly housing schemes in areas at present undeveloped, and secondly as a method of preparing the way for the efficient housing of the working classes in areas already developed. To place housing before town planning has been aptly likened to "sewing on your buttons before you cut out your garment."

CHAPTER II.

APPLICATION FOR AUTHORITY TO PREPARE OR ADOPT A SCHEME.

LOCAL authorities under the Act may prepare schemes themselves, or may adopt schemes prepared by owners. Undoubtedly the majority of schemes will be prepared by local authorities, but cases have already arisen of schemes prepared by owners, and adopted by local authorities or incorporated in larger schemes prepared by local authorities.

Before a scheme may be prepared or adopted, the local authority require an order of the Local Government Board authorising them to prepare or adopt a scheme. In deciding upon a local authority's application for such an order, two questions, and two questions only, will be considered by the Board, namely: first, whether a town plan is required at all, and, if so, secondly, for what area it is required. The application is made by resolution of the local authority, and the practice of the Local Government Board is to hold a public local inquiry into the application, when all persons concerned may attend and be heard before the Board's inspector who holds the inquiry. The inspector makes a report to the Board upon evidence produced before him at the inquiry, and on his report the Board decide whether or not to make an order granting authority to prepare or adopt a scheme. If the authority is refused, there is no appeal, but a fresh application may be made with respect to an area different from that included in the unsuccessful application; or, as soon as there is a change of circumstances, the previous application may be renewed. If the authority is granted, the first part of the procedure is completed, and the local authority proceed to prepare the scheme in accordance with the Regulations of the Local Government Board.

The procedure to be followed by local authorities before

and when making application for authority to prepare or adopt a scheme is by no means simple, and many complaints have been made that the Regulations of the Board are unnecessarily involved, but, as they say in their circular letter of the 3rd May 1910, which accompanied the Regulations (see *post*, pp. 143-146): "The Regulations are drawn so as to be of general application. They will extend on the one hand to schemes which relate to small areas or contain only proposals of a simple character and affecting few interests, and on the other hand to schemes which may deal with extensive areas, and affect numerous ownerships and other interests, and involve serious questions of expense. It is probable that the circumstances of particular cases will be such as to require or justify some relaxation or alteration of the Regulations in their application to the case, and the Board have, with a view to meeting any such case, included in Article 34 provisions which will enable them, subject to the proviso in that Article, to dispense with or vary any requirements of the Regulations where reasonable cause is shown. In the absence of authority for departure from any provisions of the Regulations, great care should be taken to comply strictly with them, as any failure in this respect might involve considerable delay and expense." In certain cases, to be mentioned later, the Board have made orders in accordance with this dispensing power.

These Regulations, which require particularly careful consideration at this stage, are entitled, "The Town Planning Procedure Regulations (England and Wales), 1910," and will be found set out in full, with notes, in Part III. of this work (*post*, pp. 146-167). They have been made in pursuance of section 56 (1) of the Act, which provides that "the Local Government Board may make regulations for regulating generally the procedure to be adopted with respect to applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme, obtaining the approval of the Board to a scheme so prepared or adopted, and any inquiries, reports, notices, or other matters required in connexion with the preparation or adoption or the approval of a scheme or preliminary

“ thereto, or in relation to the carrying out of the scheme
“ or enforcing the observance of the provisions thereof.”
The Procedure Regulations so far made by the Board include provisions in relation to all the matters mentioned in the section except “the carrying out of the scheme” and “enforcing the observance of the provisions thereof.”

Section 56 (2) provides that provision shall be made by the Regulations “(a) for securing the co-operation on the
“ part of the local authority with the owners and other persons interested in the land proposed to be included in the
“ scheme at every stage of the proceedings, by means of
“ conferences and such other means as may be provided by
“ the Regulations; (b) for securing that notice of the proposal
“ to prepare or adopt the scheme should be given at the
“ earliest stage possible to any council interested in the land;
“ and (c) for dealing with the other matters mentioned in the
“ Fifth Schedule to this Act.” This schedule (see *post*, p. 131) relates to the procedure, (1) anterior to and for the purpose of an application for authority to prepare or adopt a scheme; (2) during, on, and after the preparation or adoption, and before the approval, of the scheme; and (3) after the approval of the scheme; and to duties as to publishing or depositing schemes and plans for inspection, and details to be specified in the plans.

The preliminary procedure to be followed by the local authority may be summed up as follows:—

(1) Appoint a Town Planning Committee to consider whether a town planning scheme is required, and, if so, for what area. For a form of such resolution, see Precedent No. 2, *post*, p. 177; and as to area, see Chapter III., *post*, p. 11.

(2) Pass a resolution that all necessary proceedings be taken under the Act to obtain authority to prepare or adopt a scheme with regard to the area selected (see Precedent No. 5, *post*, p. 188).

(3) Within seven days after passing this resolution give preliminary notice thereof to any local authority interested in the land included in the area selected (see Regulations, Article II., *post*, p. 150; and Precedent No. 6, *post*, p. 193).

(4) At least two months before making application to

the Local Government Board for authority to prepare or adopt a scheme—(a) serve on the owners, lessees, and occupiers of land in the area, and on any local authority part of whose district is included in the area, and, if any main road is or may be affected by the scheme, on the county council, notice of intention to make such application (see Regulations, Article I. (a), *post*, p. 149, and Precedent No. 7, *post*, p. 191); (b) advertise such notice in a newspaper or newspapers circulating in the area of the local authority (see Regulations, Article I. (a), and Precedent No. 8, *post*, p. 196); (c) not later than the giving of the first notice, deposit a map of the area (Map No. 1) at some convenient place for inspection by all persons interested without payment of any fee, at all reasonable hours on any week-day, for a period of one month after the giving of the latest notice, and afford any person inspecting the map any necessary explanation in regard thereto (see Regulations, Article I. (b) *post*, p. 149). The notices must describe the area, and state where and when the map may be inspected (Regulations, Article I. (c), *post*, p. 150). A certified copy of the map must be furnished to any local authority, a part of whose district is included (Regulations, Article I., (d) *post*, p. 150).

(5) Before passing the resolution to apply for authority to prepare or adopt a scheme—consider any objections or representations made in writing, and endeavour by conferences and any other means available to secure the co-operation of persons and authorities interested, and hold at least one meeting for the purpose of having the proposed scheme considered, serving not less than fourteen days' notice of the time and place of the meeting on all local authorities, owners, and persons interested (Regulations, Article III., *post*, p. 150. See Precedent No. 9, *post*, p. 197).

(6) Pass a resolution that application be made to the Local Government Board for authority to prepare a scheme (see Regulations, Article IV. (a), *post*, p. 151, and Precedent No. 11, *post*, p. 199). A copy of the resolution, certified by the clerk, must be sent to the Board, with the documents, maps, and particulars set out in Articles IV. to X. of the Regulations of 1910 (see *post*, and Precedents Nos. 12–21, *post*, pp. 200–209).

(7) When the application has been made, advertise the fact of the application and the date of the resolution in some newspaper or newspapers circulating in the district (see Regulations, Article XI., *post*, p. 155, and Precedent No. 17, *post*, p. 206).

(8) Prepare a *prima facie* case (see note to section 54 (2), *post*, p. 78, and Chapter V., *post*, pp. 20, 21) ready for the Local Government Board inquiry. The Regulations do not provide that the Local Government Board shall hold an inquiry, but the Board have power to do so under section 63 of the Act, and have made a practice of holding inquiries into all applications that have been duly made to them. After the inquiry the Board, on the report of their inspector who holds the inquiry, refuse the application or make an order granting authority to prepare or adopt a scheme for the area included in the application, or for such part of that area as they think fit.

The procedure in connexion with an application for authority to adopt a scheme framed by owners is somewhat different from the procedure in connexion with an application for authority to prepare a scheme. The essential points of difference are dealt with later (see Chapter XIII., *post*, p. 53).

CHAPTER III.

THE AREA.

THE most important part of the work in the initial stages in the preparation of a town planning scheme is the settling of the area for which the scheme is to be prepared. One of the first things to be borne in mind is the statutory object of the scheme, namely, to secure proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land and of any neighbouring lands. As already stated, the Act provides that a scheme may be prepared for any land that is in course of development or appears likely to be used for building purposes; that land likely to be used for building purposes includes open spaces, roads, and other specified classes of lands; and that land already built upon, or land not likely to be used for building purposes, may in certain circumstances be included also (see section 54 (1), (3), (7), *post*, pp. 73-75).

In the majority of cases there will probably be no dispute between the Local Government Board, local authorities, and owners, lessees, or occupiers, as to whether or not any particular land is capable of being included in a town planning scheme, but there are cases in which difficulty will arise—for instance (1) where land has been built on in some parts and left vacant in others; (2) land on which are erected buildings which are likely to be pulled down or to change their character; (3) land which is being temporarily used for certain purposes, but which will, or may eventually, be used for other purposes; and doubtless other cases will arise where serious doubt will exist. In all cases where such doubt exists, local authorities intending to prepare a scheme should treat the land as coming within the Act. This point is dealt with more fully in the note to section 54, *post*, p. 76. As is explained later (*post*, p. 38), land for which a town planning scheme is being prepared has to be divided into

“units,” and, in cases where a unit is built on in part only, the local authority may be considerably embarrassed if a part of a unit or the whole of it is left out of a scheme on the ground that it is not land in course of development.

The decision of the Local Government Board whether the land is likely to be used for building purposes or not is to be final (see section 54 (7), *post*, p. 75), and in their Circular of the 31st December 1909 (set out *post*, pp. 133, 134), they say: “The object of the town planning part of the Act is “to ensure by means of schemes, which may be prepared “either by local authorities or landowners, that any future “land in the vicinity of towns shall be developed in such a “way as to secure proper sanitary conditions, amenity, and “convenience in connexion with the laying out of the land “itself, and of any neighbouring land. Hitherto the con- “flicting interests of different owners, and the absence of “any power of the local authority to guide and control “development according to the circumstances and require- “ments of particular cases, have resulted to a considerable “extent in the development of estates, whether large or “small, with a sole regard to the immediate interests of the “particular estate and without regard to the amenity and “convenience of neighbouring lands. The town planning “part of the new Act involves in fact a material advance in “the relations between the owners of land and the local “authorities in this country, and enables each party to co- “operate with the other in promoting the general interest. “The Board trusts that councils in whose districts *signs of “development are visible* [the italics are ours] will give very full “consideration to the opportunities which the Act offers of “guiding and controlling that development for the benefit of “the community, and that in so doing they will bear in “mind the heavy burden which has fallen on the ratepayers “of many districts in the past, in remedying the defects of “the kind which it is now within their power to prevent.”

In view of the very large powers granted under the Act to the Local Government Board, these observations have a distinct significance. In the first place, it seems clear that a scheme cannot be prepared for a town or part of a town which is practically built up, and not likely to change its

character. In the second place, it appears that a scheme cannot be prepared for land of an agricultural nature, which is likely to so remain, and where houses are few and far between. The correct view seems to be that schemes ought to be prepared in every case where land is gradually passing from the latter phase into the former; that is to say, all land in the vicinity of a town, whether it is within the boundaries of a city or borough, or of an urban or rural district, would seem to come within the Board's idea of land likely to be built upon. Further, in country places where a sudden development takes place—caused perhaps by the erection of a factory—and it is necessary to build a number of small cottages in close proximity, a town planning scheme would be justified. So would it where a shaft for a mine is sunk, or some other industrial development suddenly brings a number of people to a particular spot, and houses will be required for such people to reside in.

In fixing the limits of the area the following points should be considered:—First: Whether generally the land for which they wish to prepare a scheme comes within the provisions of the Act. Secondly: A general outline of their proposed scheme should be drawn up, and they should consider the various matters for which they wish to make provision in their scheme, in the following order:—

- (1.) The main traffic roads to connect with other districts.
- (2.) Sewerage outfall sufficient for the whole of the land when fully developed.
- (3.) The possible construction of any railways or canals through the district.
- (4.) The class of property that the owners are likely to want to put upon the land.
- (5.) The possibilities of the development of the neighbouring land, and the nature of such development.

If, in order to secure a satisfactory route for main traffic, it is necessary that the road be continued beyond the boundary of the district of the local authority intending to prepare the scheme, and then connected with some existing or intended new road, the local authority should first approach the local authority for the adjoining district through which such road will have to be made, and

endeavour to come to an agreement with them. If this is found not to be possible, then so much of the land of the adjoining district should be included in the area as is necessary for such continuation and connexion.

If the sewerage outfall will be outside the district, then the local authority should endeavour to come to an agreement with the local authority for the outside district. But failing such agreement, so much of the land as will be required for the provision of the outfall should be included in the area.

If a railway or canal is likely to be constructed through the district, the local authority should obtain what particulars they can, and endeavour, if possible, to come to an agreement with the promoters. The land on which a railway or canal is constructed is not land likely to be used for building purposes, but it is, no doubt, land in course of development, and the effect on adjoining land should be carefully considered.

As to the class of property proposed to be erected, if good residential property has been or may be erected on the boundary of the district, and in the adjoining district there is any danger of a smaller or other class of property being erected which would be detrimental to the residential property, the local authority should, unless an agreement is come to, include in their area so much of the land of the adjoining district as will be sufficient to prevent the development of the adjoining district to the detriment of the district of the authority preparing the scheme.

In short, where any doubt arises as to whether or not a piece of land should be included in the area, the local authority should certainly include it, because, apart from the possibility of creating opposition to the scheme, the worst that could happen is that it would be struck out of the area by the Local Government Board—that is to say, the Local Government Board might not grant authority to prepare a scheme in respect of it. Whereas, if it were found later that it would have been better to have included in the area a piece of land which has been left out, it will not be possible to include it without going through the whole of the procedure again, or complying with some special requirement of the Local Government Board in the matter.

CHAPTER IV.

CONFERENCES.

UNDOUBTEDLY interest in a town planning scheme grows keener when the conference under Article III. has been held. There may be many conferences under Article III. (see *post*, p. 150), but the one to which reference is now made is mentioned in the second paragraph of the Article, which requires that the local authority *shall* arrange for at least one meeting being held at which all owners, persons, or councils interested shall be entitled to attend or be represented, for the purpose of considering the proposed scheme. Notice of the time and place fixed for such meeting must be served by the local authority upon all such owners, persons, or councils, so far as they can ascertain the same, not less than fourteen days before the time fixed for the meeting.

The conference is intended to be a town's meeting held for the purpose of explaining the action which the local authority have taken, and their reasons for taking such action, and for the purpose of interesting the persons present and the public generally in the scheme and securing their co-operation.

The mayor or chairman of the local authority is to be president, and he should be supported on the platform by as many of the members of the town planning committee and of the council as possible. If he is unable or unwilling to act, the local authority may appoint anyone to take his place, or if they do not appoint anyone the meeting may do so. Such of the officials of the council as are connected with the work should also be present. It is advisable to have a note taken of the names and addresses of the persons present, and of the property in which they are interested. Map No. 1 should be exhibited in a conspicuous place so that everyone present may see it. It is also advisable, in the case of large schemes, to have a shorthand note of the proceedings taken for future reference.

An Agenda for the meeting is given in Part IV. (see Precedent No. 10 and Note, *post*, p. 195). At the outset the president should welcome those present, and refer to the Article which requires the conference to be held. He should announce generally the attitude of the local authority on the matter, and state that a fuller explanation will be given later by the chairman of the town planning committee and the clerk or surveyor of the authority. It is to be noted that the explanation may be such explanation as the president thinks expedient. Undoubtedly many attempts will be made during the meeting to ascertain what the local authority's actual proposals are with regard to the scheme. It is important, more than is perhaps realised at the present time, that no details of the proposed scheme, even if the same have been prepared, should be given either to this meeting or to any interested individual. There will be present at the meeting many landowners who will be anxious to know what their position is going to be under the scheme. If they can, they will tie the council down at this conference to some plan or statement, which will materially interfere with the negotiations which the council will have to conduct subsequently when authority to prepare the scheme has been given. If the owners can find out what the council propose to do, they will shape their plans with a view to getting the greatest advantages themselves when the scheme is prepared. The preparation of a scheme has a financial aspect, and the financial result of the scheme will depend on the success of the negotiations. In order to ensure the greatest freedom in the negotiations the council should make no promises and give no hints at this period. The president should make it clear at the commencement of the meeting that two points only will be discussed, namely, whether or not a scheme, of the nature to be explained by an officer of the local authority, should be prepared, and, if so, for what area, and that no discussion of any details can be allowed.

A question arises in connection with this conference as to whether or not a vote should be taken at the meeting. There is nothing in the Regulations on the point. The matter is apparently one to be decided by the president. As the meeting is in the nature of a conference, attended

probably only by a small proportion of the persons invited to attend, and as apparently, if a vote were taken, the vote of the largest landowner would only be equal to that of the smallest householder, the value of any such voting would seem to be small. Further, persons not invited will probably be present. Also, in the event of the meeting deciding that a town planning scheme should be prepared, but not for the area selected by the local authority, the position of the local authority will be embarrassing unless they obtain some clear indication of the area for which those present consider that a scheme should be prepared. Even if such indication is given, those who give it will scarcely be in possession of the necessary knowledge to enable them to select an area. Moreover, if the local authority materially alter the area, they ought, in justice to those not present, to call another conference. The Local Government Board have expressed no official view on this point at present, but it is believed that in their opinion it is not incumbent upon the local authority to put a resolution to the meeting, or necessary that a resolution should be proposed by anyone, but at the same time if the meeting wish to pass a resolution there is no objection to this being done, and if one is passed a note of it should be taken by the clerk.

At Chesterfield a resolution in favour of a town planning scheme being prepared by the local authority was carried by 26 to 4. At Sutton Coldfield there was strong opposition to the area suggested, chiefly on the ground that it was too small, and at the first public conference a resolution was carried unanimously "that the council do not apply to the Local Government Board in the matter until the owners have been further consulted, and that there be a further public meeting after that." In consequence of this resolution, and subsequent negotiations, 1600 acres were added to the original 4800, and at the second public conference a resolution in favour of a scheme in respect of the enlarged area was carried, with four dissentients.

The explanation of the local authority's reasons for deciding that a town planning scheme is necessary, and their reasons for selecting the area in question, should be given by the chairman of the town planning committee or some

other member or officer of the authority well acquainted with the details of the Act and the procedure. He should first point out which parts of the area the local authority consider are "in course of development" and which parts "appear likely to be used for building purposes." If any land is included which is already built upon, or is not likely to be used for building purposes, it should be explained that it is necessary to include it because of its situation with regard to land likely to be used for building purposes. The principles of the Act should be explained, and the area generally described by reference to Map No. 1. If any portions of outside districts are included, the reasons for their inclusion should be explained. The clerk of the local authority (or some other suitable person) should then follow with an explanation of the procedure. This is no easy task, for the procedure is very long and complicated, and to make it intelligible is an achievement in itself, apart from the task of persuading the audience that it is framed with a view to their protection. The explanation should, however, be given as shortly and simply as possible (see the Clerk's Report, Precedent No. 3, *post*, p. 178). When it is concluded, the meeting should be thrown open for discussion. Speakers should be asked to give their names and the properties they represent, so that the meeting can more readily follow their remarks.

At a reasonable time the conference should be adjourned or closed with a vote of thanks to the president.

If necessary, further conferences can be held, but unless some practical advantage is likely to be derived (such as satisfying opponents of the scheme) further conferences will be of little use. After the conferences are all concluded, and two months have elapsed since the service of the notices under Article I. of the Regulations, application should be made to the Local Government Board for authority to prepare a scheme. The importance of getting this application in at as early a date as possible is dealt with later under the heading of "Compensation" (Chapter XI., *post*, pp. 45-48).

It should be noted that, in addition to this public conference, Article III. also requires local authorities to

consider objections and representations made to them, and to endeavour by conferences, *and any other means available*, to secure the co-operation of owners, persons, or councils interested. For instance, some authorities have asked selected property owners, secretaries of Ratepayers' and Property Owners' Associations, and representatives of adjoining local authorities, to sit with their town planning committees, though such persons have no right to vote thereat. Driving expeditions round, or to particular parts of, the area have also been found to have an educating effect upon those who do not realise what a town planning scheme means to their district.

It should be further noticed that the provisions of Article III. apply equally in the case of schemes prepared by owners which the local authority wish to adopt.

CHAPTER V.

THE FIRST LOCAL GOVERNMENT BOARD INQUIRY.

ALTHOUGH there is no provision in the procedure Regulations for the holding of a public inquiry into a local authority's application for authority to prepare or adopt a scheme, the Local Government Board have stated in their Circular of May 3, 1910, that in ordinary circumstances they would probably find it necessary or desirable to direct a local inquiry before giving the necessary authority to prepare a scheme (see section 63 and note, *post*, p. 110).

The inquiry will doubtless be held shortly after the local authority have made their application to the Board for authority to prepare a scheme, and as soon as the Board are satisfied that the documents and information which, according to Articles IV. to X., are to accompany the application, have been sent to them and are in order. Notice of the inquiry will be given in the manner in which notices of inquiries into applications for sanction to loans are given at the present time—that is to say, by posting copies of the notice sent by the Board on all the church doors and public notice-boards in the area. Apparently no other notice need be given, even to those interested persons who object to the local authority's application.

In due course the inquiry will be held, and, unless counsel is instructed to appear for the local authority, their case should be stated by the clerk or his deputy. After he has given a general description of the district, he should go on to prove the *primâ facie* case for making the scheme (see section 54 (2), *post*, p. 74). As part of this *primâ facie* case the local authority should, if they can, show that the portion of the district which is already developed has not been developed in a way that is satisfactory to them, and that the area for which the scheme is to be prepared or adopted is likely to develop in a similar manner,

unless its development is controlled by means of a scheme. The local authority may also be able to show that, on account of the number of owners of the land included in the area, there is little chance that the land will be developed in a way that is either satisfactory to the local authority or to the owners themselves. Any other local reason establishing the need of a town-planning scheme should also be given (see the Surveyor's Report, Precedent No. 4, *post*, p. 183).

The local authority having established a *prima facie* case for the making of a scheme, the *onus* is thrown on the owners, and other persons interested, of showing generally that a scheme is not necessary (see the Notice of Objections, Precedent No. 17 and Note, *post*, pp. 206, 207).

A great deal of misconception has arisen as to the case which the local authority must put forward to establish their right to an order granting them authority to prepare a scheme, many people contending that the local authority must make out a very strong case indeed before the Board will grant them authority. This view is quite incorrect. The Act intends that the local authority shall in all ordinary cases be granted authority to prepare a scheme, unless the owners prepare one themselves and ask the local authority to adopt it.

It is to be observed that the *prima facie* case which is required is for the "making" of a scheme. It was urged at one inquiry, that, as the local authority were asking the tribunal for an order affecting the rights of other persons, the local authority were under the same *onus probandi* as an ordinary plaintiff, and that it was not for objectors to show why their land should be excluded, but for the local authority to show why the land should be included against the wish of the owners. If the tribunal were a court of law, probably this view would prevail, but the Local Government Board will no doubt authorise the inclusion of all land which the local authority wish to include, unless some strong reason is given for its exclusion.

The object of the preliminary procedure of obtaining the authority of the Local Government Board to prepare a scheme before the actual work of preparation is taken in

hand is to ensure that the local authority shall prepare a scheme for an area which really requires a scheme, because if it is necessary to alter the area the whole scheme must be altered, and much money and valuable time will in that case be wasted.

At the inquiry the Local Government Board inspector will deal only with the two questions mentioned above, namely, first, whether or not a scheme should be prepared; and secondly, if so, for what area. Doubtless it will be objected at this inquiry that no decision can be come to by an owner as to whether or not his land should be included in the scheme until he has the details, or at least an outline, of the scheme before him. But this will be of no avail, for none of the details of the scheme will be gone into at this inquiry. If and when authority to prepare a scheme is granted, abundant opportunities will be given, in accordance with the Regulations, to owners and other persons interested, to make objections and representations to the local authority. Further, the Regulations provide that such objections and representations are to be duly considered both by the local authority and the Local Government Board. There are six different stages before the Local Government Board make an order approving a scheme at which opportunities of lodging objections are afforded by the Regulations to dissatisfied owners and other persons interested. See Articles III., XII., XVI., XVII., XXIII., and XXVI. (*post*, pp. 150, 155, 157, 158, 162, and 164). Other opportunities are afforded at the Local Government Board inquiries and under the proviso to section 55 (2) of the Act (*post*, p. 80).

When the first local inquiry has been held, the Local Government Board inspector, who holds the inquiry on behalf of the Board, will make his report to the Board, and in due course the Board will either make an order granting authority to the local authority to prepare or adopt a scheme for such an area as the Local Government Board may decide, or decline to allow any scheme to be prepared or adopted.

It should here be noted that the Local Government Board have power to exclude any portion of the area in respect of

which the local authority have applied for authority to prepare a scheme, and in several cases this power has been exercised, but on grounds which have, for reasons given by the Comptroller (see Chapter XV., *post*, pp. 63, 64), not been disclosed by the Board.

Apparently the Local Government Board have no power to add to the area, but even if they have it is presumed that they would not take such a course themselves. They would probably intimate to the local authority that they would favourably consider an application for authority to prepare a scheme for a larger area, describing it, but they would no doubt require that the owners and other persons interested in the added land should be served with such notices as they, the Local Government Board, would indicate.

When the order has been made, notice has to be given to all owners, lessees, occupiers, and authorities interested, that authority to prepare or adopt a scheme has been given and that the order, which must be deposited in some public place, may be inspected at all reasonable times during office hours, and a like notice must be given by advertisement in some newspaper circulating in the district (Regulations, Article XII. (a), *post*, p. 155). Such notices shall state that the local authority propose to prepare or adopt a scheme, and that any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archaeological societies or otherwise interested in the amenity of the proposed scheme, should give notice in writing to the clerk of the local authority within twenty-one days from the date of the notice (Regulations, Article XII. (a), *post*, p. 155; see Precedent No. 19, *post*, p. 207). These notices need only be served on the owners and other persons interested in the land for which the authority to prepare a scheme has been granted. But if the Board exclude any land from the sanctioned area, notice of such exclusion must be served on the owners and other persons interested in the land excluded (Regulations, Article XII. (b), *post*, p. 155; see Precedent No. 20, *post*, p. 208).

CHAPTER VI.

PREPARATION OF THE SCHEME.

THE most important stage in the procedure has now been reached. The success, financially and otherwise, of a town planning scheme will very largely depend on the way in which the local authority go about its preparation. A wise council will, up to this stage, have done nothing beyond what they are required to do in connexion with their application for authority to prepare a scheme—at any rate nothing which will in any way tie their hands when this important time arrives. The local authority hold the balance between the ratepayers on the one hand and the owners on the other hand. They must endeavour to do justice to both. Their duty to the ratepayers demands that they keep themselves free to negotiate with the owners when the time for preparing the scheme arrives, and their duty to the owners requires them to ascertain the owners' wishes and to meet them as far as is consistent with the best interests of the district as a whole.

This can most easily be done by the local authority sending, with their notices that they have obtained authority to prepare a scheme, a circular letter requesting the owners to submit their proposals to the local authority, and promising that everything possible shall be done to meet their wishes. This course puts the local authority in a secure position at once, because if an owner submits his proposals, then the local authority have the advantage of knowing what his ideas are, and can readily make any necessary counter-proposal with a view to an agreement being ultimately arrived at; and if an owner refuses to put any proposals before the local authority, the latter can, as soon as they have some idea of the way in which they think that his portion of the district will develop, prepare suggestions of their own and send them to the owner, who

will not be allowed merely to say that he will not accept the proposals. Unless he submits some reasonable alternative, the local authority will be justified in inserting their own suggestions in the draft scheme.

The Regulations provide that the local authority shall carefully consider all objections and representations made to them in writing (Regulations, Article XIII., *post*, p. 156). This consideration will probably take place in the course of the negotiations, which are dealt with more fully in the next Chapter. They will occupy a considerable time, and should be carried out in great detail so that nothing is overlooked. The local authority should not be too eager at any time to assert their requirements; they should, on the contrary, do everything to stimulate the initiative of the owners, and, in considering their plans and proposals in the first instance, they should put their own counter-plans and counter-proposals forward as suggestions, and nothing more. The time may come when the local authority must insist on something with which an owner is not prepared to agree; but this time should be put off, so far as the local authority are concerned, until as late a date as possible. For disagreement between the local authority and one owner will probably engender disagreement between the local authority and another owner. The keynote of the Act is co-operation. Every endeavour should be made to come to definite agreements with the owners, and each agreement should be embodied in writing and made binding on the parties. Such agreements should subsequently be incorporated into the scheme.

It is essential throughout these negotiations—in fact in connexion with the whole of the procedure—that the local authority should be advised by some person thoroughly acquainted with the provisions of the Act and Regulations. Unless there is some official capable and willing to undertake what is likely to prove a heavy task, extending over a period of not less than a couple of years, expert assistance should be obtained from outside the local authority's permanent staff.

During the course of the negotiations, the local authority should have in mind (a) the principal roads which they

propose shall be made as part of the scheme, and should communicate with the County Council and Road Board (*see* Chapter VIII., *post*, p. 34); (*b*) the open spaces which are likely to be required in any special district; (*c*) the class of property likely to be erected on the land; and (*d*) the drainage facilities already existing or likely to be required. Wherever it is possible, an arrangement should be come to by which an owner gives up a certain portion of land for use as an open space. In the case of a large landowner this can probably be done by allowing him to make his residential roads of a less width than that prescribed by the local byelaws, or to build more houses to the acre than the local authority originally intended to allow. In the case of a group of small landowners some arrangement should be come to, if possible, for a suitable portion of land being used as an open space and for the owner of the land being compensated at the expense of the other owners, who would receive concessions for so doing from the local authority in the same way as the large landowner. This question of open spaces is a very important one, and it is advisable for the local authority to let it be known at the beginning of the negotiations that they will require an open space of so many acres in such and such a district.

The questions of roads, land, sewerage, light, water, and compensation are all dealt with in subsequent chapters.

When the local authority have completed their agreements and concluded their preliminary negotiations as far as they can, they will prepare their draft scheme. It should take the form of an Act of Parliament. Model clauses for a scheme will be found in Part V., *post*, pp. 232 *et seq.* Accompanying it should be the maps showing the planning details of the scheme in accordance with Article XIV. (*post*, p. 156). The local authority will then follow carefully the directions given in Articles XVI. to XXVI. (*post*, pp. 157-164), but matters should be arranged as far as possible during the preliminary period described above in order that this formal procedure may be gone through as quickly as possible.

Article XVII. (*post*, p. 158) provides that another public conference shall be held such as that required under Article

III. There will doubtless, also, be a Local Government Board inquiry into the application for approval of the scheme, and those persons who have been unable to agree with the local authority will be afforded another opportunity of stating their objections thereat.

During this procedure there are endless opportunities given to all persons interested of putting their objections or representations with regard to the scheme before the local authority and the Local Government Board.

When the scheme is approved by the Local Government Board, it comes into force in the same way as an Act of Parliament does when it receives the Royal Assent. But before such approval can be given, it is necessary, in two cases, to bring the scheme before Parliament.

In the first case, if any objection is made under Article XXVI. (*post*, p. 164) against the draft order which the Local Government Board propose to make approving the scheme, the draft order must be laid before both Houses of Parliament for thirty days (see section 54 (3), *post*, p. 74). In the second case, if the scheme contains provisions suspending any enactment in a public general Act, the draft order must be laid before both Houses of Parliament for forty days (see section 55 (2), *post*, p. 80). If within these periods either House presents an address to His Majesty against the draft, no further proceedings may be taken thereon, without prejudice to the making of a new scheme. Presumably this means that the parts objected to may be omitted, and that the scheme may be approved subject to such omission. When the scheme is finally approved, the Local Government Board will make an order and transmit the same to the local authority, and the scheme will then have the same effect as if it were enacted in the Act (see section 54 (5), *post*, p. 75).

CHAPTER VII.

NEGOTIATIONS WITH OBJECTING OWNERS.

THERE is probably no part of the town planning procedure about which local authorities are left so much in the dark as that dealing with objections and negotiations with owners. The Act gives no information on these points beyond the provisions of Schedule IV. (13), (18) (*post*, p. 130), referred to in section 55 (1) (*post*, p. 80), under which the Local Government Board may prescribe general provisions for dealing with agreements between responsible authorities and owners, and with co-operation between such authorities and owners, and other persons interested in the scheme, by means of conferences, &c. Under Schedule V. (2) (*c*) (*post*, p. 131), referred to in section 56 (2) (*a*) (*post*, p. 86), the Local Government Board may make regulations for the hearing of objections and representations by persons affected, including persons representing architectural or archaeological societies, or otherwise interested in the amenity of the proposed scheme, during, on, and after the preparation, and before the approval, of the scheme. Article III. of the Regulations provides that the local authority shall "consider any objections or representations "made to them in writing in reference to the proposed "scheme, whether by owners or other persons interested in "the land proposed to be included in the scheme, or by "owners or other persons interested in any lands in the "neighbourhood of the land proposed to be included in the "scheme which may be affected by the scheme or by the "council of any borough or of any urban or rural district "within which any part of the land proposed to be included "in the scheme is comprised, or by any other council who "may be interested in or affected by the scheme; and shall "endeavour, by conferences between the local authority or "their officers and such owners, persons, or councils, and

“ by any other means available, to secure the co-operation of such owners, persons, or councils in promoting the scheme.” Beyond this the Act and Regulations say nothing, but it is not difficult to point out some of the main objections which may be made.

The first and most easily made objection is that the objector's land is not land for which, according to the terms of the Act, a scheme may be prepared. When this objection is made, the objector should be asked to give the reasons for his objection, so that they may be considered by the local authority intending to prepare the scheme. As to the soundness of the objection, see the note to section 54 (1), *post*, p. 76.

The next and most natural objection is that of an adjoining authority against the inclusion of any portion of their land in the area for which the scheme is to be prepared. This objection will probably be made principally because the adjoining authority is not prepared to consent to the administration of a part of their district being placed in the hands of another authority. But unless the adjoining authority are preparing or will undertake to prepare a scheme of their own which includes the land in question, this objection by itself is not likely to prevail—at any rate if the land in question is virtually, though not technically, a part of the district of the local authority seeking to administer it by means of its town plan. Moreover, that authority will usually be made “ the responsible authority.”

Another objection which an adjoining authority may make is that the roads proposed to be made as a part of the scheme, and to be extended to meet some existing or contemplated road in the adjoining district, are not necessary for the purposes of the adjoining district, or for some engineering or other reason are not practicable, and that therefore the land of the adjoining district which has been included in order to permit of such roads being made, ought not to be included in the scheme.

Such an objection will be weak unless accompanied by some counter-proposal, for obviously some roads must extend into adjoining districts. As to engineering and

other similar difficulties, some way should always be found of overcoming them. Any counter-proposals should be very carefully considered, and every effort should be made to come to an agreement with the adjoining authority. The evidence of such efforts, even if they fail, will be of great assistance to the local authority when their application comes before the Local Government Board.

Another, and not unnatural, objection may be that no detailed information is given of what the scheme is to be, nor of the cost of carrying it out. This is a real difficulty. Owners and others interested in the land, unable at the outset to appreciate that the principle of the Act is not to lay out the district, but to prepare a plan showing how it shall be laid out as the district develops, are scared at the prospect of great injury being done to their land without their consent; while the ratepayers, with past experience on their memories, think they foresee large amounts being paid for compensation and a consequent increase in the district rate, which, they complain, is already too high.

At the outset it should be pointed out in reply to this objection that the district will develop whether a town planning scheme is prepared or not; that the scheme to be prepared must be one which places little or no extra burden on the rates; that if the scheme is not properly prepared, there are sufficient opportunities given under the Regulations for objecting to the scheme; that the essence of the success of the scheme is the co-operation of the owners; and that if a scheme is well prepared and not thwarted by the owners there should be a good prospect of the property increasing in value, half of which increase will go to the local authority to be applied towards the cost of the scheme and the reduction of the district rate. It should also be pointed out that neither in the Act nor in the Regulations is there anything necessitating expenditure, with the exception of the cost of preparing the scheme, which a local authority should not carry out in the proper exercise of their duties at the present time (see the list of items of expenditure given in Article XXII. of the Regulations, *post*, p. 161). Under a scheme these duties can be carried out at less

expense, owing to the bargaining powers conferred on the authority, than without a scheme. An accurate estimate of the cost cannot be given at this stage, but the Local Government Board insist that the local authority shall at least prepare an outline of the estimated expenditure and receipts, which shall be given to them before they grant authority to prepare a scheme, and for this purpose they require to be supplied with the information asked for under the headings in that list. A town planning scheme properly prepared should place the responsible authority under no greater financial obligation than they are under at present. Indeed, a well prepared scheme should, on the question of finance alone, be a great boon to the district, for under section 58 (3) (see *post*, p. 90), the local authority are in future to take half of any increase in the value of property which is due to the making of a town planning scheme.

Another objection, and one that carries considerable weight, is that of the owner of a large estate, part only of whose land is included in the area for which the scheme is prepared. Very properly he may say, "I will develop my own land," or "I have no intention of developing my land at present, and as you can quite easily prepare a scheme for the remainder of your land without touching my land, leave my land out." Unless the local authority can show some good reason on the lines already indicated for the inclusion of that land, as, for example, that the land may be developed to the detriment of the area for which the scheme is to be prepared, this objection will probably be upheld, and the land will be excluded by the Local Government Board from the area.

Other objections that may be made are generally on the following lines:—(1) that the land is already developed; (2) that the land is being properly developed by the present owners; (3) that the land is not likely to be used for building purposes; (4) that the area is too large or too small; or (5) that there should be a joint scheme with other authorities. All such objections are matters purely of local interest, and must be dealt with on their merits after a careful consideration of the district and the surrounding neighbourhood; but it may be taken that the Local Govern-

ment Board will assist as far as possible any local authority desiring to prepare a scheme, and unless satisfied that there are reasonable prospects of a better one being prepared, and for a different area, they will grant the local authority permission to prepare a scheme for an area as near as possible to that specified in their application.

An important point that has already been raised under the Act may be suitably dealt with here. After application has been made for authority to prepare or adopt a scheme, and before the scheme is approved, an owner may wish to develop his land. The owner cannot be asked to wait till the scheme is approved, and on the other hand the council cannot allow a development to take place which might prejudice the whole scheme. This is essentially a case for agreement between the local authority and the owner. If the owner refuses to come to reasonable terms, and submits plans which comply with the existing byelaws but which will contravene the scheme when approved, he should be formally warned by letter that if he builds in accordance with the plans as submitted, and they contravene the scheme as approved, his buildings will be pulled down and no compensation will be payable.

CHAPTER VIII.

ROADS.

As to the preparation of the seven series of maps required by the Regulations, see Chapter XIV. (*post*, pp. 56–61). With regard to the showing of roads on these maps, Map No. 1 need not contain any but existing roads (Article I. (*b*), *post*, p. 149); Map No. 2 must show “the lines and widths of the principal roads which the local authority propose shall be made as part of the scheme,” or, in the case of owners’ schemes, “of all roads proposed as part of the scheme,” and “the connexions of the proposed roads with existing roads,” and “any existing roads or ways which it would be necessary to stop up or divert” (Articles VI., VII., *post*, pp. 152, 153); Map No. 3 is a one-inch map, and no roads are required to be shown on it (Article V. (*c*), *post*, p. 152); and Maps Nos. 4 and 5 must have “indicated and distinguished” on them the following information as to roads: (1) Existing main roads; (2) roads repairable by the inhabitants at large; (3) roads or footways over which the public have a right of way; (4) roads on which tramways or light railways (*a*) have been constructed, or (*b*) are authorised to be constructed; (5) roads which the local authority propose shall be made as part of the scheme, indicating the widths thereof and any proposals as to the parts thereof to be appropriated or set apart for special purposes, and the connexions of such roads with existing roads; and (6) roads or ways which it is proposed to stop up or divert (Articles XIV., XVIII., *post*, pp. 156, 158).

By far the most important of these for consideration when preparing a scheme are the roads which the local authority propose shall be made as part of the scheme. There are three different kinds of roads to be considered in

mapping out the unbuilt-on land:—(1) the main traffic roads, (2) the secondary roads, and (3) the residential roads. Before any plan is prepared, or any negotiations take place with any of the owners, the local authority should communicate with the Road Board and the County Council, stating that a scheme is about to be prepared, and that they will be glad to know whether it is intended that any roads, such as those referred to in the Development and Road Improvements Funds Act, 1909, shall be made through their district, and asking for any suggestions or observations that the Board or the County Council can give with regard to the planning of main roads for the area (see the Circular of the Road Board dated July, 1910).

Whether or not such roads are intended to be made, it is quite clear that the local authority should provide in their plan for sufficient arterial roads to take the through traffic and prevent it from coming on to the residential roads. A minimum width for these arterial roads is eighty feet, though it has been suggested that they should be at least one hundred feet. Owners whose land is taken for the purpose of providing this width of road will undoubtedly claim some compensation for the extra land which they are required to give up beyond the byelaw width, and will object to the extra cost of road making if the scheme provides that it shall be borne by them. This can be met in the following ways:—(1) by setting off against it half the increased value of the owner's remaining land; (2) by allowing the owners to build more houses to the acre than originally intended by the local authority; (3) by relaxation of the byelaws with regard to the construction of buildings and the width and construction of residential roads. In this way the cost of preparing these arterial roads should be borne entirely by the owners and should not fall on the local authority.

To a very large extent secondary roads will be dealt with in the same way. If the County Council or the Road Board make grants towards the cost of these roads, the owners, in return for the concessions which the local authority are prepared to give them, may be required to give up a sufficient portion of land to provide a public

park or open space in a place where it will be required when the scheme is carried out.

The expense of constructing residential roads at the present time at a minimum width varying from thirty to forty feet, and with the material usually required by local authorities, has been a legitimate ground for complaint. In future, under a town planning scheme, there need be no minimum width. It has been suggested that for a road which is not of any great length, and in which the houses are not very crowded together, twenty-four feet would be a proper width, and the construction need only be such as is reasonably required for the purposes of the traffic to and from the houses in the road. Residential roads are not intended to be used for the purposes of through traffic, and whether they are so used or not will depend on how well the surveyor of the local authority is able to plan his district and prevent traffic from taking short cuts by side streets. There cannot be any hard and fast rule as to the width and construction of these residential roads, though there must of necessity be some uniformity. Where a considerable reduction is allowed from the byelaw width, the owners should be required to allow an extra width of space between the houses on either side of the street (see Part V., Model Clause 9, *post*, p. 237). A minimum width of fifty feet has been suggested. This will provide a pleasant front garden to each house, a better aspect, and greater air space.

The question arises as to the maintenance of these roads when they are constructed, and whether the local authority will be required to adopt them formally. This is a matter for which provision should be made in the scheme. The Hampstead Garden Suburb Act, 1906 (6 Edw. VII., c. cxcii.), s. 5 (1) (A), (see *post*, p. 235), provides that any "accommodation" (*i.e.* residential) road constructed primarily for giving access to a group of houses and not designed for the purposes of through traffic, may be exempted from the byelaws and section 150 of the Public Health Act, 1875, so long as it is maintained in good order to the reasonable satisfaction of the local authority; that the local authority may take over any roads which are not of the full width prescribed by the byelaws, or are otherwise not in accordance therewith; and

that any width above byelaw width may consist of grass margins or ground planted with trees or laid out as gardens (*cf.* Model Clause 19, *post*, p. 243). These provisions, having been already approved by Parliament, may be taken as a fair sample of what would be approved in a town planning scheme, though the economy of grass margins is at present a moot point. It should be noted that under the Hampstead Act, it is provided that in cases of dispute the deciding authority is to be the local authority, subject to the arbitration of the Local Government Board.

The benefits which owners may obtain in connexion with bye-streets may be summarised as follows:—(1) reduction of width; (2) less expensive construction and over a smaller area; (3) less need for cross streets; and (4) other means of additional access than the present costly paved passages. The local authority should take great care to make a proper use of their power to grant these concessions, and to see that in return they are relieved by the owner from liability to claims for compensation and the cost of construction of the wider roads. They should also stipulate, when possible, for the provision, without cost, of any of the matters referred to in Article XXII. of the Regulations under the heading of "Expenditure" (*see post*, p. 161).

CHAPTER IX.

LAND.

WHEN the question of the arterial roads has been settled, the local authority should turn their attention to the planning of the vacant land.

The following land is required to be indicated on map No. 4 :—(1) Land already built upon; (2) Land not likely to be used for building purposes; (3) Land proposed to be allocated for use as open spaces, (*a*) private or (*b*) public; (4) Land to be used for any other purposes, including, *e.g.*, buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land; and (5) Land to be acquired by the local authority for any purpose. (Article XIV., *post*, p. 156.)

Land not likely to be used for building purposes is land not likely to be so used because of its nature, *e.g.*, covered with water, very marshy, or because it is laid out as a railway or is likely to be so laid out. Land allocated for open spaces is specifically included in the definition of land likely to be used for building purposes. (See section 54 (7), *post*, p. 75.) Land proposed to be used for other purposes will depend on the result of the negotiations with the owners.

With regard to planning the vacant land, the local authority should fix, before negotiations commence, some figure as the minimum number of houses to the acre that they consider should be erected in each of certain zones. These figures will form a basis for negotiation. If the minimum is departed from, it should only be in return for concessions on the part of the owners, and this should be borne in mind in fixing the minimum.

The Rt. Hon. John Burns, in a statement published by him a short time ago, said : " I trust that the chief benefits " of this Act will be, first, fewer houses per acre, more space " and gardens about the dwelling, more attractive frontages, " larger rooms, universal bath accommodation, and all the " conveniences that are necessary in urban life. . . . Above " all, I trust that a new standard of ventilation will prevail, " so that the new accommodation provided under this Act " will be supplemented by the admission of pure air at " all times of the day or night. . . . It is to be hoped that " all local authorities, architects, landowners, builders, " tenants, and all concerned will avail themselves of this " new method of amicable, equitable, and reasonable adjust- " ment of their interests and property, and make them " harmonise with the architectural, æsthetic, and neigh- " bourly disposition of their collective municipal property, " namely, their village, town, or city. This mutually bene- " ficial arrangement will not depreciate the value of any " interest ; on the contrary, town planning will confer upon " the community untold benefits by the co-operation of all " and each for the better growth and sane development of " their district. . . . The conservation of groups of trees, " historical and artistic objects, which add to the amenity, " as they assuredly will, increase the pleasure and treasure " of civic life. The necessity and value of larger and " healthier houses, in pleasant streets, in better towns, in " close relation to parks, gardens, and open spaces, is so " urgent and important, and will have so beneficial an " influence on the education and character of our citizens, " that this Act should have the cordial support of all who " have the best interests of the children, individual citizen, " the race, the city, and the nation at heart."

With these objects in view, the local authority should decide at an early stage how they propose to divide the area. For example, Area No. 1 :—Residential property—*(a)* 3 houses to the acre ; *(b)* $4\frac{1}{2}$ houses to the acre ; *(c)* 8 houses to the acre ; and *(d)* 12 houses to the acre. Area No. 2 :—Shop property, and workshops for trades of an offensive nature. Area No. 3 :—Manufacturing property, and trades which are unpleasant if carried on in the neigh-

bourhood of residential property. Churches, schools, and public buildings will have to be put where required, and will not enter into any calculations as to the number of houses per acre.

In fixing the number of houses per acre, it is advisable to stipulate beforehand as to whether roads, open spaces, and land not likely to be used for building purposes, are to be taken into consideration for the purpose of calculating the area or not. The areas should be arranged so that the prevailing winds carry the smoke and smell of the manufacturing area away from, and not over, the residential areas. And other considerations of a like nature, such as the probable development of the neighbouring lands, should be carefully taken into account.

The Act provides that the scheme may prescribe the height and character of the buildings (see Schedule V. (5), *post*, p. 126). How far the Local Government Board will allow the local authorities to go in this direction remains to be seen, but it is assumed at the present time that this power will be covered by the insertion in the scheme of some general provision providing that the local authority shall have power to require builders, who have submitted plans to the local authority for approval, to alter their plans in proper cases, so as to bring them into harmony with the buildings already erected on the adjoining and surrounding land, with a view to preserving the amenity of the district. In every case this should be done, if possible, in such a way as not to put the builder to any extra expense in erecting a building (see Model Clause No. 49, *post*, p. 255).

Where an owner is required to put fewer houses to the acre on his land than he would have been able to do under the byelaws, he will complain that he will either have to lose a portion of the profit which he had calculated he would receive from the land when he bought it (and the Act provides that he is to receive no compensation in respect of the number of houses to be built per acre), or he will be compelled to raise his rents in order to secure a profit, or he may have to stop building in this area because the tenants will not pay the increased rent. He may then say, "I will go and build in an adjoining area where the restrictions

are less and the profit will be greater." This is a real danger, and must be carefully guarded against in a district where the greater portion of the land is in the hands of speculating builders. It would not be wise, however, to give way to the builders too much, for matters will right themselves in the course of time. The land will change hands, and eventually similar restrictions will be enforced in other areas.

CHAPTER X.

SEWERAGE, LIGHTING, AND WATER SUPPLY.

THE following must be indicated in Map No. 4 :—(1) lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity, and (2) proposals as to lines of sewers or of pipes or mains for supply of water, gas, or electricity (Article XIV., *post*, p. 157).

These matters are more conveniently dealt with together, if for no other reason than that they all involve the laying of underground pipes. There is no more common or annoying occurrence than the taking up of some perhaps recently laid or repaired road or footwalk, along which there is usually a large amount of traffic, for the purpose of laying a pipe of some kind. The damage that is constantly caused to the construction of the roads in such cases is a genuine ground for complaint, and even though the cost may in many cases be recovered from the persons taking up the road, the road is never the same afterwards. In a well-designed town planning scheme this could all be obviated by the timely provision of a small subway, for the cost of which the local authority could in the scheme be authorised to make a proper charge to those using it, a charge which would fully cover the cost of the outlay, and would be infinitesimal beside the great expense to which lighting and water companies are put at the present time whenever they want to lay a new pipe or inspect or repair an old main.

Telegraph wires are nowadays being laid underground, and the method of transmitting letters and telegrams through towns by tube is being rapidly adopted. The advantages of such a subway, which could be divided into various compartments, are obvious. At the present time no one is authorised to make such subways and charge for them, and consequently they are not made. Under a town planning scheme this difficulty would be overcome. Sewer

ventilating columns would disappear from the footwalks, together with manhole covers, water hydrants, and all other inlets into the footwalk, and they would be placed in the centre of the carriage way, and surrounded, whenever there was room, with a small shrubbery. In practice such an arrangement would have many advantages, not the least of which would be the filling of the water cart in the middle of the carriage way instead of the usual splashing over the footwalk.

So far as attractiveness and convenience go, much can be done to improve the lighting of the streets and the arranging of name-plates. A suggestion put forward at a recent conference was to have a curved column, with a suspension lantern fitted with metal tops and reflectors, and, across the top of the arch, a name-plate with the name of the street appearing on both sides.

When planning the roads and the land, the question of drainage must be always borne in mind, and it might be well in most cases to prepare a contour map, which should be carefully studied, so that the minimum gradient may be obtained in very hilly districts, and the maximum gradient in flat or low-lying districts; the object of the local authority being to obtain sewers at not too great a depth from the road on the one hand, and, on the other hand, pipes that would be self-cleansing.

Land which cannot be drained because no sewer can be laid deep enough to take the sewerage, cannot be built on, and consequently loses its value. Many mistakes have been made in the past by making the outfall of sewers so high that certain of the land which was intended to be drained into it has been rendered useless by reason of its levels. Moreover, the sewers and drains should follow the lines of roads or intended roads. Pipes running across land are a detriment to the district and decrease the value of the land, for no building should be erected over a drain or pipe of any kind. Care should be taken, too, to fix the outfall in a good situation, and as far removed as possible from residential houses.

It should be remembered that a town planning scheme can only apply to the area sanctioned by the Local Govern-

ment Board, and that in the majority of cases it will not be possible to prepare and embody in a scheme provisions for a main drainage or for general lighting or water undertakings; though if the scheme embraces a particularly large area, and there is no sewerage outfall available, nor provision for lighting or water supply, there is no reason why all, or at any rate some, of these matters should not be provided for in the scheme. If no such provision is made, care should be taken that they can all be properly dealt with subsequently by arrangements with adjoining local authorities or water or lighting companies having statutory powers in the area.

If the local authority think it advisable, none of these matters need be included in the scheme. They can be left to be dealt with just as if the district were being developed without a town plan. But even if they are not in the scheme, they must have the most careful consideration of the local authority, for the Local Government Board could hardly support a scheme for an area which could not be drained, or for which no water supply was available.

Existing pipes should be carefully considered before planning is commenced, and any companies or other bodies, whether statutory or otherwise, should be approached, and their support to the scheme obtained so far as they are affected. If any works are to be carried out as part of the scheme, the scheme should state the persons by whom and at whose expense they are to be carried out.

Probably there will be no byelaw in the district dealing with the sewerage of streets. The practice of the Local Government Board has been to refuse to confirm any such byelaw made by a local authority. The following byelaw has, however, been allowed by the Board in certain cases, and a provision to the like effect in a scheme would probably be favourably received: "Every person who shall
" construct a sewer for the sewerage of a new street shall
" lay the same at such depth and inclination as shall
" effectually serve for the houses or buildings with which
" it is or shall be connected, and it shall form the best
" practical continuous gradient along the entire length of
" such sewer to the point of discharge, and shall construct

“ such a sewer in a good and workmanlike manner, and in
“ such form and of such size and materials, and with such
“ manholes, junctions, and appurtenances as shall be neces-
“ sary, having regard to the use, or intended or probable
“ use, of such sewer.”

If it is proposed to drain into the sewers of an adjoining authority, it should be provided that in the event of the parties not agreeing as to terms, a single arbitrator appointed by the Local Government Board, or some other suitable person, shall decide the point in dispute, and that his decision shall be final and binding.

If the district is one where there are, or may be, houses with joint drains, a provision might be inserted that they be treated, apart from the question of ownership, as private drains and not sewers. But the insertion of a provision in the scheme changing the status of a joint pipe from a “sewer” to a “drain” would, it appears, amount to the “suspension” of an “enactment contained in a public general Act,” and therefore necessitate the laying of the draft scheme before Parliament, and the giving of a “full explanation of the reasons which are considered to justify” such suspension. (See note to section 55 (2), *post*, p. 83, and Regulations Article XXI. (b) (viii.), *post*, p. 161.)

CHAPTER XI.

COMPENSATION AND BETTERMENT.

THE provisions of the Act relating to the payment of compensation and the allowance for the increase in value of land included in a scheme are most important.

With regard to compensation, the Act provides that "any person whose property is injuriously affected by the making of a town planning scheme" may claim compensation in respect thereof (see section 58 (1), *post*, p. 89). These are very wide words, but there are a number of provisions under which certain cases, which would in ordinary circumstances be cases for compensation, are excluded. These are dealt with later.

In the first place it should be noticed that the injury must be caused by the making, and not by the carrying out, of the scheme. This means that if the injury would have been caused if no scheme had been made, then there can be no right to compensation. In the second place, it should be noticed that compensation must be claimed promptly, otherwise it may be forfeited.

In the case of every scheme it is probable that a number of claims will be made for compensation, and it is important, therefore, to observe carefully all the limits within which the claims must come if they are to be allowed. Thus, (1) claims are barred unless made "within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme was published" as prescribed (see section 58 (1), *post*, p. 89). (2) It is also provided that a person shall not be entitled to obtain compensation "on account of any building erected on, or any contract made or other thing done with respect to, land included in a scheme, after the time at which the application for authority to prepare the scheme was made, or after such other time as the Local Government Board

may fix for the purpose" (see section 58 (2), *post*, p. 90). Many claims may be made by persons taking an unfair advantage of their knowledge of the proposals of the local authority during the preparation of the scheme, but so that there may be no injustice to the persons who have work in progress on this important date, a proviso to the sub-section enacts that it shall not apply "as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made."

(3) No compensation is to be paid if, or so far as, the provisions of the scheme "are such as would have been enforceable if they had been contained in byelaws made by the local authority" (see section 59 (1), *post*, p. 97). It should be noticed that the byelaws referred to are not byelaws which have been actually made by the local authority, but byelaws which the local authority were at the time of making the scheme entitled to make.

(4) Property is not to be "deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose" (see section 59 (2), *post*, p. 98). But for the efforts of the National Housing Reform Council, no such exception as this would have been made to the general provision that compensation must be paid for all injury arising through the making of a scheme. There is much speculation as to the precise meaning of the words "space about buildings," "limit the number of houses," and "the height or character of buildings." As we have previously stated, the Local Government Board have not yet prescribed any general provisions under section 55 (1). Undoubtedly, in the course of time, some general provisions will be drawn up, and they will deal with these words in a manner which will enable local authorities to know the limits to which the

Local Government Board will allow them to go in excluding claims for compensation under this sub-section. Up to the present, the Local Government Board have given no hint of their attitude under this section, but say that each case will be considered on its merits. The local authorities will, therefore, have to frame their own provisions as best they can, and they will be well advised to leave themselves with a comfortable bargaining margin.

(5) Where a person is entitled to compensation under the Act, and "would be entitled to compensation in respect of the same matter or thing under any other enactment," he shall not be entitled to more than one compensation, nor to any greater compensation than he would be entitled to under the other enactment (see section 59 (3), *post*, p. 98).

Where a town planning scheme is revoked by the Local Government Board, "any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation . . . in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme" (see section 58 (6), *post*, p. 90); but as all questions of compensation should be carefully gone through between the local authority and the owners before the scheme is prepared, the local authority, if they find that it is necessary to ask for a portion of the scheme to be revoked, should endeavour, before doing so, to come to an agreement with the owner as to the compensation to which he will be entitled under this sub-section.

Such are the provisions of the Act with regard to compensation. A large number of questions in connection therewith will have to be settled, chiefly by the Local Government Board, before the meaning of the Act is quite clear. But the Board cannot enlarge or diminish the provisions of the Act. They can only make provisions or regulations to carry them out. If they endeavour to do more, the Courts will probably be called upon to intervene.

With regard to the increased value of land, it is provided (see section 58 (3), *post*, p. 90) that "where, by the making of any town planning scheme, any property is increased in value," the responsible authority, if they make a claim for the purpose within a certain time, will be "entitled to

recover from any person whose property is so increased in value one-half of the amount of that increase." This is commonly known as the "betterment" sub-section. It should be noticed that here also the land must derive its increase in value from the making of the scheme.

While there are several limitations upon claims for compensation, there are no similar limitations, except the time limit, in the case of claims in respect of betterment; though the compensation which has to be paid by the local authority is "full" compensation, whereas the betterment that they are entitled to claim is only "one-half" the amount of the increase. But it seems quite possible that, by a judicious setting off of one against the other, the amount received for betterment may in some cases more than cover the amount to be paid in compensation.

Questions arising as to the fact of injurious affection or increase in value, and as to the amount and manner of payment of compensation and betterment, are to be "determined by the arbitration of a single arbitrator appointed by the Local Government Board, unless the parties agree on some other method of determination" (see section 58 (4), *post*, p. 90). Any amount due as compensation or betterment may be recovered summarily as a civil debt (see section 58 (5), *post*, p. 90), and provision may be made in a scheme by which the amount of betterment becomes a charge on the land (see Schedule IV. (19), *post*, p. 130).

CHAPTER XII.

ENFORCEMENT OF A SCHEME.

IN the preceding eleven chapters practically all the sections of Part II. of the Act have been dealt with, and there now only remain the provisions of the Act with regard to the enforcement of a scheme, and one or two other points.

The expression "responsible authority" is used in this Part of the Act to denote "the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority" (see section 55 (2), *post*, pp. 80, 81). Special provisions are to be made with regard to this in every town planning scheme, and it is laid down that, "where land included in a town planning scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority and for certain purposes another local authority, or a joint body constituted specially for the purpose by the scheme, and all necessary provisions may be made by the scheme for constituting the joint body and giving them the necessary powers and duties" (see section 55 (3), *post*, p. 81). In London the responsible authority is to be the London County Council, unless that council consents to a metropolitan borough or other council becoming such authority (*ibid.*).

Section 57 (1) (see *post*, p. 87) provides that the responsible authority may, in accordance with the provisions of the scheme, "remove, pull down, or alter any building or other work," which fails to comply with the scheme, and may also execute work which ought to have been executed under the scheme. By sub-section 2 of the same section, the responsible authority may recover the cost

of such work from the persons in default, and, by subsection 3, questions arising under this section, unless the authorities agree, are to be determined by the Local Government Board as arbitrators, and their decision is final and binding on all parties. By section 60 (1) (see *post*, p. 99), the responsible authority may purchase land for the purpose of a scheme, and it should be noted that the compulsory powers enabling them to so purchase are now very much simpler than they used to be. Reference should be made by any authority desiring to purchase land to the Lands Clauses Acts, the Housing of the Working Classes Act, 1890, and in particular to sections 2 and 45 of the Housing, Town Planning, &c., Act, 1909, and the Regulations of the Local Government Board on this subject (see the note to section 60, *post*, p. 100, and Part III., *post*, pp. 168-174). By section 60 (2) of the latter Act, where land included within the area of a local authority is comprised in a scheme, and the local authority are not the responsible authority, the local authority may purchase land in the same manner as the responsible authority.

At the end of the Local Government Board Circular of the 3rd May 1910, the Board say that they "think it desirable that local authorities and others concerned in the making of a town planning scheme should realise at the outset that a considerable period must of necessity elapse between the time of the inception of the scheme and its final approval. The necessity of giving effect to the clearly expressed intention of the Act, in regard to affording persons interested or affected full opportunity of considering the proposals at all stages involves considerable delay; but the Board, in settling the Regulations, have made the periods for notices as short as possible, having due regard to the objects to be attained. So far as administrative action upon the part of the Board is concerned, they will endeavour to expedite as much as is practicable the dealing with applications to them in regard to town planning schemes, but the careful consideration of a case in all its aspects, and the arrangements for the holding of the necessary local inquiries, must necessarily take a substantial amount of time."

The Local Government Board Regulations are long and complicated, but it should always be borne in mind that, under Article XXXIV. (*post*, p. 167), any Regulation may, with the approval of the Board, be dispensed with in certain particulars. The Board have shown their willingness to assist in overcoming difficulties by allowing Regulations to be departed from in many cases (see Chapter XV., *post*, p. 64, and the Note, *post*, pp. 148, 149). A local authority that has any difficulty arising either under the Act or under the Regulations should not hesitate to put the matter at once before the Local Government Board, and they may rely upon getting an early reply with sympathetic advice.

Section 62 (see *post*, p. 108), which deals with disputes arising under the Act, should be noticed. It provides that “where the Local Government Board are authorised by this Part of this Act or any scheme made thereunder to determine any matter, it shall, except as otherwise expressly provided by this Part of this Act, be at their option to determine the matter as arbitrators or otherwise, and if they elect or are required to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply,” as if they were enacted in the Housing, Town Planning, &c., Act, 1909.

The Regulation of Railways Act, 1868, section 30 (set out in the note to section 62, *post*, p. 109), provides that the Board of Trade may appoint an arbitrator to settle differences under that Act, and the decision of the arbitrator shall be deemed to be the decision of the Board of Trade. As a result, the decision of any arbitrator appointed by the Local Government Board under the Housing, Town Planning, &c., Act, will be deemed to be the decision of the Local Government Board.

One other provision remains, namely, section 54 (6), (*post*, p. 75), which provides that town planning schemes may be varied or revoked by subsequent schemes prepared or adopted and approved in accordance with Part II. of the Act, “and the Local Government Board, on the application of the responsible authority, or of any other person

appearing to them to be interested, may by order revoke a town planning scheme if they think that under the special circumstances of the case the scheme should be so revoked." It should be noticed here that though schemes can only be prepared by local authorities or owners, and adopted by the local authority, yet any person appearing to be interested may take steps to have them revoked.

The Second Part of this Act, dealing with the question of town planning, is an attempt to enforce the laying out, in the future, of land which is likely to be built upon, in a manner which will secure the best possible sanitary conditions, ensure amenity, and procure the greatest convenience in connexion with the laying out and the use of the land, and of any neighbouring land. The objects sought to be attained are of the greatest national importance, and the success, or otherwise, of the experiment—for this Part of the Act is admitted to be in the nature of an experiment—will depend very largely upon the spirit in which local authorities throughout the United Kingdom, the owners of land, and, in a smaller degree, the lessees and tenants of the land, are willing to co-operate with the Local Government Board in putting into practice the powers that are granted by the Act. All must work together—the Local Government Board representing the State, the local authorities representing the ratepayers in the area for which a scheme is required, and the owners and tenants representing the vested interests in the land itself. If one of these three stands out and resolutely opposes the making of a scheme, then it does not seem possible to prepare any scheme which will be of any practical use. The essence of the Act is co-operation and not compulsion. This is shown by the opportunity given for all these three sections to work together and help one another.

A well-prepared scheme should also prove a success financially. This has been proved by the private experiments which have already been made in various parts of the country, and there is no reason why these experiments should not be repeated elsewhere.

CHAPTER XIII.

OWNERS' SCHEMES.

“ ALL or any of the owners of any land with respect to which ” a local authority may themselves be authorised to prepare a town planning scheme may propose such a scheme for adoption by the local authority, and the authority may adopt such a scheme, with or without modifications, provided that they obtain authority to do so from the Local Government Board, such authority being as necessary in the case of owners' schemes as in the case of schemes prepared by local authorities (see section 54 (2), *post*, p. 74).

A scheme proposed by owners must come strictly within the limits prescribed for schemes prepared by local authorities. Owners can only propose such a scheme as the local authority might themselves prepare. No obligation, however, is placed by the Act on any owner to propose a scheme for adoption; though, under section 61 (1) of the Act (*post*, p. 107), the Local Government Board may order a local authority to prepare or adopt a scheme.

There is no formal procedure to be followed under the Act or Regulations until the local authority definitely decide to adopt an owner's scheme. Owners may meet between themselves or with the local authority in any manner mutually agreeable, and may practically have their scheme cut and dried before the local authority begin to proceed under the Act and Regulations. But as the trouble and expense of preparing the scheme in such a case will fall on the owners, and the expense of adoption only will fall on the local authority, schemes will generally be prepared by the local authority in co-operation with the owners, an arrangement which will be much simpler and less expensive to all concerned. Out of the twenty-eight formal applications received by the Board up to the

end of 1912, only one related to an owner's scheme (see Chapter XV., *post*, p. 62).

The procedure to be followed by a local authority, in applying to the Local Government Board for authority to adopt a scheme proposed by owners, is the same as that to be followed when they have prepared a scheme themselves, except that the Local Government Board require certain additional information where the scheme is proposed by owners. As to a suggestion that the distinction between the two kinds of schemes should be more marked, see the reply of the Comptroller (*post*, pp. 148, 149).

As to such additional information, Article VII. of the Regulations (*post*, p. 152) provides that when an application to the Board "relates to the adoption of a scheme proposed " by owners of the land, there shall be shown on Map No. " 2 the lines and widths of all roads proposed as part of " the scheme, the connexions of the proposed roads with " existing roads, and the lines of any existing sewers or any " existing pipes or mains for the supply of water, gas, or " electricity. Any existing roads or ways which it is pro- " posed to stop up or divert shall be indicated on the said " map, which shall also indicate the areas proposed by the " scheme to be allocated for the purpose of open spaces, " private or public, or to be used for any other special " purposes. The said map shall also show all such further " particulars in relation to the scheme proposed to be " adopted as are suitable for indication thereon, *e.g.*, any " proposals as to lines of sewers, or of pipes or mains for " the supply of water, gas, or electricity."

Article IX. (*post*, p. 154) gives the following further list of particulars to be supplied by the local authority in the case of owners' schemes:—" (a) The names and addresses of " the owners, lessees, and occupiers of each parcel of the land " included in the scheme, and the approximate extent of each " parcel. (b) Information showing in what respects the " proposals in the scheme would involve the suspension of " any statutory enactments, byelaws, regulations or other " provisions which are in operation in the area included in " the scheme. (c) Information as to the extent to which it may " be contemplated or necessary under the scheme that land

“ included in the scheme shall be acquired (1) by the local
“ authority making the application, or (2) by any other local
“ authority. (d) Definite information as to whether any of
“ the owners by whom the scheme is proposed will, in the
“ event of the scheme being adopted by the local authority
“ and approved by the Board, claim compensation on the
“ ground that his property would be injuriously affected by
“ the making of the scheme; and particulars of any in-
“ formation in the possession of the local authority in regard
“ to the probability of any other person making a claim for
“ compensation on that ground. (e) If, in the opinion of
“ the local authority, any property will be increased in
“ value by the making of the proposed scheme, information
“ as to such property and as to the estimated increase in
“ value.”

When the local authority have fully considered and decided to adopt, with or without modifications, an owner's scheme in respect of land in regard to which they have been authorised to adopt such a scheme, Article XV. (*post*, p. 157) requires that they “ shall cause to be printed a copy
“ of the scheme proposed by owners, and shall prepare and
“ cause to be printed a memorandum of all modifications
“ which they propose should be made in such scheme, and
“ shall obtain from the owners or shall themselves provide
“ a map or maps (to be marked and known as ‘ Map No. 4 ’
“ or ‘ Map No. 4 (A),’ ‘ Map No. 4 (B),’ &c.) on a scale of
“ not less than 25·344 inches to the mile, showing thereon
“ all such particulars and details as are required to be
“ shown on the map or maps referred to in Article XIV. of
“ these Regulations.” (For this Article see *post*, p. 156, and
as to Maps in general see Chapter XIV., *post*, pp. 56–61.).

In the Regulations as set out in this work, because certain Articles relate to schemes prepared by local authorities, others to schemes proposed by owners, and others to both such schemes, italics are used to draw attention to this important distinction, though italics are not used for this purpose in the Regulations as published.

CHAPTER XIV.

MAPS.

IN addition to the seven maps specifically required by the English Regulations, the Local Government Board may "at any stage of the proceedings" require the local authority to "prepare and furnish to the Board all such maps, plans, sections, elevations, and specifications, and all such particulars or information as the Board" require in connexion with "any scheme or proposed scheme" (Article XXXIII., *post*, p. 167).

The Table on pages 57 and 58, *post*, shows the maps specifically required by the English Regulations, the particulars which the maps are required to contain, and the Articles of the Regulations which relate to those requirements.

In every case the maps are to be mounted on linen and folded in book form, and have a scale properly drawn thereon; and, wherever Ordnance maps have been published in respect of the district or area in relation to which the maps are required, such maps are to be used (Article XXXII. (a), *post*, p. 167).

The Board of Agriculture have issued a Circular (see *post*, p. 175), in which they offer to undertake the preparation of maps in connexion with town planning schemes at cost price. The actual terms are given at the end of the present Chapter.

With regard to the preparation of these maps, the Local Government Board, in their Circular of the 3rd May, 1910, accompanying their Regulations, say:—"It will be observed that the Regulations require the preparation of maps at various stages of the proceedings in connexion with a scheme. In Article XVIII. of the Regulations express provision is made under which the maps prepared in accordance with Article XIV. or Article XV. may

MAPS.	PARTICULARS.	ARTICLES.
<p>No. 1. Scale 25·344 inches to mile. To be deposited for one month. Certified copy to be furnished to any local authority part of whose area is comprised in scheme.</p>	<p>Showing land proposed to be included in scheme to be prepared or adopted.</p>	<p>I. (b) (d) (<i>post</i>, p.149).</p>
<p>No. 2. Scale not less than 25·344 inches to mile. Need not be deposited. Certified copy to accompany application for authority to prepare or adopt scheme.</p>	<p>Showing area included, by boundary lines sharply defining such area in colour, and distinguishing lands outside district of authority; also, by distinctive colours and reference notes, land built on and land not likely to be used; also position of buildings erected and in course of erection; also, in case of schemes prepared by local authorities, lines and widths of principal proposed new roads and their connexions with existing roads; lines of existing (but not proposed) sewers, and water, gas and electricity mains; ways to be diverted or stopped up; and areas contemplated for open spaces or special purposes; and, in case of owners' schemes proposed to be adopted, lines and widths of proposed roads and their connexions with existing roads; lines of existing and proposed sewers, and water, gas and electricity mains; ways to be diverted or stopped up; areas for public and private open spaces or special purposes; and other suitable particulars.</p>	<p>IV. (b), V., VI., VII. (<i>post</i>, pp. 151, 152).</p>
<p>No. 3. Scale 1 inch to mile. Need not be deposited. To accompany application for authority to prepare or adopt scheme.</p>	<p>Showing, by distinguishing colours or boundary lines in colour, area included, district of authority, and neighbourhood within 5 miles of district. In rural districts, only contributory places affected, and neighbourhood within 5 miles of any such place. If area wholly outside district, such area only, and neighbourhood within 5 miles thereof.</p>	<p>V. (c) (<i>post</i>, p.151).</p>

MAPS.	PARTICULARS.	ARTICLES.
<p>No. 4, 4a, 4b, &c. Scale not less than 25·344 inches to mile. After receipt of authority to prepare or adopt scheme, and decision to do so, to be deposited for 21 days after service of last notice of such decision.</p>	<p>Showing full details of proposed scheme as specified in Article XIV.</p>	<p>XIV., XV., XVI. (<i>post</i>, pp. 156, 157).</p>
<p>No. 5, 5a, 5b, &c. Scale not less than 25·344 inches to mile. Need not be deposited. Certified copy to accompany application for approval of scheme.</p>	<p>Showing same details as Map No. 4, subject to modifications, if any, made to meet objections, and to be <i>sealed</i> by local authority. If no modifications, Map No. 4 may be used and marked Map No. 5.</p>	<p>XVIII., XX. (<i>b</i>) (<i>post</i>, pp. 158, 159).</p>
<p>No. 6. Scale 6 inches to mile. Need not be deposited. To accompany application for approval of scheme.</p>	<p>Showing, by distinguishing colours or boundary lines in colour, district of local authority; or, in rural districts, contributory places affected; or, if area wholly outside district, all land between area and district; and land included in scheme; and also, by distinctive colours and reference notes, recreation grounds, open spaces, public elementary schools in area, and buildings erected in area up to date, distinguishing between buildings begun before and after making of application to Board for authority to prepare or adopt scheme.</p>	<p>XX. (<i>c</i>) (<i>post</i>, p. 159).</p>
<p>No. 7. Scale 25·344 inches to mile or larger. Need not be deposited. To accompany application for approval of scheme.</p>	<p>Showing area divided between different owners, giving names either on map or in annexed statement with numbers on map referring to statement.</p>	<p>XX. (<i>d</i>) (<i>post</i>, p. 160).</p>

“ be used for the purposes of Article XVIII., and be marked as
“ required by that Article, but such user would only be
“ permissible if the maps required under the later Article
“ would be identical in every respect with those previously
“ prepared for the purposes of Article XIV. or Article XV.
“ This provision has been inserted with the view of saving
“ the expense of preparing further maps, and the Board
“ would not offer any objection to a similar course being
“ followed, subject to similar conditions, as regards the use
“ of Map No. 1 (required by Article I. of the Regulations)
“ in lieu of preparing a further map (Map No. 2) for the
“ purpose of Article IV. It should be clearly understood,
“ however, that a map which has been prepared and
“ deposited to meet specific requirements of an Article of
“ the Regulations should not be subsequently altered to
“ meet the requirements of a subsequent Article. It was
“ suggested to the Board that provision should be made in
“ the Regulations for definite schemes of colouring being
“ adopted in the preparation of the maps required by the
“ Regulations, so as to provide for uniformity of practice in
“ regard to the colouring of all maps relating to town
“ planning schemes under the Act. The Board have not
“ regarded it as practicable to carry out this suggestion, but
“ they think it would be desirable that, in preparing the
“ maps required at the several stages of a scheme, the local
“ authority should, as far as possible, follow the same scheme
“ of colouring throughout all the maps, so that, *e.g.*, if a
“ particular colour is used to indicate some special feature
“ on Map No. 1, the same colour should be used to
“ indicate the same feature on any map at a later stage
“ of the proceedings. Suggestions have been made that
“ contour models of the areas proposed to be included
“ in town planning schemes should be prepared. The
“ Board have not considered it desirable to include
“ any provision on this matter in the Regulations, and
“ they are disposed to think that it would not as a
“ general rule be expedient to incur the expense of
“ preparing such models, and that it would be found in
“ practice that plans with contour lines drawn or coloured
“ thereon so as to show the variations in the levels of

“ the land would meet adequately the necessities of the “ case.”

It must be remembered that when once Map No. 1 has been deposited the area to be dealt with in the scheme cannot be enlarged without commencing *de novo*, though it may be diminished (Article XII. (b), *post*, p. 155), and that when once authority to prepare or adopt a scheme has been given, the area cannot be either enlarged or diminished without commencing *de novo*; though in a proper case, and where the desired enlargement or diminution is not extensive, the Local Government Board would no doubt be prepared to dispense with some of the requirements under Article XXXIV.

Special provision is made for supplying a certified copy of Map No. 1 to a local authority any part of whose district is included in the area for which a scheme is intended to be prepared or adopted (see Article I. (d), *post*, p. 149); but, under the dispensing power taken by the Local Government Board in Article XXXIV. of the Regulations (see *post*, p. 167), the Board have expressed their willingness to allow an Ordnance map on the scale of 6, instead of 25·344, inches to the mile to be used for service on local authorities under this Article, but only with the consent of such authorities (see Chapter XV., *post*, p. 64). In all other respects under the Regulations, such local authorities are to be treated as ordinary landowners.

With regard to the showing of new through roads, these need only be indicated by dotted lines, so that these may be modified as the scheme develops.

Maps Nos. 1 and 4 must be deposited for inspection (see Articles I. (b), XVI. (b)). The other maps referred to need not be deposited, though they, and other documents prepared in connexion with the scheme, may be inspected by persons interested. (See the observations of the Comptroller noted *post*, pp. 64–66 and 148, 149, and Articles I. (b), XII. (a), XVI. (b), XXIII., XXIV. (b), XXV. (c), XXVII. (a), (b), and XXXII. (b), *post*, pp. 149, 155, 157, 162, 163, 164, 167.)

Any person interested in or affected by a scheme or proposed scheme is entitled to a copy of or extract from any

map or plan required in pursuance of the Regulations on payment of a reasonable fee, to be determined by the local authority, and any fee so received is to be credited to the fund liable to be charged with the expenses of the scheme. (Articles XXVII. and XXXII. (b), *post*, pp. 164, 167; as to such expenses, see section 65 (2), *post*, p. 114.)

PROVISIONAL SCALE OF PRICES FOR MAPS.

The Director-General of the Ordnance Survey Department at Southampton has informed the authors (by letters dated September 6th and December 23rd, 1912, and numbered respectively O/12 4579 and O/12 6552) that he has fixed the following "provisional scale of prices for printing, at this office from published editions, maps in connexion with Town Planning and Small Holding Schemes," and that any maps required "under any of the headings of the scale" can be "put in hand at the price given immediately on the receipt of order." The letters request that all correspondence on this subject be addressed to "The Director-General of the Ordnance Surveys, Southampton," and that postage be prepaid (*i.e.* letters may not be marked O.H.M.S. and sent unstamped). There is a note at the foot of the scale saying that "there might be an additional charge for adding detail which does not appear in the latest published Ordnance Survey plans."

The scale is as follows (the lower prices being for paper weighing 96 lbs. per ream, and the higher prices for paper weighing 140 lbs. per ream):

"A."—Size up to 18" × 12" from one O.S. 6" quarter sheet or one 25" scale plan (the 6" scale will be without contours): 200 copies, £1, 10s. 6d. or £2, 5s. 6d.; 500, £1, 19s. or £3, 13s. 6d.; 700, £2, 7s. or £4, 16s.; 1000, £2, 17s. or £6, 3s.

"B."—Size up to 37" × 25" from two or more O.S. sheets, 25" scale: 200 copies, £2, 8s. 6d. or £3, 10s. 6d.; 500, £3, 8s. or £6, 8s.; 700, £4, 3s. or £8, 10s. 6d.; 1000, £4, 18s. or £11, 5s. 6d.

"C."—Size up to 18" × 12" from two or more O.S. sheets, 6" scale (without contours): 200 copies, £2, 0s. 6d. or £2, 15s.; 500, £2, 9s. or £4, 3s.; 700, £2, 17s. or £5, 6s.; 1000, £3, 7s. or £6, 13s.

"D."—Reductions up to 18" × 12" from 25" or 6" scale: 200 copies, £3, 8s. 6d. or £4, 3s. 6d.; 500, £3, 17s. or £5, 11s. 6d.; 700, £4, 5s. or £6, 14s.; 1000, £4, 15s. or £8, 1s.

"E."—Reductions up to 24" × 36" from 25" or 26" scale: 200 copies, £3, 16s. or £5, 1s.; 500, £4, 16s. or £7, 18s. 6d.; 700, £5, 11s. or £10, 1s.; 1000, £6, 6s. or £12, 16s.

"F."—Extra to **A**, **C**, or **D** for 1 colour band up to 18" × 12": 200 copies, £1, 7s. 6d.; 500, £1, 10s. 6d.; 700, £1, 13s.; 1000, £1, 15s.

"G."—Extras to **B** or **E** for 1 colour band up to 37" × 25": 200 copies, £2, 10s.; 500, £2, 15s.; 700, £3; 1000, £3, 5s.

"H."—Extra to **A** for contours in blue up to 18" × 12" from one O.S. sheet: 200 copies, £1, 5s. 6d.; 500, £1, 8s. 6d.; 700, £1, 11s.; 1000, £1, 13s.

"I."—Extra to **C** for contours in blue up to 18" × 12" from two or more O.S. sheets: 200 copies, £1, 15s. 6d.; 500, £1, 18s. 6d.; 700, £2, 1s.; 1000, £2, 3s.

With regard to **"F," "G," "H,"** and **"I,"** there is the following note: "When quoting, these prices will be extra to **A**, **B**, **C**, **D**, and **E** if the contours are required (for 6" maps) or the colour bands (for all scales)."

CHAPTER XV.

RECORD OF PROCEEDINGS UNDER ENGLISH ACT.

THROUGH the courtesy of Mr. J. A. E. Dickinson, the Comptroller of the Housing and Town Planning Department of the English Local Government Board, the following information as to how the Board have dealt with various applications which have been made to them by local authorities in connexion with town planning schemes is included in this work. The questions which were put, and Mr. Dickinson's answers (supplemented by the Memorandum which was presented by the Board to Parliament on November 9, 1912, and by the *Times* for December 30, 1912), were as follows:—

(1) *How many applications have been made to the Local Government Board under Part II. of the Housing, Town Planning, &c., Act, 1909, for authority (a) to prepare schemes, and (b) to adopt schemes?*

Applications for authority to prepare schemes have been made by twenty-eight local authorities in respect of thirty-four schemes, and there has been one application by one authority for authority to adopt one scheme.

Details as to the applications granted and refused are given in Answers 2 and 3 *infra*.

The applications not yet decided are from Ellesmere Port and Whitby U.D.C. (3678 acres), Twickenham U.D.C. (2278 acres), Sutton Coldfield Corporation (6400 acres), Wirral R.D.C. (two schemes for 5829 and 3499 acres), Finchley U.D.C. (1047 acres), Liverpool Corporation (1220 acres), Much Woolton U.D.C. (1064 acres), and Scarborough Corporation (40 acres).

With regard to the number of local authorities that have taken or are contemplating the taking of steps under the Act, see the end of the present Chapter.

(2) *How many applications have been granted (a) as to preparation of schemes and (b) as to adoption of schemes?*

The Board have authorised eighteen local authorities to prepare twenty-three schemes, and one authority to adopt one scheme. Three schemes have been prepared by local authorities, and submitted to the Board for their approval. The Birmingham Corporation have prepared two schemes (2320 acres and 1442 acres), and the Rochdale Corporation have prepared one scheme (43 acres).

Authority to prepare schemes has been granted to Ruislip Northwood U.D.C. (5906 acres), North Bromsgrove U.D.C. (554 acres), Oldbury U.D.C. (1763 acres), Chesterfield Corporation (64 acres), Bournemouth Corporation (two schemes for 202 and 223 acres), Liverpool Corporation (88 acres), Hanwell U.D.C. (198 acres), Sheffield Corporation (three schemes for 488, 97, and 624 acres), Newcastle-upon-Tyne Corporation (53 acres), Southport Corporation (2848 acres), Halifax Corporation (two schemes for 877 and 749 acres), Walthamstow U.D.C. (1530 acres), Stoke-on-Trent Corporation (83 acres), Warrington Corporation (1475 acres), Blackburn Corporation (887 acres), and Luton Corporation (4766 acres).

Authority to adopt a scheme has been granted to Middleton Corporation (300 acres).

(3) *How many have been refused, and on what ground?*

The answer was: "In one case the Board were unable to give the authority asked for as the land was for the most part held by the Secretary of State for War, and being Crown lands could not be included in a town planning scheme."

The application was made by Rochester Corporation.

(4) *How many have been granted subject to modifications, and what were the modifications?*

The answer was: "In fourteen cases the Board modified the areas of the proposed schemes by the exclusion of certain lands which for various reasons they considered should not be included in those schemes."

In answer to a request for further information as to the reasons referred to, the Comptroller replied: "It would not be practicable to give detailed information in regard to the areas which were excluded by the Board and the precise

reasons for their exclusion. In nearly every case, however, the land excluded has been land built on or land not likely to be used for building purposes in regard to which no satisfactory reasons could be assigned for inclusion under section 54 (3). The Board are disposed to take as broad a view as possible in regard to land which may be included in a scheme, but it is necessary that a case should be made out under section 54 (3) for including land built on or land not likely to be used for building purposes."

(5) *In what respects and in what circumstances have the Board waived compliance with the Town Planning Procedure Regulations (England and Wales), 1910?*

The answer was: "The principal relaxation has been in regard to the service of notices on occupiers of land included in the area of proposed town planning schemes. In a number of cases the Board have dispensed with the service of notices, &c., on occupiers whose interest in the land occupied was that of a quarterly tenant, or less than that of a quarterly tenant, and in the case of occupiers of allotments the Board have varied the Regulations so that the notices, &c., required might be served by affixing a copy of the document to a notice-board at each entrance to the allotment gardens.

"The Board have also allowed an Ordnance map on the scale of 6 inches to the mile, instead of 25·344 inches to the mile, to be utilised for service under Article I. (d) of the Procedure Regulations on local authorities parts of whose areas were proposed to be included in a town planning scheme, but only with the consent of the local authorities affected. For the form of instrument in which this approval has been given, see Appendix A."

This Appendix was as follows:—"In the matter of a Town Planning Scheme proposed by the Urban District Council of —, relating to an area situate partly within the Urban District of —, and partly within the —: WE, the Local Government Board, in pursuance of Article XXXIV. of the Town Planning Procedure Regulations (England and Wales), 1910, do hereby, in regard to the said Scheme, vary the requirements of paragraph (d) of Article I. of the said Regu-

“lations, so that the paragraph shall be read as if the
 “following proviso were added thereto, that is to say,—
 “Provided that if the Council of any such — agree in
 “writing under the hand of their clerk, to accept, in lieu
 “of a certified copy of Map No. 1, a map on a scale of 6
 “inches to the mile, certified to show accurately the land
 “proposed to be included in the scheme, the local authority
 “may furnish a map on that scale and so certified in lieu
 “of a certified copy of Map No. 1.”

Mr. Dickinson continued, in answer to the same question:—“In a few special cases the Board have raised no
 “objection to the copy of Map No. 1 required to be sent to
 “them under Article XXXI. of the Procedure Regulations
 “being utilised for the purpose of showing the further particulars
 “required to be shown on Map No. 2, which has
 “to be sent to the Board under Article V. (b) of the
 “Regulations. The Board have in such cases required
 “separate Maps No. 1 and No. 2 to be prepared for the
 “use of the local authorities. For the usual terms of letter
 “in which the Board have allowed this course to be adopted,
 “see Appendix B.”

This Appendix was as follows:—“As regards the
 “inquiry contained in the first paragraph of your letter,
 “the Board understand the Council’s proposal to be
 “that the copy of Map No. 1 required to be sent to
 “the Board under Article XXXI. of the Procedure
 “Regulations should also be utilised for the purpose of
 “showing the further particulars required to be shown on
 “Map No. 2, which has to be sent to the Board under
 “Article V. (b) of the Regulations. The Board presume
 “that the map would be marked as Map No. 2 as well as
 “Map No. 1, and that a statement would be made on the
 “face of the map showing precisely what part or what
 “features of it represented Map No. 1 as deposited under
 “Article I. of the Regulations. It is further assumed that
 “the original Map No. 1 so deposited and remaining in
 “possession of the Council would not in any way be
 “altered; that the Council would prepare for themselves
 “a Map No. 2 to constitute the original Map No. 2 for the
 “purposes of the Regulations, and that the Map No. 2 sent

“ to the Board would be a certified copy of such original.
“ If the proposals of the Council are in all respects
“ correctly set out above, I am to state that in the circum-
“ stances the Board will offer no objection to the procedure
“ indicated being adopted in this case.”

As to the principle upon which the Board will act in using the dispensing power taken by Article XXXIV. of the Regulations, see the Comptroller's observations noted *post*, pp. 148, 149.

In their Memorandum of November 9, 1912, referred to at the commencement of the present Chapter, the Board say that fourteen local authorities have served the preliminary notices required by the Regulations before application for authority to prepare a scheme may be granted (namely, Acton, Barrow-in-Furness, Bristol, Cheadle and Gatley, Chesterfield, Ham, Middlesbrough, Nelson, Prestwich, Richmond (Surrey), Shrewsbury, Stockport, Willesden, and Wirral). The Board have also received information that thirty-five other local authorities have “reached a stage practically equivalent to a decision to proceed with a scheme,” and in fifty-four other cases the Board have been made aware “by correspondence, interviews, or otherwise” that “the question of preparing a scheme is under consideration.” This gives a total of 124 local authorities that are definitely moving in the matter. The total acreage in respect of which the Board have actually received applications for authority to prepare or adopt schemes is stated to be over 52,000 acres. The Memorandum ends: “There can be little doubt that many other authorities are contemplating town planning schemes, but have not yet found it necessary to communicate with the Board on the subject.”

CHAPTER XVI.

SCOTLAND.

THE Housing, Town Planning, &c., Act, 1909, does not apply to Ireland (see section 76 (2), *post*, p. 122), but it does apply to Scotland, subject to certain modifications (see section 67, *post*, p. 116). The modifications contained in the Act are shortly:—

- (1.) The Local Government Board for Scotland is substituted for the Local Government Board for England and Wales (section 67 (1)).
- (2.) Expenses incurred by local authorities in connexion with town planning schemes are to be defrayed as expenses under the Housing Acts and, for the purposes of these Acts, the local rate is to be the public health general assessment (section 67 (2), (4)).
- (3.) The "local authority" and the area of such authority for the purposes of Part II. of this Act are the local authority for the purposes of the Housing Acts, as defined in Part I. of the Act of 1909, and the district of that authority (section 67 (3)).
- (4.) References to the Public Health Acts are to be construed as references to the Housing Acts as so defined (section 67 (4)).
- (5.) A local rate for town planning purposes is not to be reckoned in any calculation as to the statutory limit of the public health general assessment (section 67 (5)).
- (6.) The Local Government Board for Scotland may not make an Order directing a local authority to prepare or adopt a scheme, but they may, after holding a local inquiry at which the authority is to have an opportunity of being heard, and obtaining the approval of the Lord Advocate, apply for such an Order to either Division of the Court of Session, or, during vacation or recess, to the Lord Ordinary

on the Bills, and the Division or Lord Ordinary may make such an Order and dispose of the expenses as shall appear to be just (section 67 (6)).

- (7.) The Local Government Board for Scotland, in any proceedings under this Part of the Act, are to have regard to the powers and jurisdiction of the Dean of Guild Court in burghs (section 67 (7)).
- (8.) Notices which, in England and Wales, are to be published in the *London Gazette*, are in Scotland to be published in the *Edinburgh Gazette* (section 67 (8)).

For the modifications with reference to the compulsory purchase of land for town planning purposes, see clause (14) of Schedule I. to the present Act (*post*, p. 129).

The Procedure Regulations for Scotland (the official title is "The Town Planning Procedure Regulations (Scotland), 1911") are much shorter and simpler than the English Regulations. The former, unlike the English Regulations, are divided into two Parts, the Articles in the First Part being numbered from I. to X., and relating to the procedure in connexion with applications for authority to prepare and adopt schemes, and those in the Second Part from I. to XVII., and relating to the procedure after such authority has been given.

The following are the principal differences between the two sets of Regulations:—

Service of notice, of intention to apply to the Local Government Board, on owners, lessees, and occupiers (English Regulations, Article I. (a)) is dispensed with, and advertisement in the local press only is required (Scottish Regulations, Part I., Article I. (a)), and a certified copy of Map No. 1 (required by English Regulations, Article I. (d)) need not be served on interested local authorities.

The special notice to interested local authorities is to be served two months before making application to the Board, instead of within seven days after the decision to consider a proposal to make such application (English Regulations, Article II.; Scottish Regulations, Part I., Article II. (a)).

The notice of the public meeting of owners, &c. (English

Regulations, Articles III. and XVII.) is to be a seven instead of a fourteen days' notice, and need only be given in a local paper (Scottish Regulations, Part I., Article III. (*d*); Part II., Article IV. (*b*), (*c*)).

The Maps (five in number and not seven) are not called Map No. 1, &c., and the particulars required on the various sets are not the same, nor is there any provision as to the sale of copies or extracts therefrom, and there are other variations with regard to the information to be supplied to the Board, and notices to be served, the Scottish Regulations not being quite so exacting as the English requirements.

In addition to the Procedure Regulations of June 20, 1911 (which revoked the previous Regulations of July 4, 1910), the Local Government Board for Scotland have issued Regulations for the compulsory purchase of land for housing and town planning purposes which are dated October 20, 1911. These Regulations are identical with the English Regulations of June 15, 1911 (set out *post*, pp. 168-171), except that the word "Scotland" is added to the title of the Order, the word "arbiter" is substituted for "arbitrator," and the Lands Clauses Acts incorporated are: "The Lands Clauses Acts (except section 120 of the Lands Clauses Consolidation (Scotland) Act, 1845, and sections 70 to 78 of the Railways Clauses Consolidation (Scotland) Act, 1845." On January 10, 1911, the Local Government Board for Scotland prescribed forms (corresponding to the English Forms II. and III. set out *post*, pp. 124, 125), for use in connexion with the compulsory purchase of land; and on November 11, 1910, they issued a form (corresponding to that set out *post*, p. 105) of notice of intention to enter and inspect premises.

The Regulations, Circulars, and Memoranda of the Scottish Board can be obtained from H.M. Stationery Office (Scottish Branch), 23 Forth Street, Edinburgh.

It will be reasonable to assume that any observations made in this book with regard to the English Law and Practice will apply with equal force to Scotland, subject to the above-mentioned modifications in the Act and differences in the provisions of the Regulations.

Up to the end of July, 1912, the only Orders issued by the Local Government Board for Scotland with regard to particular town planning schemes were: (1) Authorising the preparation of town planning schemes by the burghs of Dunfermline, Inverkeithing, and Dundee; and (2) Fixing a date in the terms of section 58 (2) of the Act, after which no compensation shall be payable for buildings subsequently erected, &c., within the area of the Dunfermline town planning scheme. In this latter Order, which was issued on December 29, 1911, the date fixed by the Board was the 12th day of December, 1911, the day on which the Burgh Council published their first advertisement intimating their intention to apply for authority to prepare a scheme, and it was fixed "as the date after which a person shall not be entitled to compensation under section 58, on account of any building erected on or contract made, or other thing done with respect to, land included in the said town planning scheme." It is to be observed that the Order was issued before application was made to the Board for authority to prepare a scheme, but after notice of intention to apply for such authority had been given. Since July, authority has been given for the preparation of a scheme for the Bellevue district of Edinburgh. According to information kindly supplied by Mr. David Brown, Assistant Secretary of the Local Government Board for Scotland, that Board will shortly publish a Memorandum as to the progress made with town planning schemes in Scotland.

In their Annual Report for 1911 the Local Government Board for Scotland say: "In December, we received a large deputation representing the Middle Ward of the Lanarkshire District Committee, when the question of the special conditions applicable to land more or less undermined by mineral workings was considered. It is noteworthy that the towns and districts in which town planning schemes have been under consideration are also the very areas in which the housing question becomes most acute, and this is particularly the case in connexion with mining localities, where it is difficult to forecast the laying out of the land, even for a short time

ahead, by reason of change of circumstances. Feus might be taken for cottages, and afterwards it might be necessary to erect tenements; or the working of the unwrought coal, as was contended in the case of the Lanarkshire local authority, might so alter the physical character of the land that it would not be prudent, nor perhaps even possible, to condescend on the line that roads or streets might possibly take. We recognise that there are such special difficulties in connexion with town planning schemes for such districts; and in prescribing general provisions under section 55 of the Act of 1909, we shall have due regard to the necessity for separate sets of provisions adapted to areas of any special character."

"The local authority of the suburban district of Midlothian have frequently consulted us during the past year regarding the necessity for a town planning scheme for the village of Corstorphine, the ratepayers of which have been concerned at the recent haphazard building in their locality. The problem here differs from that already referred to in industrial and mining districts. This is an example of a residential village where the keynote to the situation is rather 'amenity' than 'proper sanitary conditions,' which are not in dispute. We think, therefore, that the two local authorities are proceeding on the right lines in seeking to come to an understanding as to the proper development of the often characterless land where town and country meet."

The Board also report that on June 12, 1911, a representation was made to them under section 61 of the Act of 1909, alleging that the Edinburgh Corporation were not town planning a large enough area. The representation was made by a committee of Edinburgh citizens interested in the improvement of the Canal district of that city, and dealt with the necessity for the whole of that area being included in a comprehensive town planning scheme, expressing the hope that the Board would exercise their power to have a satisfactory scheme prepared by the local authority. With regard to the result of this representation, the Board say in their report: "While recognising that this also is a large and difficult problem, it is eminently desirable that there should be no undue delay in carrying out a good

scheme of improvement, and we were glad to learn that the matter, involving delicate negotiations, is being proceeded with. It is engaging the attention of committees of the corporation, and a tentative suggested scheme for the construction of new accesses and the opening out of the district has been prepared by the burgh engineer. Negotiations are also in progress with the North British Railway Company regarding their property at the Canal Basin."

"Of private schemes to which our attention has been drawn the most interesting seems to be the proposed new residential garden suburb which is being planned on the estate of the Duke of Portland on the Ayrshire coast at Barassie. The features of the scheme will be the generous allowance of ground granted by the proprietor for open spaces, and the special facilities for golf within easy distance of the large centres of population in and around Glasgow."

PART II.

PARTS II. AND IV. OF THE HOUSING, TOWN PLANNING, &c. ACT, 1909, WITH NOTES.

THE HOUSING, TOWN PLANNING, &c. ACT, 1909.

(9 EDW. VII. c. 44.)

An Act to amend the Law relating to the Housing of the Working Classes, to provide for the making of Town Planning Schemes, and to make further provision with respect to the appointment and duties of County Medical Officers of Health, and to provide for the establishment of Public Health and Housing Committees of County Councils.

[3rd *December* 1909.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

* * * * *

PART II.

TOWN PLANNING.

54. (1) A town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or

Preparation and approval of town planning scheme.

appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands.

(2) The Local Government Board may authorise a local authority within the meaning of this Part of this Act to prepare such a town planning scheme with reference to any land within or in the neighbourhood of their area, if the authority satisfy the Board that there is a *prima facie* case for making such a scheme, or may authorise a local authority to adopt, with or without any modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme.

(3) Where it is made to appear to the Local Government Board that a piece of land already built upon, or a piece of land not likely to be used for building purposes, is so situated with respect to any land likely to be used for building purposes that it ought to be included in any town planning scheme made with respect to the last-mentioned land, the Board may authorise the preparation or adoption of a scheme including such piece of land as aforesaid, and providing for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect.

(4) A town planning scheme prepared or adopted by a local authority shall not have effect, unless it is approved by order of the Local Government Board, and the Board may refuse to approve any scheme except with such modifications and subject to such conditions as they think fit to impose :

Provided that, before a town planning scheme is approved by the Local Government Board, notice of their intention to do so shall be published in the London or Edinburgh Gazette, as the case may be, and, if within twenty-one days from the date of such publication any person or authority interested objects in the prescribed manner, the draft of the order shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and, if either of those Houses before the expiration of those thirty days presents an address to His Majesty

against the draft, or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft scheme.

(5) A town planning scheme, when approved by the Local Government Board, shall have effect as if it were enacted in this Act.

(6) A town planning scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with this Part of this Act, and the Local Government Board, on the application of the responsible authority, or of any other person appearing to them to be interested, may by order revoke a town planning scheme if they think that under the special circumstances of the case the scheme should be so revoked.

(7) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the Local Government Board, whether land is likely to be used for building purposes or not, shall be final.

NOTE.

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A. Town Planning Scheme.

The scheme should include a provision that its title shall be "The Town Planning Scheme."¹ A completed scheme approved by the Local Government Board, and, where necessary, laid before Parliament, has the effect of an Act of Parliament.² Possibly an approved scheme would not have this effect in a case where some grave defect in the procedure had taken place. Thus, in a recent Irish case³ a provisional order sanctioning compulsory purchase for the purposes of an improvement scheme had become absolute by lapse of time,

(1) See Model Clause 50, *post*, p. 255.

(2) See sub-section (5) of the present section.

(3) *Hosford v. O'Regan* (1910, C. A. in Ireland, 1911, Ir. Ch. 467). But see *Ex parte Ringer* (1909, K. B. D., 73 J. P. 436), and *Rex v. Local Government Board for Ireland* (1910, K. B. D. in Ireland, 45 Ir. L. T. 65).

but was nevertheless quashed because of the absence of a formal resolution of the local authority applying for such order.

Lord Halsbury¹ said of a provision making certain rules "of the same effect as if they were contained in this Act": "I have asked in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the Courts. . . . But there is this difference between a rule and an enactment, that whereas, apart from some such provision as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. . . . No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it."

Kinds of Land included.

Two kinds of land are indicated by the expression "any land which is in course of development or appears likely to be used for building purposes."

Land "in course of development" evidently means land upon which building or other constructional operations have actually commenced, and land "likely to be used for building purposes" no doubt means either suitable building land upon which there has hitherto been no building at all, or land which has been cleared of buildings, either by the owner of the property or by the local authority under an "improvement" or "reconstruction" scheme, and on which it may be proposed either immediately or within a reasonable time to erect buildings.² The Local Government Board have used the expression "councils in whose districts *signs of development are visible*."³

Where land is built upon, but the character of the district and the property is changing (*e.g.* a residential district of large houses, where the houses are being pulled down and smaller property is being erected), the land would apparently be land in course of development. The intention seems to be to include all land upon which any buildings may be erected in the not too distant future, but not land already built upon, unless there is evidence that the character of the buildings upon it may be changed.

It is also expressly declared⁴ that land "likely to be used for building purposes" is to "include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not"; and that the decision of the Local Government

(1) In *Institute of Patent Agents v. Lockwood*, H. L., Sc., L. R. 1894 A. C. at pp. 359, 360. See also *Baker v. Williams* (K. B. D., L. R. 1898, 1 Q. B. 23).

(2) It is stated to be the custom in Germany to look ahead for a period of thirty years in these matters.

(3) See extract from Circular, Introduction, Chapter III., *ante*, p. 12.

(4) See sub-section (7) of the present section.

Board whether land is likely to be used for building purposes or not is to be final.¹

There is, however, no provision that the Board are to be the final arbiters on the question whether land is "in course of development." So that in any case in which the Local Government Board order a local authority to prepare and submit a scheme under section 61 (1) on the ground that the land is "in course of development," it will be open to the local authority, on an application for a *mandamus* under section 61 (3), or in other proceedings, to call evidence to show that the land is not "in course of development." But when the Board have decided that the land is "likely to be used for building purposes," evidence could not be called to contravene that decision.²

"Securing Proper Sanitary Conditions, Amenity, and Convenience."

When the area for which the scheme is to be prepared has been settled, the scheme must be drafted so as to come within the "general object" laid down in section 54 (1), namely, that of "securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land and of any neighbouring lands."

The securing of proper "sanitary conditions" will include the provision of sewers, drains, outfalls, sewage farms, refuse destructors, urinals, ventilation, in fact anything tending to prevent insanitary conditions.

The securing of "*amenity*" opens up many possibilities. The word "*amenity*" comes from the Latin *amœnus*, pleasant. Tacitus used the neuter plural, *amœna*, as meaning "pleasant places." The modern English dictionaries define it as referring to the "quality" of pleasantness.³ Thus, Murray defines it as "the quality of being pleasant or agreeable; of places, their situation, aspect, climate, &c." It is also used to denote something which renders a place pleasant.⁴ The Act of 1909 appears to use it in the dictionary sense of a quality to be secured. The Local Government Board have apparently used it in their Regulations as synonymous with "success," for they use the expression persons "interested in the *amenity* of the *proposed scheme*."⁵

It will be some guide to the meaning of the word in this Act to consider the compensation cases where "loss of amenity" is alleged to have been suffered,⁶ and the cases where actions have been brought to restrain the

(1) See sub-section (7) of the present section. As to the determination of matters by the Board, see section 62, *post*, p. 108.

(2) As to the effect of provisions making decisions of Government Departments "final," see *Murphy v. Regem* (L. R. 1911 A. C. 401), and *Rex (Gornley) v. Local Government Board for Ireland* (1911, K. B. D. in Ireland, 45 Ir. L. T. Jo. 312), which related to old age pensions; *Rex (Considine) v. Fermanagh County Justices* (1910, K. B. D. in Ireland, 44 Ir. L. T. 188), which related to surcharge appeals; and *American Thread Co. v. Joyce* (1912, C. A., 106 L. T. 171), which related to the finality of a decision of the General Income Tax Commissioners. See also footnote (1), *post*, p. 112.

(3) "Places which were so *full of amenity* that melancholy itself could not but change its humour as it gazed" (Bancroft).

(4) "The suburbs are large, the prospects sweete, *with other amenities*, not omitting the flower gardens" (Evelyn, *Diary*, Oct. 17, 1671).

(5) See Regulations, Articles XII. (c) and XXIII., *post*, pp. 155, 162. See also the observations of the Rt. Hon. John Burns noted *ante*, p. 38.

(6) See, *e.g.*, in *re Ned's Point Battery* (K. B. D. in Ireland, 1903, Ir. K. B. 196), and particularly *per* Gibson, J., at pp. 198-200: "The construction and use of a camp may depreciate the value of adjoining parts of the estate; for such depreciation from loss of privacy, *loss of amenity*, vulgarisation of the neighbourhood, and the natural concomitants of a camp, compensation may

doing of something which will destroy the "amenity" of the plaintiff's property, e.g., the smallpox hospital cases,¹ the urinal cases,² and the lamp-post or electric standard cases.³

It would appear to be possible, therefore, that local authorities will be able to justify, as being covered by the word "amenity," the inclusion in their town planning schemes of clauses relating to the planting of trees, the provision of gardens to houses (back and front), open spaces, and parks, the enforcement of architectural requirements resulting in the formation of streets and erection of buildings pleasing to the eye, the exclusion of obnoxious traffic, such as motor omnibuses, from certain streets, and the prohibition of disfiguring advertisements in specified places.⁴

The presence of the word "convenience" will enable the promoters of schemes, e.g., to widen narrow and straighten crooked roads, and to vary or remove existing restrictive covenants. The use of the expression "*laying out of the land*" shows that a plan is to be prepared for the area for which the scheme is required; and the words "*and use of*" indicate that the user of the land will be restricted in accordance with the provisions contained in the scheme, e.g., one portion for factories, another for residential property, and another for shops, &c. The expression "*any neighbouring lands*" indicates that the laying out and use of land neighbouring that included in the scheme is to be considered. Probably some provision might be inserted in a scheme providing that neighbouring land not included in the scheme shall not be developed in a way detrimental to the land included in the scheme, or even specifically that when it is developed a road so many feet wide shall be made connecting an existing road in the neighbouring land with an existing road in the land included in the scheme; though the normal way of securing this will be to schedule the neighbouring land in the scheme.

A Primâ Facie Case.

Having settled the question of the classes of land for which a scheme may be prepared, the authority must attend to the provision in subsection (2) of the present section, which requires them to "satisfy the

be assessed. . . . If *injury to amenity and privacy* can be considered, I do not see why sentimental injury should be excluded where the depreciation from that cause is real."

(1) *Metropolitan Asylum Managers v. Hill* (1881, H. L., L. R. 6 A. C. 193), and *Bendelow v. Wortley Guardians* (1887, Ch. D., 57 L. J. Ch. 762), where the plaintiffs were successful; and *Attorney-General v. Manchester Corporation* (Ch. D., L. R. 1893, 2 Ch. 87), and *Attorney-General v. Nottingham Corporation* (Ch. D., L. R. 1904, 1 Ch. 673), where the plaintiffs were unsuccessful.

(2) *Vernon v. St. James, Westminster, Vestry* (1879, C. A., L. R. 16 Ch. D. 449), *Sellers v. Matlock Bath Local Board* (1885, Q. B. D., L. R. 14 Q. B. D. 928), *Parish v. London City Corporation* (1901, Ch. D., 67 J. P. 55), and *Leyman v. Hesse U. D. C.* (1902, Ch. D., 67 J. P. 56), where the plaintiffs were successful; and *Biddulph v. St. George, Hanover Square, Vestry* (1863, C. A., 33 L. J. Ch. 411), *Mason v. Wallasey Local Board* (1876, Ch. D., 58 J. P. 477), *Spicer v. Margate Corporation* (1880, Ch. D., 69 L. T. Jo. 329, 24 Sol. J. 821), *Pethick v. Plymouth Corporation* (1894, Ch. D., 58 J. P. 476), and *Mayo v. Seaton U. D. C.* (1904, Ch. D., 68 J. P. 7), where the plaintiffs were unsuccessful.

(3) *Andrews v. Abertillery U. D. C.* (C. A., L. R. 1911, 2 Ch. 398), where the plaintiff was successful; and *Goldberg & Sons v. Liverpool Corporation* (1900, C. A., 82 L. T. 362); and *Chaplin & Co. v. Westminster City Corporation* (Ch. D., L. R. 1901, 2 Ch. 329), where the plaintiffs were unsuccessful.

(4) Claims for compensation barred under section 59 (2) of the Act are in regard to provisions which "with a view to securing the *amenity* of the area . . . prescribe the space about buildings or limit" their number or prescribe their height or character (see *post*, p. 98).

Board that there is a *prima facie* case for making such a scheme.”¹ Where their application is for authority to adopt a scheme, they must consider whether they will apply to the Board for authority “to adopt with or without any modifications any such scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme.”²

With regard to the *prima facie* case, which will no doubt have to be made out to the satisfaction of the Board whether the application is for authority to prepare, or merely to adopt, a scheme, so far as is known the Local Government Board have only refused one application up to the present time, and this was in a case where a very large portion of the land was Government property, and the department concerned objected to the scheme.³

In many cases the Board have granted authority to prepare a scheme for a portion only of the area in respect of which application has been made.⁴

It is clear that, to establish a *prima facie* case, the local authority must satisfy the Board on the following points:—(a) That the area, or the main portion of it, is “land in course of development, or likely to be used for building purposes”; (b) that their “general object” is to secure “proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands”; and (c) that these objects will be attained by the preparation and carrying out of a town planning scheme.

Improvement Schemes.

The provision in sub-section (3) of the present section for the “demolition or alteration of any buildings . . . so far as may be necessary for carrying the scheme into effect,” would authorise the inclusion in a town planning scheme of any provisions usually contained in an “improvement” or “reconstruction” scheme under the housing portions of the Housing of the Working Classes Acts, and this subject is dealt with separately.⁵

“Laid before each House of Parliament.”

The “prescribed manner” in which a person or authority may object to a scheme, so as to make it necessary to lay the draft before Parliament under sub-section (4) of the present section, will be found in the Regulations.⁶

Variation or Revocation of Schemes.

As to the variation of schemes, sub-section (6) of the present section, which provides that a scheme “may be varied or revoked by a subsequent scheme,” would appear to refer to variations after a scheme has been finally approved and is in force. With regard to the variation of schemes before their final approval, it must be remembered that, when once Map No. 1 has been deposited, the area to be dealt with in the scheme cannot

(1) See Introduction, Chapter V., *ante*, p. 20.

(2) See Introduction, Chapter XIII., *ante*, p. 53.

(3) See Regulations, Article VIII. (g), *post*, p. 153, and Precedent No. 15 and Note, *post*, p. 200.

(4) As to the grounds on which such portions have been excluded by the Board, see Introduction, Chapter XV., *ante*, p. 63.

(5) See Part VI., *post*, pp. 256 *et seq.*

(6) See Article XXVI., *post*, p. 164, and Precedent No. 18, *post*, p. 206. See also the Note to section 55 on “Suspension of Acts,” *post*, p. 83.

be enlarged without commencing *de novo*, though it may be diminished by the Local Government Board,¹ and that, when once authority to prepare or adopt a scheme has been given, the area cannot be either enlarged or diminished without commencing *de novo*; though in a proper case, and where the proposed enlargement or diminution is not extensive, the Board will no doubt be prepared to dispense with some of the requirements of the Regulations.² With regard to the variation of schemes after their final approval, no express provision is made in the Act or Regulations as to obtaining authority to prepare a new scheme for the purpose of varying an earlier scheme, though such new scheme has to be "prepared or adopted and approved" in the same way as an original scheme, and it would seem that no such authority is necessary, provided that the area is not altered by the proposed new scheme.

As to the revocation of the whole of a scheme which is in force, as distinguished from the revocation of a part (which would appear to come within the term "variation"), this may only be done at the instance of the "responsible authority"³ or a person appearing to the Board to be "interested," and where the "special circumstances of the case" require that it shall be revoked.⁴ Instances of special circumstances, which would justify the complete revocation of a scheme, would be that the whole area included in the scheme had in fact been developed as laid down in the scheme, or that the proposed variation is so great that a new scheme in place of the old one would be preferable to a complicated amending scheme. Special provision is made as to claims for compensation when a scheme is revoked,⁵ but there is no such provision when a scheme is merely varied.

Contents of
town planning
schemes.

55. (1) The Local Government Board may prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the Fourth Schedule to this Act, and the general provisions, or set of general provisions appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme as approved by the Board for the variation or exclusion of any of those provisions.

(2) Special provisions shall in addition be inserted in every town planning scheme defining in such manner as may be prescribed by regulations under this Part of this Act the area to which the scheme is to apply, and the

(1) See Regulations, Article XII. (b), *post*, p. 155.

(2) Under Article XXXIV., *post*, p. 167.

(3) As to the "responsible authority," see sections 55 (2) (3), and 57 (1), *post*, pp. 80, 87, and Introduction, Chapter XII., *ante*, p. 49.

(4) See sub-section (6) of the present section.

(5) See section 58 (6), *post*, p. 90.

authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority (in this part of this Act referred to as the responsible authority), and providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions, and for suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme :

Provided that, where the scheme contains provisions suspending any enactment contained in a public general Act, the scheme shall not come into force unless a draft thereof has been laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and, if either of those Houses before the expiration of those forty days presents an Address to His Majesty against the proposed suspension no further proceedings shall be taken on the draft, without prejudice to the making of any new scheme.

(3) Where land included in a town planning scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority and for certain purposes another local authority, or a joint body constituted specially for the purpose by the scheme, and all necessary provisions may be made by the scheme for constituting the joint body and giving them the necessary powers and duties :

Provided that, except with the consent of the London County Council, no other local authority shall, as respects any land in the county of London, prepare or be responsible for enforcing the observance of a town planning scheme under this Part of this Act, or for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority.

NOTE.

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General Provisions.

The Local Government Board have not yet prescribed any general provisions under sub-section (1) of the present section. They are "giving consideration to the subject," but "will not be able to issue them immediately," "as they are satisfied that it would not at the present time be prudent to attempt to lay down a code of provisions for insertion in schemes."¹ At the present time, therefore, local authorities must prepare the whole of their schemes themselves, but need not divide them into general and special provisions. The general provisions when made will probably be like Table A under the Companies (Consolidation) Act, 1908, and local authorities will be entitled to adopt as much or as little of them as they wish, subject always to the approval of the Local Government Board. But apart from some express clause in the scheme to the contrary, they will be automatically incorporated in every scheme. General provisions, when made, must be laid before Parliament.²

Special Provisions.

These are intended to meet the requirements of particular districts. The Memorandum of the Board of December 31, 1909, paraphrases sub-section (2) of the present section.³

For Model Clauses for a town planning scheme, see Part V. of the present work.⁴

The Responsible Authority.

As to the enforcement of a scheme by the "responsible authority," see the Introduction to the present work.⁵

Sub-section (3) of the present section makes no reference to the authority who are to be responsible for a scheme prepared by a local authority for an area entirely within its own district. In all ordinary cases that local authority would be the responsible authority, but possibly the absence of any express provision to this effect might enable the Local Government Board to make the council of some neighbouring borough or district the responsible authority in a case where they have had to exercise the powers of section 61⁶ upon an unwilling authority. The county council (except near London) could not be made the responsible authority, for such a council is not a "local authority" for the purposes of Part II. of this Act.⁷

A metropolitan borough council cannot be or become a "responsible authority," except, apparently, with the consent of the London County Council,⁸ though such a council could clearly take part as an objector to any scheme which affected its borough.

(1) See the Memorandum of November 9, 1912, referred to in Chapter XV., *ante*, p. 62.
 (2) See section 64, *post*, p. 113. Schedule IV. will be found *post*, p. 130.
 (3) See paragraphs 10 to 11, *post*, pp. 136, 137.
 (4) *Post*, pp. 232 *et seq.*
 (5) *Ante*, p. 49.
 (6) *Post*, p. 107.
 (7) See sections 65 and 66, *post*, pp. 114, 115.
 (8) See sub-section (3) of the present section, and section 66 (1), *post*, p. 115.

The "joint body" which may be constituted the responsible authority under sub-section (3) of the present section, need not be a body with a perpetual succession and a common seal, such as a "joint board" constituted under the Public Health Act, 1875,¹ but would probably be a joint committee such as that provided for in the Public Libraries (Amendment) Act, 1893.² The committee would probably need a clerk, and, having regard to a recent decision,³ no member of any of the constituent authorities should take the post if it is a paid office.

Suspension of Acts.

Under sub-section (2) of the present section, any Act of Parliament, general, local, or personal, in force in the area may be suspended by a town planning scheme "so far as necessary for carrying out" the scheme. This provision will be found useful by local authorities that regret having adopted, *e.g.*, section 19 of the Public Health Acts Amendment Act, 1890 (as to "single private drains"), or section 20 of the Private Street Works Act, 1892 (as to compulsory adoption of streets after they have been made up under that Act). These adoptive Acts, though local in the sense of only being in force in certain localities, are not "local Acts" which can be dealt with by provisional order,⁴ and, unlike the Lighting and Watching Act, 1833,⁵ they contain no provision enabling local authorities to abandon them when once adopted, so that if this is desired it must be done by means of a local Act, or, now, by a town planning scheme.

When it is proposed to suspend any Act of Parliament, the Local Government Board require certain additional information.⁶

If it is sought to suspend a "public general Act," the proviso to sub-section (2) of the present section requires that a draft of the scheme be laid before each House of Parliament. This would not be necessary in the case of a private or personal Act,⁷ but the position of local Acts is not altogether clear. Every Act confirming a provisional order made under the Public Health Acts is to be "deemed to be a public general Act,"⁸ and the proviso would probably apply to a local Act of that kind. With regard to other local Acts, the Interpretation Act, 1889,⁹ enacts that every Act passed after 1850 is to be a "public Act," and "judicially noticed as such," and in that Act the term "Act" includes local, personal, and private Acts; but the adjective "general" was no doubt purposely omitted. Unless, therefore, a local Act confirms a provisional order under the Public Health Acts, or itself contains a provision that it is to be deemed to be a "public general Act," it would appear that a scheme suspending it need not be laid before Parliament under this proviso.

Assuming that the scheme must be laid before Parliament, the proviso requires that it be so laid for a period of at least forty days. Section 54 (4)

(1) See 38 & 39 Vict. c. 55, s. 280.

(2) See 56 Vict. c. 11, s. 4.

(3) *Greville Smith v. Tomlin* (K. B. D., L. R. 1911, 2 K. B. 9).

(4) Under section 303 of the Public Health Act, 1875.

(5) 3 & 4 Will. IV. c. 90, see section 15.

(6) See Regulations, Articles IX. (b) and XXI. (vii.) and (viii.), *post*, pp. 154, 161.

(7) *E.g.* Lord Radnor's Act of 1825 (6 Geo. IV. c. xxvii.), which formed the subject of a recent private street works case (*Brockman v. Folkestone Corporation*, 1912, C. A., 10 L. G. R. 856).

(8) See section 297 (8) of the Public Health Act, 1875.

(9) 52 and 53 Vict. c. 63, see sections 9 and 39.

requires that where an objection is made in the prescribed manner,¹ a draft of the Local Government Board Order approving the scheme must be similarly laid before Parliament for at least thirty days.² It would appear that where such an objection is made, and the scheme suspends a public general Act, these two periods may run concurrently, provided that the draft scheme and the draft Order of the Board are both laid before Parliament.

The presentation of an Address to His Majesty³ before the expiration of the prescribed period itself operates as a bar not only to the proposed suspension of the Act, but also to the taking of "further proceedings on the draft," though this is "without prejudice to the making of any new scheme."

If the objection contained in the Address is subsequently overcome, probably the Local Government Board would dispense⁴ with most of the preliminary steps in the case of any new scheme, provided that it is similar to the one against which the Address was presented, but does not contain provisions similar to those to which exception was taken in the Address.

Suspension of Byelaws.

A scheme may also suspend "byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area," and when this is done certain information has to be supplied to the Board.⁵

This provision would appear to authorise the suspension of regulations made by the Local Government Board,⁶ and other Government Departments,⁷ and such officials as the Metropolitan Police Commissioner,⁸ as well as the local authority's own byelaws⁹ and regulations.¹⁰

This power to suspend byelaws will be found both by local authorities and owners to be one of the most useful provisions of the Act. Hitherto it has been illegal to waive byelaws,¹¹ though in practice it is often done with regard to unimportant details. The Local Government Board have declined to sanction byelaws giving discretionary powers to the local authority or their officers,¹² though it has been held that a byelaw as to the construction of buildings ought to contain provisions under which the hard and fast rules which it lays down may be dispensed with

(1) See Regulations, Article XXVI., *post*, p. 164.

(2) See *ante*, p. 74.

(3) As to Addresses to His Majesty from the Houses of Parliament, see Lord Halsbury's *Laws of England* vol. xxi., title "Parliament," pp. 802-804.

(4) Under Article XXXIV. of the Regulations, *post*, p. 167.

(5) See Regulations, Articles IX. (b) and XXI. (viii.), *post*, pp. 154, 160.

(6) *E.g.* the Heavy Motor Car Order, 1904, Articles II., III., IV., and XI. of which received an unwelcomed construction in *Pilgrim v. Simmonds* (1911, K. B. D., 9 L. G. R. 966).

(7) *E.g.* the Commons Regulations of the Board of Agriculture, dated May 1, 1900.

(8) *E.g.* as to street traffic in the Metropolitan Police District under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), ss. 51, 52, and the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), ss. 4-16.

(9) *E.g.* as to the width and construction of new streets under section 157 (1) of the Public Health Act, 1875.

(10) *E.g.* as to the mode in which communications between drains and sewers are to be made under section 21 of the Public Health Act, 1875.

(11) *Yabbicom v. King* (Q. B. D., L. R. 1899, 1 Q. B. 444).

(12) See their Circular of July 25, 1877, quoted in the Note to *Pomeroy's Case* in the *Local Government Reports* (*post*, p. 85).

in the case of buildings of an exceptional character to which those rules are unsuited.¹ Byelaws have, however, been sanctioned giving latitude to the persons who have to comply with them, and such a byelaw is not necessarily invalid for "uncertainty."²

Where a byelaw does not contain a provision under which it may be dispensed with by the local authority in exceptional cases, and a prosecution is instituted under it in an exceptional case, the justices may not treat the byelaw as being "unreasonable" and therefore invalid, but may dismiss the summons as being in respect of a "trifling offence."³

The Board have also not made a practice of sanctioning one set of byelaws for one part of a local authority's district and another set for another part of the district, though they have done this recently.⁴

These difficulties are now overcome in areas for which town planning schemes are made. If the required byelaws are, as they should be, incorporated in the scheme, they cannot be questioned on the ground that they are *ultra vires*⁵ unreasonable⁶ or uncertain,⁷ as the scheme has the force of an Act of Parliament.⁸

With regard to the approval of plans after a scheme has come into

(1) See *Pomeroy's Case* (*infra*, foot-note (3)).

(2) *E.g.* a byelaw providing that the channel to the carriage-way of a new street must be constructed of certain specified materials "or otherwise in a suitable manner and with suitable materials" (see *Leyton U. D. C. v. Chew*, K. B. D., L. R. 1907, 2 K. B. 283).

(3) See *Pomeroy v. Malvern U. D. C.* (1903, K. B. D., 1 L. G. R. 825), as to the walls of a billiard room in the country. The power of justices to dismiss a summons on the ground that the offence is "trifling" is now contained in section 1 of the Probation of Offenders Act, 1907 (7 Edw. VII. c. 17), which repeals and re-enacts in a different form section 16 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

(4) In the urban district of The Maldens and Coombe with regard to new streets, these byelaws are set out in full in the *Sanitary Record* for October 11, 1912, at pp. 352, 353.

The byelaw which gives the new regulations a partial operation in the district is in the following form: "2 (1). From and after the date of the confirmation of these Byelaws the Byelaws numbered . . . inclusive in the Byelaws of 1904 and the Byelaws of 1910 shall be repealed so far as they apply to that part of the District which is bounded by an imaginary line commencing at the point of intersection of the eastern boundary of the District and the road known as Coombe Lane and running thence in a westerly direction along the centre of the said road until it intersects the western boundary of the District and from such point of intersection following the said boundary northward until it intersects the road known as Kingston Hill and from such point of intersection continuing along the centre of the said road known as Kingston Hill and London and Portsmouth Road until it intersects the eastern boundary of the District and from such last-named point of intersection continuing southwards to the point of commencement. (2) The following Byelaws shall be substituted for the Byelaws repealed by the foregoing paragraph and shall apply to that part of the District in the said paragraph described." The new regulations are to be "construed as one with the Byelaws of 1904."

(5) As was held in *Parker v. Bournemouth Corporation* (1902, K. B. D., 66 J. P. 440); and see *Williams v. Weston-super-Mare U. D. C.* (1910, C. A., 8 L. G. R. 843).

(6) As was held in *Moorman v. Tordoff* (1908, K. B. D., 6 L. G. R. 360); and see *Collins v. Greenwood* (1910, K. B. D., 8 L. G. R. 702).

(7) As was held in *Nash v. Finlay* (1901, K. B. D., 66 J. P. 183); and see *Leyton U. D. C. v. Chew*, *supra*, foot-note (2)).

(8) See section 54 (5) and Note, *ante*, pp. 75, 76; and Model Clause No. 49, *post*, p. 255.

force, the same considerations will apply as apply now, unless the matter is specially dealt with in the scheme. Thus, if a plan complies with all the requirements of the scheme, and the ordinary byelaws of the local authority, and the statutes affecting the proposed work,¹ the authority could be compelled to approve the plan² without attaching any condition to such approval;³ and if it fails to comply with any of those requirements, byelaws, or statutes, the approval of the plan would be invalid.⁴

Moreover, an agreement for which the sole consideration is the approval of a plan which ought to be approved would be unenforceable unless made by deed or in pursuance of a local Act,⁵ and an agreement based on an invalid approval of a plan would be *ultra vires*.⁶

It is, however, open to a local authority to consider whether the state of things existing at the time of the application for their approval is such as to render the carrying out of the proposed works "impracticable,"⁶ and the Court will not compel a local authority to approve plans *bonâ fide* disapproved on some relevant ground.⁷

As to the advisability of suspending byelaws by means of town planning schemes, see the recent circular of the Local Government Board⁸ on this subject.

56. (1) The Local Government Board may make regulations for regulating generally the procedure to be adopted with respect to applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme, obtaining the approval of the Board to a scheme so prepared or adopted, and any inquiries, reports, notices, or other matters required in connexion with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof.

(2) Provision shall be made by those regulations—

(a) for securing co-operation on the part of the local

(1) *E.g.* the Public Health (Buildings in Streets) Act, 1888, section 3, as to which see Model Clause No. 17 and Note, *post*, pp. 241, 242.

(2) *Rex v. Beahill Corporation* (1911, K. B. D., 9 L. G. R. 640); *Rex v. Preston R. D. C.* (1911, K. B. D., 10 L. G. R. 238); and see *Rex v. West Ham B. C.* (1911 K. B. D.) (Glen's *Loc. Gov. Case Law*, 1911, pp. 206, 207), where a plan was disapproved on the ground that the local authority were contemplating an application for authority to prepare a town plan.

(3) *E.g.* that the street be gratuitously widened—see *Rex v. Newcastle-upon-Tyne Corporation* (1912 K. B. D.) (Glen's *Loc. Gov. Case Law*, 1912, title "Public Health") applying *Southwark B. C. v. Partington Advertising Co.* (1905, K. B. D., 3 L. G. R. 505).

(4) *Yabbicom v. King* (*ante*, p. 84, foot-note (11)).

(5) As in *Crane v. Wallasey Corporation* (1912, K. B. D., 10 L. G. R. 523).

(6) *Rex v. Tynemouth Corporation* (1911, K. B. D., 9 L. G. R. 953). Here the owner of the field on which it was proposed to build was under covenant not to build on any portion of the field, and the disapproval was held justified.

(7) *E.g.* that there may be a contravention of the Public Health (Buildings in Streets) Act, 1888, section 3—see *Rex v. Chiswick U. D. C.* (1908, K. B. D., 6 L. G. R. 605).

(8) Dated August 29, 1912, and set out in 76 J. P. Journal, pp. 425, 426.

authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the regulations;

- (b) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land; and
- (c) for dealing with the other matters mentioned in the Fifth Schedule to this Act.

NOTE.

Procedure Regulations.

These have been made by the Local Government Boards for England¹ and Scotland,² and deal with all the matters mentioned in the present section³ except "the carrying out of the scheme" and "enforcing the observance of the provisions thereof"⁴ and "inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme."⁵

The Board "propose to defer the making of any Regulations under these heads until they are in a better position for determining the precise Regulations which may be desirable."⁶

The Regulations have been carefully epitomised in the Introduction to the present work. For the arrangement of the Articles of the Regulations see the Table of Contents; and for a Table giving the pages in the present work on which they will be found set out or referred to, see the "Table of Statutes and Regulations" which follows the Table of Contents.

57. (1) The responsible authority may at any time, after giving such notice as may be provided by a town planning scheme and in accordance with the provisions of the scheme

Power to enforce scheme.

- (a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or

(1) See *post*, pp. 149 *et seq.*

(2) See Introduction Chapter XVI., *ante*, p. 67.

(3) And those mentioned in section 54 (4), *ante*, p. 74.

(4) See sub-section (1) of the present section, *supra*.

(5) See *ibid.* and sub-section (2) (c), *supra*, and Schedule V. (3) (b), *post*, p. 131.

(6) See Circular of May 3, 1910, *post*, p. 145.

(b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a responsible authority under this section may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the Local Government Board, and shall, unless the parties otherwise agree, be determined by the Board as arbitrators, and the decision of the Board shall be final and conclusive and binding on all persons.

NOTE.

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Pulling Down Buildings.

Suggestions as to the use to be made of the present section will be found in the Model Clauses in Part V. of this work.¹

In their Memorandum of December 31, 1909, the Local Government Board point out, with regard to sub-clause (a), that needless expense might be involved if existing contravening buildings are pulled down immediately after a scheme has been approved, for the contemplated development may not take place at once.²

As to claims for compensation in respect of the pulling down of existing buildings under the present section, see the next section and Note.

Execution of Work on Default.

The Board also point out, with regard to sub-clause (b), that the power to execute works "is limited to works which the scheme expressly makes it the duty of some person to execute," and does not extend to "works which it is made a person's duty to execute otherwise than by the scheme, or works which the scheme merely requires to be executed in a particular position, or in a particular way if executed at all."³ The expression "any person" in the clause apparently means some particular class of persons specified in the scheme; it can hardly be confined to named individuals. The expression "duty under the scheme" clearly

(1) *Post*, pp. 232 *et seq.*

(2) Par. 15, *post*, p. 138.

(3) Par. 14, *post*, pp. 137, 138.

indicates a compulsory work, as distinguished from an optional work, and one expressly mentioned in the scheme.

Recovery of Expenses.

The scheme might provide that such expenses are to be a charge on the property.¹ It might also provide alternatively that the question is to be brought before the justices at petty sessions, before whom so many expenses of a similar character are already recoverable. Their jurisdiction will be somewhat limited so far as expenses in connexion with existing buildings are concerned (sub-clause (a)) for the provision in sub-section (3), as to the settlement by the Local Government Board of any question as to whether such a building contravenes the scheme, will not leave much for them to decide beyond the amount to be recovered; though they will be able to decide any point in connexion with unexecuted work (sub-clause (b)).

Determination of Questions.

As to the finality of decisions by Government departments, see the cases already mentioned.² As to the procedure, &c., for the settlement of these and other questions by the Local Government Board, see section 62 and Note.³ In their Memorandum of December 31, 1909, the Board intimate⁴ that they will usually appoint an arbitrator to act for them under the present section.

58. (1) Any person whose property is injuriously affected by the making of a town planning scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Local Government Board, be entitled to

Compensation in respect of property injuriously affected by scheme, &c.

(1) See Schedule IV. (19), *post*, p. 130, and Model Clauses 37 and 38, *post*, pp. 251, 252.

As to such charges, see *Hornsey Local Board v. Monarch Building Society* (1889, C. A., L. R. 24 Q. B. D. 1), time for enforcing charge is 12 years from completion of works; *Tottenham Local Board v. Rowell* (1880, C. A., L. R., 15 Ch. D. 378, see p. 394), as to enforcing payment of instalments; *Stock v. Meakin* (C. A., L. R. 1900, 1 Ch. D. 683), as to indemnities by vendors of property subject to charge, and interest; *Tottenham U. D. C. v. Smith* (Ch. D., *Times*, March 6, 1897, p. 16), as to appointment of receiver; *Maguire v. Leigh-on-Sea U. D. C.* (1906, Ch. D., 4 L. G. R. 979), declaration of non-existence of charge granted; *West Ham Corporation v. Sharp* (K. B. D., L. R. 1907, 1 K. B. 445), declaration of existence of charge granted; *Portsmouth Corporation v. Hall* (1907, C. A., 6 L. G. R. 16), declaration of existence of charge refused; *Pontypridd U. D. C. v. Jones* (1911, Ch. D., 75 J. P. 345), as to service of demand and other defences; *Reading Corporation v. Fewster* (1910, Ch. D., 55 Sol. J. & W. R. 125), as to trial in county court; and *Re Pizzi, Scrivener v. Aldridge* (1906, Ch. D., L. R. 1907, 1 Ch. 67), as to power of tenant for life to keep charge alive for his own benefit.

(2) In the Note to Section 54, *ante*, p. 77, foot-note (2).

(3) *Post*, p. 108.

(4) See par. 18, *post*, p. 138.

obtain compensation in respect thereof from the responsible authority.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the time at which the application for authority to prepare the scheme was made, or after such other time as the Local Government Board may fix for the purpose :

Provided that this provision shall not apply as respects any work done before the date of the approval of the scheme, for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made.

(3) Where, by the making of any town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Local Government Board), shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.

(4) Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, shall be determined by the arbitration of a single arbitrator appointed by the Local Government Board, unless the parties agree on some other method of determination.

(5) Any amount due under this section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt.

(6) Where a town planning scheme is revoked by an order of the Local Government Board under this Act, any

person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation in accordance with this section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme.

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"Any Person."

Any person, whether his property is included in the area or not, may claim compensation if it is injuriously affected by the making of the scheme, and he sends in his claim within the proper time. For a summary of the limitations imposed by the Act upon the right to claim compensation, see the Introduction.¹

"Whose Property."

The word "property" is the "most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have."² But in this connexion it obviously bears a restricted meaning, namely, property of such a nature that it is capable of being injuriously affected by the making of a town planning scheme. If, however, a claimant can show that financial loss or diminished enjoyment has resulted to him in his capacity of owner or occupier or possessor of property, as distinguished from his capacity as a mere member of the public,³ it is difficult to see any legal answer to his claim. "Goodwill" is "property" for the purposes of the Stamp Acts,⁴ and there does not appear to be any good reason for excluding goodwill in the present connexion.⁵

The following injuries would, it is conceived, be instances of injuries to "property" within the meaning of the present section, though some have been held not to be injuries to an "interest in land" in respect of which compensation can be claimed under the Lands Clauses Acts:—Depriving a building site of its frontage to a road;⁶ dividing such a site so as to diminish its value for building purposes;⁷ destroying an ease-

(1) Chapter XI., *ante*, pp. 45–47.

(2) *Per* Langdale, M. R., in *Jones v. Skinner* (1835, Ct. of Ch., 5 L. J. Ch. (N.S.) at p. 90). The definition of the term in section 100 of the Local Government Act, 1888, is clearly too wide for this purpose.

(3) See Cases cited *infra* under heading "Injuriously affected."

(4) See *per* Lord Esher, M. R., in *Inland Revenue Commissioners v. Angus* (1889, C. A., L. R. 23 Q. B. D. at p. 590).

(5) See also *Ricket's Case*, *infra*.

(6) As to "potential value," see *per* Cockburn, C. J., in *Reg. v. Brown* (1867, L. R. 2 Q. B. 630), and *Streatham Estate Co. v. Public Works Commissioners* (1888, Q. B. D., 52 J. P. 615).

(7) As to the assessment of compensation on the "reinstatement" principle, see *London School Board v. South Eastern Railway Co.* (1887, C. A., 3 T. L. R. 710).

ment even temporarily;¹ destroying a licence;² injuring sporting rights;³ causing the loss of the benefit of restrictive covenants;⁴ causing the loss of options for (though probably not mere expectations of) renewal of leases;⁵ and causing the determination of leases, in pursuance of options which have been exercised in consequence of the advent of a town planning scheme.⁶

“Is Injurious Affected.”

While “injuriously” for this purpose does not mean “wrongfully,” but “hurtfully” or “damnously,”⁷ it will probably be held that, in order to give rise to a claim for compensation, the act which does the injury must, as has been held with regard to other statutes where this expression is used,⁸ be one which would have been “actionable” apart from the statute or, in this case, scheme.⁹ Where an expression, which is used in statutes passed many years ago, has been frequently interpreted in a particular way by the Courts, the legislature should, in the absence of an expressed or clearly implied contrary intention, be presumed to have used it in the sense judicially attached thereto, and not to have introduced a “startling novelty.”¹⁰

If this rule of construction be adopted, and it be borne in mind that this enactment does not require payment of “full” compensation,¹¹ and that certain kinds of injury are expressly excluded by the next section,¹² the following propositions may be urged:—The mere fear of injury which, if it happened, would give a cause of action, would give no right to compensation,¹³ the injury may not be too remote,¹⁴ and the fact that the injury is one from which the public derive inconvenience as well as the claimant will be no bar to the recovery of compensation.¹⁵

(1) See *Ford v. Metropolitan Railway Co.* (1886, C. A., L. R. 17 Q. B. D. 20).

(2) See *Frank Warr & Co. v. London C. C.* (C. A., L. R. 1904, 1 K. B. 713).

(3) As to injuries to such rights, see *Bird v. Great Eastern Railway Co.* (1865, Ct. of C. P., 34 L. J. C. P. 366); *Webber v. Lee* (1882, C. A., L. R. 9 Q. B. D. 315); *Fitzgerald v. Firbank* (1897, C. A., 66 L. J. Ch. 529).

(4) See *Kirby v. Harrogate School Board* (C. A., L. R. 1896, 1 Ch. 437); *Long Eaton Recreation Grounds Co. v. Midland Railway Co.* (C. A., L. R. 1902, 2 K. B. 574); *Re Furness and Willesden U. D. C.* (1905, Ch. D., 70 J. P. 25).

(5) See *Syers v. Metropolitan Board of Works* (1877, C. A., 36 L. T. 277).

(6) See *Reg. v. Poulter* (1887, C. A., L. R. 20 Q. B. D. 132).

(7) *Per* Bramwell, B., in *McCarthy v. Metropolitan Board of Works* (1872, Ex. Ch., L. R. 8 C. P. at pp. 208, 209), afterwards affirmed in *H. L. sub nom. Metropolitan Board of Works v. McCarthy* (1874, L. R. 7 H. L. 243).

(8) *E.g.*, Lands Clauses Act, 1845, s. 68; Railways Clauses Act, 1845, ss. 6, 16.

(9) See the most recent decision on this subject, *Lingke v. Christchurch Cpn.* (1912, C. A., 10 L. G. R. 773), and the numerous cases there cited.

(10) See *per* Lindley, L. J., in *Hornsey Local Board v. Monarch Investment Building Soc.* (1889, C. A., L. R. 24 Q. B. D., at p. 9).

(11) As in section 308 of the Public Health Act, 1875 (see *Lingke's Case, supra*).

(12) Section 59 (1), (2), *post*, p. 97.

(13) See *per* Fry, L. J., in *Reg. v. Poulter* (1887, C. A., L. R. 20 Q. B. D. at p. 140) as to a prospective injury to light.

(14) *Ricket v. Metropolitan Ry. Co.* (1867, L. R. 2 H. L. 175); *Re Clarke and Wandsworth District Board* (1868, Bail Ct., 17 L. T. 549); *Birkenhead Cpn. v. London and N. W. Ry. Co.* (1885, C. A., L. R. 15 Q. B. D. 572); *Sydney Cpn. v. Young* (P. C., L. R. 1898 A. C. 457).

(15) *Beckett v. Midland Ry. Co.* (1867, Ct. of C. P., L. R. 3 C. P. 82), and see *McCarthy's Case, supra*.

“By the Making of a Scheme.”

Compensation can only be claimed in respect of injuries sustained in consequence of something “lawfully” done under the scheme.¹ If the powers conferred by the scheme are exceeded, either by the doing of an unauthorised act or of an authorised act in a negligent or unreasonable manner, the remedy will be by action; and if, while doing an authorised act, sufficient care is not taken to prevent damage, there will be liability both to an action and to a claim for compensation.²

The ordinary rule³ that compensation can only be claimed in respect of injuries sustained through the “construction” of works, as distinguished from their subsequent “user,”⁴ would appear to resemble the rule intended to be laid down by the express provision in the present section that compensation can only be claimed when property is injuriously affected “by the making” of a scheme.⁵

This express provision is difficult to construe, and in order to do so one must, while giving the words their natural or ordinary meaning, “inquire what is the subject matter with respect to which they are used and the object in view.”⁶ With regard to the natural meaning of the word “make,” one of the dictionaries gives, as one of its meanings: “to fashion by action or preparation, bring into condition or order, fit for use or service, arrange, prepare.”⁷

The “object in view” is no doubt to compensate persons who suffer detriment owing to the fact that the local authority have thought fit to engage in a town plan. The subject matter is the altering of the *status quo* and enabling persons and local authorities to do things upon their land which the existing law does not permit. It would seem that if anyone can prove that he has suffered not too remotely from this alteration of the *status quo*, he can claim compensation therefor.

The next section contains two further expressions after “injuriously affected,” namely, “by reason of any provisions contained in a scheme,”⁸ and “by reason of the making of any provisions inserted in” a scheme;⁹ but the present section merely says “by the making” of a scheme.

Clearly the compensation which can be claimed is not confined to injurious affection after the final approval of a scheme, but the difficulty is to say at what moment, during the preparation of a scheme, the scheme commences its “making.”

(1) *Caledonian Ry. Co. v. Colt* (1860, H. L., 3 Macq. 833).

(2) *Roberts v. Charing Cross Ry. Co.* (1903, Ch. D., 87 L. T. 732); *Lewis and Salome v. Charing Cross Ry. Co.* (Ch. D., L. R. 1906, 1 Ch. 508).

(3) Which is sometimes expressly excepted, e.g., in sections 6 and 12 of the Waterworks Clauses Act, 1847, as to which see *Fletcher v. Birkenhead Cpn.* (C. A., L. R. 1907, 1 K. B. 205); and in some modern railway Acts, as to which see *In re London and N. W. Ry. Co. and Reddaway* (1907, K. B. D., 71 J. P. 150).

(4) See *Hammersmith Ry. Co. v. Brand* (1869, L. R. 4 H. L. 171); *Cowper Essex v. Acton Local Board* (1889, L. R. 14 A. C. 153); *Meux's Brewery Co. v. City of London Electric Lighting Co.* (C. A., L. R. 1895, 1 Ch. 287); and *Canadian Pacific Ry. Co. v. Roy* (P. C., L. R. 1902 A. C. 220).

(5) But see *Harding v. Board of Land and Works*, *post*, p. 95.

(6) *Per Lord Blackburn in Direct United States Cable Co. v. Anglo-American Telegraph Co.* (1887, P. C., L. R. 2 A. C. at p. 412). These words were quoted with approval by Lord Atkinson in *London and India Docks Co. v. Thames Steam Tug Co.* (H. L., L. R. 1909 A. C. at p. 23).

(7) Century Dictionary, title “Make,” 5: “Make me savoury meat, such as I love.”—Genesis xxvii. 4.

(8) Section 59 (1) *post*, p. 97.

(9) Section 59 (2) *post*, p. 98.

The first formal step in connexion with the making of a scheme has to be taken two months before authority to prepare or adopt a scheme may even be asked for. That step consists of the service of notices upon all persons and bodies interested in an area which has been previously selected. If a person's property is injuriously affected by reason of the taking of this step, and no further step is taken, it could hardly be said that his property has been injuriously affected by the "making" of a scheme. If, however, the next step is taken and authority to prepare or adopt a scheme is obtained, and the matter is then dropped, it would seem that a person, whose property is injuriously affected by the procedure having been carried so far, could claim compensation.¹ Under the Regulations the scheme has to be to a certain degree crystallised before the necessary authority can be granted, and landowners may quite conceivably alter their positions to a considerable extent in the belief that the scheme will go through, and it would seem as if the "object in view" contemplated that such persons should not have to bear their loss without compensation.

If the scheme is carried through and finally approved, the question as to when the scheme was "made" is not so important, though the existence of this difficulty should make local authorities careful to enter into binding agreements as to compensation with as many likely claimants as possible and at as early a stage as possible.

The Local Government Board Memorandum and Circular² throw little light on this difficulty.

By the "Revocation" of a Scheme.

The provision giving compensation under this head is more restricted in its operation. It only entitles to compensation "any person who has incurred expenditure for the purpose of complying with the scheme . . . in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme."³

Schemes may be "varied or revoked" by subsequent schemes prepared or adopted and approved under the Act, and they may be "revoked" by order of the Local Government Board on the application of the responsible authority or other interested persons.⁴ The present sub-section gives compensation where a scheme is "revoked by an order of the Local Government Board," so that it is arguable that the sub-section is inapplicable where a scheme is "varied or revoked" by a subsequent scheme.

But before a scheme can be varied or revoked it must be "made," and the earlier provision in the present section for compensation in respect of the "making" of a scheme would not, it is submitted, be annulled by this express provision for compensation where a scheme is revoked. The measure of compensation in a case where a scheme has been varied or revoked by a new scheme would be the loss which the claimant has suffered by reason of the making of the new scheme. When a scheme has been revoked by order of the Board and no new scheme is substituted, he will have received his compensation in respect of the making of the revoked scheme, and his further compensation will be limited to that allowed by the present sub-section.

(1) With regard to compensation when an approved scheme has been "revoked," see sub-section (6) of the present section.

(2) See Memorandum of December 31, 1909, par. 19, *post*, p. 138; and Circular of May 3, 1910, *post*, p. 144.

(3) Sub-section (6) of the present section.

(4) Section 54 (6), *ante*, p. 75.

Mode of Claiming Compensation.

Claimants are to "obtain" their compensation "from the responsible authority."¹ The scheme should provide for the manner in which such claims are to be made, for the giving of full particulars of the alleged injuries, and for the treatment of persons under disabilities.² The authority should endeavour to have the majority of these claims disposed of by agreement during the negotiation period, or at any rate before the scheme is finally approved.³ In the case of owners' schemes, this matter should be settled before application is made to the Board for authority to adopt such a scheme.⁴

Time for Claiming Compensation.

There are two limitations upon the time within which these claims may be made: (1) in respect of all claims, "within the time (if any) limited by the scheme, not being less than three months after the date when notice of approval of the scheme is published in the" prescribed manner,⁵ and (2) in respect of claims "on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme," not "after the time at which the application for authority to prepare the scheme was made, or after such other time as the Local Government Board may fix for the purpose."⁶ In the second case, the limitation is not to "apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made."⁶

The first limitation applies whether the scheme was prepared or adopted by the local authority. The second limitation only applies when the scheme was prepared by them. In the case of adopted schemes, the second limitation, if any, must be provided for in the scheme itself.

Betterment.

Any person whose property is increased in value by the making⁷ of a town planning scheme may be compelled by the responsible authority to pay them one-half of the amount of that increase, if they claim payment thereof within the time specified by the scheme.⁸

It may be that full guidance as to the assessment of betterment claims under this provision will be contained in the General Provisions

(1) See sub-section (1) of the present section.

(2) See Model Clause No. 43, *post*, p. 253.

(3) See Circular of May 3, 1910, *post*, pp. 143, 144.

(4) See Circular of May 3, 1910, *post*, p. 143.

(5) Sub-section (1) of the present section.

(6) Sub-section (2) of the present section. In the case of the Dunfermline Scheme the date fixed by the Local Government Board for Scotland under this sub-section was December 12, 1911, the date on which the council published their first advertisement intimating their intention to apply for authority to prepare a scheme (see Introduction, Chapter XVI., *ante*, pp. 69, 70).

(7) The expressions "any person," "property," and "making," have already been dealt with. With regard to the use of the latter expression in connexion with "betterment," in *Harding v. Board of Land and Works* (1886, P. C., L. R. 11 A. C. 208), it was held that the expression "by reason of the making of such works or undertaking" included enhancement from the "use" as well as from the "construction" of a railway.

(8) See sub-section (3) of the present section.

to be issued by the Local Government Board, but until then local authorities and owners must, if possible, agree upon some mode of assessment, and if they cannot agree, must be prepared with arguments in favour of their respective modes which they can lay before the Board's arbitrator.¹

Betterment may be direct² or indirect,³ and where land is concerned the method of ascertaining the "increment value" for the purposes of the Finance Act of 1910⁴ may perhaps be utilised as a guide.

Though it has been held under the Lands Clauses Acts that betterment cannot be "set off" against compensation,⁵ it would appear to be the obvious intention of Parliament in this legislation that the two claims should be set off against each other, and it should be the claim of every local authority that engages in a town planning scheme, especially in those districts where the loan charges are high, to so conduct their negotiations that the two as nearly balance each other as possible.

Determination of Claims.

Questions as to the fact of injurious affection or increase in value, and as to the amount and manner of payment of claims when substantiated, are to be determined by a single Local Government Board arbitrator unless the parties agree to go before some other tribunal.⁶

If the scheme does not provide otherwise, the provisions of the Arbitration Act, 1889,⁷ and the decisions given thereunder, will apply, e.g., as to the power of the arbitrator to administer oaths or take affirmations,⁸ to call for the production of documents,⁹ to state a case for the opinion of the High Court,¹⁰ and to provide for the costs of the

(1) For the method adopted under the Tower Bridge Southern Approach Act, 1895 (58 & 59 Vict. c. cxxx), see *In re London C. C. and City of London Brewery Co.* (Q. B. D., L. R. 1898, 1 Q. B. 387); and see section 38 (8) of the Housing of the Working Classes Act, 1890.

(2) *E.g.*, an owner may save money in the development of his estate by being able to utilise a new road provided under a scheme towards the construction of which, or towards the purchase of the site of which, he has not had to contribute.

(3) *E.g.*, an owner may have the value of his land substantially increased by reason of the proximity of some work provided under a scheme, such as a large park, or main road.

(4) 10 Edw. VII. c. 8. See Lord Halsbury's *Laws of England*, vol. xxiv., title "Revenue," and Konstam's "Land Values."

(5) *Eagle v. Charing Cross Ry. Co.* (1867, Ct. of C. P., L. R. 2 C. P. 638).

(6) Sub-section (4) of the present section. This express provision prevents the application to these questions of the general provisions as to determination of questions contained in section 62, *post*, p. 108. As to what does not amount to an agreement to submit to arbitration, see *Carmichael v. Stowrod Flooring Co.* (1911, C. A., Glen's *Loc. Gov. Case Law*, 1912, title "Contracts.")

(7) 52 & 53 Vict. c. 49. By section 24 of this Act, where a statute prescribes arbitration, the arbitration is to be subject to the provisions of the Act of 1889 relating to references by consent out of court "except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rule or procedure authorised or recognised by that Act." As to the effect of this, see *Re Knight and Tabernacle Building Soc.* (H. L., L. R. 1892 A. C. 298); *Baxter v. Midland Ry. Co.* (1905, K. B. D., 69 J. P. 389).

(8) *Ibid.*, sections 2, 7, Sched. I. (f), (g). Section 22 of this Act, as to false evidence before an arbitrator, is now replaced by section 1 of the Perjury Act, 1911 (1 & 2 Geo. V. c. 6).

(9) *Ibid.*, section 2, Sched. I. (f).

(10) *Ibid.*, sections 7 (b), 19; see *Re Gonty and Manchester, &c., Ry. Co.* (C. A., L. R. 1896, 2 Q. B. 439).

arbitration;¹ as to the power of the Court to secure the attendance of witnesses by *subpoena* or *habeas corpus*, and the production of documents,² to order the statement of a special case on a point of law,³ to extend the time for making an award,⁴ to stay actions pending arbitrations,⁵ to set aside⁶ or remit⁷ an award, to enforce the taking up of an award,⁸ and to remove an arbitrator for misconduct;⁹ as to the right to particulars of the sum awarded;¹⁰ and as to the finality of awards.¹¹

Recovery of Claims.

Both compensation and betterment claims are to be recovered "summarily as a civil debt."¹² There is no provision in this sub-section corresponding to "unless the parties agree on some other method," which is in the preceding sub-section, and so summary proceedings would appear to be the only remedy available,¹³ except in those cases where the scheme provides that betterment is to be a charge on the property.¹⁴

59. (1) Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or so far as the provisions are such as would have been enforceable if they had been contained in byelaws made by the local authority.

Exclusion or limitation of compensation in certain cases.

(1) 52 & 53 Vict. c. 49, section 2, Schedule I. (i).

(2) *Ibid.*, sections 8, 18.

(3) *Ibid.*, section 19; see *Johnston v. Glasgow Corporation* (1912, S. C. (S.) 300; 49 Sc. L. R. 269), where the Court refused to make such order after the Sheriff Substitute had given his decision.

(4) *Ibid.*, sections 2, 9, 10 (2), Schedule I. (c), (d), (e).

(5) *Ibid.*, section 4; see *Freeman & Sons v. Chester R. D. C.* (C. A., L. R. 1911, 1 K. B. 783); *Printing Machinery Co. v. Linotype Co.* (C. A., *Glen's Loc. Gov. Case Law*, 1912, title "Contracts"); *Taylor v. Western Valleys Sewerage Bd.* (1911, C. A., 75 J. P. 409).

(6) *Ibid.*, section 11 (2); see *Rex v. Hewson* (1910, K. B. D. in Ireland, 45 Ir. L. T. 6), where the award of a Local Government Board arbitrator was set aside because he refused to hear tendered evidence of value.

(7) *Ibid.*, section 10 (1) (2).

(8) See *Rex v. Barton and Immingham Light Ry. Co.* (K. B. D., L. R. 1912, 3 K. B. 72).

(9) *Ibid.*, section 11 (1).

(10) See *North British Ry. Co. v. Wilson* (1911, S. C. (S.) 730).

(11) *Ibid.*, section 2, Schedule I. (h); see *Nickels v. Hancock* (1855, Ch. App., 7 De G. M. & G. 300), as to conditional awards; *Manser v. Heaver* (1832, K. B., 3 B. & Ad. 295), as to reserving power to settle future questions; and, as to power of Court to review decisions of arbitrators, *Adcock's Trustee v. Bridge R. D. C.* (1911, K. B. D., 75 J. P. 241), and *North British Ry. Co. v. Newburgh Ry. Co.* (1911, S. C. (S.) 710).

(12) Sub-section (5) of the present section. As to the recovery of civil debts summarily, see the Summary Jurisdiction Act, 1879, section 35, and the Summary Jurisdiction Rules, 1886, Rules 19-29 (*Stone's Justice's Manual*, 1912, pp. 65-67).

(13) See *Barraclough v. Brown* (H. L., L. R. 1897 A. C. 615); and *Pasmore v. Oswaldtwistle U. D. C.* (H. L., L. R. 1898 A. C. 387). But see also *Fraser v. Fear* (C. A., *Glen's Loc. Gov. Case Law*, 1912, title "Practice").

(14) See Schedule IV. (19), *post*, p. 130, and Model Clause No. 38, *post*, p. 252.

(2) Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose.

(3) Where a person is entitled to compensation under this Part of this Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and under that other enactment, and shall not be entitled to any greater compensation under this Act than he would be entitled to under the other enactment.

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If "Contained in Byelaws."

The enactment eliminating compensation in respect of provisions in a scheme which are "such as would have been enforceable if they had been contained in byelaws made by the local authority,"¹ sets up an inquiry as to whether the particular provision in respect of which compensation is claimed "might have been legally inserted in" an ordinary local byelaw made under the general law. It cannot be meant that no compensation is to be paid in respect of any provision which has ever been inserted in any byelaw made by any local authority under any Act general or local.

The general power to make byelaws is contained in the Public Health Act of 1875,² the adoptive Act of 1890,³ and the semi-adoptive Act of 1907,⁴ and it would appear that any provision in a scheme which is to

(1) Sub-section (1) of the present section.

(2) 38 & 39 Vict. c. 55, sections 157, 182-186. As to London, see the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), section 202; the London County Council (General Powers) Act, 1890 (53 & 54 Vict. c. ccxliii), sections 14-19, and Schedule B; the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), sections 16, 19 (4), 39, 50, 66, 94, 114; the London Building Act, 1894 (57 & 58 Vict. c. ccxiii), section 164; and the Metropolis Management Acts Amendment (Byelaws) Act, 1899 (62 & 63 Vict. c. 15), sections 1-3.

(3) 53 & 54 Vict. c. 59, section 23.

(4) 7 Edw. VII. c. 53, sections 24 (chimneys and height of buildings), 51, (offensive trades), 82 (seashore), and 83 (esplanades), and see sections 2 (4), 6, 9.

the same effect as any byelaw that has ever been sanctioned in a similar kind of district under any of those enactments, and not held bad by the Courts,¹ would come within this eliminating clause. It might, however, be contended that, if an adoptive Act is not in force in a district, the local authority of that district could not have made a byelaw only authorised by that Act, and that therefore if they include such a byelaw in their scheme, they must pay compensation notwithstanding the present sub-section.

Amenity Provisions.

The enactment eliminating compensation in respect of provisions in a scheme which (1) are inserted "with a view to securing the amenity" of the whole or part of the area; (2) "prescribe the space about buildings, or limit the number of buildings to be erected, or prescribe the height or character of buildings," and (3) are considered "reasonable for the purpose" by the Local Government Board, "having regard to the nature and situation of the land affected by the provisions" extends the first eliminating provision of the present section to matters some of which could not have found their way into ordinary byelaws.²

The fact that the Local Government Board have sanctioned the inclusion of such provisions in the scheme is not to be taken to mean that the Board consider them reasonable for this purpose.³

The expression "character of buildings" would seem to include not only their character as domestic or non-domestic buildings, or as buildings of the warehouse class, but also their artistic or architectural character.

Dual Compensation.

The third sub-section of the present section allows a person who is entitled to compensation under this Act and also under some other Act to choose which Act he will utilise in order to obtain his compensation, and prevents his obtaining dual compensation. It also limits the amount of compensation which he might otherwise have been able to obtain under this Act to the amount to which the other Act entitles him. If he considers that the other Act entitles him to greater compensation than this Act, the present sub-section will not prevent his endeavouring to obtain such greater compensation.

60. (1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorised to purchase any such land compulsorily in the same manner and subject to the same provisions (including any provision authorising the Local Government Board to give directions as to the payment and application of any purchase money or compensation) as a local authority may purchase or be authorised to purchase land situate in an urban district for the

Acquisition by local authorities of land comprised in a scheme.

(1) See Note under heading "Suspension of Byelaws," *ante*, p. 84.

(2) Sub-section (2) of the present section. As to the meaning of "amenity," see Note to section 54, *ante*, p. 77.

(3) See Memorandum of December 31, 1909, par. 26, *post*, p. 139.

purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sections two and forty-five of this Act.

(2) Where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may purchase or be authorised to purchase that land in the same manner as the responsible authority.

NOTE.

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Power of Local Authorities to Acquire Land.

Under the present section land may be acquired for the purpose of a town planning scheme, either by agreement or compulsorily, (1) anywhere in the area comprised in the scheme, by the "responsible authority"¹ or (2) in so much of that area as is within its own district, by a "local authority"² that is not the responsible authority; and in the latter case the local authority has the same powers with regard to acquiring the land as the responsible authority.

The incorporation of other Acts which is effected by sub-section (1) of the present system is as follows:—The incorporated provision of the Housing of the Working Classes Act, 1890,³ is section 57, which incorporates sections 175 to 178 (inclusive) of the Public Health Act, 1875.⁴ Section 176 of the latter Act expressly incorporates the Lands Clauses Acts, 1845,⁵ 1860,⁶ and 1869,⁷ except the provisions relating to access to the special Act; and to these must be added the Lands Clauses (Empire) Act, 1883,⁸ and the Lands Clauses Taxation of Costs Act, 1895.⁹

(1) As to the meaning of "responsible" authority, see section 55 (2) and Note, *ante*, p. 82.

(2) As to the meaning of "local" authority, see sections 65 and 66, *post*, pp. 114, 115.

(3) 53 & 54 Vict. c. 70.

(4) 38 & 39 Vict. c. 55. So much of section 176 of this Act as relates to compulsory purchase is not incorporated (see section 2 of the present Act, *post*, pp. 102, 104, 168).

(5) 8 & 9 Vict. c. 18. Section 127 of this Act (as to superfluous land) is not incorporated. Probably section 133 (as to making good deficiencies in land tax and poor rate, occasioned by the acquisition of the land and putting it out of rating for the time being), is rendered inapplicable by section 34 of the present Act, which enacts that that section "shall not apply in the case of any lands of which a local authority becomes possessed by virtue of the Housing Acts"; but see the Note to section 76, *post*, p. 122.

(6) 23 & 24 Vict. c. 106.

(7) 32 & 33 Vict. c. 18.

(8) 46 & 47 Vict. c. 15. Section 1 of this Act amends section 28 of the Lands Clauses Act, 1845, by taking away from justices the power to appoint an umpire on default of the parties.

(9) 58 & 59 Vict. c. 11. Section 1 of this Act repeals section 1 of the Lands Clauses Act, 1869, and provides for taxation of the costs of arbitrations, if either party so requires, by a Master of the Supreme Court. See, however, the new "Rules with reference to costs of arbitrations," set out, *post*, pp. 171 *et seq.*

Under Schedule I. (4) of the present Act,¹ an order authorising compulsory purchase must also incorporate, with any necessary adaptations, sections 77 to 85 of the Railways Clauses Consolidation Act, 1845,² subject to the modification that any question of disputed compensation is to be determined by a single Local Government Board arbitrator, who is to be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the arbitration provisions of those Acts are to apply subject to the provisions of Schedule I. of the present Act.

Restrictions upon Acquisition of Land.

As to the acquisition, compulsorily or by agreement, or appropriation to any other purpose, of any land "forming part of any common, open space, or allotment," see section 73 of the present Act;³ and as to the acquisition, compulsorily or by agreement, of land near Royal palaces or parks, see section 74 of the present Act.⁴

"Nothing in the Housing Acts shall authorise the acquisition," *i.e.* compulsorily or by agreement, "for the purposes of those Acts of any land which is the site of an ancient monument or other object of archæological interest."⁵ This restriction would not prevent the land round such a site being acquired for the purposes of a town planning scheme.

Donations of Land.

Section 8 of the present Act provides that "a local authority may accept a donation of land or money or other property for any of the purposes of the Housing Acts, and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888."⁶ Apart from the observation in the note to section 76 of the present Act⁷ as to the meaning of the expression "Housing Acts," this provision would enable local authorities to accept gifts, *inter vivos* or by will, of land for town planning purposes without any necessity to enrol the assurance under the Act of 1888,⁸ subject to the "general provisions" which may be made by the Local Government Board on this subject.⁹ The Local Government Board consider that a formal conveyance should always be executed in such cases.

(1) Set out, *post*, p. 126.

(2) 8 & 9 Vict. c. 20, see footnote (1), *post*, p. 126.

(3) *Post*, p. 118.

(4) *Post*, p. 121.

(5) Section 45 of the present Act, which is made applicable to the acquisition of land for town planning purposes by the last words of sub-section (1) of the present section.

The remainder of section 45 applies to compulsory purchase only, and will be found, *post*, p. 104.

(6) 51 & 52 Vict. c. 42, section 4 (9); and see sections 6 and 7.

(7) *Post*, p. 122.

(8) "Assurance" for this purpose "includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument" (*ibid.*, section 10 (i.)); and "will" in this definition "includes codicil" (*ibid.*, section 10 (ii.)).

The decision of Wills, J. (L. R. 1901, 2 K. B. at p. 875) in *Truro Corporation v. Rowe* (afterwards affirmed on other grounds in C. A., L. R. 1902, 2 K. B. 709), that a lease, dated June 1897, of the foreshore of the estuary of a river, for fourteen years, did not come within the Act of 1888, appears to be erroneous.

(9) See Schedule IV. (14), *post*, p. 130.

Purchase by Agreement.

Those of the provisions of the present Act, and of the Acts incorporated with and amended by the present Act, which relate solely to the purchase of land "by agreement" for town planning purposes, are as follows:—

"A local authority may, with the consent of and subject to any conditions imposed by the Local Government Board, acquire land by agreement for the purposes of" a town planning scheme "notwithstanding that the land is not immediately required for those purposes."¹

The land is to be acquired "in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections 175–178, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the *Commissioners of Sewers*" [now the Common Council of the City] "and London County Council respectively were a local authority in the said sections mentioned."²

The incorporated provisions of the Act of 1875 are as follows:—

Section 175 enacts that "any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange³ any lands,⁴ whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district. Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for

(1) Section 2 (3) of the present Act, as applied to town planning schemes by sub-section (1) of the present section.

(2) Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 57. The last words of this section: "and" [as if] "a Secretary of State were substituted for the Local Government Board," have been repealed by the Statute Law Revision Act, 1908 (8 Edw. VII. c. 49).

Sub-section (3) of this section, as to the appropriation for housing purposes of land which is "for the time being vested in" local authorities "or at their disposal," is not available for town planning purposes.

The general rule on this subject is that land acquired under statutory authority for one purpose cannot be lawfully utilised for another purpose, except temporarily in some way not inconsistent with its being ultimately utilised for the purpose for which it was acquired (see *Attorney-General v. Hanwell U. D. C.*, C. A., L. R. 1900, 2 Ch. 377; *Attorney-General v. Pontypridd U. D. C.*, C. A., L. R. 1906, 2 Ch. 257). If it is not required for its original purpose it must be sold as "superfluous land," see section 175 of the Public Health Act, 1875, quoted *infra*, and Note. But in districts in which section 95 of the Public Health Acts Amendment Act, 1907, is in force, the Local Government Board could authorise the permanent appropriation for town planning purposes of land acquired for some other purpose.

(3) These provisions of the Act of 1875 are only incorporated in section 57 of the Act of 1890 so far as they relate to the "acquiring" of land (see section 2 (3) of the present Act, quoted *supra*), and the provisions of sections 57 and 2 are only made available for the "purchase" of land for town planning purposes (see sub-section (1) of the present section), so that the power to "take on lease sell or exchange" land would not appear to be available for town planning purposes. The marginal note to the present section contains the word "acquisition," but that would not enlarge the scope of the word "purchase" in the section itself (see, as to the use of "marginal notes" in construing statutes, *per* Jessel, M. R., in *Sutton v. Sutton*, 1882, C. A., L. R. 22 Ch. D. at p. 513).

(4) "Lands and premises include messuages, buildings, lands, easements, and hereditaments of any tenure (section 4 of Act of 1875).

which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same,¹ and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate."

The Local Government Board consider that a solicitor clerk to a local authority should not act as solicitor to both parties in connexion with agreements of this kind.

Section 176 enacts that "with respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say), (1) the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845."²

Section 177 enacts that "any local authority may, with the consent of the Local Government Board, let for any term any lands³ which they may possess, as and when they can conveniently spare the same."⁴

Section 178 enacts that "the Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee tenant or occupier), from

(1) The necessity for selling superfluous land will no doubt be dealt with in the General Provisions which will be made by the Local Government Board under Schedule IV. (10) (*post*, p. 130) for "dealing with or disposal of land acquired by the responsible authority or by a local authority."

(2) The remainder of this section relates to compulsory purchase, as to which see *infra*. In addition to the Acts of 1860 and 1869 which are referred to in this section, the Act of 1845 has been amended by Acts of 1883 and 1895 (as to which see footnotes (8) and (9), *ante*, p. 100).

The excluded section 127 of the Act of 1845 relates to the sale of superfluous land, as to which see the preceding footnote.

The clauses of the Act of 1845 headed "with regard to the purchase of lands by agreement" are sections 6 to 15 (set out with notes in *Glen's Public Health*, 13th ed., vol. ii., at pp. 1017-1019). Sections 12 to 15 do not appear to be relevant in this connexion.

Section 6 enacts that "subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they think proper, and of all estates and interests in such lands of what kind soever."

Sections 7 and 8 enable "parties under disability" to "sell and convey" (see *Re Barrow-in-Furness Corporation and Rawlinson's Contract*, Ch. D., L. R. 1903, 1 Ch. 339) and "exercise other powers."

Section 9 provides for ascertaining the "amount of compensation in case of parties under disability" by valuation, and requires such compensation to be deposited in "the bank" (*i.e.*, in England, the Bank of England, see section 3).

Sections 10 and 11, as amended by the Act of 1860 (23 & 24 Vict. c. 106, sections 1, 2), relate to payment by gross sums or rent charges, and to the recovery of such payments.

(3) See footnote (4), *ante*, p. 102.

(4) The Local Government Board have refused to consent to surplus land being let for a term of ninety-nine years.

time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to [His] Majesty [his] heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855,¹ the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of [His] Majesty [his] heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855."

Compulsory Purchase.

Those of the provisions of the present Act, and of the Acts incorporated with and amended by the present Act, which relate solely to the "compulsory" purchase of land for town planning purposes are as follows:—

"Nothing in the Housing Acts shall authorise . . . the compulsory acquisition" for town planning purposes "of any land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which at the date of the order forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling house."²

Subject to this restriction, and to the other restrictions which are not confined to compulsory purchase,³ "a local authority may be authorised to purchase land compulsorily for" town planning purposes "by means of an order submitted to the Local Government Board and confirmed by the Board in accordance with" Schedule I. of the present Act⁴ and the Regulations of the Local Government Board dated June 15, 1911.⁵ This procedure is "substituted for the procedure for the same purpose under section 176 of the Public Health Act, 1875, as applied by" section 57 (1) of the Act of 1890.⁶ The incorporated provisions of the Lands Clauses and Railways Clauses Acts will be found referred to in the Notes to Schedule I. of the present Act.⁷ The general effect of the substituted procedure is given in the Memorandum of the Local Government Board of December 31, 1909,⁸ the principal difference between the new and the old being that confirmation of the order by Parliament will generally be unnecessary.⁹

(1) 18 & 19 Vict. c. 58. As to this Act and the other Acts and law relating to the Duchy of Lancaster, see Lord Halsbury's *Laws of England*, vol. vii., title "Constitutional Law," pp. 217-238.

(2) Section 45 of the present Act, as applied to compulsory acquisition of land for town planning purposes by sub-section (1) of the present section.

(3) See *ante*, p. 101.

(4) Section 2 (1) of the present Act, as applied to town planning schemes by sub-section (1) of the present section. Schedule I. of the present Act will be found *post*, pp. 125 to 129.

(5) Set out, *post*, pp. 168 to 170.

(6) Section 2 (2) of the present Act, as applied to town planning schemes by sub-section (1) of the present section.

(7) *Post*, pp. 125, 126.

(8) See paragraphs 28-32, *post*, p. 140.

(9) See, however, Schedule I. (7), *post*, p. 127.

The following power of entry for survey and valuation purposes contained in Part I. of the present Act is probably available in connexion with town planning schemes:—"Any person authorised in writing stating the particular purpose or purposes for which the entry is authorised, by the local authority or the Local Government Board, may at all reasonable times, on giving twenty-four hours' notice to the occupier and to the owner, if the owner is known, of his intention, enter any house, premises, or buildings—(a) for the purpose of survey or valuation, in the case of houses, premises, or buildings which the local authority are authorised to purchase compulsorily under the Housing Acts . . . and (c) for the purpose of survey and examination, where it appears to the authority or Board that survey or examination is necessary in order to determine whether any powers under the Housing Acts should be exercised in respect of any house, premises, or building. Notice may be given to the occupier for the purposes of this section by leaving a notice addressed to the occupier, without name or further description, at the house, buildings, or premises."¹

No form for the above twenty-four hours' notice has yet been prescribed.² Entry must be at reasonable times of the day.³

Application of Purchase Money by Local Authorities.

Under section 5 of the present Act⁴: "(1) Any purchase money or compensation payable in pursuance of the Housing Acts by a local

(1) Section 36 of the present Act. As to the meaning of the expression "Housing Acts," see the Note to section 76, *post*, p. 122.

(2) By order dated January 11, 1910, the Local Government Board prescribed a form (No. 1) for use under section 15 (2) of the present Act (as to viewing the condition of working class lodging houses), and the following is an adaptation thereof:—"To [name and description, where known, of tenant or occupier] the [tenant or occupier] of the [house or premises or buildings, giving such a description thereof as may be sufficient for its identification]. Take notice that, in pursuance of section 36 of the Housing, Town Planning, &c., Act, 1909, I [name and description of person authorised by the local authority to enter] being a person duly authorised in writing by the [description of the local authority] intend, on the day of 19 , at any time between the hours of in the forenoon and in the afternoon, to enter the above-mentioned house premises or buildings for the purpose of [here must be given in some detail the particular purpose or purposes for which the entry is authorised]. Dated this day of 19 .

Signature	}	of person authorised to enter.
Description		
Residence or place of business		

(3) These words are added as a footnote to the form from which the form in the preceding footnote has been taken, and see *Small v. Bickley* (1875, Q. B. D., 40 J. P. 119), where it was held that Sunday afternoon might, under some circumstances, be within the expression "at all reasonable times" in section 116 of the Public Health Act, 1875 (as to inspection of unsound food).

(4) This provision is expressly applied by the words in brackets in subsection (1) of the present section to town planning schemes, so that in this case it is not necessary, in order to make the provision applicable to such schemes, to rely upon the use of the expression "Housing Acts" (as to which see the Note to section 76, *post*, p. 122).

It is to be observed, however, that section 5 of the present Act only applies where "any lands, estate, or interest of another local authority" are acquired, and that section 45 of the present Act prohibits the compulsory acquisition, "for the purposes of Part III." of the Act of 1890, of "any land which is the property of any local authority," and that the present section

authority in respect of any lands, estate, or interest of another local authority which would, but for this section, be paid into court in manner provided by the Lands Clauses Acts or by paragraph (20) of the Second Schedule to the principal Act may, if the Local Government Board consent, instead of being paid into court, be paid and applied as the Board determine. (2) Any such decision of the Board as to the payment and application of any such purchase money or compensation shall be final and conclusive."¹

Purchase money or compensation in respect of any lands or interest therein purchased or taken from any corporation, or compensation for permanent damage to such lands if it amounts to or exceeds £200 is payable into the Bank of England² in the name of the Paymaster General.³

The purchase money or compensation, if under £200 and over £20, may be paid to two trustees, to be nominated in writing by the parties entitled to the rents or profits of the lands in respect of which the same is payable, and approved of by the promoters,⁴ and, if under £20, to the person entitled to the rents and profits for their own use and benefit.⁵

Under Schedule II. (20) of the Housing of the Working Classes Act, 1890, "If it appear to the local authority, from any such statement and abstract as aforesaid,⁶ or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then in every such case the

authorises compulsory purchase for town planning purposes "in the same manner and subject to the same provisions" as Part III. of the Act of 1890, "as amended by" section 45 of this Act, authorises compulsory purchase. Section 5, therefore, only applies to the application of purchase money where the land has been acquired "by agreement."

(1) As to the "finality" of decisions of Government Departments, see section 62 and Note, *post*, p. 108, and footnote (2), *ante*, p. 77.

(2) Lands Clauses Act, 1845, section 69 (and see *ibid.*, section 3).

(3) Court of Chancery Funds Act, 1872 (35 & 36 Vict. c. 44). See also Supreme Court of Judicature (Funds, etc.), Act, 1883 (46 & 47 Vict. c. 29); Supreme Court Funds Rules, 1905, rule 39, and R. S. C. Order XXII., rule 17.

(4) Lands Clauses Act, 1845, section 71. The money so paid and its produce is to be applied by the trustees as prescribed for sums over £200, but no order of court is necessary (*ibid.*).

(5) *Ibid.*, section 72.

(6) The statement and abstract are those referred to in Schedule II. (10) of the Act of 1890, which requires the local authority, upon the deposit at their office of the arbitrator's award, to "publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice) a short statement in writing of the nature of such claim, and a short abstract of title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years previous to the claim when the abstract shall commence with such conveyance."

amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872,¹ 'with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title.'"

61. (1) If the Local Government Board are satisfied on any representation, after holding a public local inquiry, that a local authority—

Powers of Local Government Board in case of default of local authority to make or execute town planning scheme.

- (a) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or
- (b) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or
- (c) have unreasonably refused to consent to any modifications or conditions imposed by the Board;

the Board may, as the case requires, order the local authority to prepare and submit for the approval of the Board such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so inserted:

Provided that, where the representation is that a local authority have failed to adopt a scheme, the Local Government Board, in lieu of making such an order as aforesaid, may approve of the proposed scheme, subject to such modifications or conditions, if any, as the Board think fit, and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Board.

(2) If the Local Government Board are satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or this Part of this Act the authority is required to execute, the Board may order that authority to do all things necessary for enforcing the observance of the scheme

(1) See footnote (3), *ante*, p. 106.

or any provisions thereof effectively, or for executing any works which under the scheme or this Part of this Act the authority is required to execute.

(3) Any order under this section may be enforced by mandamus.

NOTE.

Sub-section (1) (a) of the present section enables interested persons to ask the Local Government Board not only to compel a local authority to start the preparation of a scheme, but also to urge them on at any stage of its preparation up to its final approval by the Board; and sub-section (2) of the present section enables such persons to have an approved scheme effectively enforced.¹

Where any representation is made to the Board for any of these purposes, the Board will probably first forward the representation to the local authority and ask for their observations thereon. In many cases, as recently in Edinburgh,² that will have the desired effect without a local inquiry. If a local inquiry is held, it will be subject to section 63 of the present Act.³ If the Board made an order without first holding a local inquiry, the order could be removed by *certiorari* into the King's Bench Division and quashed.⁴

Determination of matters by Local Government Board.

62. Where the Local Government Board are authorised by this Part of this Act or any scheme made thereunder to determine any matter, it shall, except as otherwise expressly provided by this Part of this Act, be at their option to determine the matter as arbitrators or otherwise, and, if they elect or are required to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of the matters aforesaid.

NOTE.

If the Board "elect or are required" to determine any matter "as arbitrators," they can be compelled to state a case for the opinion of the

(1) In *Reg. v. Rochester Corporation* (1892, *Loc. Gov. Chron.* 1015) an order of the Local Government Board under section 299 of the Public Health Act, 1875, was enforced by *mandamus*; see also *Rex v. Worcester Corporation* (1905, K. B. D., 3 L. G. R. 468), where writs of attachment were issued against certain members of the defaulting local authority.

(2) See the *Surveying and Housing World*, 1912, p. 14, and Chapter XVI. of the Introduction, *ante*.

(3) See that section and Note, *post*, p. 110.

(4) *Reg. v. Staines Local Board* (1893, Q. B. D., 58 J. P. 182).

High Court upon any question of Law arising upon the determination,¹ otherwise they are under no such compulsion,² and cannot state a case even if they desire to do so.³ The case would go to the Divisional Court of the King's Bench Division, and there would apparently be no appeal from the decision of that Court.⁴

The Board need not act "as arbitrators" when determining whether land is "likely to be used for building purposes,"⁵ or whether provisions in a scheme for securing amenity, &c., are "reasonable," so as to bar claims for compensation for injurious affection.⁶ But they are, "unless the parties otherwise agree," required to act "as arbitrators" when determining whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work.⁷

The present section would appear to have no application to disputes which are to be "determined by the arbitration of a single arbitrator appointed by the Local Government Board," e.g. as to injurious affection and betterment claims.⁸

The Regulation of Railways Act, 1868,⁹ eliminating the expression "in any case in which a company is one of the parties," and substituting the Local Government Board for the Board of Trade, provides as follows: Section 30: "Whenever the Local Government Board are required to make any award or to decide any difference, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Local Government Board. If the arbitrator dies, or in the judgment of the Local Government Board becomes incapable or unfit, the Local Government Board may appoint another arbitrator." Section 31: "The Local Government Board may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Local Government Board." Section 32: "The provisions of sections 18-29, both inclusive, of the Railway Companies Arbitration Act, 1859,¹⁰

(1) *Re Kent C. C. and Sandgate Local Board* (Q. B. D., L. R. 1895, 2 Q. B. 43), decided under section 63 of the Local Government Act, 1888, before its amendment by the Local Government Board (Determination of Differences) Act, 1896 (59 & 60 Vict. c. 9).

(2) *Rex (Hackney B. C.) v. Local Government Board* (1908, K. B. D., 72 J. P. 211).

(3) *See Bexley Local Board v. West Kent Main Sewerage Board* (1882, Q. B. D., L. R., 9 Q. B. D. 518).

(4) *Re Knight and Tabernacle Building Soc.* (C. A., L. R. 1892, 2 Q. B. 613); *Shrewsbury v. Shrewsbury* (1907, C. A., 23 T. L. R. 224).

(5) Under section 54 (7) of the present Act, *ante*, p. 75.

(6) *Ibid.*, section 59 (2), *ante*, p. 98.

(7) *Ibid.*, section 57 (3), *ante*, p. 88.

(8) See section 58 (4) of the present Act, *ante*, p. 90.

(9) 31 & 32 Vict. c. 119.

(10) 22 & 23 Vict. c. 59. This Act empowers the arbitrator to call for production of documents in the possession or power of the parties, and to examine witnesses on oath (*ibid.*, section 18); to proceed in the business of the reference in such manner as he may think fit, except where and as the parties otherwise agree (*ibid.*, section 19); to proceed in the absence of the parties or any of them after having given them notice (*ibid.*, section 20); and to make several awards, each on part of the matters referred, instead of one

shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Local Government Board, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act, the word 'companies' shall be construed to mean the parties to the arbitration."

63. Section eighty-five of the Housing of the Working Classes Act, 1890 (which relates to inquiries by the Local Government Board), as amended by this Act, shall apply for any purposes of this Part of this Act as it applies for the purpose of the execution of the powers and duties of the Local Government Board under that Act.

Inquiries by
Local
Government
Board.

NOTE

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Occasions for Local Inquiries.

At least two local inquiries will probably be held before the final approval of any town planning scheme, and there may be several more. One will be held in order to satisfy the Board that there is a "*prima facie* case for making" a scheme, before authority to prepare one is granted,¹ and one will be held after the scheme has been made by the local authority, and before it receives the approval of the Board, at all events if there is any substantial opposition to the scheme.² The Board have not yet made the Regulations as to inquiries provided for by the present Act.³ A local inquiry must be held before a local authority can be compelled to prepare or adopt a scheme, or to consent to modifications or conditions imposed by the Board, or to enforce effectively the observance of a scheme or execute works thereunder;⁴

award on all the matters referred (*ibid.*, section 21). The award, if made and signed and ready to be delivered within the time agreed on by the parties, or failing such agreement within thirty days after the matters are referred to the arbitrator (or if there is an umpire within the time extended by him), is to be binding and conclusive on the parties (*ibid.*, sections 22, 23). The submission may be made a rule of court by any party interested, and the court may remit the matter to the arbitrator with any directions it may think fit (*ibid.*, section 29); but the award is not to be set aside for irregularity or informality, and except so far as the parties otherwise agree is to be obeyed, and may not be enforced by the Superior Courts (*ibid.*, sections 24, 25, 26). The costs are in the discretion of the arbitrator, but, subject to the award or any agreement by the parties, are to be paid by such parties in equal shares (*ibid.*, sections 27, 28).

(1) See section 54 (2) of the present Act (*ante*, p. 74), and par. 8 of the Circular of the Board of May 3, 1910, *post*, p. 144.

(2) See section 54 (4) of the present Act (*ante*, p. 74), and the end of the Circular of May 3, 1910, *post*, p. 146.

(3) See section 56 (1), *ante*, p. 86, and Schedule V. (3) (b), *post*, p. 131.

(4) See section 61 of the present Act, *ante*, p. 107.

before the Board sanction a loan for town planning purposes;¹ and before they sanction an opposed order for the compulsory purchase of land.² Where land which it is proposed to acquire compulsorily "consists of or comprises land situate in London, or a borough, or urban district," the inquiry is to be held "by an impartial person, not in the employment of any Government Department."³ A local inquiry must be held "if necessary" before the Board give their certificate in connexion with the exchange of common land.⁴

Rules as to Inquiries.

Section 85 of the Act of 1890, as amended by Schedules II.⁵ and VI.⁶ of the present Act, is as follows: "(1) For the purposes of the execution of their powers⁷ and duties under this Act, the Local Government Board may cause such local inquiries to be held as the Board see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration⁸ of any inspector or officer of or person employed by the Board or confirming authority engaged in the inquiry, shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board or confirming authority may direct, and that Board or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person. (2) Sections 293-296 and section 298 of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board or any local inquiry which the Board cause to be held in pursuance of any part of this Act."

Sections 293-296 and section 298 of the Public Health Act, 1875, are as follows:—

293. "The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act."

294. "The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein."⁹

(1) See section 65 (2) of the present Act, and Note, *post*, p. 114.

(2) See Schedule I. (6) of the present Act, and Note, *post*, p. 126.

(3) See Schedule I. (7), and Note, *post*, p. 127.

(4) See section 73 (2) of the present Act, and Note, *post*, p. 118.

(5) Section 46 of the present Act enacts the amendments contained in this Schedule "which relate to minor details . . . in the provisions of the Housing Acts."

(6) Section 75 of the present Act enacts the repeals contained in this Schedule.

(7) The words "powers and" are added by Schedule II. of the present Act.

(8) The words "not exceeding three guineas a day" have been repealed by Schedule VI. of the present Act.

(9) The town planning portion of the present Act does not provide for any "appeal" to the Local Government Board such as that provided for in section 39 of the Act (*re* closing orders, &c.), and in the Rules made by the

295. "All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct."¹

296. "Inspectors of the Local Government Board shall, for the purposes of an inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."²

298. "The reasonable costs of any local inquiry in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be

Board on January 11, 1910. For these see Allan's *Housing Acts* (pp. 216-218 and 294, 295). As to Rules of Court, see section 18 of the Judgments Act, 1838 (1 & 2 Vict. c. 110) and notes in "Chitty's Statutes," vol. vii., 1910 Ed., pp. 600-602.

(1) Though the orders of the Board are "binding and conclusive in respect of the matters to which they refer," they are not necessarily conclusive as to all matters recited or incidentally referred to in them. See *Fenwick v. Croydon R. S. A.* (Q. B. D., L. R. 1891, 2 Q. B. 216), where it was held that an order, putting section 150 of the Act of 1875 in force in a rural district with regard to a road which it called a "street," was not conclusive on the question of whether the road was a "street" within that section. See also the Notes to sections 54 (*ante*, p. 77, footnote (2)), and 62 (*ante*, pp. 108, 109) of the present Act.

(2) The powers of the poor law inspectors are contained in the Poor Law Board Act, 1847 (10 & 11 Vict. c. 109), section 21, which, as amended by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), sections 1, 7, provides as follows—"The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the Board, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments, not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summonses had been the summonses and order of the Board, and the non-observance thereof shall be punishable in like manner; and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first recited Act are now payable. Provided always that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode." The reference to "the first recited Act" is to section 14 of the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76), under which the Local Government Board may order such a sum as they "may deem reasonable" to be paid out of the rates for such expenses.

Under section 26 of the Act of 1847, persons refusing to attend or give evidence, or altering, suppressing, or destroying documents required to be produced, are guilty of a "misdemeanour." As to perjury, see now the Perjury Act, 1911 (1 & 2 Geo. V. c. 6).

expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.”¹

Reports of Inspectors.

The Local Government Board have stated that the reports made to them by their inspectors are intended solely for the use of the Board, and that they are not prepared in the case of legal proceedings to produce them except in obedience to a *subpœna*. In the event of a *subpœna* being issued, the Board, in accordance with their usual practice, claim that such documents are privileged on the ground that it would be injurious to the public service for them to be put in evidence, and their representatives are instructed to prefer this claim if they are required to appear in Court.

64. All general provisions made under this Part of this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893, shall apply to such provisions as if they were statutory rules within the meaning of section one of that Act.

Laying
general
provisions
before
Parliament

NOTE.

The “general provisions” referred to in the present section are those which may be made by the Local Government Board under section 55 (1) and Schedule IV. of the present Act.²

The Rules Publication Act, 1893,³ provides as follows:—Section 1 (1), “At least forty days before making any statutory rules to which this section applies, notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, shall be published in the *London Gazette*.”

(2) “During those forty days any public body⁴ may obtain copies of such draft rules on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a public body interested⁴ to the authority proposing to make the rules shall be taken

(1) See Schedule I. (6), (7) of the present Act, *post*, pp. 126, 127.

(2) See *ante*, p. 80, and *post*, p. 130.

(3) 56 & 57 Vict. c. 66.

(4) The expressions “public body” and “public body interested” are not defined in the Act of 1893. Section 7 of the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69) defines “public body” as meaning “any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom.” This definition would not include such bodies as Rate-payers’ Associations, but such associations will no doubt be considered entitled to purchase copies of and make representations with reference to

into consideration by that authority before finally settling the rules ; and on the expiration of those forty days the rules may be made by the rule-making authority, either as originally drawn or as amended by such authority, and shall come into operation forthwith, or at such time as may be prescribed in the rules."

(3) "Any enactment which provides that any statutory rules to which this section applies shall not come into operation for a specified period after they are made is hereby repealed; but this repeal shall not affect section thirty-seven of the Interpretation Act, 1889."¹

(4) "The statutory rules to which this section applies are those made in pursuance of any Act of Parliament which directs the statutory rules to be laid before Parliament, but do not include any statutory rules if the same or a draft thereof are required to be laid before Parliament for any period before the rules come into operation, nor do they include rules made by the Local Government Board for England. . . ."²

Section 2: "Where a rule making authority certifies³ that on account of urgency or any special reason why a rule should come into immediate operation, it shall be lawful for such authority to make any such rules to come into operation forthwith as provisional rules, but such provisional rules shall only continue in force until rules have been made in accordance with the foregoing provisions of this Act."

Definition
of local
authority,
and
expenses.

65. (1) For the purposes of this Part of this Act the expression "local authority" means the council of any borough or urban or rural district.

(2) Any expenses incurred by a local authority under this Part of this Act, or any scheme made thereunder, shall be defrayed as expenses of the authority under the Public Health Acts, and the authority may borrow, for the purposes of this Part of this Act, or any scheme made thereunder, in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts.

(3) Money borrowed for the purposes of this Part of this

the general provisions authorised by the present section, though not considering such representations would not invalidate the provisions, as this requirement appears to be "directory" rather than "mandatory." (As to this distinction, see *per* Lord Blackburn in *Middlesex JJ. v. Regiam*, 1884, H. L., L. R. 9 A. C. at p. 778, and *per* Denman, J., in *Caldow v. Pixell*, 1877, L. R. 2 C. P. D. at p. 566.) It would be practically impossible to prove a "wilful" disregard of the representation such as would support an indictment (as to which see *Reg. v. Hall*, Q. B. D., L. R. 1891, 1 Q. B. 747).

(1) 52 & 53 Vict. c. 63. This enactment relates to the exercise of statutory powers between the passing and the coming into operation of the Act conferring them.

(2) This enactment shows the necessity for the present section.

(3) The Act does not prescribe any mode of certifying the urgency of statutory rules. As to the printing, numbering, sale, citation, publication, and notification of statutory rules, see section 3 of the Act of 1893.

Act, or any scheme made thereunder, shall not be reckoned as part of the debt of a borough or urban district for the purposes of the limitation on borrowing under sub-sections (2) and (3) of section two hundred and thirty-four of the Public Health Act, 1875.

NOTE.

As to London, see the next section. Sub-sections (1) and (3) of the present section do not apply to Scotland.¹

As to "expenses under the Public Health Acts," see sections 207 to 228² of the Act of 1875, which relate to urban districts, and sections 229 to 232³ which relate to rural districts; as to borrowing powers under these Acts, see sections 233 to 243⁴ of the same Act.

As to the removal of the limitation upon borrowing effected by sub-section (3) of the present section, this does not remove the necessity for the consent of the Local Government Board or for the holding of a local inquiry, and the Board will no doubt require strong grounds for sanctioning any borrowing for town planning purposes beyond the limit imposed by section 234 (2) and (3) of the Act of 1875.⁵

66. (1) This Part of this Act shall apply to the administrative county of London, and, as respects that county, the London County Council shall be the local authority.

Application
to London.

(2) Any expenses incurred by the London County Council shall be defrayed out of the general county rate and any money may be borrowed by the Council in the same manner as money may be borrowed for general county purposes.

NOTE.

The fact that the present section makes the London County Council "the local authority" for town planning purposes as respects the administrative county of London, overrides, so far as the metropolitan borough councils are concerned, the provision in the preceding section that the expression "local authority" for those purposes is to include "the council of any borough." Section 55 (3) of the present Act⁶ makes

(1) See section 67 (2), (5) of the present Act, *post*, p. 116.

(2) See Glen's *Law relating to Public Health*, 13th ed., pp. 724-770.

(3) See *ibid.*, pp. 771-779.

(4) See *ibid.*, pp. 780-795.

(5) By sub-section (2) of this section: "The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed"; and by sub-section (3): "Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board."

(6) *Ante*, p. 81.

the consent of the London County Council necessary before any other local authority can "as respects any land in the county of London, prepare or be responsible for enforcing the observance of a town planning scheme under this Part of this Act, or for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority." The land must be "in" and not merely "adjoining" the county. There appears to be nothing to prevent the London County Council consenting to the preparation of a scheme by a metropolitan borough council, except that there is no provision for defraying the expenses of such a scheme out of the rates raised by such councils. These councils could object to anything contained in a scheme which would affect their borough, as a "council interested" within the meaning of the Procedure Regulations. The Acton Urban District Council did not serve the notices required by Article II. of the Procedure Regulations upon the Council of the adjoining metropolitan borough of Hammersmith.

The London County Council have taken power, in their General Powers Act of 1912,¹ to make a garden suburb scheme for their White Hart Estate in Tottenham and Wood Green.

As to the "general county rate" in London and the borrowing powers of the county council, see Lord Halsbury's *Laws of England*.²

67. This Part of this Act shall apply to Scotland subject to the following modifications:—

- (1) The Local Government Board for Scotland (hereinafter referred to as the Board) shall be substituted for the Local Government Board, and shall for the purposes of this Part of this Act have the same powers of local inquiry as for the purposes of the Housing Acts as defined in Part I. of this Act.
- (2) Sub-section (1) and sub-section (3) of the section of this Part of this Act which relates to the definition of local authority and expenses shall not apply.
- (3) The local authority and the area of such authority for the purposes of this Part of this Act shall respectively be the local authority for the purposes of the Housing Acts as defined in Part I. of this Act, and the district of that authority.
- (4) References to the Public Health Acts shall be construed as references to the Housing Acts as defined in Part I. of this Act.
- (5) Any local rate for the purposes of this Part of this Act (including the purposes of any loan)

(1) 2 & 3 Geo. V. c. civ. The sections authorising the scheme have been set out at the end of Part VI. of the present work, *post*, pp. 262 *et seq.*

(2) Volume xx., title "Metropolis," pp. 438 (rating) and 444 (borrowing).

shall not be reckoned in any calculation as to the statutory limit of the public health general assessment.

- (6) The Board shall not themselves make an order under section sixty-one of this Act on any authority, but in lieu thereof it shall be lawful for the Board, after holding a local inquiry at which the authority shall have had an opportunity of being heard, and with the approval of the Lord Advocate, to apply for such an order by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall appear to be just.
- (7) In any proceedings under this Part of this Act the Board shall have regard to the powers and jurisdiction of the dean of guild court in burghs.
- (8) The provision respecting the Rules Publication Act, 1893, shall have effect as if section one of that Act applied to Scotland, with the substitution of the *Edinburgh Gazette* for the *London Gazette*.

NOTE.

As to Scotland, see Introduction, Chapter XVI.¹

PART III.

68. [Appointment, duties, and tenure of office of county medical officers.]

69. [Duty of clerk and medical officer of health of district council to furnish information to medical officer of health of county council.]

70. [Extent of Part III.]

(1) *Ante*, pp. 67–71. As to the jurisdiction of the Dean of Guild Court, see *Porter v. Nisbet* (1912, S. C. (S.) 400) and *Maguire v. Smith* (1912, S. C. (S.) 410), and Note to the former case in Glen's *Local Government Case Law*, 1912, title "Public Health."

71. [Public health and housing committee of county councils.]

72. [Formation and extension of building societies.]

PART IV.

SUPPLEMENTAL.

Provisions as
to commons
and open
spaces.

73. (1) Where any scheme or order under the Housing Acts or Part II. of this Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Local Government Board after consultation with the Board of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate the Board shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public

recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

NOTE.

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"Common."

By reason of sub-section (4) of the present section, "common" *includes* (a) any land subject to be enclosed under the Inclosure Acts, and (b) any town or village green. Town and village greens are added because their enclosure was prohibited by the Inclosure Act, 1845.¹

As to (a), land which is subject to be enclosed under the Inclosure Acts includes common or waste land in the ordinary sense and also (1) all lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; (2) all gated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattlegates or other gates or stints, or any of them; (3) all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattlegates or other gates or stints, or any of them; (4) all lands held, occupied, or used in common, either at all times, or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; (5) all lands in which the property or right of or to the vesture or herbage or any part thereof during the whole or any part of the year, or the property or right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; and (6) all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise.²

As to (b), there is no statutory definition of either "town green" or "village green," but the essential characteristic of both is that the inhabitants of the particular locality have an immemorial customary right to use the green for exercise and recreation, including the playing of lawful games.³

"Open Space."

By reason of sub-section (4) of the present section, "open space" *means* (a) any land laid out as a public garden or used for the purposes of public recreation, and (b) any disused burial ground.

As to (a), this is not as comprehensive a definition as that in the Open

(1) 8 & 9 Vict. c. 118, s. 15.

(2) 8 & 9 Vict. c. 118, s. 11; Commons Act, 1876 (39 & 40 Vict. c. 56), ss. 2, 37. See Lord Halsbury's *Laws of England*, vol. iv., title "Commons and Rights of Common," pp. 541 *et seq.*

(3) See Lord Halsbury's *Laws of England*, vol. xxi., title "Open Spaces and Recreation Grounds," p. 583.

Spaces Act, 1906,¹ but is the same as that in the Development and Road Improvement Funds Act, 1909,² and it is to be observed that the term "means" is used and not "includes."³

As to (b), a "disused burial ground" is any burial ground, whether consecrated or not, which has been at any time set apart for the purposes of interments, and is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of any statute or Order in Council, and whether or not the ground has been lawfully set apart as a burial ground.⁴

"Allotment."

By reason of sub-section (4) of the present section, "allotment" means any allotment set out under an Inclosure Act as (a) a fuel allotment or (b) a field garden allotment. The use of the word "means" in this definition³ would exclude allotments as defined, *e.g.*, in the Allotments and Cottage Gardens Compensation for Crops Act, 1887,⁵ and confines the scope of the expression to Inclosure Act allotments.

As to (a), allotments for the supply of fuel for the labouring poor may be resolved upon by the persons interested at the meeting held under the Inclosure Acts for the appointment of a valuer, or subsequently, and may be embodied in his instructions.⁶

As to (b), field gardens are gardens not exceeding a quarter of an acre let by parish councils, or by allotment wardens appointed by parish meetings, to poor inhabitants of the parish for one year or from year to year, free of tithe rent charge and other rates, &c., at rents not below the full yearly agricultural value of the land as ascertained by periodical valuation.⁷

Equality of Exchange.

It would appear that if the Local Government Board and Board of Agriculture consider that a local inquiry, as to the equality of a proposed exchange, is unnecessary, their decision could be challenged by *mandamus* proceedings, as there is no provision that such decision shall be "final."⁸

(1) 6 Edw. VII. c. 25, s. 20.

(2) 9 Edw. VII. c. 47, s. 19 (4).

(3) As to the force of this distinction, see the Note to Model Clause No. 1, *post*, p. 234.

(4) Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 2, as amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4 (which is left unrepealed by the Act of 1906, see section 23 and the Schedule to that Act). As to these grounds, see Lord Halsbury's *Laws of England*, vol. iii., title "Burial and Cremation," p. 533.

(5) 50 & 51 Vict. c. 26, s. 4. "In this Act 'allotment' means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm." As to this definition, see *Cooper v. Pearse* (Q. B. D., L. R. 1896, 1 Q. B. 562). There is a similar definition in the Allotments Rating Exemption Act, 1891 (54 & 55 Vict. c. 33), s. 2. In the Small Holdings and Allotments Act, 1908 (8 Edw. VII. c. 36, s. 61), the definition only says that "the expression 'allotment' includes a field garden."

(6) Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 34. As to these allotments, see *Attorney-General v. Meyrick* (L. R. 1893 A. C. 1).

(7) Inclosure Act, 1845, ss. 73, 108, 109; Commons Act, 1876 (39 & 40 Vict. c. 56), s. 24; Small Holdings, &c., Act., 1908, s. 33 (3). As to field garden allotments, see Lord Halsbury's *Laws of England*, vol. iv., title "Commons and Rights of Common," p. 593.

(8) See Notes to sections 55, 62, and 63, *ante*, pp. 77, 108, 110.

If an inquiry is held, it would no doubt be held in accordance with section 85 of the principal Act,¹ as Part IV. of the present Act is, it seems, included in the expression "Housing Acts."²

"The Board," in sub-section (2) of the present section, no doubt means the Local Government Board and not the Board of Agriculture and Fisheries.³

74. (1) Where any land proposed to be included in any scheme or order to be made under the Housing Acts or Part II. of this Act, or any land proposed to be acquired under the Housing Acts or Part II. of this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Local Government Board shall, before confirming the scheme or order or authorising the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations they may have received from the Commissioners of Works with reference to the proposal.

Provisions as to land in neighbourhood of Royal palaces or parks.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the Local Government Board after consultation with the Commissioners of Works.

NOTE.

On September 2, 1910, the Local Government Board issued the following order (No. 55, 763) under the present section:—"WHEREAS . . . [reciting the present section]. NOW THEREFORE, We the Local Government Board, after consultation with the Commissioners of Works, do hereby make the following Regulations under and for the purposes of the above-cited section 74, that is to say—The prescribed distance for the purposes of sub-section (1) of section 74 of the Act shall, in the case of Windsor Castle, Windsor Great Park, and Windsor Home Park, be two miles, and, in the case of any other Royal Palace or Park, be half a mile. Given under. . . ."

75. [Enactments mentioned in Schedule VI. repealed to extent therein specified.]⁴

(1) See the Note to section 63 of the present Act, *ante*, p. 111.

(2) See the Note to section 76 of the present Act, *post*, p. 122.

(3) See Local Government Board Memorandum of December 31, 1909, Part IV., *post*, p. 142.

(4) Any repeals effected by this section and Schedule and affecting provisions relating to town planning, are dealt with in their appropriate places in the present work.

Short title
and extent.

76. (1) This Act may be cited as the Housing, Town Planning, &c. Act, 1909, and Part I. of this Act shall be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and that Part of this Act and those Acts may be cited together as the Housing of the Working Classes Acts, 1890 to 1909.

(2) This Act shall not extend to Ireland.

NOTE.

"The Housing Acts."

By reason of sub-section (1) of the present section, the expression "Housing of the Working Classes Acts" means the Acts of 1890,¹ 1894,² 1896,³ 1900,⁴ 1903,⁵ and Part I. (only) of the present Act. A portion of the Housing of the Working Classes Act, 1885,⁶ is still in force, but that Act is not included in this collective title.⁷ The Short Titles Act, 1896,⁸ does not give a collective title for these Acts.

The Act of 1903 introduced the expression "Housing Acts," using it as a collective title for "the principal Act, or any Acts (including this Act) amending it";⁹ and in Part I. of the present Act the expression is defined thus: "In this Part of this Act the expression 'Housing Acts' means the principal Act, and any Act amending that Act, *including this Act.*"¹⁰ The present section expressly excludes, from the collective title "Housing of the Working Classes Acts," all parts of the present Act except Part I., but as the definition of the expression "Housing Acts" in Part I. does not allude specially to Part I. but speaks of the present Act as a whole, it would appear that unless the context is repugnant to such a construction, the whole of the present Act, including Part II., is intended to be included in the expression "Housing Acts" where used in Part I. of the present Act. The point is of importance, because in numerous sections in Part I. of the present Act,¹¹ powers are given and duties are imposed by reference to "the Housing Acts," and many of them are relevant to and would be useful in connexion with town planning schemes.

(1) 53 & 54 Vict. c. 70, "the principal Act."

(2) 57 & 58 Vict. c. 78, as to borrowing for "reconstruction" schemes in the United Kingdom.

(3) 59 & 60 Vict. c. 31, extending to Scotland only.

(4) 63 & 64 Vict. c. 59, as to working class lodging houses in England only.

(5) 3 Edw. VII. c. 39, containing miscellaneous housing provisions and extending to England only.

(6) 48 & 49 Vict. c. 72, ss. 7-10.

(7) The Short Titles Act, 1896, includes this portion of the Act of 1885 in the Acts for which it gives the collective title "the Public Health Acts." The rest of the Act of 1885 (except section 3, which relates to the sale of the sites of certain metropolitan prisons to the London County Council) was repealed by section 102 and Schedule VII. of the Act of 1890.

(8) 59 & 60 Vict. c. 14.

(9) 3 Edw. VII. c. 39, s. 1 (2).

(10) 9 Edw. VII. c. 44, s. 51.

(11) Namely, sections 3 (as to loans), 5 (as to payments into court), 8 (as to donations), 10, 11, 13 (as to enforcing execution of Housing Acts), 34 (as to acquisition of land), 36 (as to power of entry), 37 (as to crowded areas), 38 (as to joint action by local authorities), 40 (as to disposal of land and buildings acquired), 41 (as to prescribed forms), 42 (as to publications in *London Gazette*), 43 (as to back to back houses), 45 (as to ancient monuments),

Part II. of the present Act only uses the expression "Housing Acts" in the section which deals with the application of Part II. to Scotland,¹ and here the words used are "for the purposes of the Housing Acts as defined in Part I. of this Act." Part IV. of the present Act uses the expression "under the Housing Acts or Part II. of this Act,"² and this throws doubt upon the above proposition, as also does the fact that some of the sections in Part I. of the present Act in which the expression "Housing Acts" occurs are expressly made applicable for town planning purposes,³ which would be unnecessary if the expression included Part II. Moreover, Parts I., III., and IV. of the present Act amend the principal Act, but Part II. of the present Act does not "amend" that Act at all; and section 47 (1) of the present Act enacts that "any provisions of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained." It seems, therefore, to be at least arguable that the expression "Housing Acts" is used as synonymous with the expression "Housing of the Working Classes Acts" as defined by the present section, or that, even if it includes Parts III. and IV., it does not include Part II. of the present Act.

SCHEDULES.

FIRST SCHEDULE.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A LOCAL AUTHORITY FOR THE PURPOSES OF PART III. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890.

NOTE.

The present Schedule is expressly made applicable to the compulsory purchase of land for town planning purposes by sections 2 (1), (2) and 60 of the present Act.⁴

There are no headings or marginal notes to the Schedule in the Act itself, but headings have been added in this work for convenience in finding any required clause.

The Regulations made by the Board under the Schedule have been set out in full.⁵

Under section 41 (1) of the present Act: "the Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connexion with the powers and duties of a local authority or of the Board under the Housing Acts,⁶ and the forms so prescribed, or forms as near thereto as circumstances admit,

46 (as to minor amendments to Housing Acts), 47 (as to closing orders), 51 (definition of "Housing Acts"), and 53 (as to application of Housing Acts to Scotland). Some of these sections are expressly applied to town planning schemes (*e.g.* section 45), and others are clearly inapplicable to such schemes (*e.g.* sections 43 and 47). (1) See section 67, *ante*, p. 116.

(2) See sections 73 and 74, *ante*, pp. 118, 121.

(3) See end of foot-note (11), *supra*. (4) See *ante*, pp. 104 and 99.

(5) See the Compulsory Purchase Regulations of June 14, 1911, *post*, pp. 168 to 170, and the Costs of Arbitrations Rules of September 5, 1912, *post*, pp. 171 to 174.

(6) As to the expression "Housing Acts," see section 76 and Note, *ante*, p. 122.

shall be used in all cases to which those forms are applicable.”¹ Forms were prescribed, for use under Part I. of the Act of 1890, by the Board by Order dated the 19th day of November, 1910, and Forms II. and III. of the forms so prescribed, as adapted, *infra*, would appear to be useful in connexion with the preliminary stages in the compulsory purchase of land for town planning purposes.² An additional notice would be

(1) Under sub-section (2) of this section: “The Local Government Board may dispense with the publication of advertisements or the service of notices required to be published or served by a local authority under the Housing Acts, if they are satisfied that there is reasonable cause for dispensing with the publication or service”; and under sub-section (3): “Any such dispensation may be given by the Local Government Board either before or after the time at which the advertisement is required to be published or the notice is required to be served, and either unconditionally or upon such conditions as to the publication of other advertisements or the service of other notices or otherwise as the Board think fit, due care being taken by the Board to prevent the interests of any person being prejudiced by the dispensation.”

(2) Form II. is a “form of notice to owners and lessees.” It might be adapted for use in connexion with a town planning scheme as follows:—

[PART II. OF THE HOUSING, TOWN PLANNING, &C. ACT, 1909.]

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under [a Town Planning] Scheme.

To [insert name, residence, or place of business, and description, where known, of owner or reputed owner, lessee or reputed lessee, as the case may require]:

TAKE NOTICE, that a petition is about to be presented by the [insert description of Local Authority] to the Local Government Board in pursuance of [Part II. of the Housing, Town Planning, &c. Act, 1909], praying that an Order may be made [in connexion with a Town Planning Scheme under which] it is proposed to take compulsorily the lands described in the Schedule hereunder, in which lands you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee. You are therefore hereby required to return to me on or before the day of next an answer in writing, stating whether you dissent or not in respect of the taking of the lands described in the said Schedule. A Copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at and may be seen at all reasonable hours.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE.

Name of Street, Court, Alley, or other Place.	Description of Lands proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Occupier.
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Dated this day of 19 .

[Signature of Clerk of Local Authority.]

Form III. is a “form of notice to occupiers.” It might be adapted for use in connexion with a town planning scheme as follows:—

[PART II. OF THE HOUSING, TOWN PLANNING, &C. ACT, 1909.]

Notice to occupier or occupiers (not being owners or reputed owners, or lessees or reputed lessees) of intention to take lands compulsorily under [a Town Planning] Scheme.

To [insert the name of the occupier] the occupier of the land [or to the occupier or occupiers of the house], which in the Schedule hereunder is described as the lands proposed to be taken.

TAKE NOTICE, that a petition is about to be presented by the [insert description of local authority] to the Local Government Board in pursuance of

necessary to comply with the provisions of Article III. of the Order of June 14th, 1911.¹

Submission of Order to Board.

(1) Where a local authority propose to purchase land compulsorily under this Act, the local authority may submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.²

Confirmation of Order by Board.

(2) An order under this Schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this Schedule, become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.³

[Part II. of the Housing, Town Planning, &c. Act, 1909], praying that an Order may be made [in connexion with a Town Planning Scheme under which] it is proposed to take compulsorily the lands described in the Schedule hereunder. A copy of the said Scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily and by particulars and estimates, has been deposited at _____, and may be seen at all reasonable hours.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE.

Name of Street, Court, Alley, or other Place.	Description of Lands proposed to be taken.
---	--

Dated this _____ day of _____ 19 .

[*Signature of Clerk of Local Authority.*]

(1) *Post*, p. 169.

(2) The provisions of the Act of 1845 ranged under the heading "with respect to the purchase and taking of lands otherwise than by agreement" are sections 16 to 68, and these are the sections which may be put in force under the present clause (see section 5 of the Act of 1845). As to the power to acquire land for town planning purposes, see section 60 of the present Act and Note, *ante*, pp. 99, 104. The "Board" means the Local Government Board (see clause (13), *post*, p. 129).

(3) The order cannot be confirmed until after a local inquiry if an objection to it is lodged in the prescribed manner (see clause (6), *post*, p. 126). Confirmation by Parliament is unnecessary, except in the case provided for in clause (7), *post*, p. 127. As to the finality effected by such provisions as this clause enacts, see the Note to section 55 of the present Act (*ante*, pp. 77, 78). The power of the Board to modify the order is apparently confined to cases where there has been a duly lodged objection (see clause (6), *post*, p. 126).

Allowance for Compulsory Purchase.

(3) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.¹

Form of Order.

(4) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845), and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of these Acts with respect to arbitration shall, subject to the provisions of this Schedule, apply accordingly.²

Publication and Notification of Order.

(5) The order shall be published by the local authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.³

Making and Hearing of Objections to Order.

(6) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.⁴

(1) This clause prevents the addition of the usual 10 per cent. for compulsory purchase. As to the principles on which the compensation is to be assessed, see Lord Halsbury's *Laws of England*, vol. vi., title "Compulsory Purchase of Land and Compensation," pp. 36-39.

(2) Section 127 of the Lands Clauses Act relates to surplus land, as to which see the Note to section 60 (*ante*, p. 100). Sections 77 to 85 of the Railways Clauses Act relate to mines and minerals, and will be found dealt with on pages 49 to 55 of the above volume of Lord Halsbury's work.

(3) As to the prescribed formalities, see the Regulations of the Local Government Board of June the 14th, 1911 (*post*, pp. 168-170).

(4) Counsel and expert witnesses are not to be heard at these inquiries unless the Local Government Board "otherwise direct" (see clause (8), *post*, pp. 127, 128).

Under the next clause, which relates to urban areas only, "undue

Inquiries in Urban Areas and Necessity for Confirmation by Parliament.

(7) Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of the adjoining land, and such person shall in England have for the purpose of the inquiry all the powers of an inspector of the Local Government Board, and if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that owing to its extent or situation or the purpose for which it is used it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Local Government Board confirm the order in respect of the land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament. Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat.¹

detriment" to "persons interested" and "owners of adjoining land" is to be considered, but under the present clause adjoining owners are not mentioned, and apparently have no right to object although their property may be indirectly affected. The expression "interested in the land" probably has a technical meaning. Under Article III. of the Compulsory Purchase Regulations (*post*, p. 169) notices are to be served on "every owner, lessee, and occupier of the land," and copies of the order authorising the compulsory purchase are to be furnished free of charge to any person "interested in the land." The "interest" in the land is therefore wider than actual ownership or occupation, and would include that of an equitable mortgagee (see *Martin v. London, Chatham, &c., Ry. Co.*, 1866, L. R. 1 Ch. App. 501), but not that of a mere licensee (see *Municipal Freehold Land Co. v. Metropolitan Ry. Co.*, 1883, Q. B. D., Cab. and El. 184; *Frank Warr & Co., Ltd. v. London C. C.*, C. A., L. R. 1904, 1 K. B. 713). Interests created after service of the above-mentioned notices would not be subjects for compensation (see *Wilkins v. Birmingham Corporation*, 1883, Ch. D., L. R. 25 Ch. D. 78).

(1) This clause requires the Board to appoint an impartial person "to hold the inquiry" and not "an inquiry," and "the inquiry" refers to clause (6) which only necessitates an inquiry if an objection is properly lodged, so that if there is no such objection, this clause has no operation. If, therefore, an adjoining owner wishes his claim to be considered, he must persuade a person interested to lodge an objection in the prescribed manner. If a confirming Act is required, the Board will no doubt promote the necessary Bill, and in this case counsel and expert witnesses will be heard by the select committee to whom the Bill will be referred.

Conduct of Local Inquiries and Arbitrations.

(8) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this Schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.¹

Rules as to Costs of Arbitrations.

(9) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this Schedule, and an arbitrator under this Schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.²

Remuneration of Arbitrators.

(10) The remuneration of an arbitrator appointed under this Schedule shall be fixed by the Board.³

Construction of Incorporated Enactments.

(11) In construing for the purposes of this Schedule or any order made thereunder, any enactment incorporated with the order, this Act, together with the order, shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.⁴

Church Property.

(12) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be

(1) This clause prevents the hearing of counsel and expert witnesses at inquiries under both clause (6) and clause (7), and such persons can only be heard if, under clause (7), the arbitrator reports that land in an urban area is unsuitable, &c., and confirmation by Parliament becomes necessary.

(2) See the Rules of September 5, 1912, set out, *post*, pp. 171 to 174.

(3) The Rules made under the preceding clause do not refer to the remuneration of the arbitrator, which will no doubt be fixed by the Board according to the nature of each case.

(4) If no period is fixed in the order with regard to the time within which the compulsory powers must be exercised, or if a time is fixed with regard to some powers and not with regard to others, this clause brings into operation section 123 of the Lands Clauses Act of 1845, and the period for the exercise of the powers with regard to which no time is fixed will be three years (see *Seymour v. London and S.W. Ry. Co.*, 1859, 5 Jur. (N. S.) 753).

paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners, to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.¹

Definitions of "Board" and "Prescribed."

(13) In this Schedule the expression "Board" means the Local Government Board, and the expression "prescribed" means prescribed by the Board.

Application of Schedule to Scotland.

(14) The provisions of this Schedule, except those relating to land belonging to an ecclesiastical benefice, shall apply to Scotland, subject to the following modifications:—

- (a) For the reference to section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to section one hundred and twenty of the Lands Clauses Consolidation (Scotland) Act, 1845, and for the reference to sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845;
- (b) for references to an arbitrator there shall be substituted references to an arbiter;
- (c) for the references to the Lord Chancellor there shall be substituted a reference to the Lord Advocate;
- (d) for the reference to the Local Government Board there shall be substituted a reference to the Local Government Board for Scotland, and for the reference to a borough or urban district there shall be substituted a reference to a burgh.²

SECOND SCHEDULE.

[MINOR AMENDMENTS TO HOUSING ACT OF 1890.]

THIRD SCHEDULE.

[MODIFICATION OF HOUSING ACT OF 1903 *re* SCOTLAND.]

(1) For the Ecclesiastical Leasing Acts, 1842 (5 & 6 Vict. c. 108), 1858 (21 & 22 Vict. c. 57), and 1865 (28 & 29 Vict. c. 57), see Lord Halsbury's *Laws of England*, vol. xi., title "Ecclesiastical Law," pp. 760-767.

(2) As to Scotland, see section 67 of the present Act, *ante*, p. 116, and Introduction, Chapter XVI., *ante*, pp. 67 to 71.

FOURTH SCHEDULE.

MATTERS TO BE DEALT WITH BY GENERAL PROVISIONS PRESCRIBED BY THE LOCAL GOVERNMENT BOARD.

NOTE.

Section 55 (1) of the present Act (*ante*, p. 80) enables the Local Government Board to prescribe general provisions in relation to the subjects specified in the Schedule, and also general provisions for carrying out the general objects of town planning schemes.

As to clause (4) see Note to Precedent No. 15, *post*, p. 203.

The expression "obstructive work" in clause (12) would appear to mean any work which substantially contravenes the Scheme as approved by the Local Government Board.

1. Streets, roads, and other ways, and stopping up, or diversion of existing highways.
2. Buildings, structures, and erections.
3. Open spaces, private and public.
4. The preservation of objects of historical interest or natural beauty.
5. Sewerage, drainage, and sewage disposal.
6. Lighting.
7. Water supply.
8. Ancillary or consequential works.
9. Extinction or variation of private rights of way and other easements.
10. Dealing with or disposal of land acquired by the responsible authority or by a local authority.
11. Power of entry and inspection.
12. Power of the responsible authority to remove, alter, or demolish any obstructive work.
13. Power of the responsible authority to make agreements with owners, and of owners to make agreements with one another.
14. Power of the responsible authority or a local authority to accept any money or property for the furtherance of the objects of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888.
15. Application with the necessary modifications and adaptations of statutory enactments.
16. Carrying out and supplementing the provisions of this Act for enforcing schemes.
17. Limitation of time for operation of scheme.
18. Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested by means of conferences, &c.

19. Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

FIFTH SCHEDULE.

NOTE.

Section 56 (1) of the present Act¹ enables the Local Government Board to make "regulations for regulating generally the procedure to be adopted with respect to" town planning schemes, and sub-section (2) (a) of that section requires that such regulations shall contain provisions for dealing with the matters mentioned in this Schedule. The Regulations which the Board have made hereunder will be found in Part III. of this work.²

1. Procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme:—

- (a) Submission of plans and estimates.
- (b) Publication of notices.

2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme:—

- (a) Submission to the Local Government Board of the proposed scheme, with plans and estimates.
- (b) Notice of submission of proposed scheme to the Local Government Board.
- (c) Hearing of objections and representations by persons affected, including persons representing architectural or archaeological societies or otherwise interested in the amenity of the proposed scheme.
- (d) Publication of notice of intention to approve scheme and the lodging of objections thereto.

3. Procedure after the approval of the scheme:—

- (a) Notice to be given of approval of scheme.
- (b) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.

4. Duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.

5. The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

(1) *Ante*, p. 86.

(2) *Post*, pp. 149 *et seq.*

PART III.

CIRCULARS, MEMORANDA, AND ORDERS OF THE
LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES, AND BOARD OF AGRICULTURE
AND FISHERIES, RELATING TO TOWN PLAN-
NING.CIRCULAR OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.Dated *December 31st*, 1909.LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.

SIR,—I am directed by the Local Government Board to bring under the notice of the Council the Housing, Town Planning, &c., Act, 1909 (9 Edw. VII., c. 44), which has been passed in the recent session of Parliament, under which important additional powers and duties will devolve on the Council.

The Board enclose a Memorandum which they have prepared explaining in some detail the provisions of the Act. They propose, therefore, in this Circular, merely to indicate the more important points in which the measure extends and enlarges the powers and duties of local authorities in regard to the important question of the Housing of the Working Classes, and to explain generally the objects of Part II. of the Act which relates to Town Planning.

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Town Planning.

The object of the Town Planning Part of the Act is to ensure, by means of schemes which may be prepared either by local authorities or landowners, that in future land in the vicinity of towns shall be developed in such a way as to secure proper sanitary conditions, amenity and convenience in connexion with the laying out of the land itself and of any neighbouring land.

Hitherto the conflicting interests of different owners and the absence of any power in the local authority to guide and control development according to the circumstances and requirements of particular cases has resulted to a considerable extent in the development of estates, whether large or small, with a sole regard to the immediate interests of the particular estate and without regard to the amenity and convenience of neighbouring lands.

Nor can the landowners be generally blamed for what has taken place. Their powers have in the past been practically limited to their own

estates, and the local circumstances connected with the interests of owners of neighbouring properties have often hindered development in the direction most in harmony with the interests of the community.

Much has, of course, been done by provisions in public general statutes, byelaws, regulations, and local Acts to secure sanitary conditions in the development of land. But such provisions, which commonly apply to a whole district, are inherently inelastic in their character and are not concerned with amenity and convenience as affected by the particular circumstances of the actual land about to be developed.

The Town Planning Part of the new Act involves, in fact, a material advance in the relations between the owners of land and the local authorities in this country, and enables each party to co-operate with the other in promoting the general interest.

The importance of co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in a town planning scheme is fully recognised by the Act. Thus Section 56 (2) contemplates that the Regulations to be made by the Board under that section shall provide for securing this co-operation by means of conferences and otherwise at every stage. Again, amongst the matters to be dealt with by General Provisions under section 55 is the power of the responsible authority to make agreements with owners, and of owners to make agreements with one another (Fourth Schedule, paragraph 13). It is hoped that by means of conferences agreement may generally be arrived at between the local authority and the owners concerned before a scheme is formally submitted to the Board for their approval; and if it is thought that at any stage prior to such submission the assistance or advice of any of the Board's experts might tend to facilitate such agreement or to save labour or expense, the Board will be quite ready to arrange for such assistance or advice being given.

The Board trust that councils in whose district signs of development are visible will give very full consideration to the opportunities which the Act offers of guiding and controlling that development for the benefit of the community, and that in doing so they will bear in mind the heavy burden which has fallen on the ratepayers of many districts in the past in remedying defects of the kind which it is now within their power to prevent.

The Board have very fully explained in the accompanying Memorandum the actual provisions of the Act with respect to town planning.

I am directed to add that this Circular and the Memorandum referred to in it will be placed on sale, so that copies can shortly be purchased from Messrs. Wyman & Sons, Limited, Fetter Lane, London, E.C.—I am, Sir, your obedient Servant,

S. B. PROVIS, *Secretary.*

The Town Clerk or
The Clerk to the Urban
or Rural District Council.

MEMORANDUM OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.

Dated *December 31st*, 1909.

NOTE.

The memorandum is headed "Memorandum addressed to the Councils of Boroughs and other Urban Districts on the Housing, Town Planning, &c., Act, 1909." Part I. relates to the Housing of the Working Classes, and is omitted.

PART II.

NOTE.

This Part of the Memorandum has been divided into numbered paragraphs to facilitate cross-references, the original not being so divided.

TOWN PLANNING.

1. The local authorities for the purposes of this Part of the Act will be (outside London), in boroughs, the town council, and in urban or rural districts, the urban or rural district council (section 65 (1)).

2. Section 54 indicates in sub-section (1) what land may as a rule be made the subject of town planning schemes, and the general objects intended to be secured by such schemes, viz., proper sanitary conditions, amenity and convenience in connexion with the laying out and use of the land and of any neighbouring lands. It will be seen that a scheme may embrace not only any land which is already in course of development, but also land which "appears likely to be used for building purposes," and within the last mentioned category will be included (sub-section (7)) any land likely to be used—

- (1) as or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreation grounds, or
- (2) for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not.

Any question that may arise as to whether land is "likely to be used for building purposes" within the meaning of that expression will be decided by the Board, whose decision will be final.

3. Before a local authority actually prepare a scheme with reference to any land within or in the neighbourhood of their area they must satisfy the Board that there is a *prima facie* case for making a scheme, and receive an authorisation from them to prepare one. A like authorisation is required to enable a local authority to exercise the power conferred on them by the Act of adopting, with or without modification, a scheme proposed by all or any of the owners of any land with respect to which the authority might themselves have been authorised to prepare a scheme (sub-section (2)).

4. This stage of the procedure is of importance, as unless some other time is fixed by the Board for the purpose, the time at which application for authority to prepare or adopt the scheme was made will be the time fixed for the purpose of section 58(2). Under that sub-section a person is, subject to the exception in the proviso, not to be entitled to compensation on account of any building erected on, or contract made, or other thing done after the time fixed with respect to land included in a scheme.

5. It will be seen from sub-section (1) of section 54 that the Act contemplates that, as a general rule, town planning schemes should primarily be concerned with land which is in course of development or appears likely to be used for building purposes. Such a scheme need not, however, be exclusively confined to land of this character. The effect of sub-section (3) is to enable a town planning scheme to include pieces of land already built upon, or pieces of land which are not likely to be used for building purposes, which by reason of their situation with respect to land which is likely to be used for building purposes ought, in the opinion of the Board, to be so included, and provision may be made for the demolition or alteration of any buildings so far as may be necessary for carrying the scheme into effect.

6. In order that a town planning scheme, whether prepared or adopted by the local authority, may have effect, it will be necessary, under sub-section (4), that it should be approved by Order of the Board, who may refuse to approve it except with modifications or subject to conditions. Before a scheme can be approved by the Board, notice of their intention to approve it must be published in the *London Gazette*, and if, within 21 days, any person or authority interested object in manner prescribed by regulations made by the Board under section 56, the draft of the Order must be laid before both Houses of Parliament for not less than 30 days during the session. If either House before the expiration of that period presents an address to the Crown against the draft or any part of it, no further proceedings are to be taken on it.

7. Sub-section (5) gives statutory effect to a town planning scheme when approved by the Board.

8. Under sub-section (6), a town planning scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with the provisions already explained. Moreover, the Board are empowered, on the application of the "responsible authority," as that term is subsequently defined in section 55 (2), or of any other person appearing to the Board to be interested, by Order to revoke a scheme if they think that under the special circumstances of the case the scheme should be revoked.

Contents of Town Planning Schemes.

9. Section 55 (1) empowers the Board to prescribe a set of General Provisions, or separate sets of General Provisions adapted for areas of any special character, for carrying out the general objects of town planning schemes, the matters to be particularly dealt with being set out in Schedule IV. to the Act. The General Provisions appropriate to the area for which a town planning scheme is made are to take effect as part of every scheme, except so far as they are varied or excluded by the provisions of the scheme itself as approved by the Board.

The Board are giving consideration to the subject of General Provisions, but they will not be able to issue them immediately.

10. The section also, by sub-section (2), provides for the insertion of special provisions in every town planning scheme. These special provisions are to :—

- (1) Define, in manner prescribed by the Board's regulations, the area to which the scheme is to apply and the "responsible authority," *i.e.*, the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or the Town Planning Part of the Act are to be executed by a local authority;
- (2) Provide for any matters which may be dealt with by General

Provisions and otherwise supplement, exclude, or vary those Provisions;

- (3) Deal with any special circumstances or contingencies for which adequate provision is not made by the General Provisions; and
- (4) Suspend, so far as necessary for the proper carrying out of the scheme, any statutory enactments, byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme.

Where, however, the scheme contains provisions suspending any enactment contained in a public general Act, it is not to come into force unless a draft of it has been laid before each House of Parliament for a period of not less than 40 days during the session, and if either House before the expiration of that period presents an address to the Crown against the proposed suspension no further proceedings are to be taken on the draft, without prejudice to the making of a new scheme.

11. As already mentioned, the special provisions in each town planning scheme must define who are to be the responsible authority. Where the land comprised in the scheme is wholly situate within the area of some one local authority, that authority would naturally be nominated as the responsible authority. Sub-section (3) of section 55 provides that where the land included in a scheme is in the area of more than one local authority or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be (a) one of these local authorities, or (b) for certain purposes of the scheme one local authority and for certain purposes another local authority, or (c) a joint body constituted specially for the purpose by the scheme which, in this instance, may make all necessary provisions for constituting the joint body and giving them the necessary powers and duties.

Procedure Regulations.

12. Section 56 empowers the Board to make Regulations for regulating generally the procedure to be adopted with respect to various matters in connexion with the preparation, adoption, carrying out, or enforcing the observance of a town planning scheme, and specifies certain subjects for which the regulations are required to provide.

The Board will in due course frame Regulations under this enactment and will forward a copy to the Council.

Power to Enforce Scheme.

13. The responsible authority are empowered by Section 57, after giving notice as provided by a scheme and in accordance with its provisions, to:—

- (1) Remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or
- (2) Execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme (sub-section (1)).

14. It will be observed that the power of the responsible authority to execute works under the section is limited to works which the scheme expressly makes it the duty of some person to execute. It will not

enable the authority to execute works which it is made a person's duty to execute otherwise than by the scheme, or works which the scheme merely requires to be executed in a particular position, or in a particular way if executed at all.

15. Subject to the provisions of the particular scheme it will not in all cases be necessary that the pulling down, &c., of existing buildings which contravene the scheme should take place at once after approval has been given to the scheme. This might involve needless expense where the development contemplated by the scheme did not take place immediately.

16. Any expenses incurred by a responsible authority under section 57 will be recoverable from the persons in default in the manner and subject to the conditions provided by the scheme (sub-section (2)).

17. Any question that arises as to whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, is to be referred to the Board, and must, unless the parties otherwise agree, be determined by the Board as arbitrators, and the decision of the Board is made final and conclusive and binding on all persons (sub-section (3)).

18. It will be seen on reference to section 62 that the provisions of the Regulation of Railways Act, 1868, and amending enactments respecting arbitrations by the Board of Trade apply where the Board determine any matter as arbitrators. Under those provisions as thus made applicable, the Board can appoint an arbitrator to act for them, a course which they would usually follow as regards cases arising under section 57.

Compensation in respect of Property injuriously affected by Scheme, &c.

19. Under sub-section (1) of section 58 any person whose property is injuriously affected by the making of a town planning scheme will be entitled to obtain compensation in respect thereof from the responsible authority if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in manner prescribed by regulations made by the Board. But as already explained, sub-section (2) provides that a person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made, or other thing done with respect to land included in a scheme, after the time at which the application for authority to prepare the scheme was made, or after such other time as the Board may fix for the purpose. The sub-section, however, is subject to the proviso that it shall not apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun, or of carrying out a contract entered into, before the application was made.

20. On the other hand, where any property is increased in value by the making of a town planning scheme, the responsible authority will be entitled to recover from the person whose property is so increased in value one-half of the amount of the increase, if they make a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is first published in manner prescribed by the regulations made by the Board (section 58 (3)).

21. Any question as to whether any property is injuriously affected

or increased in value within the meaning of the section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under the section or which the responsible authority are entitled to recover from a person whose property is increased in value, is to be determined by the arbitration of a single arbitrator appointed by the Board, unless the parties agree on some other method of determination (section 58 (4)).

22. Any amount due under the section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, will be recoverable summarily as a civil debt (section 58 (5)).

23. In case a town planning scheme is revoked by an Order of the Board, any person who has incurred expenditure for the purpose of complying with the scheme is to be entitled to compensation in accordance with the section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme (section 58 (6)).

Exclusion or Limitation of Compensation in certain Cases.

24. In certain cases the compensation which would otherwise be payable is excluded or limited.

Thus, where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation is to be paid in respect thereof if or so far as the provisions are such as would have been enforceable if they had been contained in byelaws made by the local authority (section 59 (1)).

Again, property is not to be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, with a view to securing the amenity of the area included in the scheme or any part of the scheme—

- (1) prescribe the space about buildings, or
- (2) limit the number of buildings to be erected, or
- (3) prescribe the height or character of buildings,

and which the Board consider reasonable for the purpose, having regard to the nature and situation of the land affected by the provisions (section 59 (2)).

25. It will be observed that in order to exclude compensation in regard to injurious affection arising out of provisions in the nature of those referred to in this sub-section, it is necessary that the Board should consider the provisions reasonable for the purposes with which they deal, having regard to the nature and situation of the land affected.

26. Cases may arise in which the Council may desire to insert provisions in a scheme in reference to these matters which, having regard to the terms of the sub-section, the Board would be unable to consider reasonable. If, however, the Council were willing to pay compensation in respect of these provisions, in so far as they exceeded what the Board considered reasonable in the circumstances, there would be no necessary difficulty in inserting such provisions in the scheme. The Board would of course make it clear, when approving the scheme, how far they were able to regard the provisions as reasonable for the purposes of the sub-section.

27. Further, where a person is entitled to compensation under Part II. of the Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he is not to be entitled in respect of that matter or thing both under the Act and under the other enactment, and is not to be

entitled to any greater compensation under the present Act than he would be entitled to under the other enactment (section 59 (3)).

Acquisition by Local Authorities of Land comprised in a Scheme.

28. Under section 60 (1) the responsible authority may, for the purpose of a town planning scheme, purchase by agreement or be authorised to purchase compulsorily, any land comprised in the scheme in the same manner and subject to the same provisions as a local authority are enabled or may be authorised to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sections 2 and 45 of the new Act.

29. Under the provisions thus made applicable, the responsible authority may be authorised to purchase land compulsorily by means of an Order submitted to the Board and dealt with by them in accordance with those provisions of Schedule I. to the new Act which relate to the compulsory purchase of land situate in an urban district. These provisions have been previously explained.

30. Amongst other provisions which will be applicable where land is acquired for the purpose of a town planning scheme, will be those contained in section 5 of the Act which enables the Board to give directions as to the payment and application of any purchase money or compensation payable by a local authority in respect of any lands, estate or interest of another local authority which would otherwise have to be paid into Court.

31. Section 45 will also apply so as to save from acquisition by a responsible authority land which is the site of an ancient monument or other object of archaeological interest and from compulsory purchase land which is the property of any local authority or has been acquired by any corporation or company for the purpose of a railway, dock, canal, water, or other public undertaking, or which forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house.

32. Under section 60 (2), a local authority, although not themselves the responsible authority, may purchase, or may be authorised to purchase, in the same manner as the responsible authority, land included within their area which is comprised in a town planning scheme.

Powers of Board in Case of Default of Local Authority to Make or Execute a Scheme.

33. Section 61 confers upon the Board power, where they are satisfied on any representation, and after holding a public local inquiry, that a local authority :—

- (1) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a scheme ought to be made; or
 - (2) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or
 - (3) have unreasonably refused to consent to any modifications or conditions imposed by the Board;
- to order the local authority, as the case requires :—
- (1) to prepare and submit for the approval of the Board a satisfactory town planning scheme; or
 - (2) to adopt the scheme; or
 - (3) to consent to the modifications or conditions inserted by the Board in the scheme.

34. Where, however, the representation is that a local authority have failed to adopt a scheme, the Board, in lieu of making such an Order as above mentioned, may approve the proposed scheme, subject to such modifications or conditions (if any) as the Board think fit, and thereupon the scheme is to have effect as if it had been adopted by the local authority and approved by the Board (sub-section (1)).

35. Again, the Board are empowered, if they are satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed or any provisions of the scheme, or to execute any works which under the scheme or Part II. of the Act the authority are required to execute, to order that authority to do all things necessary for enforcing the observance of the scheme or any provisions of the scheme effectively, or for executing any works which under the scheme or Part II. of the Act, they are required to execute (sub-section (2)).

36. Any Order of the Board made under this section will be enforceable by mandamus (sub-section (3)).

Determination of Matters by Board.

37. Under section 62 the Board are empowered to determine any matter, which they are authorised to determine under Part II. of the Act or any scheme made under that Part, either as arbitrators or otherwise, at their option, except in cases where it is otherwise expressly provided; and where the Board elect or are required to determine a matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, and the enactments amending those provisions are made applicable with appropriate modifications.

Inquiries by Board.

38. Section 63 makes section 85 of the Housing of the Working Classes Act, 1890, which relates to inquiries by the Board, as amended by the new Act (Schedule VI.), applicable for any purposes of Part II. of the new Act.

Laying General Provisions before Parliament.

39. Section 64 requires all General Provisions made under Part II. of the Act to be laid as soon as may be before Parliament, and makes the Rules Publication Act, 1893, applicable to such Provisions as if they were statutory rules within the meaning of section 1 of that Act.

Expenses.

40. Under section 65 (2) the expenses incurred by a local authority under Part II. of the Act, or any scheme made under that Part, are to be defrayed as expenses of the authority under the Public Health Acts, and local authorities are empowered to borrow, for the purposes of Part II. of the new Act, or any scheme made under that Part, in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts.

41. Section 65 (3) provides that money borrowed for the purposes of Part II. of the Act, or any scheme made under that Part, is not to be reckoned as part of the debt of a borough or urban district for the purpose of the limitation on borrowing under sub-sections (2) and (3) of section 234 of the Public Health Act, 1875.

PART III.

NOTE.

This Part relates to the appointment of a medical officer of health by county councils, and to the duty of the medical officer of health of a district to furnish information to the medical officer of health of a county.

PART IV.

SUPPLEMENTAL.

Provisions as to Commons and Open Spaces.

Under section 73 a scheme or order under the Housing Acts or the Town Planning Part of the new Act, which authorises the acquisition or appropriation to any other purpose of any common, open space, or allotment, as these expressions are respectively defined by the section, is to this extent to be provisional only and will need confirmation by Parliament, except where it makes provision for giving other land, not less in area, in exchange. Any land given in exchange will have to be certified by the Board, after consultation with the Board of Agriculture and Fisheries, to be equally advantageous to the persons (if any) entitled to commonable or other rights and to the public. The Board are to give public notice of any exchange proposed, and to afford opportunities to all persons interested to make representations and objections. If necessary, they are to hold a local inquiry on the subject. This section requires that the scheme or order shall contain certain other provisions for the purpose of giving effect to any exchanges of land of the kind contemplated.

Provisions as to Land in the Neighbourhood of Royal Palaces or Parks.

Section 74 requires that where any land proposed to be included in any scheme or order under the Housing Acts, or any land proposed to be acquired under those Acts, or under the Town Planning Part of the new Act, is situate within a certain distance to be prescribed by the Board from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Board are to consider any recommendations received from the Commissioners in regard to the proposal before confirming the scheme or order, or authorising the acquisition of the land or the raising of a loan for the purpose.

Repeals.

Section 75 and Schedule VI. effect the repeal, consequential upon the provisions of the new Act, of various sections and parts of sections of the Housing of the Working Classes Acts.

S. B. PROVIS, *Secretary.*

CIRCULAR OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.Dated *May 3rd*, 1910.LOCAL GOVERNMENT BOARD,
WHITEHALL, S.W.

SIR,—I am directed by the Local Government Board to forward to you the enclosed copies of the Regulations which they have issued for regulating generally the procedure to be adopted with respect to the preparation or adoption of town planning schemes, and for making provision in regard to certain other matters in accordance with section 56 of the Housing, Town Planning, &c., Act, 1909. A provision is also included prescribing under and for the purposes of sub-section (4) of section 54 of the Act the manner in which any objection should be made to the approval of the Board being given to a scheme.

The Regulations are drawn so as to be of general application. They will extend on the one hand to schemes which relate to small areas or contain only proposals of a simple character and affecting few interests, and on the other hand to schemes which may deal with extensive areas and affect numerous ownerships and other interests and involve serious considerations of expense. It is probable that the circumstances of particular cases will be such as to require or justify some relaxation or alteration of the Regulations in their application to the case, and the Board have, with a view to meeting any such case, included in Article 34 provisions which will enable them, subject to the proviso to that Article, to dispense with or vary any requirement of the Regulations where reasonable cause is shown.

In the absence of authority for departure from any provisions of the Regulations, great care should be taken to comply strictly with them, as any failure in this respect might involve considerable delay and expense.

In the Circular Letter which they addressed to town councils and urban and rural district councils on the 31st December 1909, the Board drew attention to the importance of co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in a town planning scheme. The Board desire again to emphasise this point. Sub-section (2) of section 56 of the Act enacts that provision shall be made by the Regulations "for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the Regulations." The Board have included provisions on this subject in the Regulations, which also contain provisions requiring notices to be given at various stages of the procedure to owners and other persons, including local authorities or companies, interested or affected, and facilities to be afforded to all such persons to place their views or objections before the local authority, or, at the later stage, the Board.

In a case in which the owners of land propose a scheme for the adoption of the local authority, the Board consider it very desirable that the local authority should, before applying to the Board for authority to adopt the scheme, obtain from the owners definite information or undertakings on the question of any compensation which might

become payable in respect of property injuriously affected by the scheme in the event of its becoming operative, whether in respect of property of the owners proposing the scheme, or of the property of any other person. Under section 58 (1) of the Act any compensation payable in accordance with the provisions of that section and section 59 would be payable by "the responsible authority" referred to in section 55 (2), that is to say, the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under the scheme or Part II. of the Act are to be executed by a local authority. In regard also to a scheme proposed to be prepared by a local authority, it appears to be a matter of the greatest importance that these provisions as to compensation should be carefully borne in mind from the earliest stage of the proceedings, and that, as in the case of the proposed adoption of a scheme, the local authority should endeavour to secure definite agreements with any person who may be affected by the proposals.

In regard to the provisions of section 58 above-mentioned the Board are aware that questions have arisen as to the meaning to be attached to the words "by the making of any [or a] town planning scheme" in sub-sections (1) and (3) of the section. The Board have no authority to determine the interpretation to be placed upon provisions in the Act, but they are advised that, in giving effect to the section, no loss in value or gain in value of the property affected which is not due solely to the making of the scheme can be taken into account. There will no doubt be exceptional cases, but as a general rule the loss or gain in value would seem to depend upon a comparison of the full value of the property immediately prior to and irrespective of the making of the scheme with the full value of the property immediately after the making of the scheme, regard being had to the provisions of section 59 of the Act.

In preparing the Regulations the Board have been desirous of limiting as far as possible the specific requirements to be complied with for the purpose of an application to the Board for authority to prepare or adopt a town planning scheme, and it does not appear to them that as a general rule it should be necessary for a local authority to incur much expense at this stage of the proceedings.

The full development of the details of a scheme might, the Board consider, be reserved until after the preliminary stage is passed, at all events in the case of a scheme which is being prepared by the local authority. In ordinary circumstances the Board would probably find it necessary or desirable to direct a local inquiry before giving the necessary authority to prepare or adopt a scheme, and the Board may here repeat what was stated in their Circular Letter of the 31st December, 1909, viz., that if it is thought that at any stage prior to the submission of a scheme for their approval the assistance or advice of any of the Board's experts might tend to facilitate agreements with owners concerned or to save labour or expense, the Board will be quite ready to arrange for such assistance or advice being given.

It will be observed that the Regulations require the preparation of maps at various stages of the proceedings in connexion with a scheme. In Article 18 of the Regulations express provision is made under which the maps prepared in accordance with Article 14 or Article 15 may be used for the purposes of Article 18 and be marked as required by that Article, but such user would only be permissible if the maps required under the later Article would be identical in every respect with those previously prepared for the purposes of Article 14 or Article 15. This provision has been inserted with the view of saving

the expense of preparing further maps, and the Board would not offer any objection to a similar course being followed, subject to similar conditions, as regards the use of Map No. 1 (required by Article 1 of the Regulations) in lieu of preparing a further map (Map No. 2) for the purpose of Article 4. It should be clearly understood, however, that a map which has been prepared and deposited to meet specific requirements of an Article of the Regulations should not be subsequently altered to meet the requirements of a subsequent Article.

It was suggested to the Board that provision should be made in the Regulations for definite schemes of colouring being adopted in the preparation of the maps required by the Regulations, so as to provide for uniformity of practice in regard to the colouring of all maps relating to town planning schemes under the Act. The Board have not regarded it as practicable to carry out this suggestion, but they think it would be desirable that, in preparing the maps required at the several stages of a scheme, the local authority should as far as possible follow the same scheme of colouring throughout all the maps, *e.g.*, if a particular colour is used to indicate some special feature on Map No. 1, the same colour should be used to indicate the same feature on any map at a later stage of the proceedings.

Suggestions have been made that contour models of the areas proposed to be included in town planning schemes should be prepared. The Board have not considered it desirable to include any provision on this matter in the Regulations, and they are disposed to think that it would not as a general rule be expedient to incur the expense of preparing such models, and that it would be found in practice that plans with contour lines drawn or coloured thereon so as to show the variations in the levels of the land would meet adequately the necessities of the case.

Under section 54 (1) of the Act, read with section 55 of [*? and*] the Fourth Schedule and section 59 (2), it would be practicable to include in a town planning scheme provisions restricting the use of certain areas of land to specified purposes, and it will be seen that the Regulations recognise the possibility of provisions of this character. To what extent the power should be used will be a matter for very careful consideration in each case, and the provisions of sections 58 and 59 of the Act in regard to compensation should be borne in mind in connexion with the matter. The Board refer to this point at the present time as they understand that some doubt has been expressed whether the Act authorises the inclusion in a scheme of provisions such [*? as*] are here referred to.

It will be observed that the present Regulations do not include provisions "in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof" (section 56 (1) of the Act), or as to "inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme" (Fifth Schedule, 3 (b)). The Board propose to defer the making of any Regulations under these heads until they are in a better position for determining the precise Regulations which may be desirable.

The Board think it desirable that local authorities and others concerned in the making of a town planning scheme should realise at the outset that a considerable period must of necessity elapse between the time of the inception of a scheme and its final approval. The necessity of giving effect to the clearly expressed intention of the Act in regard to affording persons interested or affected full opportunity of considering the proposals at all stages involves considerable delay, but the Board in settling the Regulations have made the periods for notices as short as possible, having due regard to the objects to be attained. So far as administrative action upon the part of the Board is concerned they will

endeavour to expedite as much as is practicable the dealing with applications to them in regard to town planning schemes, but the careful consideration of a case in all its aspects and the arrangements for the holding of the necessary local inquiries must necessarily take a substantial amount of time.

The Regulations and this Circular will be placed on sale, so that copies can shortly be purchased from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.—I am, Sir, your obedient Servant,

H. C. MONRO, *Secretary.*

To The Clerk to the London County Council *or*
The Town Clerk *or*
The Clerk to the Urban *or* Rural District Council.

REGULATIONS OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.

Dated *May 3rd*, 1910. No. 55,373.

**The Town Planning Procedure Regulations (England and
Wales), 1910.**

To the several Local Authorities in England and Wales for the purposes of Part II. of the Housing, Town Planning, &c., Act, 1909;—

And to all others whom it may concern.

Whereas by sections 54, 55, and 56 of the Housing, Town Planning, &c., Act, 1909 (hereinafter referred to as "the Act of 1909"), which Sections are included in Part II. of the Act of 1909, it is enacted as follows:—

.
[See *ante*, pp. 73, 80, 86.]

And whereas by sub-section (1) of section 65 of the Act of 1909, it is provided that for the purposes of Part II. of the Act of 1909 the expression "local authority" means the Council of any Borough or Urban or Rural District:

And whereas by sub-section (1) of section 66 of the Act of 1909 it is provided that Part II. of the Act of 1909 shall apply to the Administrative County of London, and that, as respects that county, the London County Council shall be the local authority:

And whereas the following are the matters mentioned in the Fifth Schedule to the Act of 1909, namely:—

.
[See *ante*, p. 131.]

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, by this Order, make the following Regulations; that is to say:—

NOTE.

Interview between the Comptroller of the Housing and Town Planning Department of the English Local Government Board and Representatives of the National Advisory Town Planning Committee.

Various points arising on these Regulations were raised at the Conference held by the National Housing and Town Planning Council on July 26, 1910, and at an interview between representative members of the National Advisory Town Planning Committee and Mr. J. A. E. Dickinson, the Comptroller of the Housing and Town Planning Department of the English Local Government Board, held at the offices of the Board on Monday, November 28, 1910, the members of the Committee submitted the following points of difficulty and elicited the following replies:—

(1) *That the Regulations governing the preliminary procedure relating to application for permission to prepare a scheme seemed to require such particulars as could only be given when a scheme had actually been prepared in some detail.*

In reply to this the Comptroller explained that the Local Government Board desired to assist local authorities in every possible way in the preparation of Town Planning Schemes, but they considered that they were entitled to have from local authorities at the outset the whole of the facts and information which were in their possession, relevant to the tentative proposals which the local authorities had under consideration, as well as a general indication of the outlines of the proposals. Amongst other things this would have the advantage of placing the Board in a better position to render assistance. The Board in effect required local authorities, when applying for permission to prepare schemes, to send with their applications outlines of their tentative proposals in so far as these had been put into shape. Attention was drawn to the Board's Circular Letter of May 3, 1910 (see *ante*, pp. 143-146) in regard to this matter.

(2) *That especially many of the particulars required by the Regulations in Articles VI., VIII., and X. (post, pp. 152, 153, 154) were of a character which it would be premature to determine at the early stage of application for permission to prepare a scheme, and that any attempt at this stage to give an estimate of the cost of carrying a scheme into effect would necessarily be inaccurate and might endanger the success of the scheme.*

In reply to this the Comptroller stated that, with regard to the question of estimates, the Board fully recognised that it would not be practicable in all cases for a local authority at this preliminary stage of the proceedings to furnish accurate estimates of the cost of carrying a town planning scheme into effect, especially with regard to compensation. The Board considered that the Act contemplated that some estimates of the cost of a scheme (and not merely the cost of preparing a scheme) should be prepared at this stage, and they were also of opinion that a local authority would desire to have for their own information, before embarking upon the preparation of a scheme, some general estimate of the cost likely to be incurred by the authority and imposed upon the ratepayers, and it was this estimate—so far as the local authority could arrive at it—which the Local Government Board would require. The Comptroller further pointed out that, under the terms of Article X. (a) (*post*, p. 154), the estimated cost was to be stated "as nearly as may be practicable."

(3) *That to comply with the requirements of Article VI. (post, p. 152), requiring at this preliminary stage a statement to be made in regard to the lines and widths of the principal roads proposed to be made under a scheme, would unduly hamper the proper consideration of the scheme at a later stage, and would render subsequent modification and negotiation with landowners more difficult.*

In reply to this the Comptroller pointed out, with reference to the question of showing the lines and widths of the principal roads, that in a great many

cases the necessity for, or desirability of, certain new links of communication would be an important, if not the chief, factor in the inception of a scheme, and would often have a material bearing on the precise area which should be included in the scheme; and in those cases, and also in some others, the desirability of linking up certain points would determine, within certain limits, the lines of the roads. In such cases and in other cases where a local authority had, before making application for permission to prepare a scheme, given consideration to the desirability of constructing main thoroughfares, the Board would desire to have the tentative proposals of the local authority shown on Map No. 2. The showing these proposals on Map No. 2 was solely for the purpose of communicating to the Local Government Board the preliminary ideas of the local authority, and did not commit the local authority in any way to the scheme of roads thus outlined. Map No. 2 was not one of those required by the Regulations to be formally deposited for public inspection, though Article XXXII. (b) (*post*, p. 167) was applicable to it. The Board would, moreover, not in any event insist on roads being shown as definitely fixed, and would accept dotted lines on Map No. 2, or even an indication that it was proposed to construct a road between two definite points without showing the actual line of the road. The Board simply wished to know what projects the local authority might already have in contemplation as probable or desirable. If it was contemplated that the scheme would not provide for the making of roads of the character referred to, it would not be necessary to show any such roads on the Map No. 2.

(4) *That in reference to Article VIII. (d) (post, p. 153) it did not seem necessary or practicable at the preliminary stage to determine how far sewerage and sewage disposal works need modification or extension.*

In reply to this the Comptroller stated that the only information the Board would require under the provisions of Article VIII. (d) with respect to the effect of a proposed scheme on the existing system of sewerage and sewage disposal would be such facts as the local authority could readily give to enable the Board to appreciate the relation of the area comprised in the scheme to existing sewerage facilities. It is considered desirable that such information should be available at this stage of the procedure, especially perhaps in a case of an application relating to an area extending into two or more districts.

(5) *That in some cases the obligation to serve notices under Article I. (post, p. 149) upon all occupiers, of whatever tenure and interest, would be cumbersome and costly, and, to a large extent, unnecessary.*

In regard to this the Comptroller said that the Board could not entertain a proposal to omit entirely from Article I. the requirement as to notice to occupiers. Obviously, in very many cases occupiers of land or premises included in a scheme would have substantial interests, and the Act clearly required that persons interested should have the opportunity of being heard at every stage. But when it is shown to the Board that the interests of occupiers are of a temporary character, *e.g.*, where the tenancies are terminable on very short notice, the Board are willing to consider an application under Article XXXIV. for dispensing with notices on that class of occupier.

(6) *That it would be advisable to draw a distinction in procedure between schemes prepared by a local authority and schemes prepared by landowners and adopted by a local authority. In view of the fact that in the latter case the schemes thus agreed to and adopted by the local authority would then in effect be fully prepared schemes, certain parts of the procedure would seem to be unnecessary and should, if possible, be greatly simplified.*

In reply to this the Comptroller explained that the Act did not recognise any distinction in procedure between a scheme prepared by a local authority and a scheme prepared by an owner and adopted by a local authority, but seemed to contemplate similar procedure. If a scheme proposed by an owner related only to his own land, it would not follow that the interests of adjoining

ing owners or other persons would not be affected. They might be affected materially. Moreover, an owner might prepare a scheme dealing not only with his own land but also with lands of adjoining owners, and a variety of interests might be affected just as if the local authority were preparing the scheme. The provisions of the Act in regard to compensation and betterment would require the careful consideration of the local authority whether they prepared the scheme or adopted an owner's scheme, and in this connexion the fifth paragraph of the Board's Circular Letter of the 3rd May, 1910, should be noted (see *ante*, pp. 143, 144). It was not evident that it would be possible to modify the Regulations in regard to the adoption of owners' schemes generally, but in the case where a local authority applied for permission to adopt a well considered and complete scheme, it might be possible for the Board, on an application under Article XXXIV. (*post*, p. 167) to modify the procedure in the later stages. It would be a matter for consideration on the merits of the particular case how far this could be done consistently with the provisions of the Act and the proviso to Article XXXIV.

The Comptroller finally emphasised the fact that the Regulations were drawn so as to be of general application, and stated that the Board would at all times have regard to the special circumstances of any particular case, and where good cause could be shown they would sympathetically consider applications made under Article XXXIV. for dispensing with or varying any requirement of the Regulations which could properly be dispensed with or varied, having regard to the provisions of the Act and the proviso to the Article referred to.

As certain portions of these Regulations relate to schemes prepared by local authorities, others to schemes proposed by owners, and others to both such schemes, italics have been used in the present work to draw attention to this important distinction, though italics are not used in the original Regulations; and, to give prominence to the references to the various maps, the word "map" has been printed in capitals.

The marginal notes to the Regulations have been drawn in after the numbers of the Articles. For a list of the Articles and these marginal notes, see the Table of Contents.

Procedure Anterior to and for the Purpose of an Application for Authority to Prepare or Adopt a Scheme.

Article I. *Notices of Intention to apply for authority to prepare or adopt a Scheme: Deposit of Map No. 1 showing land proposed to be included.*—(a) At least two months before making an application to the Local Government Board (hereinafter referred to as "the Board") for authority to prepare a town planning scheme, or for authority to adopt a town planning scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land proposed to be included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected by the proposed scheme, upon the County Council, a notice of their intention to make such application. The local authority shall also give notice of their intention to make such application by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least two months before making the application.

(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than one month from the date on which the latest of the said notices is given, a map of the land proposed to be included in the

scheme. The said map (to be marked and known as "MAP No. 1") shall be on the scale of 25·344 inches to the mile, and shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any person inspecting the map any necessary explanation in regard thereto.

(c) The said notices shall describe the land proposed to be included in the scheme and shall state the place at which a map of the land is deposited and the period and times during which the same will be open for inspection by any person interested.

(d) A certified copy of MAP No. 1. shall be furnished by the local authority to the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised.

NOTE.

See Note, *ante*, p. 148 (Question No. 5). As to the preparation of Maps in connexion with town planning schemes, see Chapter XIV. *ante*, pp. 56-61; the Circular of the Board of Agriculture and Fisheries, *post*, p. 175; and the Letter from the Ordnance Survey Department, *ante*, p. 61.

For Forms of the Resolution, Notice, and Advertisement required by this Article, see Precedents Nos. 5, 7, and 8, *post*, pp. 188, 191, 193.

Article II.—*Special Notice to Councils interested.*—With the view of securing that notice of the proposal to apply for authority to *prepare or adopt* a scheme in respect of any land shall be given at the earliest stage possible to any council interested in the land, the local authority, independently of the notices required to be given as aforesaid, shall, within seven days after they have decided to consider a proposal for authority to *prepare or adopt* a scheme in reference to any area of land, serve notice of their decision upon any council interested in the land.

NOTE.

This Regulation has been made in compliance with section 56 (2) (b) of the Act of 1909 (see *ante*, p. 86). For a Form of Notice, see Precedent No. 6, *post*, p. 190.

Article III. *Consideration by Local Authority of Objections, &c.—Conferences: Meeting of Parties Interested.*—The local authority before making an application to the Board for authority to *prepare or adopt* a scheme shall consider any objections or representations made to them in writing in reference to the proposed scheme whether by owners or other persons interested in the land proposed to be included in the scheme, or by owners or other persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme which may be affected by the scheme, or by the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised, or by any other council who may be interested in or affected by the scheme; and shall endeavour, by conferences between the local authority or their officers and such owners, persons, or councils and by any other means available, to secure the co-operation of such owners, persons, or councils in promoting the scheme.

The local authority shall arrange for at least one meeting being held, at which all such owners, persons, or councils as aforesaid shall be entitled to attend or be represented, for the purpose of considering the proposed scheme. Notice of the time and place fixed for such meeting shall be served by the local authority upon all such owners, persons, or

councils so far as they can ascertain the same, not less than fourteen days before the time fixed for the meeting.

The Mayor (if the local authority are the Town Council of a borough) or the chairman of the council (if the local authority are the London County Council or an Urban or Rural District Council) shall be the president of the said meeting, or, in the event of the Mayor or chairman being unable or unwilling to act, any person appointed for the purpose by the local authority shall be the president, or, in default of such appointment, the meeting shall choose some person present at the meeting to be president thereof. On opening the meeting the president, or a member or officer of the local authority, shall give such explanation of the proposed scheme as he thinks expedient.

NOTE.

For a Form of Notice of the Meeting, and an *agenda* of the business to be transacted thereat, see Precedents Nos. 9 and 10, *post*, pp. 194, 195.

Article IV. *Applications to the Board to be by Resolution: Map No. 2 to be prepared in connection with Resolution.*—(a) An application to the Board by a local authority for authority to *prepare or adopt* a scheme shall be made by a resolution of the local authority.

(b) The resolution shall define, by reference to a map prepared on a scale of not less than 25·344 inches to the mile (to be marked and known as “MAP No. 2”), the land in reference to which it is desired to prepare or adopt the scheme, and shall state whether the land is entirely within the area of the local authority or wholly or partly within a neighbouring area. In addition to any other particulars required by these Regulations to be shown thereon the said map shall show clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme, distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority. If the area of the land includes any piece of land already built upon or any piece of land not likely to be used for building purposes, any such lands shall be indicated on the map by distinctive colours and any necessary reference notes, and there shall also be shown on the map in like manner the positions of any buildings which have been erected on the land or of any buildings which are in course of erection.

(c) A copy of the resolution certified by the clerk of the local authority shall be transmitted without delay to the Board by the clerk, with a covering letter, and accompanied by a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

NOTE.

For Forms of the Resolution, Covering Letter, and Statement referred to in this Article, see Precedents Nos. 11, 12, and 13, *post*, pp. 196, 197, 198.

Article V. *Documents, &c., to accompany Application: Map No. 3 to be Prepared.*—The application to the Board shall be accompanied by:—

(a) The statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of Article I.

(b) MAP No. 2 or a copy thereof duly certified by the clerk to the local authority.

(c) A map on the scale of 1 inch to the mile (to be marked and known as "MAP No. 3"), showing, by distinguishing colours or boundary lines in colour, the district of the local authority, the land included in the proposed scheme, and the area within a distance of five miles from any part of the district of the local authority:

Provided that, if the scheme is proposed to be *made or adopted* by the council of a rural district, it shall not be obligatory that the map shall extend to the whole of the rural district, but it shall extend to the contributory place or places therein in which any part of the land included in the scheme is comprised, and to the area within a distance of five miles from such place or places:

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show at least the area within a distance of five miles from any part of such land.

(d) A copy of all objections made in writing in reference to the proposed scheme so far as the objections have not been withdrawn or removed.

(e) If the application relates to the *adoption* of a scheme proposed by owners, a copy of the scheme so proposed and a statement of any modifications which the local authority are of opinion should be made in the scheme.

NOTE.

For a Form of the Statutory Declaration as to compliance with Article I., see Precedent No. 14, *post*, p. 198. For a Form of Statement of Modifications proposed in connexion with owners' schemes, see Precedent No. 16 (6), *post*, p. 205.

Article VI. *Additional Particulars to be shown on Map No. 2 in a case of Preparation of Scheme by Local Authority.*—If the application relates to the *preparation* of a scheme by the local authority there shall be shown on MAP No. 2 the lines and widths of the principal roads which the local authority propose shall be made as part of the scheme, the connexions of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it would be necessary to stop up or divert shall also be indicated on the said map, and if the local authority contemplate that the scheme to be prepared shall provide for certain areas being used for the purpose of open spaces or for other special purposes those areas shall as far as possible be indicated on the said map.

NOTE.

[See Note, *ante*, p. 147 (Questions 2 and 3).]

Article VII. *Additional Particulars to be shown on Map No. 2 in a case of Adoption of Scheme by Local Authority.*—If the application relates to the *adoption* of a scheme proposed by owners of land there shall be shown on MAP No. 2 the lines and widths of all roads proposed as part of the scheme, the connexions of the proposed roads with existing roads, and the lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity. Any existing roads or ways which it is proposed to stop up or divert shall be indicated on the said map, which shall also indicate the areas proposed by the scheme to be allocated for the purpose of open spaces, private or public, or to be used for any other special purposes. The said map shall also show all

such further particulars in relation to the scheme proposed to be adopted as are suitable for indication thereon, *e.g.*, any proposals as to lines of sewers, or of pipes or mains for the supply of water, gas, or electricity.

Article VIII. *Information to be furnished to the Board in connexion with all applications.*—In connexion with an application for authority to prepare or adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the particulars and information hereinafter indicated :—

(a) A general description of the scheme including information as to the general character of the land proposed to be included in the scheme, to the extent to which the scheme applies to land in course of development, the extent to which it applies to land likely to be used for building purposes, and, as regards the last-mentioned land, the grounds for considering that the land is likely to be so used.

(b) The reasons on which the local authority rely in support of their application.

(c) If the scheme includes land already built upon or land not likely to be used for building purposes, the reasons which, in the opinion of the local authority, render it necessary or desirable to include such lands in the scheme; particulars of the buildings on the lands; such information as the local authority may be in a position to give in regard to the extent to which it would be necessary to provide for the demolition or alteration of the buildings for the purpose of carrying the scheme into effect; and, as regards any land not likely to be used for building purposes, the grounds on which it is considered that such land would not be so used.

(d) Information as to the arrangements in operation in the area of the local authority in regard to sewerage, drainage, and sewage disposal, water supply and lighting, and the like information in regard to the area of any other local authority in which any part of the land included in the scheme is comprised, and also information to show to what extent the arrangements as to sewerage, drainage, and sewage disposal would be available or would require alteration or modification for the purposes of the area included in the scheme. If any company, whether statutory or otherwise, is supplying or has power to supply water, gas, or electricity in the area included in the scheme, it should be so stated and particulars given in regard thereto.

(e) If the area of the land included in the scheme is not wholly within the area of the local authority making the application, information shall be supplied as to the proposals in regard to the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under such scheme, or under Part II. of the Act of 1909, may have to be executed by a local authority.

(f) Information as to any monuments or ancient monuments, within the meaning of the Ancient Monuments Protection Acts, 1882 to 1900, situate within the area included in the scheme, and as to the manner in which they would be affected.

(g) If any land or property of any Government Department would be affected by the scheme, particulars in regard to any such property and as to the Government Departments concerned.

NOTE.

See Note, *ante*, p. 147 (Question No. 2); and, as to sub-clause (d), *ante*, p. 148 (Question No. 4). For a Form of the required Statement, see Precedent No. 15 A, and Note, *post*, p. 200.

Article IX. *Additional Information to be furnished to the Board in a case of Adoption of Scheme by Local Authority.*—In connexion with an application for authority to adopt a scheme, the local authority shall furnish the Board with a statement or statements giving the additional particulars and information hereinafter indicated:—

(a) The names and addresses of the owners, lessees, and occupiers of each parcel of the land included in the scheme, and the approximate extent of each such parcel.

(b) Information showing in what respects the proposals in the scheme would involve the suspension of any statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme.

(c) Information as to the extent to which it may be contemplated or necessary under the scheme that land included in the scheme shall be acquired (1) by the local authority making the application or (2) by any other local authority.

(d) Definite information as to whether any of the owners by whom the scheme is proposed will, in the event of the scheme being adopted by the local authority and approved by the Board, claim compensation on the ground that his property would be injuriously affected by the making of the scheme; and particulars of any information in the possession of the local authority in regard to the probability of any other person making a claim for compensation on that ground.

(e) If, in the opinion of the local authority, any property will be increased in value by the making of the proposed scheme, information as to such property and as to the estimated increase in value.

NOTE.

With regard to the suspension of byelaws, see section 55 (2) of the Act (*ante*, p. 80); see also Articles XXI. (viii.) and XXII. (c) of the Regulations (*post*, pp. 161, 162), and the Circular of the Local Government Board as to byelaws issued to district councils on August 29th, 1912.

For a Form of the required Statement, see Precedent No. 16, *post*, p. 204.

Article X. *Estimate as to Cost of Scheme: Information as to Area, Population, Rates, Debt, &c.*—(a) In connexion with an application for authority to prepare or adopt a scheme the local authority shall state as nearly as may be practicable the estimated cost of carrying out the scheme, so far as the cost is expected to be borne by (1) the local authority making the application, and (2) any other local authority. The local authority shall also furnish the Board with such information as they may require as to the manner in which the estimated cost is arrived at.

(b) Subject to the proviso hereinafter contained, the local authority shall also furnish a statement showing the following particulars with respect to the district of the local authority, that is to say:—

- (i.) the acreage;
- (ii.) the population according to the last census;
- (iii.) the rateable value for the purposes of the poor rate;
- (iv.) the amount in the £ of every rate levied during the three last preceding financial years;
- (v.) the amount of the balances of the outstanding loans contracted by the local authority and the sum included in such amount in respect of loans for sanitary purposes; and
- (vi.) the amount of the loans sanctioned but not raised though proposed to be raised, and the sum included in such amount in respect of loans for sanitary purposes:

Provided that if it is proposed that the cost of the scheme to be borne by the local authority shall be charged upon any contributory place or places in their district the particulars required under heads i., ii., iii., and iv. hereof shall be given with respect to such place or places only.

(c) If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the application, the first-mentioned local authority shall make a statement showing in regard to their district the several particulars indicated in paragraph (b) of this Article, and shall supply the same to the last-mentioned local authority, who shall transmit it to the Board with the said application.

NOTE.

See Note, *ante*, p. 147 (Question No. 2).

The cost of arbitrations in connexion with the compulsory purchase of land for the purpose of town planning schemes is dealt with by a recent Order which will be found *post*, pp. 171-174.

The cost of road work may be lessened by a grant from the Road Board. See their Circular, dated July 1910.

For a Form of the required Statement, see Precedent No. 15 B, *post*, p. 202.

Article XI. *Notice by Advertisement of application having been made to the Board.*—When the local authority have transmitted to the Board an application for the approval of the Board to the *preparation or adoption* of a scheme, the local authority shall forthwith give notice of such application and of the date of the resolution making the application by advertisement in some newspaper or newspapers circulating in the area of the local authority.

NOTE.

For a Form of the required Advertisement, see Precedent No. 17, *post*, p. 206.

Procedure during, on, and after the Preparation or Adoption and before the Approval of the Scheme.

Article XII. *Notices of authority having been given to prepare or adopt a Scheme, and of intention to prepare or adopt a Scheme: Persons desiring to be heard to give notice to Local Authority.*—(a) When authority has been given by the Board to the *preparation* by a local authority of a scheme with reference to any land or to the *adoption* by a local authority, with or without modifications, of a scheme proposed by owners of land, the local authority shall forthwith serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land in reference to which authority to *prepare or adopt* a scheme has been so given, and upon the council of any borough or of any urban or rural district within which any part of that land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a notice that such authority has been given and that a copy of the Order or instrument giving such authority may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day pending the *preparation or adoption* of the scheme. They shall also give notice to the same effect by advertisement in some newspaper or newspapers circulating in the area of the local authority.

(b) If the land in reference to which authority to *prepare or adopt* a scheme has been given as aforesaid excludes any land in regard to which an application under Article IV. of these Regulations was made to the

Board, the local authority shall serve notice of the exclusion of such land upon the owners or reputed owners, lessees or reputed lessees, and occupiers of such excluded land and upon the council of any borough or of any urban or rural district within which any part of the excluded land is comprised, and also, if any main road would or might have been affected by the inclusion of the excluded land, upon the county council.

(c) The notices to be served on owners or other persons or to be given by advertisement under paragraph (a) of this Article shall also state that the local authority propose to *prepare* a scheme or, as the case may be, to *adopt* with or without modifications the scheme proposed by owners, and that any person interested or affected desiring to be heard in reference to such proposal, including any persons representing architectural or archaeological societies or otherwise interested in the amenity of the proposed scheme, should give notice in writing to the clerk to the local authority within twenty-one days from the date of the notice.

(d) The local authority shall make suitable provision for affording to any person interested or affected inspecting the Order or instrument of the Board giving authority to *prepare* or *adopt* a scheme any necessary explanation or information in regard thereto.

NOTE.

For a Form of Notice that authority to prepare or adopt a scheme has been obtained from the Local Government Board, see Precedent No. 19, *post*, p. 207, and for a form of Notice that certain land has been excluded by the Board, see Precedent No. 20, *post*, p. 208.

Article XIII. *Consideration by Local Authority of Objections, &c.*—In connexion with the *preparation* or *adoption* of a scheme the local authority shall carefully consider all objections and representations made to them in writing by any persons or councils interested or affected, including persons representing architectural or archaeological societies or otherwise interested in the amenity of the proposed scheme.

NOTE.

For a Form of Notice of Objection to the preparation of a scheme, see Precedent No. 18, *post*, p. 206.

Article XIV. *Preparation of Scheme by Local Authority: Draft Scheme to be printed and Map No. 4 to be prepared showing details of proposals.*—When the local authority have fully considered and developed their proposals and have decided to *prepare* a scheme in regard to an area of land in respect of which they have been authorised to *prepare* a scheme, they shall cause to be printed a draft scheme embodying their proposals and shall cause a map or, if the case so require, maps (to be marked and known as "MAP No. 4" or "MAP No. 4 (A)," "MAP No. 4 (B)," &c.) to be prepared on a scale of not less than 25·344 inches to the mile, showing clearly by means of boundary lines sharply defined in colour the area of the land included in the proposed scheme distinguishing between the parts of the land included within the area of the local authority and within the area of any other local authority, and also showing thereon all such particulars and details in relation to the proposed scheme as can conveniently be indicated thereon by the aid of reference letters or numbers, descriptive notes, distinguishing colours, or otherwise; and especially there shall be indicated and distinguished on the said map or maps:—

Existing main roads;

Roads repairable by the inhabitants at large;

Roads or footways over which the public have a right of way;

Roads on which tramways or light railways (a) have been constructed or (b) are authorised to be constructed:

Roads which the local authority propose shall be made as part of the scheme, indicating the widths thereof and any proposals as to the parts thereof to be appropriated or set apart for special purposes, and the connexions of such roads with existing roads;

Roads or ways which it is proposed to stop up or divert;

Land already built upon;

Land not likely to be used for building purposes;

Land proposed to be allocated for use as open spaces, (a) private or (b) public;

Land to be used for any other purposes, including, *e.g.*, buildings for manufacturing purposes or buildings of a special character in reference either to the purposes to which they are to be applied or to their height or otherwise, indicating any restrictions proposed as to the number of buildings which may be erected on any portion of land or each acre in any portion of land;

Land to be acquired by the local authority for any purpose;

Lines of any existing sewers or any existing pipes or mains for the supply of water, gas, or electricity.

Proposals as to lines of sewers or of pipes or mains for supply of water, gas, or electricity.

NOTE.

It is hoped that local authorities, when preparing their draft schemes in pursuance of this Article, will find the Model Clauses, which have been culled from various sources and set out in Part V. of the present work (*post*, pp. 233 *et seq.*), of value in suggesting the lines upon which their schemes may be based; but see the Introduction to that Part, *post*, p. 232.

Article XV. *Adoption of Scheme by Local Authority: Scheme of Owners to be printed and also Memorandum of any modifications proposed, and Map No. 4 to be prepared showing details of proposals.*—When the local authority have fully considered the scheme proposed by owners in respect of an area of land in regard to which the local authority have been authorised to *adopt* a scheme with or without modifications and have decided to *adopt* the same with or without modifications, they shall cause to be printed a copy of the scheme proposed by owners, and shall prepare and cause to be printed a memorandum of all modifications which they propose should be made in such scheme, and shall obtain from the owners or shall themselves provide a map or maps (to be marked and known as “MAP No. 4” or “MAP No. 4 (A),” “MAP No. 4 (B),” &c.) on a scale of not less than 25·344 inches to the mile, showing thereon all such particulars and details as are required to be shown on the map or maps referred to in Article XIV. of these Regulations.

NOTE.

For a Form of Memorandum of Modifications, see Precedent No. 21, *post*, p. 209.

Article XVI. *Notices of Scheme prepared or of Scheme intended to be adopted by Local Authority: Deposit of Draft Scheme, &c., and of Map No. 4 for Inspection.*—(a) At least one month before deciding upon the scheme to be submitted to the Board for approval, whether in regard to a scheme prepared by the local authority or a scheme proposed by owners and proposed to be adopted by the local authority, the local authority shall serve upon the owners or reputed owners, lessees or reputed lessees, and

occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a notice that a draft scheme *has been prepared* by the local authority or (as the case may be) *that the local authority intend to adopt* a scheme proposed by owners, and that it is proposed to submit the same, with or without modifications, to the Board for approval; and shall also give notice of such proposal by advertisement in some newspaper or newspapers circulating in the area of the local authority, and the advertisement shall be published at least one month before deciding upon the scheme to be submitted to the Board.

(b) The local authority shall, not later than the date on which the first of the said notices is given, deposit at a place convenient for the purposes of inspection and shall keep deposited thereat, for a period not being less than twenty-one days from the date on which the latest of the said notices is given, the draft scheme and the map or maps referred to in Article XIV. of these Regulations or (as the case may be) the scheme and memorandum and the map or maps referred to in Article XV. of these Regulations, and the same shall be open for inspection by any persons interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any such person inspecting the said documents and maps any necessary explanation or information in regard thereto.

(c) The said notices shall describe the land proposed to be included in the scheme, and shall state the place at which the documents and maps referred to in paragraph (b) of this Article are deposited and the period and times during which the same will be open for inspection by any person interested or affected. The notices shall state that the local authority will be prepared to consider any objections or representations which may be made to them in writing during the said period, and the notice to be given by advertisement shall also state that the local authority will be prepared to consider any objections or representations made in writing by any persons affected, including any persons representing any architectural or archaeological society or otherwise interested in the amenity of the proposed scheme.

NOTE.

For a Form of Notice of intention to submit a draft scheme to the Board, see Precedent No. 22, *post*, p. 210.

Article XVII. *Application of Article III. of Regulations.*—Article III. of these Regulations shall apply also in regard to procedure before the local authority decide upon the scheme to be submitted to the Board for approval, whether in regard to a scheme *prepared* by the local authority or a scheme proposed by owners and proposed to be *adopted* by the local authority.

NOTE.

For a Form of Notice of the public meeting required by this Article, and an *agenda* of the business to be transacted thereat, see Precedents Nos. 23 and 24, *post*, pp. 211, 212.

Article XVIII. *Making or Adoption of Scheme to be by Order of Local Authority, and Map No. 5 to be sealed in connexion with the Order.*—When the local authority have decided upon the scheme to be submitted to the Board for their approval, whether in regard to a scheme *prepared*

by the local authority or a scheme proposed by owners and proposed to be *adopted* by the local authority, they shall make an Order under their seal, authenticated by the signature of their clerk or deputy clerk, *making* the scheme, or (as the case may be) *adopting* the scheme proposed by owners with such modifications as may have been decided upon by the local authority.

A map or, if the case so require, maps prepared in the manner and containing the particulars and details required by Article XIV. of these Regulations, but to be marked and known as "MAP No. 5" or "MAP No. 5 (A)," "MAP No. 5 (B)," &c., shall be sealed with the seal of the local authority in connexion with the Order:

Provided that if the map or maps required by this Article to be prepared and sealed in connexion with the Order would be identical in all respects with the map or maps prepared in accordance with Article XIV. or (as the case may be) Article XV. of these Regulations, the last-mentioned map or maps may, if the local authority think fit, be used for the purposes of this Article, but if so used they shall also be marked as indicated in this Article as well as in the manner required by Article XIV. or Article XV.

NOTE.

For Forms of the Resolution deciding upon the scheme to be submitted to the Board, and of the Order making or adopting the scheme, see Precedents Nos. 25 and 26, *post*, pp. 212, 213.

Article XIX. *Application to the Board to approve Scheme to be by Resolution.*—An application to the Board to approve the scheme as *made or adopted* by the local authority by an Order in pursuance of Article XVIII. of these Regulations shall be made by a resolution of the local authority; and a copy of the resolution, certified by the clerk to the local authority, shall be transmitted without delay to the Board by the clerk, with a covering letter, and accompanied by a statement as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting.

NOTE.

For Forms of the Resolution applying to the Board for approval of the scheme and the Covering Letter, see Precedents Nos. 27 and 28, *post*, pp. 214, 215. For a Form of Statement as to voting, &c., see Precedent No. 13, *post*, p. 198.

Article XX. *Documents, &c., to accompany Applications for Approval of a Scheme: Map No. 6 and Map No. 7 to be prepared.*—When the local authority transmit to the Board the resolution of the local authority requesting the approval of the Board to the scheme as *made or adopted* by the local authority, they shall transmit to the Board:—

(a) The statutory declarations and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of Articles XII. and XVI.

(b) A sealed copy and three other copies of the Order of the local authority containing the scheme as made or adopted by them, and a certified copy of every map referred to in the Order.

(c) A map on the scale of 6 inches to the mile to be marked and known as "MAP No. 6," showing, by distinguishing colours or boundary lines in colour, the district of the local authority and the land included in the scheme:

Provided that, if the scheme is *made or adopted* by the council of a

rural district, it shall not be obligatory that the map shall extend to the whole of the rural district but it shall extend to the contributory place or places therein in which any part of the land included in the scheme is comprised :

Provided also that, if in any case the land included in a scheme is wholly outside the district of the local authority, the map shall show all the area intervening between that land and the district of the local authority.

There shall also be shown on the map by some distinctive colours and any necessary reference notes all recreation grounds or public open spaces and public elementary schools in the area required to be shown on the map, and also the buildings which have been erected in that area up to the time when the map is sent to the Board, distinguishing so far as regards the land included in the scheme the buildings begun to be erected after the application was made to the Board for their approval to *prepare* or *adopt* the scheme.

(d) A map on the scale of not less than 25·344 inches to the mile, or a plan drawn to some larger scale (to be marked and known as "MAP No. 7") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of such land belonging to different owners. The map or plan shall show as regards each portion of the land the name of the owner, or shall bear numbers having reference to a statement, to be annexed to the map or plan, showing the names of the owners.

(e) A copy of all objections made in writing in reference to the scheme so far as the objections have not been withdrawn or removed in the scheme as finally *prepared* or *adopted* by the local authority.

NOTE.

For a Form of the Statutory Declaration required by Clause (a) of this Article, see Precedent No. 29, *post*, p. 215.

Article XXI. *Information to be furnished to the Board in connexion with an Application for Approval of a Scheme.*—(a) The local authority shall furnish the Board with a statement or statements giving in regard to the scheme *prepared* or *adopted* by the local authority the particulars and information indicated in Articles VIII. and IX. of these Regulations so far as such particulars and information are not contained in the scheme.

The said particulars and information shall be given in regard to every scheme whether *prepared* by the local authority or *adopted* by them :

Provided that where the particulars and information furnished to the Board in accordance with Article VIII. or Article IX. or any division of either of those Articles represent fully and accurately the particulars and information required by this Article in regard to the scheme as *prepared* or *adopted* by the local authority it shall be sufficient if a reference be made to the particulars and information previously furnished under Article VIII. or Article IX. or any division thereof.

(b) The local authority shall also furnish the Board with a statement or statements giving the particulars and information indicated below so far as they are not contained in the scheme :—

(i.) Information to show whether the scheme admits of satisfactory provision being made in regard to the supply of water, gas, or electricity within the area included in the scheme.

(ii.) Information in regard to any tramways or light railways constructed or authorised to be constructed in the area included in the scheme or in the immediate neighbourhood thereof.

(iii.) In regard to any lands proposed to be acquired by (a) the local authority submitting the scheme or (b) any other local authority, any information available as to the probability of the lands being acquired by agreement.

(iv.) Particulars in regard to any land included in the scheme which belongs to (a) the local authority submitting the scheme or (b) any other local authority; the purposes for which and the authority under which such land was acquired or is held; and also information as to any proposal in regard to its use for any other purposes under the scheme.

(v.) If the local authority are of opinion that any property will be injuriously affected by the making of the scheme, within the meaning of the Act of 1909, information, so far as it is practicable to give the same, in regard to such property and as to the extent to which the local authority consider that it may be injuriously affected.

(vi.) Detailed particulars of any works which are to be executed under the scheme by any person or local authority, so far as any such particulars are available.

(vii.) If the scheme contains provisions suspending any enactment contained in a public general Act, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(viii.) If the scheme contains provisions suspending any other statutory enactments, byelaws, regulations or other provisions which are in operation in the area included in the scheme, a full explanation of any such provisions and the reasons which are considered to justify their insertion.

(ix.) Particulars of any land forming part of any common, open space, or allotment, within the meaning of section 73 of the Act of 1909, which is within the area included in the scheme, and of any part of that land which under the scheme is authorised to be acquired or appropriated to any other purpose, and particulars in regard to any land proposed to be given in exchange for the land so to be acquired or appropriated.

(x.) Particulars of any land included in the scheme which is situate within the distance prescribed by Regulations made by the Board under section 74 of the Act of 1909 from any of the Royal palaces or parks.

NOTE.

For a Form of the Statement required by clause (a) of this Article, see Precedent No. 30, *post*, p. 218, and for a Form of that required by clause (b), see Precedent No. 31, *post*, p. 218. With regard to the suspension of byelaws, see cross references given in Note to Article IX. of these Regulations (*ante*, p. 154).

Article XXII. *Estimate and particulars as to cost of Scheme: Information as to area, population, rates, debt, local Acts, orders, byelaws, &c.*— (a) In connexion with an application to the Board for their approval of the scheme to be *prepared or adopted* by the local authority, information shall be furnished in regard to the estimated cost of carrying out the scheme, so far as the cost is to be borne by (1) the local authority making the application and (2) any other local authority. Separate particulars shall be given under the following heads:—

EXPENDITURE.

- Purchase of land for open spaces.
- Purchase of land for other purposes, specifying them.
- Purchase of buildings.
- Demolition or alteration of buildings.
- Compensation in respect of property injuriously affected by the scheme.
- Making or alteration of roads or ways.
- Sewerage or drainage.
- Cost of preparing the scheme.
- Other purposes, specifying them.

RECEIPTS.

- In respect of property increased in value.
- From other sources, specifying them.

(b) If the statement or statements of particulars furnished under Article X. (b) or (c) of these Regulations has or have owing to lapse of time or other circumstances become inaccurate in any material respect, an amended statement or amended statements of such particulars shall be supplied.

(c) There shall also be supplied a list and a copy of all local Acts, Provisional Orders, byelaws, or regulations in force in the area of any local authority any part of whose district is included in the scheme; and in the case of any part of a district other than that of the local authority making the application to the Board being so included, such list and copy shall be supplied by the local authority of that district to the local authority making the application, who shall transmit them to the Board.

NOTE.

For forms of the Statements as to estimated expenditure, as to Amendments to be made in previous statements, and as to Acts, &c., in force in the area included in the scheme, see Precedents Nos. 32, 33, and 34, *post*, pp. 222, 223.

Article XXIII. *Notice by Advertisement of submission of Scheme to the Board: Objections, &c., may be made to the Board.*—When the local authority have submitted to the Board for their approval the scheme prepared or adopted by the local authority they shall forthwith give notice of submission by advertisement in some newspaper or newspapers circulating in the area of the local authority. The notice shall also state that a copy of the scheme submitted to the Board may be inspected by persons affected, including persons representing architectural or archaeological societies or otherwise interested in the amenity of the scheme, at a place to be specified in the notice, without payment of any fee, at all reasonable hours (specifying the same) on any week-day within a period of one month from the date of the notice, and that any objections and representations by any such persons should be made in writing and addressed to the Board, at their office, within the said period. A copy of the newspaper or newspapers containing such advertisement shall be forwarded to the Board by the clerk to the local authority.

NOTE.

For a Form of the Advertisement required by this Article, see Precedent No. 35, *post*, p. 224.

Article XXIV. *Notices of Modifications or Conditions proposed by the Board: Objections, &c., may be made to the Board.*—(a) If the Board propose to make any modifications in, or to attach any conditions to, the scheme submitted for their approval and transmit to the local authority a draft Order for approving the scheme with such modifications and conditions, the local authority shall within fourteen days after the receipt of the draft Order serve a copy of the draft Order upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is affected, upon the county council, together with a notice that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their office within a period of one month from the date of the serving of such draft Order and notice.

(b) The local authority shall also within fourteen days after the receipt of the draft Order give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board have caused a draft Order to be prepared for approving the scheme subject to modifications or conditions, that a copy of the draft Order may be inspected and any information in regard thereto may be obtained, without payment of any fee, at a place which shall be specified in the notice, at all reasonable hours (specifying the same) on any week-day during the period of one month from the date of the notice, and that any objections or representations in regard to such modifications and conditions should be made in writing and addressed to the Board at their office within a period of one month from the date of the notice.

(c) The local authority shall furnish the Board within a period of one month from the receipt of the draft Order for approving the scheme with modifications or subject to conditions any objections or representations which they may desire to make in regard to the proposed modifications and conditions, and shall also within the same period transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of this Article.

NOTE.

For a Form of the Notice required by clause (a) of this Article, see Precedent No. 36, *post*, p. 225; for a Form of the Advertisement required by clause (b), see Precedent No. 37, *post*, p. 225; for a Form of the Statement as to the local authority's objections to the Board's proposed modifications and conditions referred to in clause (c), see Precedent No. 38, *post*, p. 226; and for a Form of the Statutory Declaration required by clause (c), see Precedent No. 39, *post*, p. 227.

Article XXV. *Notice by Advertisement of intention of the Board to approve Scheme and to publish notice of such intention in "London Gazette."*—

(a) When the Board have decided to approve the scheme submitted for their approval, with or without modifications, and notify the local authority of the decision and transmit to the local authority a draft Order for approving the scheme, the local authority shall within fourteen days after the receipt of such notification give notice by advertisement in some newspaper or newspapers circulating in the area of the local authority that the Board intend to approve the scheme and propose, after the receipt by the Board of a copy of the newspaper or newspapers containing the advertisement, to publish forthwith in the *London Gazette*, in accordance with sub-section (4) of section 54 of the

Act of 1909, a notice of such their intention, and that any person or authority interested and deciding to object to the scheme being approved should make his or their objection in the manner prescribed by Article XXVI. of these Regulations within twenty-one days from the date of such publication in the *London Gazette*.

(b) A copy of the newspaper or newspapers containing the advertisement shall be forwarded to the Board by the clerk to the local authority immediately on the publication thereof.

(c) The local authority shall deposit at a place convenient for the purposes of inspection and shall keep deposited thereat the draft Order forwarded to them under this Article, for the full period of twenty-one days from the date of the said publication in the *London Gazette*, and the draft Order shall be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period.

NOTE.

For a Form of the Advertisement required by clause (a) of this Article, see Precedent No. 40, *post*, p. 228.

Article XXVI. *Prescribing Manner of Objection to approval of Scheme under and for the purposes of section 54 (4) of the Act of 1909.*—When the notice of the intention of the Board to approve a scheme has been published in pursuance of sub-section (4) of section 54 of the Act of 1909, any person or authority interested and deciding to object to the scheme being approved shall make his or their objection in the following manner, that is to say:—

The objection shall be made to and be brought before the Board by means of a letter, or other representation in writing, which shall be addressed and posted, or shall be otherwise given, sent, or delivered to the Board at their office. The letter or representation shall indicate clearly the scheme to which the objection is taken, and shall state fully in what respects the person or authority objecting claims or claim to be interested in the scheme and the grounds on which the objection is made.

Procedure after the Approval of the Scheme.

Article XXVII. *Notices of Approval of Scheme by the Board.*—(a) The local authority, on receipt of a copy of the Order of the Board approving a scheme, shall without delay first publish notice of the approval of the scheme by advertisement in some newspaper circulating in the area of the local authority. The notice shall state that the scheme has been approved, with or without modifications or conditions as the case may be, and that the Order of the Board giving the approval and a copy of any map or plan referred to in the Order or scheme may be inspected and any necessary explanation or information in regard thereto may be obtained without payment of any fee at a place which shall be specified in the notice at all reasonable hours (specifying the same) on any week-day during the period of three months after the date of the Order. They shall also, not earlier than the second day after the first publication in a newspaper as aforesaid, serve upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the land included in the scheme, and upon the council of any borough or of any urban or rural district within which any part of the said land is comprised, and also, if any main road is or may be affected by the scheme, upon the county council, a copy of the Order approving the scheme and a notice

that a copy of any map or plan referred to in the Order or scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained as above mentioned.

(b) The local authority shall make suitable provision for affording any person inspecting the Order or scheme or any map or plan referred to therein within the said period any necessary explanation or information in regard thereto.

(c) The local authority shall within fourteen days after the receipt of the said Order transmit to the Board the statutory declaration and exhibits required by Article XXXI. of these Regulations in proof of compliance with the requirements of paragraph (a) of this Article.

NOTE.

For Forms of the Advertisement and Notices required by clause (a) of this Article, see Precedents Nos. 41 and 42, *post*, pp. 229, 230. For a Form of the Statutory Declaration required by clause (c), see Precedent No. 43, *post*, p. 230.

GENERAL.

Article XXVIII. *Notices, &c., to Board of Agriculture and Fisheries and to Commissioners of Works in certain cases.*—Wherever in these Regulations any notice or Order or scheme or draft Order or scheme is required to be served by the local authority upon any owner of land, the local authority shall send a like notice or Order or scheme or draft Order or scheme to the Board of Agriculture and Fisheries at their office if in the scheme or proposed scheme there is any provision for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment within the meaning of section 73 of the Act of 1909, and to the Commissioners of Works if any land included in the scheme or proposed scheme is situate within the distance prescribed by Regulations made by the Board under section 74 of the Act of 1909 from any of the Royal palaces or parks.

NOTE.

The Regulations which prescribe this distance are set out, *ante*, p. 121.

Article XXIX. *Notices, &c., to Board of Trade and to Light Railway Commissioners in certain cases.*—Where in a scheme proposed to be prepared or adopted by a local authority any land is proposed to be included on which tramways or light railways are constructed or are authorised to be constructed, the local authority shall, when they give the notices required to be given under Article I. of these Regulations, also give notice to the Board of Trade and, as regards light railways, to the Light Railway Commissioners, of the intention of the local authority to apply for authority to prepare or (as the case may be) to adopt a scheme in regard to the said land, and shall from time to time thereafter furnish all such information as the Board of Trade or the Light Railway Commissioners may require in regard to the proposals so far as any tramways or light railways or an authorised route of any tramways or light railways may be affected.

Article XXX. *Service of Notices.*—A notice required to be served in pursuance of these Regulations shall be served:—

(a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; or

(b) by leaving the same at the usual or last known place of abode of such person as aforesaid; or

(c) by post addressed to the usual or last known place of abode of such person; or

(d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office:

Provided that if the owner of any land is not known to and after diligent inquiry cannot be found by the local authority then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some conspicuous part of the land:

Provided also that a notice required to be given to an occupier may be addressed by the description of the "occupier" of the land or premises (describing it or them) in respect of which the notice is given, without further name or description.

Article XXXI. *Proofs of Compliance with certain Regulations to be furnished by Statutory Declarations.*—Proofs of compliance with the requirements of Articles I., XII., XVI., XXIV., and XXVII. of these Regulations as extended by Articles XXVIII. and XXIX. shall to the extent herein mentioned be furnished to the Board by statutory declarations made by the clerk to the local authority or other person competent to make the same. The declarations shall in each case specify the manner in which the notices required by those Articles to be served upon owners, lessees, and occupiers, and upon any other local authority or council, were served, and the names of the persons so served, and shall also show that the other requirements of those Articles as to notices required to be given and as to the deposit of maps or plans or any documents required to be deposited have been duly complied with. There shall also be annexed to the declarations as exhibits:—

In regard to Article I.,—

(1) a copy of the form of notice served, (2) a copy of the map deposited for inspection, and (3) a copy of each newspaper containing the advertisement.

In regard to Article XII.,—

(1) copies of the forms of notices served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XVI.,—

(1) a copy of the form of notice served, (2) a copy of each newspaper containing the advertisement, (3) a statement showing the several parcels of land in respect of which notice was served upon each owner, lessee, and occupier, (4) a copy of the draft scheme prepared by the local authority and deposited for inspection, or (4A) a copy of the scheme proposed by owners and deposited for inspection, together with a copy of any memorandum prepared by the local authority of modifications in such scheme and deposited with the scheme for inspection, and (5) copies of the maps deposited for inspection.

In regard to Article XXIV.,—

(1) a copy of the form of notice served, and (2) a copy of each newspaper containing the advertisement.

In regard to Article XXVII.,—

(1) a copy of the Order, (2) a copy of the form of notice served, and (3) a copy of the newspaper containing the advertisement.

Article XXXII. *Provisions as to Maps.*—(a) The maps required in pursuance of these Regulations shall be Ordnance Maps wherever such maps are published in respect of the district or area in relation to which the maps are required, shall be on a scale not less than that specified in each case, shall be mounted on linen and folded in book form, and shall have a scale properly drawn thereon.

(b) Any person interested in or affected by any scheme or proposed scheme shall be entitled to a copy of or extract from any map or plan required in pursuance of these Regulations, on payment of a reasonable fee to be determined by the local authority, and shall be entitled to inspect at all reasonable times any map or plan referred to in Article XXVII of these Regulations. Any fees received by the local authority shall be carried to the credit of the fund liable to be charged with the expenses of the local authority in connexion with the scheme.

NOTE.

See Note, *ante*, p. 147 (Question No. 3), and Introduction, Chapter XIV., *ante*, pp. 56–61.

Article XXXIII. *Local Authority to furnish all Information, &c., required by the Board.*—The local authority shall prepare and furnish to the Board all such maps, plans, sections, elevations and specifications, and all such particulars or information as the Board shall require to be prepared and furnished in connexion with any scheme or proposed scheme at any stage of the proceedings in relation thereto.

Article XXXIV. *Board may consent to departures from Regulations.*—Where the Board are satisfied that there is reasonable cause for dispensing, either conditionally or unconditionally, with compliance with any requirement of these Regulations, or for varying any such requirement, the Board may, by Order or otherwise as they may think fit, give the necessary dispensation, or may make and give effect to the necessary variation and to any incidents or consequences of that variation; and, in the case of any such dispensation when given subject to any condition, or in the case of any such variation, the local authority or other authorities or persons, as the case may be, shall comply in all respects with the condition or variation and with any requirement of the Order or other writing or direction of the Board giving the dispensation or making the variation as if the condition, variation or requirement formed part of these Regulations:

Provided that the Board shall not exercise their powers under this Article in such a manner as to dispense with any provisions of these Regulations which are necessary to give effect to the requirements of the Act of 1909 or as so to vary any such provisions that they would cease to give effect to those requirements.

NOTE.

See Note, *ante*, p. 148 (Questions 5 and 6), and, as to the exercise of this dispensing power, Introduction, Chapter XV., *ante*, pp. 64–66; and Note to Precedent No. 7, *post*, p. 192. For a form of resolution asking for an exercise of the power, see Note to Precedent No. 5, *post*, p. 190.

Article XXXV. *Interpretation.*—In these Regulations “the Act of 1909” means the Housing, Town Planning, &c. Act, 1909.

Article XXXVI. *Short Title.*—These Regulations may be cited as the Town Planning Procedure Regulations (England and Wales), 1910.

Given under the Seal of Office of the Local Government Board, this Third day of May, in the year One thousand nine hundred and ten.

(L.S.)

JOHN BURNS, *President.*H. C. MONRO, *Secretary.*

REGULATIONS OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.Dated *June 14th*, 1911. No. 54,917.**Regulations for Compulsory Purchase of Land.**

To the several Local Authorities in England and Wales for the purposes of Part III. of the Housing of the Working Classes Act, 1890 ;—

To the several Local Authorities in England and Wales for the purposes of Part II. of the Housing, Town Planning, &c., Act, 1909 ;—

And to all others whom it may concern.

WHEREAS by sub-section (1) of section 2 of the Housing, Town Planning, &c., Act, 1909 (hereinafter referred to as "the Act"), it is enacted that a local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the Housing of the Working Classes Act, 1890 (in the Act and hereinafter referred to as "the principal Act"), by means of an Order submitted to and confirmed by Us, the Local Government Board, in accordance with the First Schedule to the Act, and by sub-section (2) of the same section it is enacted that the procedure under that section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under section 176 of the Public Health Act, 1875, as applied by sub-section (1) of section 57 of the principal Act ;

And whereas by sub-section (1) of section 60 of the Act, which section is included in Part II. of the Act, it is enacted that the responsible authority within the meaning of the said Part of the Act may for the purpose of a town planning scheme be authorised to purchase any land comprised in such scheme compulsorily in the same manner and subject to the same provisions as a local authority may be authorised to purchase land situate in an urban district for the purposes of Part III. of the principal Act, as amended by sections 2 and 45 of the Act, and by sub-section (2) of the said section it is enacted that where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may be authorised to purchase that land in the same manner as the responsible authority ;

And whereas by paragraphs (1), (2), (4), (5), (6), (12), and (13) of the First Schedule to the Act it is enacted that—

NOTE.

The above recitals of sections 2 and 60 of the Act of 1909 are not quotations. For section 2 (1), (2), see *ante*, p. 104, and for section 60, see *ante*, pp. 99, 100. The paragraphs of the Schedule referred to are quoted in full. They will be found *ante*, pp. 125-129.

NOW THEREFORE, in the exercise of the powers in that behalf, We do, by this Our Order, Direct and Prescribe as follows ; that is to say,—

Article I.—An Order made by a local authority under the First Schedule to the Act (hereinafter referred to as "the Compulsory Order") shall be in the form set forth in the Schedule hereto, or in a form to the like effect.

Article II.—(1) Before submitting the Compulsory Order to Us for confirmation, the local authority shall cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in the district of the local authority and in the parish or parishes in which the land to which the Compulsory Order relates is situated.

(2) The advertisements shall be headed respectively “First Advertisement” and “Second and Last Advertisement,” and the first of the said advertisements shall be published not later than the tenth day after the making of the Compulsory Order.

(3) Each of the said advertisements shall contain in addition to a copy of the Compulsory Order a notice setting out the following particulars:—

(a) a statement that any objection to the Compulsory Order must be presented to Us within the period of one calendar month from and after the date of the publication of the second and last advertisement; and

(b) a statement of the period, times, and place or places during and at which the deposited plan referred to in the schedule to the Compulsory Order may be inspected by or on behalf of any person interested in the land to which the Compulsory Order relates.

(3) The plan referred to in the Schedule to the Compulsory Order shall be deposited by the local authority not later than the tenth day after the making of the Compulsory Order at a place convenient for the purposes of inspection, and shall be kept deposited thereat for a period not being less than one calendar month from the date of the publication of the second and last advertisement; and the said plan shall be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The local authority shall also make suitable provision for affording to any such person inspecting the said plan any necessary explanation or information in regard thereto.

Article III.—(1) The local authority shall, not later than the tenth day after the making of the Compulsory Order, cause notice thereof to be given to every owner, lessee, and occupier of the land to which the Compulsory Order relates, and every such notice shall include a printed copy of the Compulsory Order, to which shall be appended a notice containing the particulars mentioned in subdivision (3) of Article II. of this Order.

(2) The local authority shall furnish a printed copy of the Compulsory Order, free of charge, to any person interested in the land to which the Compulsory Order relates, upon his applying for the same.

Article IV.—The period within which an objection to a Compulsory Order may be presented to Us by a person interested in the land to which the Compulsory Order relates shall be the period of one calendar month from and after the date of the publication of the second and last advertisement of the Compulsory Order.

Article V.—(1) The local authority shall as soon as practicable after the confirmation of the Compulsory Order cause a printed copy of the Compulsory Order as confirmed to be served on every owner, lessee, and occupier of the land to which the Compulsory Order relates.

(2) A printed copy of the Compulsory Order as confirmed shall be furnished free of charge by the local authority to any person interested in the land authorised to be purchased upon his applying for the same, and a copy of any plan to which reference is made in the Compulsory Order as confirmed shall also be furnished by the local authority to

any such person upon his applying for such copy and paying the reasonable cost of preparing the same.

Article VI.—Every notice or other document which in pursuance of subdivision (1) of Article III. or of subdivision (1) of Article V. of this Order is required to be given or served by the local authority to or on an owner, lessee, or occupier, shall be served:—

- (a) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; or
- (b) by leaving the same at the usual or last known place of abode of such person as aforesaid; or
- (c) by post as a registered letter addressed to the usual or last known place of abode of such person; or
- (d) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post as a registered letter addressed to such clerk or secretary at his office.

Article VII.—This Order may be cited as the Housing, &c. (Form of Compulsory Purchase Order, &c.) Order, 1911.

SCHEDULE.

The * hereby make the following Order:—

1. The provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject to the terms of the Housing, Town Planning, &c. Act, 1909, and of this Order, hereby put in force as respects the purchase by the * of the lands described in the Schedule hereto for the †

2. This Order shall have effect as if there were incorporated therewith, subject to the necessary adaptations, the Lands Clauses Acts (except section 127 of the Lands Clauses Consolidation Act, 1845), and sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Local Government Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of the First Schedule to the Housing, Town Planning, &c. Act, 1909, apply accordingly.

3.‡ If any of the land described in the Schedule to this Order is glebe land or other land belonging to an ecclesiastical benefice, any sums agreed upon or awarded for the purchase of any such land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the

* Here insert title of the Authority making the Order.

† Here insert "purposes of Part III. of the Housing of the Working Classes Act, 1890," or "purpose of [a town planning scheme] under Part II. of the Housing, Town Planning, &c. Act, 1909," as the circumstances require. In the case of a town planning scheme, the name of the authority who made the scheme and the date or short title of the scheme should be stated.

‡ Insert this article where the lands described in the Schedule to the Order include glebe land or other land belonging to an ecclesiastical benefice.

Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

[3.] This Order shall come into operation from and after the date of its confirmation by the Local Government Board.

[4.] This Order may be cited as the § Order, 19 .

The SCHEDULE above referred to.

Numbers on Plan deposited at the offices of the *	Quantity, Description and Situation of the Lands.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.
--	--	---------------------------------	-----------------------------------	------------

Given under the Seal of the *
this day of 19 .



Given under the Seal of Office of the Local Government Board,
this Fourteenth day of June, in the year One thousand
nine hundred and eleven.

JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

RULES OF LOCAL GOVERNMENT BOARD FOR ENGLAND
AND WALES.

Dated *September 5th*, 1912. No. 58,862.

Rules with reference to Costs of Arbitrations.

WHEREAS by paragraph (9) of the First Schedule to the Housing, Town Planning, &c. Act, 1909 (hereinafter referred to as "the Act"), it is provided that We, the Local Government Board, may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under the said schedule, and an arbitrator under that schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily :

NOW THEREFORE, We, with the concurrence of the Lord Chancellor, for the purpose of fixing the scale of costs to be applicable on an arbitration under the First Schedule to the Act, do hereby make the following Rules, that is to say :—

Rule 1.—Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 set forth in the Schedule hereto, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the

§ Here insert a suitable short title.

* Here insert title of the Authority making the Order.

second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

Rule 2.—Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 2 set forth in the Schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

Rule 3.—Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 2 set forth in the Schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

Rule 4.—So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these Rules apply. In any case in which the arbitrator determines the amount of costs to be paid to the claimant in the arbitration, these Rules shall apply to and govern such determination of costs by the arbitrator.

Rule 5.—These rules shall not apply to an arbitration in which an arbitrator has been appointed before the Rules come into operation.

Rule 6.—Nothing in these Rules shall authorise an arbitrator to hear counsel or expert witnesses, except in such cases as the Local Government Board direct, and if counsel or expert witnesses are heard by an arbitrator without such direction, no costs shall be allowed in respect thereof.

Rule 7.—(1) If, having regard to the nature or importance of the case, the interests of the parties, the general conduct of the proceedings, and the skill, labour, and responsibility involved, the taxing officer shall on special grounds consider to be inadequate the costs or allowances provided by any of the scales set forth in the Schedule hereto, he may make such further or increased allowances as he shall in his discretion consider reasonable.

(2) The taxing officer may in any case where the owner or claimant is not represented by a solicitor on the arbitration make such allowance as he may consider reasonable towards the charges or expenses incurred by the owner or claimant in connexion with the arbitration, but not exceeding in the aggregate the maximum amount which could otherwise have been allowed under the scale set forth in the Schedule hereto, which is applicable to the case.

Rule 8.—These Rules and the scales of costs set forth in the Schedule hereto shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is liable to pay the same.

Rule 9.—In these Rules :—

- (1) "The arbitrator" means an arbitrator appointed under the First Schedule to the Act.
- (2) "Taxing officer" includes the arbitrator when costs are determined by him.

Rule 10.—These Rules shall come into operation on the Ninth day of September, 1912, and may be cited as the Housing, &c. (Costs of Arbitration) Rules, 1912.

SCHEDULE.

SCALE No. 1.

Scale of fixed costs where the compensation does not exceed £300 :—

Compensation awarded.	Amount of costs other than for Witnesses.			Costs of attendance of Witnesses.		
	1.	2.			3.	
	£	s.	d.	£	s.	d.
Any sum not exceeding fifty pounds -	3	3	0	2	2	0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds.	5	5	0	3	3	0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds :—						
For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds.	2	2	0	1	1	0

SCALE No. 2.

Costs where the compensation awarded exceeds £300 but does not exceed £500 :—

- (a) The amount payable to the claimant for the costs of the arbitration shall be the sum of £20, which sum shall include all charges and disbursements of every kind, except those herein-after specially mentioned.
- *(b) In addition to the said sum of £20, there shall be allowed to the claimant the charges and expenses of one expert witness for qualifying and giving evidence as to the value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale No. 3, hereinafter set forth.
- *(c) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

SCALE No. 3.

Scale of costs and allowances where the compensation exceeds £500 :—

	£	s.	d.
1. Instructions for claim and attendances on owner or claimant in respect thereof - - - - -	1	1	0
2. Correspondence and attendance on the Clerk to the Council or Council's solicitor thereon, including drawing and copy claim - - - - -	1	1	0
*3. Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only - - - - -	0	13	4
4. Attending on the arbitrator and on the Clerk to the Council or Council's solicitor arranging appointment for the day of hearing - - - - -	0	13	4

* See Rule 6 as to employment of counsel and expert witnesses.

	£	s.	d.
5. Notice to each witness to attend - - - - -	0	5	0
6. If a view is reasonably necessary attendances on the arbitrator and the Clerk to the Council or Council's solicitor arranging for view - - - - -	0	13	4
7. Attending view with them - - - - -	3	3	0
8. Paid travelling expenses - - - - -			
*9. If counsel employed, instructions to counsel to attend view - - - - -	0	6	8
*10. Paid his fee and clerk - - - - -	5	10	0
11. Instructions for attending before the arbitrator and to conduct the claimant's case - - - - -	2	2	0
*12. If counsel employed in lieu of last item instructions for brief - - - - -	2	2	0
*13. Drawing case and minutes of evidence, at per folio, 1s.; and if counsel attending, brief copy for counsel at per folio, 4d.			
*14. Paid counsel's fee - - - - -			
*15. Attending him - - - - -	0	6	8
*16. Paid counsel's conference fee - - - - -	1	6	0
Ditto ditto (if a leader) - - - - -	2	7	0
*17. Attending to appoint and on conference - - - - -	1	0	0
18. Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk) - - - - -	5	5	0
19. If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor - - - - -	1	1	0
Ditto ditto of clerk - - - - -	0	15	0
(And for travelling expenses the sum actually paid.)			
20. If reference not concluded, for each subsequent day the same charges.			
*21. If counsel in attendance, solicitor attending each day on reference - - - - -	3	3	0
22. And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid) - - - - -	1	1	0
*23. Paid witnesses (according to the Scale or allowances in the Supreme Court Taxing Office).			
24. Drawing bill of costs and copy for taxing, at per folio, 8d.			
25. Copy for the Clerk to the Council or Council's solicitor, at per folio, 4d.			
26. Notice of taxing - - - - -	0	4	0
27. Attending taxing - - - - -	0	13	4
28. Paid taxing (the fee payable in the Supreme Court Taxing Office on taxing costs).			
29. Letters and messengers - - - - -	1	1	0
30. In agency cases for correspondence between solicitor and London agent - - - - -	1	1	0

Given under the Seal of Office of the Local Government Board,
this Fifth day of September, in the year One thousand nine
hundred and twelve.

JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

I concur,
HALDANE, *C.*

* See Rule 6 as to employment of counsel and expert witnesses.

CIRCULAR OF BOARD OF AGRICULTURE AND FISHERIES,
Dated February 29th, 1912.

**Preparation of Special Maps in connexion with Small Holdings
or Town Planning Schemes.**

4 WHITEHALL PLACE, LONDON, S.W.

SIR,—I am directed by the Board of Agriculture and Fisheries to acquaint you, for the information of your Local Authority, that the Ordnance Survey Department is prepared to undertake the preparation, at cost price, of special maps which may be required in connexion with schemes under the Housing, Town Planning, &c., Act, 1909, and the Small Holdings and Allotments Act, 1908.

Such maps would usually be prepared on the scales of 6 inches or 25 inches to the mile, but in special cases reductions from the 6 inch map to 3 or 4 inches, or from the 25 inch map to 12 inches, could be made. Bands of colour showing the districts affected could be printed if desired.

All communications respecting the preparation of maps should be addressed to the Director-General, Ordnance Survey, Southampton.—I am, Sir, your obedient Servant,

T. H. ELLIOTT, *Secretary.*

NOTE.

The Registered Number of this Circular is 52,361. There is a request upon it that "any further communication should be addressed, not to any individual by name, but to the Secretary, Board of Agriculture and Fisheries, 4 Whitehall Place, London, S.W." And correspondents are requested "(1) to quote the number, date, and heading (if any) of each letter to which they reply; (2) to let communications on different subjects form separate letters; and (3) to use paper of foolscap size."

The registered telegraphic address of the Board is "Agrif, London."

The result of an inquiry from the Ordnance Survey Department at Southampton as to the prices of such maps will be found at the end of Chapter XIV. of the Introduction to the present work (*ante*, p. 61).

PART IV.

DRAFT PRECEDENTS OF RESOLUTIONS, REPORTS,
NOTICES, ADVERTISEMENTS, STATUTORY
DECLARATIONS, AND STATEMENTS, WITH
NOTES.

INTRODUCTION.

It has been thought advisable to insert a short Introduction to this Part of the work for the guidance of those who use the Precedents contained therein.

In the first place, there is no necessity for any hard and fast rule with regard to the form of the various resolutions, but the forms of notices, statutory declarations, and statements have been based strictly on the wording of the English Procedure Regulations of 1910, and no attempt has been or should be made to shorten or vary any of them. If any variation is desired, the regulations should be carefully studied before the variation is made. If it is desired to depart from the strict wording of the Regulations, it is desirable to communicate with the Local Government Board before doing so. Mistakes may easily arise from the fact that where a regulation directs a notice to be given, it specifies in one part (usually (a)) that the notice shall be given, and in another part (usually (c)) provides that the notice shall contain certain details.

Particularly with regard to the statutory declarations and statements, care should be taken that they contain all the details, and have annexed to them all the exhibits, required by Article XXXI. No reference is made to this Article in several of the Regulations which require a statutory declaration to be made, and a short declaration to the effect that the requirements of the particular Article have been complied with might be thought sufficient, until attention is drawn to Article XXXI.

It has not been considered necessary to give a complete set of precedents of forms for use in connection with owners' schemes in addition to those for use in connexion with schemes prepared by local authorities, though separate forms, which are required only in the case of owners' schemes, have been added where necessary.

Wherever practicable, alternative expressions referring to the two kinds of schemes have been used. Such expressions will be found enclosed in *square* brackets and separated by the word "or" in italics. This method has also been utilised for indicating other alternative expressions.

When the name of the local authority preparing the scheme, or adopting an owners' scheme, is to be inserted, the expression "the local authority," enclosed in *round* brackets, is used throughout the Precedents. The borough or district of such authority is similarly denoted by the expression "the area of the local authority," also enclosed in *round* brackets. When the name of the authority is not to be inserted, the word "Council," enclosed in *square* brackets, is used.

The Precedents in this Part of the work have been drafted so as to be capable of general application, and it is believed that they include every resolution, notice, advertisement, statutory declaration, and statement rendered necessary by the Act and Regulations.

For a list of the Precedents (with the numbers of the Articles of the Procedure Regulations which render them necessary and upon which they are based), see the Table of Contents.

Precedent No. 1.

FORMAL PARTS OF NOTICES, &c.

HEADINGS.

The { City
County Borough
Borough
Urban District
Rural District } of

Part II. of the Housing, Town Planning, &c., Act, 1909.

ENDINGS.

Dated this day of 19 .

By order of the [Council].

{ Town Clerk
or
Clerk of Council. }
[Office of local authority].

NOTE.

It will be convenient if all Notices, &c., are headed and ended uniformly. In the Precedents of Notices, &c., that follow, the above formal parts are omitted.

Precedent No. 2.

RESOLUTION APPOINTING TOWN PLANNING COMMITTEE.

RESOLVED that a Town Planning Committee be appointed to consider and report to the [Council] whether a Town Planning Scheme ought to be prepared or adopted by the [Council], and if so for what area, and that the Committee consist of the following members, namely, . . .

NOTE.

The first resolution to be passed by a local authority that is thinking of carrying through a town planning scheme should be that a special Town Planning Committee be formed. This resolution is not essential, for the matter could, if only a very small scheme is required, be dealt with by some existing committee. In most cases, however, a special committee will be found to be advisable.

It may also be necessary to amend a standing order which places the duty of carrying out the Housing Acts upon an existing committee. At Acton it was necessary to do this, and the resolution was as follows:—“That Standing Order No. (6) (*h*) referring to the powers and duties of the Works Committee, viz.:—‘(*h*) To transact all business in connexion with Part II. of the Housing, Town Planning, &c. Act, 1909, and the Small Dwellings Acquisition Act, 1899,’ be amended by deleting the words ‘Part II. of the Housing, Town Planning, &c. Act, 1909,’ and that a town planning committee be appointed . . .” as above.

Precedent No. 3.

REPORT OF CLERK TO TOWN PLANNING COMMITTEE.

To the Chairman and Members of the Town Planning Committee.

GENTLEMEN,—In accordance with your resolution of I beg to present the following report upon Part II. of the Housing, Town Planning, &c. Act, 1909, and also upon the procedure to be followed by the [Council] in the event of their deciding to prepare a town planning scheme.

The main objects of the Act are:—

(1) To regulate the lines of future highways in order to facilitate traffic, and to ensure that the construction of such ways suits the traffic requirements.

(2) To prevent the formation of overcrowded areas by limiting the number of houses to be erected per acre.

(3) To provide for industrial development, and still preserve the natural beauties and amenities of the district, by prescribing the class of building to be erected in particular areas.

(4) To provide for a systematic extension of towns, each area being developed as a part of the whole for the general good of the community.

Though the Act is not what is usually called an “adoptive” Act, its town planning provisions cannot be enforced unless the prescribed procedure is followed. This procedure is divided into three parts:—

(1) Obtaining authority to prepare scheme.

(2) Preparing scheme and obtaining approval of Local Government Board, and

(3) Procedure after approval of scheme.

1. *Obtaining Authority to Prepare Scheme.*

Before a town planning scheme may be prepared in detail, authority to prepare a scheme must be obtained from the Local Government Board; but before application for such authority may be made to the Board, the [Council] must select the area for which a scheme is required, have a map of that area prepared, and serve the notices mentioned below. The first step, therefore, after deciding that a scheme is required, is to pass a resolution selecting the area, and authorising the preparation of the map and service of the notices.

Within seven days after the passing of this resolution, notice thereof must be served on every local authority any part of whose district is included in the area selected (Article II.).

At least two months before passing a resolution that application be made to the Local Government Board for authority to prepare a scheme, the [Council] must (1) serve a notice of their intention to make such application upon every owner, lessee, and occupier of land in the area selected; (2) insert a notice of such intention in a local newspaper; (3) deposit a map of the area selected (Map No. 1), for public inspection without fee; (4) make suitable provision for giving to any person inspecting this map any necessary explanation in regard thereto; and (5) send a certified copy of the map to every local authority any part of whose district is included in the area selected (Article I. (d)).

At some time before resolving to make the application the [Council] are to "consider any objections or representations made to them in writing" and "endeavour by conferences" and "any other means available" to secure co-operation. For this purpose they must hold at least one meeting to which all persons interested are to be invited to attend to consider the proposed scheme. The [Mayor or Chairman of the Council] presides at the meeting and arranges for such explanation of the scheme to be given "as he thinks expedient" (Article III.).

When this has been done, and the two months since the services of notice of intention to apply to the Local Government Board have expired, the [Council] are in a position to apply to the Local Government Board for authority to prepare a scheme. The application, which is made by resolution of the [Council], must be accompanied by the following (see Procedure Regulations, Articles IV. to VII. and X.):—

- i. Map No. 2, showing the area, the principal roads which the Council propose shall be made as a part of the scheme, and other information;
- ii. Copy resolution certified by the clerk;
- iii. Statutory declaration of compliance with Article I.;
- iv. Map No. 3 showing [the District of the Council] and the country for five miles round;
- vi. Copies of all objections not withdrawn;

- vii. A general description of the scheme and the land, and reasons in support of the application;
- viii. Rough estimate as to the cost, and particulars of the finances of the district.

When the application has been sent to the Local Government Board, notice thereof is to be published in a local newspaper (Article XI.).

There is no provision in the Regulations for the holding of a public inquiry into the [Council's] application, but the Local Government Board have power under section 63 of the Act to hold such inquiries as they think fit, and there is no doubt that they will hold an inquiry in our case.

After the inquiry the Board will probably make an Order granting the [Council] authority to prepare a scheme for the whole or part of the area shown on our plan. The first stage of the procedure is then completed. Any period of time from three months upwards may be spent on this stage.

2. Preparing Scheme and obtaining Approval of Local Government Board.

This stage commences with the service upon owners, &c., of a notice that authority has been given to prepare a scheme, and that the [Council] intend to prepare a scheme, and that any person interested who desires to be heard in reference to the proposal should give notice to the [Council] in writing within twenty-one days after the date of the notice. The Order of the Local Government Board granting the authority has to be deposited at the [Council Offices] for inspection. The notice must also be published in a local newspaper. A notice of exclusion must be served on all persons interested in any land included in the application but excluded from the area for which the Local Government Board have given authority to prepare a scheme (Article XII. (b)).

The [Council] are to carefully consider in connexion with the preparation of the scheme all objections and representations made to them in writing by persons interested (Article XIII.).

At this point in the procedure the [Council] begin to prepare their scheme. Later, detailed proposals will be submitted showing how I advise that this should be done, but whatever course is adopted the preparation of the scheme is not a matter which can be hurried in any degree. So far as can be ascertained at present, at least twelve months will be occupied on this work, which will require to be considered in great detail. Unless something unforeseen occurs, a fair estimate at the present time of the period spent on this work in our case would be [somewhere between twelve and twenty-four months], dealing during that time, first, with the buildings about to be erected as and when plans are submitted to the [Council]. There will be continual negotiations

during this period between the [Council] and the landowners, and if the [Council] are desirous, as no doubt they are, of obtaining the best possible scheme at the least possible cost to the ratepayers, they should not now do anything which will in any way tie their hands when this very important time for negotiation arrives. Wherever the negotiations with an owner result in complete agreement, the terms of the agreement should be embodied in writing and made binding on the parties thereto and subsequently incorporated into the scheme.

When these negotiations are ended the [Council] will then prepare their draft scheme, basing it on the agreements into which they have entered and the negotiations which they have concluded. It will take the form of an Act of Parliament. Accompanying it will be maps showing thereon the planning details of the draft scheme in accordance with Article XIV. Notice is then given to the owners and other persons interested that a draft scheme has been prepared, that a copy has been deposited at the [Council Offices] for inspection for twenty-one days, and that the [Council] will be prepared to consider objections and representations made to them in writing during that time. A like notice is advertised in a local newspaper, and the draft scheme and plans are deposited at the [Council Offices] for inspection (Article XVI.). The [Council] are then, if necessary, to confer with the owners and other persons interested and to hold at least one public conference similar to that which was held under Article III. before the [Council] applied for authority to prepare a scheme (Article XVII.). The scheme is then completed, with such alterations as the [Council] think necessary, and sealed by the [Council] (Article XVIII.), a resolution is passed that application be made to the Local Government Board for approval of the scheme, and all the documents and information set out in Articles XIX., XX., XXI. and XXII. are to be sent with the application. Notice must then be given, by advertisement in a local newspaper, that the application has been made, that a copy of the scheme is and will remain deposited at the [Council Offices] for a month, and that any objections and representations should be made in writing and addressed to the Local Government Board within that period (Article XXIII.). Though the Regulations do not require it, there is little doubt that the Local Government Board will transmit to the [Council] copies of any objections sent to them and will in due course hold a public inquiry into the scheme. If and after this has been done, the Board, if they propose to alter or modify the scheme, will transmit a draft Order approving the scheme with such alterations or modifications as they propose. Within fourteen days of the receipt of the draft Order copies are to be served on all persons interested, together with a notice that any objections or representations should be made in writing and addressed to the Board within one month. A like notice must be published in a local newspaper, stating that the draft Order has been deposited for inspection at

the [Council Offices]. If the [Council] themselves have any objections or representations to make they must make them to the Local Government Board within a period of one month (Article XXIV.). The Local Government Board then transmit to the [Council] the draft Order in the form in which they are prepared to make it, and within fourteen days of the receipt thereof advertisements must be inserted in a local newspaper, and in the *London Gazette*, that the Local Government Board propose to make such Order and that objections must be made in the manner prescribed within twenty-one days. The draft Order is to be deposited for inspection during that period at the [Council Offices] (Article XXV.). In two cases only is it necessary to lay the scheme before the Houses of Parliament before it is binding. In the first case, if any objection is made in the manner laid down in Article XXVI., the draft Order must be laid before both Houses of Parliament for thirty days; in the second case, if the scheme contains provisions suspending any enactment in a Public General Act, the draft Order must be laid before both Houses of Parliament for forty days. It is presumed that these periods could run concurrently. If within these periods either House presents an address to His Majesty against the draft, no further proceedings may be taken thereon, without prejudice to the making of a new scheme. Presumably the parts objected to may be omitted, and the scheme approved subject to such omissions.

When the scheme has been approved, the Local Government Board make an Order and transmit the same to the [Council], and the second part of the procedure is then completed.

3. *Procedure after Approval of Scheme.*

The Local Government Board have not yet issued Regulations for this part of the procedure, beyond providing that the Order approving the scheme shall be at once advertised in a local newspaper, copies sent to owners, the Order deposited for public inspection, and the Local Government Board notified accordingly (Article XXVII.).

Regulations will doubtless be issued later prescribing the procedure as to inquiries and reports as to the beginning and the progress and completion of the works and other action on the scheme (see Fifth Schedule to the Act).

The above procedure is long and it is complicated, but having regard to the importance of the matter, to the great benefit that will be derived from a well-prepared Town Planning Scheme, and to the provision which the Act and Regulations make for giving ample opportunities to all persons interested for making objections and representations, it does not appear on examination to be either longer or more complicated than is necessary.

The Surveyor to the [Council] is reporting to this meeting upon the advisability of taking the first of the above-mentioned steps.

I am, Gentlemen,
Your obedient Servant,

[Town Clerk or Clerk to the Council.]

NOTE.

Some councils have appointed a special officer as salaried secretary or clerk to their Town Planning Committee, and in such cases this report will be made by that officer.

The above draft Report does not deal with the adoption of owners' schemes. A report upon the procedure applicable in such a case would not appear to be necessary unless the local authority have received a request that such a scheme be adopted. Upon receipt of such a request the authority should consider whether it would not be better for them to prepare a scheme themselves for a larger area. If so, the owners' scheme should be incorporated in their own, when the procedure will be as above outlined. If, however, no scheme is required except for the area included in the owners' scheme, then the procedure in the case of owners' schemes must be followed. This procedure is practically the same as that above outlined, except that certain additional information is required by the Board, mainly as to the modifications which the local authority desire to make in the scheme as proposed by the owners (see as to these schemes, Introduction, Chapter XIII., *ante*, pp. 53-55).

Precedent No. 4.

REPORT OF SURVEYOR TO TOWN PLANNING COMMITTEE.

To the Chairman and Members of the Town
Planning Committee.

GENTLEMEN,—In accordance with your instructions I have made an examination of the area under the control of the [Council] and the neighbourhood of such area, with a view to ascertaining whether a town planning scheme is required in respect of the whole or any part thereof, and beg to report as follows:—

The [city or town or urban or rural district] is [*here the character of the land, the extent of the development, the possibility of future development, and the extent to which proper sanitary conditions, amenity, and convenience in connexion with the laying out of the land and any neighbouring lands have already been secured, and the extent to which it will be necessary to secure them in the near future, should be carefully set out*].

I have prepared and beg to submit a map of the district, having marked thereon what in my opinion constitutes (i.) land already fully developed; (ii.) land in course of development; (iii.) land likely to be used for building purposes; (iv.) land not in course of development and not likely to be used for building purposes; and

(v.) land already built upon or not likely to be used for building purposes, but so situated with respect to land likely to be used for building purposes that it ought to be included in a town planning scheme.

I recommend that a town planning scheme be prepared for an area comprising (ii.), (iii.), and (v.) and the additional land edged red on the plan annexed to this report. This additional land is included (a) for the purpose of securing through communication to outlying districts; (b) to prevent such additional land being developed to the detriment of the lands (ii.) and (iii.); and (c) because such land will be developed in conjunction with the lands (ii.) and (iii.).

It will be observed that a portion of the area lies outside the boundaries of the [city or town or urban or rural district]. I consider that such portion should be included in the scheme unless the [local authority for the portion] undertake to prepare a town planning scheme in respect thereof or enter into a satisfactory arrangement agreeing to control the laying out and development of such portion in conjunction with the adjoining land within our boundaries.

[The report should then go on to describe generally the quantities of land held by the various owners and point to any special advantages that a town planning scheme would secure.]

I am, Gentlemen,

Your obedient Servant,

Surveyor.

NOTE.

As an illustration, the following extract from the report of Mr. Frederick Sadler, M.Inst.M. and C.E., the Surveyor to the Acton Urban District Council, may be useful. Although the report is special to Acton, most of it must have a parallel in many other districts.

“Past Development.—It would not be difficult to prove that the development of Acton has been a very haphazard affair. When estates have fallen into the market they have been independently developed, each owner naturally laying out his estate with the object of a maximum of profit. Very few estates have been properly linked up with the adjoining ones. Plans are submitted to show the lack of inter-communication between adjoining estates, and also the extraordinary number of cul-de-sac streets in the district. The inconvenience caused thereby to the residents is the source of endless complaints. Some years ago the Council carried out several costly improvements, *i.e.* Crown Street, King Street, Crane Avenue, &c., in order to minimise to some extent the inconvenience arising therefrom. The lack of communication between the areas on each side of the Priory Road wall is only one instance of many in this district showing the evils of independent estate development. The railways passing through the district have seriously added to the evils. The Northern and South-Western Junction Railway practically cuts off, for vehicular traffic, the south-eastern area from the rest of the district, there being only one connecting carriage-way, and that a dangerous one, between the boundary in Bollo Lane on the west and the boundary at Woodstock Road on the east—a distance of $1\frac{1}{4}$ miles. This haphazard development

could, however, hardly have been avoided in the past, owing to the insufficient powers vested in the local authority, but if the Town Planning Act had been in operation the heavy expenditure in improvements would have been avoided.

Future Development.—It has been suggested that the district is now built on to such an extent that it is hardly worth while to proceed under the Town Planning Act, but it will be seen from the large plan submitted, which shows the extent of the district already built over, that there are large areas in the north and east still undeveloped. The area of the district is 2305 acres, and of this practically 1212 acres is already developed, leaving an area of about 1093 acres (coloured blue, brown, pink, and yellow on the key map) still undeveloped. This, however, included the Acton Park and North Acton Playing Fields. Of the land already laid out 270 acres is taken up by railways, 86 acres by parks and recreation grounds, 220 acres by streets, and the remainder by houses and other buildings, &c., and the land attached thereto. If in the future the development of the district in the ratio of houses to land is the same as at present, the total population will be 111,000.

Area to be Town Planned.—I have recently been interviewed by several landowners or their surveyors with regard to the laying out of the largest estates in the undeveloped areas, and in my opinion the whole of the undeveloped land in the district comes within the scope of the town planning portion of the Act, and ought therefore to be included in a town planning scheme.

"In order that the arterial roads laid out on the town plan shall be properly connected up with main roads in the adjoining districts, it is suggested that three areas without the district shall be included in the Acton Town Plan. The one hatched green is within the Borough of Ealing, the one hatched brown within the Urban District of Greenford, and the one hatched blue within the District of Willesden. The part edged pink is within the Urban District of Acton.

"It is only proposed in this report to suggest the area of land to be included in the town plan (edged in red on the key map) and to outline the main points to be considered in the future development of the town, more especially with regard to the lines of future highways, this being all the Local Government Board require in the preliminary stage. If the Council decide to proceed, the question of houses per acre, class of buildings in various areas, amendment of byelaws, provision of open spaces, &c., would be dealt with in a later report.

"For convenience in reporting I have divided the area to be included into four sections:—

- A. The Goldsmith's estate, East Acton, and some of the adjoining lands.
- B. The land between Willesden Lane, Wales Farm Road, and Victoria Road.
- C. The land north of the Great Western Railway, and west of Willesden Lane.
- D. Small outlying areas in Springfield Park.

"As to A, a scheme has already been submitted by the Goldsmiths' Company and approved by the Council, for laying out an area of their estate adjoining Friars Place Lane. The approved plans are again submitted for the committee's inspection. On these plans the land between Goldsmith Avenue, Friars Place Lane, and the North London Railway is shown to be laid out and covered with houses (twelve to the acre) and the land between Friars Place Lane, North London Railway, and the Great Western Railway (ten houses to the acre). The agreement between the company and the Council with regard to this work also

provides for the widening to 50 feet of East Acton Lane and Friars Place Lane from the Uxbridge Main Road to the Great Western Railway Bridge adjoining the Isolation Hospital. In order to retain the large trees growing on the side of these highways the roadway will be widened in places to 60 feet. Under the agreement the Goldsmiths' Company give up the land for the above-mentioned road widening as the adjoining land is developed, and the Council carry out the widening at their own expense. No provision is made, however, for the widening of the bridge over the North London Railway, but there is a clause with regard to the erection of a bridge connecting St. Dunstan's Avenue (one of the new roads on the estate) with Perryn Road.

"The Council have now under consideration plans for the development of part of the Friars Place estate which adjoins the Goldsmiths' Company's land. When these plans were first deposited no road connexions were shown from this estate to the Goldsmiths' estate, but after several interviews with the owners, two connecting roads will be constructed without any cost to the Council, and a road can be made to link up with Grafton Road at a small expense.

"I have had several conferences with the surveyor to the Goldsmiths' Company with a view to preparing a scheme for the laying out of their land between Acton Vale and East Acton Green and between East Acton Lane and Old Oak Road. A plan is submitted showing an outline scheme.

"Three points had to be kept in view in planning:—

1. The existing streets (First, Second, and Third Avenues).
2. A church site which had already been settled.
3. Access to the two sewers crossing the land.

"We have endeavoured to gradually break away from the rectangular treatment of the existing streets (First, Second, and Third Avenues) into the curvilinear system of present-day town plans. A main approach avenue from Acton Vale to the proposed church site, 50 to 60 feet wide, has been made the central feature of the plan. This avenue will be planted with trees and shrubs. It will be seen that the main avenue will divide and debouch into Acton Vale opposite two roads leading south enclosing a crescent garden. The gardens will also be extended west of the crescent to East Acton Lane. The houses will be set back from the Main Road, as in Uxbridge Crescent, and this will greatly improve the appearance of Acton Vale.

"The avenue will divide at the church site, and branches will lead off, one north-west to join up with Friars Place Lane at East Acton Green, the other north-east to join up with Old Oak Common Lane. The plan shows the laying out of the whole of the land into plots, leaving four or five open spaces, one or two of which could be used for tennis courts, &c. The other open spaces could be fenced in and planted with shrubs and trees.

"In some of the roads on this estate the carriage-ways could be reduced in width and the footpaths increased in width, only a portion of the latter being paved, the remainder being turfed or planted with shrubs. The whole of the roads would be planted with shrubs and trees. All the carriage-ways would be finished in tar macadam and the footways paved with artificial stone slabs made from dust destructor clinker. The planning shows only seven houses per acre.

"On the eastern boundary there is an old highway (Old Oak Road) which has already been made up for a part of its length; the remaining part is at present in a very deplorable condition. This old highway is partly within the district of Acton and partly within the borough of Hammersmith. The land on the Acton side is owned by the Gold-

smiths' Company, and the land on the Hammersmith side by the Ecclesiastical Commissioners.

"The four parties interested have recently arranged for this road to be made up and completed at the expense of the land owners. This work will be carried out in the spring, and provide better access for vehicular traffic from Acton Vale to East Acton village. Consideration should be given to the widening and continuation of this old highway to its junction with Victoria Road. For a part of its length it is known as Old Oak Common Lane. This highway will probably be a tramway route at some future time, as it is the continuation of the Askew Road tram route to Hammersmith, which will mean the widening of the road bridge by Victoria Road.

"As to *B*, the field marked 'A' on the key map is at present used as a sports ground by the employees of Messrs. Shoolbreds, Tottenham Court Road, London, but should be included. The area marked "B" is known as the St. Leonard's Estate. The committee will remember that some time ago an agreement was arrived at for the development of this land by Mr. Kershaw on garden-city lines, but owing to the death of the person who was financing the scheme it is at present in abeyance. The plan, as finally agreed, is again brought to the committee's notice. This plan was, by the instructions of the Council, exhibited at the Town Planning Conference, West Bromwich, in July last year.

"In the town plan the laying out of this estate would be on similar lines but with probably less houses per acre.

"A main avenue, 50 feet or 60 feet wide, starting at the bend of Edward Road, and crossing over the existing bridge over the Great Western Railway by the dust heap, joining the main road (called Acton Lane) within the district of Willesden by the canal bridge at Harlesden. This would provide a shorter route, and better facilities for through traffic from Acton to Harlesden and many parts of Willesden and North-West London. It should be linked up as shown on key map with Victoria Road to provide access for vehicular traffic to the works in that neighbourhood, and also facilities for children attending Acton Wells School.

"Without a Town Plan it would be impossible to insist that the roads on the west side of the dotted blue line be connected to the roads on the east side. It would be advisable for an area on this estate to be reserved for a future small park. The triangular piece of land between the roads shown on the key map would be suitable. It will be seen that the proposed roads follow as near as possible the lines of existing footpaths, so as to reduce compensation to a minimum. The bridge over the Great Western Railway would require widening, and the existing road on the east side of the Cemetery added to the Cemetery or to the back gardens of the houses to be erected in Edward Road. Detailed planning would follow.

"As to *C*, Parliamentary sanction has already been given for a connecting railway between the Great Western Main route and the High Wycombe Branch. This railway (shown in dotted black lines on the key map), being in a cutting, will divide this land into two. The company are bound to erect bridges across this new line, and a report will be laid before the next Works Committee with reference to them.

"Main lines of communication ought certainly to be laid down across this land. These are indicated on the key map.

"It will be seen that a new avenue is proposed, continuing Twyford Avenue to Coronation Road. This road would be linked up with Noel Road and Willesden Lane in Acton, and Hanger Lane in Ealing. For a part of its length this avenue would coincide with the Great North

Circular Road hereinafter mentioned. If this avenue were constructed it would be necessary to widen the existing bridge over the Great Western Railway at the north end of Twyford Avenue and construct a new bridge over the Great Western Railway (High Wycombe Branch) close to Park Royal Station. The area within the Greenford Urban District is included in the scheme in order that this avenue may be properly connected with Coronation Road. With regard to the continuation of Noel Road to Hanger Lane, this will cross the proposed Great Western branch line at one of the bridges the company is bound to build. Northfields Road ought to be continued across the proposed railway as shown, to join up with the North Circular Road.

“As to *D*, the committee are aware that in the Springfield Park district there are very few houses per acre, and if these areas were included in the Town Planning Scheme the Council could define the number of houses per acre to be erected in the future thereon. In the Twyford Avenue district the number of houses per acre is $6\frac{1}{2}$.

“A small piece of land (shown by a blue line) on the north side of Lynton Road might be included, in order to provide an approach to a future bridge over the Great Western Railway to link up Springfield Park with the North Acton playing fields district.

“One or two other points should be mentioned in connexion with the town plan. Early last year a report was issued by the London Traffic Branch of the Board of Trade on the improvement of the existing arterial roads out of London, and in that report certain new avenues radiating out of London were suggested, and one of these (the Great Western Avenue) crosses the Acton district.

“A North Circular Road was also suggested, starting at Brentford and passing along the western side of this district, through Willesden and then north-west to Finchley and Hornsey. No Government funds are yet available for the construction of these avenues, but it is possible that Parliament will make a grant towards the construction of these important roads. It is a matter to consider whether they should be incorporated in the town plan. If they are included the Road Board might contribute towards the cost of construction.

“Early last year a scheme was prepared for laying out in the north-western area of the district a large tract of land as an aviation ground. This scheme, if proceeded with, would materially affect the town plan.”

Precedent No. 5.

RESOLUTION AUTHORISING PRELIMINARY STEPS.

RESOLVED that the Town Planning Committee be, and they are hereby, authorised to serve and publish the necessary notices of the intention of the [Council] to apply to the Local Government Board under Part II. of the Housing, Town Planning, &c., Act, 1909, for authority to prepare a town planning scheme for the area enclosed within a [red] border on the map now before the [Council], and marked No. 1, but excluding those portions of such area coloured [brown], and to take all such steps in relation to such intended application as are required by Articles I., II., and III. of the Town Planning Procedure Regulations (England and Wales), 1910.

NOTE.

This is the first formal resolution which is required after the committee have dealt with the preliminaries, such as selecting the areas to be included. It is not the resolution which, under section 58 (2) of the Act, fixes the time after which compensation cannot be claimed for various matters therein mentioned, for that resolution must, under Article I. (a) of the Regulations, be preceded by the above resolution by at least two months.

This Article requires that, before resolving to make an application to the Local Government Board for authority to prepare a town planning scheme, certain notices must be served on various owners and occupiers, and it is therefore necessary that the Council should sanction the incurring of the necessary expenditure by passing a formal resolution directing the proper officers to take the required steps.

It is when this resolution is brought before the Council that the first full-dress debate upon the principle of embarking upon a town plan takes place. When the resolution was moved at Acton, there was determined opposition from a large section of the Council, chiefly because it was a leap in the dark, and might lead to extravagances in payment of compensation to owners affected by the scheme, one member going so far as to hint at £200,000 in this direction! There was considerable misapprehension as to what the Act authorised and imposed, but the time limit imposed by section 58 (2) seemed to pacify enough members to secure a majority in favour of having a scheme. The other argument which, apparently, turned waverers was that payment of small sums by way of compensation now would prevent the inevitable necessity of paying large sums later on in respect of street widenings and openings for through communication.

If a more comprehensive resolution is desired, one which shows the whole scope of the proposition and provides for two optional matters (namely, outside assistance in committee, and relief from full requirements of Regulations), would be that set out below. It is really three resolutions, but as some standing orders provide that no councillor may have more than two notices of motion on the agenda for any Council meeting, the simple expedient of labelling them (a), (b), and (c), and calling them "one resolution" may be adopted, thus:—

"(a) That, in order that an application showing a *prima facie* case for preparing a town planning scheme in accordance with the provisions of Part II. of the Housing, Town Planning, &c., Act, 1909, may be submitted to the Local Government Board, all the required steps be taken forthwith for obtaining the authority of the Board to put in force such provisions with reference to the following areas of land, which come within the scope of such provisions as being either (i.) land which is in course of development or appears likely to be used for building purposes, or (ii.) land already built upon, or land not likely to be used for building purposes, but so situated with respect to land likely to be used for building purposes that it ought to be included in any town planning scheme made with respect to such last mentioned land, viz. [describing area, as in Precedent above, by colours on Plan No. 1], with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land and of the neighbouring lands, and of providing for the demolition or alteration of any buildings thereon

so far as may be necessary for carrying the scheme into effect ; and that for this purpose the surveyor be instructed to prepare the necessary maps and plans, and the clerk be instructed to give due notice of the Council's intention of making the above-mentioned application and to serve all other notices required by the Act of 1909 and the Regulations made thereunder.

“(b) That, with a view to securing co-operation between the [Council] and persons interested in the land proposed to be included in the town planning scheme referred to in the preceding resolution, the following gentlemen be requested to confer with the Town Planning Committee and assist them in their deliberations, viz. :—

Two representatives of the [Property Owners Association].

One representative of the [Company].

One representative of [Messrs: , surveyors to estate].

One representative of the [Railway Company].

One representative of the [trustees under the will of the late].

Mr. [(Estate)] and Mr. .

“(c) That, with a view to lessening the preliminary expenses and preventing technical objections to the said scheme being raised by persons whose names have been inadvertently omitted from the list of those to be served with notices, &c., under Article I. of the Town Planning Procedure Regulations of 1910, the Local Government Board be requested to make an Order, under Article XXXIV. of such Regulations, granting leave to the Council to dispense with the service of notices, draft orders, and orders, on occupiers whose tenancy is less than that of a quarterly tenant, and that for this purpose a copy of this resolution and the preceding resolution be sent to the Board.”

A shorter form for the last part of the resolution would be :—

“(c) That the Local Government Board be requested to make an Order under Article XXXIV. of the Town Planning Procedure Regulations (England and Wales), 1910, granting leave to the Council to dispense with the service of notices, draft orders, and orders, on occupiers whose tenancy is less than that of a quarterly tenant.”

Precedent No. 6.

NOTICE TO COUNCILS OF PROPOSAL TO TOWN PLAN.

[Heading—see *ante*, p. 177.]

To the [Town Clerk or Clerk] of .

NOTICE IS HEREBY GIVEN, in accordance with Article II. of the Town Planning Procedure Regulations (England and Wales), 1910, that (the local authority) have decided to consider a proposal for authority to [prepare or adopt] a scheme in reference to the area of land edged with red on the plan hereto attached.

The portion of the area which is within the boundary of your district is hatched in [green].

[Ending—see *ante*, p. 177.]

NOTE.

This is the earliest of the Notices required under the Regulations. It must be served "within seven days after" the Council "have decided to consider a proposal for authority to prepare or adopt a scheme in reference to any area of land," (*i.e.* have passed a resolution such as that contained in Precedent No. 5) "upon any council interested in the land" (Article II.).

This Article requires that the notice shall be served "independently of the notices required to be given" under Article I. (*i.e.* the notices to persons and councils provided for in Precedents Nos. 7 and 8). It must be served in addition to those notices, for they are notices of "intention" to apply to the Local Government Board, while this is a notice of a "decision to consider a proposal" that such application be made. It need not be served on the Board of Agriculture, Commissioners of Works, Board of Trade, or Light Railway Commissioners under Articles XXVIII. and XXIX.

It is not essential to attach a plan to this notice, but that course is advisable. If no plan is attached, the boundaries of the area should be fully and accurately described in a Schedule to the Notice by reference to roads, rivers, railways, &c. (See Precedent No. 7.)

Under Article I. (*d*) of the Regulations a certified copy of Map No. 1 has to be furnished by the local authority to any Council within whose district "any part of the land proposed to be included in the scheme is comprised." No time is laid down for the furnishing of this copy of Map No. 1, but probably it must be served at the same time as the other notices under that Article, namely, at least two months before applying to the Board for authority to prepare the scheme. So that it need not be furnished with the above notice so long as it is furnished with the notice provided for in Precedent No. 7.

As to the service of Notices generally, see Regulations, Article XXX., (*ante*, p. 165), and, as to the service of notices on the Board of Agriculture and Fisheries, the Commissioners of Works, the Board of Trade, and the Light Railway Commissioners, Articles XXVIII. and XXIX. (*ante*, p. 165; and see the Note to the next Precedent, *post*, p. 193).

Precedent No. 7.

NOTICE OF INTENTION TO APPLY FOR AUTHORITY TO TOWN PLAN.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that (the local authority) intend to apply to the Local Government Board for authority to [prepare *or* adopt] a Town Planning Scheme for the area [edged red on the plan attached hereto *or* described in the Schedule hereto].

AND NOTICE IS ALSO HEREBY GIVEN that a map of the area proposed to be included in the scheme (hereafter to be described as "Map No. 1") has been deposited at the [Town Hall *or* Council Offices], and is and will remain open for inspection up to and including the day of next by any person interested,

without payment of any fee [at all reasonable hours on any week day or between the hours of — in the morning and — in the afternoon on Saturdays, and — in the morning and — in the afternoon on other week days] during the said period. Arrangements have been made for affording to any person inspecting the map any necessary explanation in regard thereto.

[SCHEDULE.

Description of Area included in Scheme.

Area No. 1.—The land bounded on the North by — Road — River and — Railway, on the South by —, on the East by —, and on the West by —; and containing an approximate area of — acres.

Area No. 2.—Similarly described.]

[Ending—see *ante*, p. 177.]

NOTE.

Plan.—It is not essential to attach a plan to the notice (the Chesterfield Corporation did not attach one to theirs), but in most cases it will be advisable to do so. See Note to Precedent No. 6.

Time of Service.—Service of this notice must be effected at least two months before making the application to the Local Government Board (Article I. (a)).

Persons, &c., to be Served.—The persons to be served are: “the owners or reputed owners, lessees or reputed lessees, and occupiers of the land proposed to be included in the scheme, and the Council of any borough or of any urban or rural district within which any part of that land is comprised and also, if any main road is or may be affected by the proposed scheme, the County Council.” (Article I. (a).)

As to notices to County Councils, if parts of several counties are included in an area which it is proposed to town plan, and there are in those parts main roads which will or may be affected, all the County Councils for those parts will, it appears, have to be served with this notice.

The Local Government Board have made several orders dispensing with the service of the above notice in certain cases in the following terms: “In the matter of a proposed Town Planning Scheme relating to an area situate within the — of — and referred to in a Resolution of the Council of the — passed on —, We, the Local Government Board, in pursuance of Article XXXIV. of the Town Planning Procedure Regulations (England and Wales), 1910, do hereby, in regard to the said scheme, dispense with compliance with the said Regulations in so far as they require the service of any notice, draft order, or order, required thereby to be served on an occupier of land within the area of the scheme, on an occupier whose interest in the land occupied is less than that of a quarterly tenant.”

In the case of occupiers of allotments, the Board have varied the Regulations so that notices, &c., required might be served by affixing a copy of the document to a notice board at each entrance to the Allotment Gardens (see Introduction, Chapter XV., *ante*, pp. 64–66).

Notice by Advertisement.—See Precedent No. 8.

ADVERTISEMENT OF INTENTION TO APPLY. 193

Deposit of Map No. 1.—This map is to be “on the scale of 25/344 inches to the mile,” and is to be “marked and known as Map No. 1”; it must be deposited “not later than the date on which the *first* of the” above notices is given “at a place convenient for the purposes of inspection,” and kept “deposited thereat, for a period not being less than one month from the date on which the *latest* of the said notices is given,” and it must be “open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period,” and the local authority are required to “make suitable provision for affording to any person inspecting the map any necessary explanation in regard thereto.”

Method of Service.—As to the method of serving Notices generally, see Article XXX., *ante*, p. 165.

Service on Government Departments.—The provisions of Articles XXVIII. and XXIX. must be borne in mind in connexion with notices, drafts, orders, &c. Under Article XXVIII. (*ante*, p. 165) wherever “any notice or order or scheme or draft order or scheme” has to be served on “any owner of land,” the local authority must also, “if in the scheme or proposed scheme there is any provision for the acquisition or appropriation to any other purpose of any land forming part of any common, open space or allotment within the meaning of section 73 of the Act of 1909” (as to which see *ante*, p. 118), send a like notice, &c., to the Board of Agriculture and Fisheries at their offices, and, if any land included in the scheme or proposed scheme is situate within two miles of Windsor Castle, Windsor Great Park, or Windsor Home Park, or half a mile of any other Royal Palace or Park (the distances prescribed by regulations made by the Local Government Board under section 74 of the Act of 1909 and set out *ante*, p. 121), upon the Commissioners of Works. Under Article XXIX (*ante*, p. 165), where in a scheme “any land is proposed to be included on which tramways or light railways are constructed or are authorised to be constructed,” the local authority shall, *when they give the notices under Article I.* (and not at any other time) also give notice to the Board of Trade and, “as regards light railways,” to the Light Railway Commissioners, of their intention to apply for authority to prepare or adopt a scheme in regard to such land, and “shall from time to time thereafter furnish all such information as the Board of Trade and the Light Railway Commissioners may require in regard to the proposals so far as any tramways or light railways or an authorised route of any tramways or light railways may be affected.”

Precedent No. 8.

ADVERTISEMENT OF INTENTION TO APPLY FOR AUTHORITY TO TOWN PLAN.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that (the local authority) intend to apply to the Local Government Board for authority to [prepare or adopt] a Town Planning Scheme for the area described in the Schedule hereto, and that a map of the said area is deposited at

the [Town Hall or Council Offices], and is open to inspection by all persons interested during office hours.

[SCHEDULE.]

(Description of area included in scheme.)
[Ending—see *ante*, p. 177.]

NOTE.

This Advertisement must be given by the local authority in some local newspaper or newspapers at least two months before making the application (Article I. (a)).

Precedent No. 9.

NOTICE OF PUBLIC MEETING.

[Heading—see *ante*, p. 177.]

WHEREAS by Article III. of the Town Planning Procedure Regulations (England and Wales), 1910, made by the Local Government Board under and in pursuance of the powers given to them by the Housing, Town Planning, &c. Act, 1909, it is provided that a local authority, before making an application to the Board for authority to [prepare or adopt] a Town Planning Scheme, shall arrange for one meeting being held at which all the owners or other persons interested in the land proposed to be included in the scheme, and the owners or other persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme which may be affected by the scheme, and the Council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised, and any other Council who may be interested in or affected by the scheme, shall be entitled to attend or be represented for the purpose of considering the proposed scheme.

AND WHEREAS (the local authority) are proposing to make such an application, NOTICE IS HEREBY GIVEN that such Meeting of owners and other persons interested as aforesaid will be held at the [Town Hall or Council Offices], on [Wednesday], the day of , at o'clock , which meeting you are hereby invited to attend.

[Ending—see *ante*, p. 177.]

NOTE.

The Meeting.—See Article III., *ante*, p. 150, and Introduction, Chapter IV., *ante*, p. 15.

Date of Meeting.—The meeting must be held before making application for authority to prepare or adopt a scheme. (Article III.)

Agenda for Meeting.—See Precedent No. 10, and Note, *infra*.

Persons, &c., to be Served.—All persons and authorities mentioned in the above Precedent, “so far as” the local authority “can ascertain the same”—which means that they must try to ascertain the same; but the requirement that persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme, if such neighbouring lands may be affected by the scheme, shall be served with the above notice, is probably unenforceable on the ground of uncertainty, though in any case where neighbouring land is obviously affected the notice should be served upon persons interested in that land.

If the local authority feel any doubts as to the persons, &c., to be served, application could be made under Article XXXIV. for an order of the Local Government Board dispensing with service on any “owners and other persons interested in lands in the neighbourhood,” other than those whom it is proposed to serve.

Time of Service.—The notice shall be served not less than fourteen days before the time fixed for the meeting.

Method of Service.—See Article XXX., *ante*, p. 165.

Service on Government Departments.—See Note to Precedent No. 7, *ante*, p. 193.

Precedent No. 10.

AGENDA FOR PUBLIC MEETING.

1. Appoint President, if necessary.
2. Read notice convening the meeting.
3. President welcomes those present, explains shortly the reasons for calling the meeting, and asks for co-operation.
4. Explanation of the proposed scheme.
5. Discussion and questions by persons present.
6. Taking of vote, if thought desirable.
7. Vote of thanks to President.

NOTE.

The Meeting.—See Article III., *ante*, p. 150, and Introduction, Chapter IV., *ante*, p. 15.

The President.—The Lord Mayor, Mayor, or Chairman of the Council is to preside over the meeting, but if he is unable or unwilling to act, any person appointed for the purpose by the local authority may preside, and in default of such appointment the meeting may choose as president some person present at the meeting.

“*Explanation*” of the “*Proposed Scheme.*”—Article III. provides that “on opening the meeting the president, or a member or officer of the local authority, shall give such explanation of the proposed scheme as he thinks expedient.” Though the Article thus requires that “the proposed scheme” shall be considered, yet, since at this stage (*i.e.* before an application is made to the Local Government Board for authority to prepare a scheme) there is no scheme for the meeting to consider, the meeting can only consider whether a scheme is necessary or not, and, if so, for what area.

The main points to be impressed on the audience at this stage are (1) that the objects of the meeting are (*a*) to let persons and bodies interested financially or otherwise in the land in and near the selected area

know why the Council consider that a town planning scheme is necessary, and why the selected area has been selected; (b) to ascertain whether the views of the Council on these points are supported by these interested persons and bodies; and (c) to secure co-operation on the part of such persons and bodies in order that the scheme when formulated may be a success; (2) that ample opportunities for discussing the details of the scheme will be afforded when authority to prepare one has been obtained; (3) that the main objects of the Act are those set out at the beginning of the clerk's report (see Precedent No. 3, *ante*, p. 178); (4) that the Council are not proposing to develop any land themselves but are merely taking power to guide such development in the best interests of the whole community as and when it takes place; and (5) that there is no idea of paying away large sums by way of compensation, but that if there is co-operation on the part of all concerned compensation ought to be balanced by concessions and betterment, and that a great saving will be effected by obviating the necessity for future costly improvement schemes.

Precedent No. 11.

RESOLUTION AUTHORISING APPLICATION FOR AUTHORITY TO TOWN PLAN.

RESOLVED that application be made to the Local Government Board for authority to [prepare *or* adopt] a town planning scheme for the area enclosed within a [red] border on the map now before (the local authority), and marked Map No. 2, which area is [entirely in (the area of the local authority) *or* partly in (the area of the local authority) and partly within the [city *or* borough *or* urban *or* rural district] of —, *or* wholly within the [city *or* borough *or* urban *or* rural district] of —].

NOTE.

Mode of Application.—Application is made by resolution of the local authority (Article IV. (a), *ante*, p. 151).

Form of Resolution.—“The resolution shall define, by reference to a map prepared on a scale of not less than 25·344 inches to the mile (to be marked and known as Map No. 2), the land in reference to which it is desired to prepare or adopt the scheme, and shall state whether the land is entirely within the area of the local authority or wholly or partly within a neighbouring area” (Article IV. (b)).

Map No. 2.—As to the details to be shown on this map, see Introduction, Chapter XIV., *ante*, p. 57.

Sending Resolution to the Local Government Board.—“A copy of the resolution, certified by the clerk to the local authority, shall be transmitted without delay to the Board by the clerk, with a covering letter (Precedent No. 12, *post*, p. 197), and accompanied by a statement (Precedent No. 13, *post*, p. 198) as to the total number of members of the local authority, the number who voted for the resolution, the number who voted against the resolution, the number who were present at the meeting but did not vote, and the number absent from the meeting” (Article IV. (c)). Other documents must also be transmitted with the resolution (see the following five Precedents).

Precedent No. 12.

COVERING LETTER.

SIR,—I am directed by (the local authority) to apply to the Local Government Board for authority to [prepare *or* adopt] a town planning scheme for an area specified in a resolution of (the local authority) passed at a meeting held on the day of , and to send to the Board the following documents which will be found herewith :—

1. A certified copy of such resolution ;
2. A statement as to the membership of (the local authority), and the voting upon such resolution ;
3. My statutory declaration in proof of compliance with the requirements of Article I. of the Procedure Regulations, together with the necessary exhibits thereto ;
4. [Map No. 2, *or* a certified copy of Map No. 2] ;
5. Map No. 3 ;
6. A statement giving the particulars required by Articles VIII. and X. of the said Regulations.
- [7. A copy of all objections made in writing in reference to the proposed scheme so far as such objections have not been withdrawn or removed, *or* All objections made in writing in reference to the proposed scheme have been withdrawn or removed.]

I shall be pleased to furnish any further particulars that the Board may require. I am to ask that an Order under the Seal of the Board granting the requisite authority may be made and dispatched in due course.

I am, Sir,
Your obedient servant,

The Secretary,
Local Government Board,
Whitehall, London, S.W.

NOTE.

This covering letter is required to be sent by the clerk to the local authority by Article IV. (c) (*ante*, p. 151).

In the case of the adoption of owners' schemes, the covering letter should also comprise "8. A copy of the scheme proposed by the owners, and a statement as to the modifications which the (local authority) are of opinion should be made in the scheme" (see Article V. (e), *ante*, p. 151); and "9. A statement giving the particulars required by Article IX. of the said Regulations" (see *ante*, p. 154).

Precedent No. 13.

STATEMENT AS TO ATTENDANCE AND VOTING.

[Heading—see *ante*, p. 177.]

At a meeting of (the local authority) held at _____ on the day of _____, when a resolution was passed authorising an application to the Local Government Board for authority to [prepare *or* adopt] a town planning scheme for an area in such resolution specified, of the _____ members who form the total number of members of (the local authority) _____ voted for the said resolution, _____ voted against it, _____ were present at the meeting but did not vote, and _____ were absent from the meeting.

[Ending—see *ante*, p. 177.]

NOTE.

This Statement is required by Article IV. (c) of the Regulations (see *ante*, p. 151). Apparently no names need be given.

Precedent No. 14.

STATUTORY DECLARATION AS TO COMPLIANCE WITH ARTICLE I.

[Heading—see *ante*, p. 177.]

I, _____ of _____ the [town clerk *or* the clerk] of (the local authority) do solemnly and sincerely declare as follows:—

1. I am the duly appointed [town clerk *or* clerk] of (the local authority).

2. On the _____ day of _____ (the local authority) decided to consider a proposal to [prepare *or* adopt] a town planning scheme for an area of land shown edged [red] on a map marked Map No. 1, a copy of which said map is now produced and shown to me marked _____ I., and is hereunto annexed.

3. Within seven days after the said _____ day of _____ notices of such decision were served by [*describe method of service*] upon the [Councils of _____ and _____], being Councils interested in the said area of land, a copy of which said notice is now produced and shown to me marked _____ II., and is hereunto annexed.

4. Between the _____ day of _____ and the _____ day of _____, being at least two months before the date of the resolution referred to in paragraph 8 hereof, notices of the intention of (the local authority) to apply to the Local Government Board for authority to [prepare *or* adopt] a town planning scheme were

served upon the persons whose names are set out in column 1 of the list now produced and shown to me marked — III. in the manner stated in column 2 of such list. A copy of such list is hereunto annexed. Such persons are, so far as can be ascertained, all the owners or reputed owners, lessees or reputed lessees, and occupiers [other than occupiers whose tenancy is less than a quarterly tenancy] of land within the said area. Such notice was also served between the said days by [describe method of service] upon the [town clerks or clerks] of the Councils of all boroughs and urban and rural districts within which any part of the area edged red in Map No. 1 is comprised, namely, upon [the Councils named in paragraph 3 hereof or — and —] and upon the clerk of the County Council of —. [A like notice was sent on the — day of — to the Board of Agriculture and Fisheries at their office and to the Commissioners of Works, and on the — day of — to the Board of Trade and the Light Railway Commissioners]. A copy of such notice is now produced and shown to me marked — IV. and is hereunto annexed.

5. On the — day of — a certified copy of the said Map No. 1 was served by [describe method of service] on each of the following authorities within whose boundaries a part of the said area is comprised, namely the — of — and the —.

6. Notice of the intention of (the local authority) to make the application referred to in paragraph 4 hereof was also given by advertisement in the following [issue or issues] of the following [newspaper or newspapers] circulating in (the area of the local authority) namely in the — of the — day of — [and the — of the — day of —]. [A like notice was sent on the — day of — to the Board of Agriculture and Fisheries at their office, and to the Commissioners of Works, and on the — day of — to the Board of Trade and the Light Railway Commissioners, being at least two months before the date of the said resolution]. [A copy of the said newspaper or copies of the said newspapers] containing such advertisement [is or are] now produced and shown to me marked — V. [V. A., &c.] and [is or are] hereunto annexed.

7. On the — day of —, being a date not later than the date on which the first of the said notices referred to in paragraph 4 hereof was given, (the local authority) deposited at the [Town Hall or Council Offices or any other place convenient for the purposes of inspection], and kept deposited thereat for a period of not less than one month from the date on which the latest of the said notices was given, the said Map No. 1, which was on the scale of 25·344 inches to the mile, and was open for inspection during the said period by any person interested without payment of any fee between the hours of — on Saturdays and — and — on other weekdays. Provision was made for affording any necessary explanation in regard thereto was made by [instructing an officer in the Surveyor's department to answer inquiries during the said hours].

and desire to prevent similar development in future; large building estates about to be developed; new main arterial roads projected; new railways projected; new harbour works projected; new Admiralty works projected; new War Office works projected; new mining district being opened; new manufacturing industry being started; new golf links about to be laid out, &c., &c.]

(c) *Reasons for including land already built upon:—*

The land already built upon and included in the area is shown on Map No. 2, and coloured ——. The following are the particulars of the buildings on such land:—***

For the purpose of carrying the scheme into effect it is considered necessary to provide for the demolition or alteration of such buildings to the following extent:—***

The reasons for including this land in the area are [*e.g.*, that it is slum property and insanitary and obstructive, and interferes with the amenity of the adjoining lands].

(d) *Reasons for including land not likely to be used for building purposes (Article VIII. (c)):—*

This land is shown on Map No. 2, and coloured ——. It is considered to be land not likely to be used for building purposes because it [is marshy, has its gradients too steep, is already dedicated to purposes inconsistent with building operations, *e.g.*, burial ground, paths, park, &c.]

The reasons for including such land in the area are [*e.g.*, to prevent its being used for building purposes at all, or otherwise than subject to restrictions which cannot be imposed under existing law].

(e) *Arrangements in operation in the [City or Borough or Urban or Rural District] of — in regard to sewage, water supply, and lighting (Article VIII. (d)):—*

(i.) Sewage, drainage, and sewage disposal:—

[Here must be given information as to the existing arrangements, and as to how far they will be available for the purposes of the scheme or will require modification.]

(ii.) Water supply:—

[Here must be given information as to the existing source or sources of supply, and particulars as to any company, statutory or otherwise, that is furnishing the supply.]

(iii.) Gas and electricity:—

[Here must be given the same information as that required with regard to water supply.]

(f) *The like information in regard to the [City or Borough or Urban or Rural District] of —, in which a part of the area included in the proposed scheme is comprised:—*

(i.) Sewage, drainage, and sewage disposal:—

[See (e) (i.) *supra.*]

(ii.) Water supply:—

[See (e) (ii.) *supra.*]

(iii.) Gas and electricity:—

[See (e) (iii.) *supra.*]

(g) *The Responsible Authority (Article VIII. (e)):*—

The authority to be responsible for enforcing the observance of the scheme and for executing any works which may have to be executed thereunder will be

[See Introduction, Chapter XII., *ante*, p. 49.]

(h) *Monuments affected (Article VIII. (f)):*—

There are the following ancient and other monuments within the meaning of the Ancient Monuments Protection Acts, 1882 to 1900, within the said area, and they will be affected as indicated below:—

Monument.	Situation.	How affected.

(i) *Government Property (Article VIII. (g)):*—

The following lands or properties of Government Departments will be affected by the scheme:—

Land.	Government Department.	How affected.

B.—*Particulars required by Article X. of the Town Planning Procedure Regulations (England and Wales), 1910.*

(a) *Estimated Cost of Scheme (Article X. (a), ante, p. 154):*—

The estimated cost of carrying out the scheme cannot be given even approximately at this stage. The service of notices up to date has cost £—, and the cost of future notices is estimated roughly at £—. The cost of the maps so far printed by the Council is £—, and the cost of future maps is estimated roughly at £—. This gives a total for notices and maps of £—. [The cost of future [widening of bridges at —] is estimated at £—]. With regard to other expenses (compensation, &c.), it is hoped that by co-operation and concessions and betterment charges there will be practically no call upon the rates.

The — Council have agreed to contribute one [third] of the cost of [the maps and notices].

(b) *Particulars of* (the district of the local authority) (Article X. (b) :—

- (i.) Acreage, —.
- (ii.) Population according to census for 1911, —.
- (iii.) Rateable value, £—.
- (iv.) Rate during last three years, 191— — in the £, 191— — in the £, 191— — in the £.
- (v.) Total balance of outstanding loans, £— (sanitary purposes, £—).
- (vi.) Amount of loans sanctioned but not raised, though proposed to be raised, £— (sanitary purposes, £—).

[Ending—see *ante*, p. 177.]

NOTE.

Owners' Schemes.—If the application is for authority to adopt a scheme proposed by owners, the above statement must contain the additional particulars and information indicated in Articles V. (e) and IX. (see Precedent No. 16, *post*, pp. 204, 205).

Contributions from other Local Authorities.—“If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the application, the first mentioned local authority shall make a statement showing in regard to their district the several particulars indicated in paragraph (b) of” Article X. (see “B” *supra*), “and shall supply the same to the last mentioned local authority, who shall transmit it to the Board with the said application” (Article X. (c), *ante*, p. 154).

Monuments.—The Acts protecting these structures are: the Ancient Monuments Protection Acts, 1882 (45 and 46 Vict., c. 73), 1900 (63 and 64 Vict., c. 34), and 1910 (10 Edw. VII. and 1 Geo. V., c. 3). The Act of 1910 has been passed since the Regulations were made.

“Nothing in the Housing Acts shall authorise the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archaeological interest” (section 45 in Act of 1909). Section 60 (1) of the Act of 1909 makes the powers for the purchase of land by agreement or compulsion contained in Part III. of the Housing of the Working Classes Act, 1890, applicable to Part II. of the Act of 1909, but these powers are limited by section 45 quoted above.

The Local Government Board may make general provisions for “the preservation of objects of historical interest” (section 55, and Schedule IV. (4) of Act of 1909), and for this purpose members of archaeological societies have been given certain express powers with respect to town planning schemes (see Articles XII. (c), XVI. (c), and XXIII., *ante*, pp. 155, 157, 162).

A “monument” is any structure, erection, or monument of historic or architectural interest or the remains thereof, with so much of the adjoining land as is necessary for its protection and for access thereto (45 and 46 Vict. c. 73, s. 11; 63 and 64 Vict. c. 34, s. 6), and “ancient monuments” are certain specified monuments and any others of a like character of which the Commissioners of Works at the request of the owners thereof may become guardians, or which are declared to be ancient monuments by Order in Council (45 and 46 Vict. c. 73, ss. 10, 11). The

Schedule to the Act of 1882 enumerates some seventy ancient structures in England, Scotland, and Ireland, to which the Act applies, and this list has been supplemented by Orders in Council of March 7th, 1887, May 3rd, 1888, February 8th and June 30th, 1890, May 9th, 1891, and May 9th, 1892. As to the protection of, and other provisions with regard to, these structures, see *Laws of England*, vol. xxi., Title "Open Spaces and Recreation Grounds," pp. 602-606.

Government Property.—One application for authority to prepare a town planning scheme was refused because most of the land was Government property (see Introduction, Chapter XV., *ante*, p. 63). But the Admiralty are cordially supporting the town planning schemes of the burghs of Dunfermline and Inverkeithing, which embrace the new naval base at Rosyth.

Estimate of Cost.—With regard to the estimate under Article VIII. (d) the Local Government Board have stated, in reply to representations made to them by the National Housing and Town Planning Council, that they fully recognise that it would not be practicable in all cases for a local authority at this preliminary stage of the proceedings to form accurate estimates of the cost of carrying a scheme into effect, especially with regard to compensation. The Board consider that some estimate of the cost of a scheme, not merely the cost of preparing a scheme, should be prepared at this stage, and that the local authority would like to have for their own purposes some general estimate of the cost likely to be incurred by the authority and imposed upon the ratepayers, and it was this estimate—*so far as the local authority could arrive at it*—which the Local Government Board would require. It should be noticed that under Article X. (a) the estimate must be "as nearly as may be practicable." If it is impossible to give an estimate which will be of any practicable value, the local authority should say so, and no doubt the Local Government Board will not press them to give one (see Note at commencement of Part III. of this work (*ante*, p. 147)).

Precedent No. 16.

STATEMENT GIVING ADDITIONAL DETAILS AS TO OWNERS' SCHEMES.

[Heading—see *ante*, p. 177].

Additional particulars and information required by Article V. (e) and IX. of the Town Planning Procedure Regulations (England and Wales) 1910:—

1. *Description, Ownership, and Occupation of Land* (Article IX (a) *ante*, p. 153).

Situation of each Parcel of Land.	Approximate extent of each Parcel of Land and Area.	Names and Addresses of Owners.	Names and Addresses of Lessees.	Names and Addresses of Occupiers.

Precedent No. 17.

ADVERTISEMENT OF MAKING OF APPLICATION FOR AUTHORITY TO TOWN PLAN

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that in pursuance of a resolution passed at a meeting of (the local authority), held at _____ on the _____ day of _____, application has been made by (the local authority) to the Local Government Board for authority to [prepare or adopt] a Town Planning scheme for an area comprising the whole of the land edged red on Map No. 1, deposited at the [Town Hall or Council Offices].

[Ending—see *ante*, p. 177.]

NOTE.

Article XI. (*ante*, p. 155) requires that notice of the transmission to the Board of the application shall be given forthwith "in some newspaper or newspapers circulating in the area of the local authority," and that the advertisement shall contain "the date of the resolution making the application."

Precedent No. 18.

NOTICE OF OBJECTION TO PREPARATION OF SCHEME.

[Heading—see *ante*, p. 177.]

TAKE NOTICE that _____ of _____ objects to the preparation of the proposed Town Planning Scheme referred to in the Notice dated the _____, on the following grounds:—

1. That the following lands for which the scheme is to be prepared is neither (a) land in course of development, nor (b) land likely to be used for building purposes, namely, _____.
2. That part of the land is situate in the district of _____, and that (the local authority for that district) are proposing to prepare a Town Planning Scheme including such part.
3. That the Procedure Regulations of the Local Government Board have not been complied with in the following respects, namely, _____.
4. That part of the land, namely _____, forms a portion of a large estate which is not included in the area for which you propose to prepare this scheme, and that there is no

intention of developing this piece of land apart from the whole estate.

5. That a scheme should be prepared for a larger area, comprising the following property, namely, — — —.
6. That land included in the proposed scheme will be developed by the owners on proper lines without a Town Planning Scheme, and that such a scheme and the expense involved are unnecessary.

NOTE.

These are suggested headings for objections (see also the objections mentioned in the Introduction, Chapter VII., *ante*, pp. 29–32). There will no doubt be other grounds for objecting to schemes, but an owner should not make useless objections, as the Act gives very large powers to local authorities, and he will probably have to submit to his land being dealt with, and it will be better for him to do so amicably than under compulsion. If he has a real objection, it should be put in as clear a form as possible, and made at the earliest possible date. If the Local Government Board uphold his objection the local authority have no appeal, but if they overrule his objection he can, in addition to objecting under Articles III. and XIII. object under Articles XVII. and XXVI. The objection under Article XVII. must be addressed to the local authority, while that under Article XXVI. (see *ante*, p. 164) must be sent to the Local Government Board and must comply with the requirements of that Article. An owner may also attend Local Government Board inquiries and object there. Probably two inquiries will be held into each scheme, one into the application for authority to prepare or adopt a scheme, and the other into the application for approval of the draft scheme prepared by the local authority or proposed to be adopted by them.

Precedent No. 19.

NOTICE THAT BOARD HAVE GIVEN AUTHORITY TO TOWN PLAN.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that an Order dated the day of has been made by the Local Government Board authorising (the local authority) to [prepare *or* adopt] a Town Planning Scheme in respect of an area specified in the said Order, and that a copy of such Order may be inspected without charge at the [Town Hall *or* Council Offices, *or* some other place convenient for the purposes of inspection], and that any necessary explanation or information in regard thereto which you may require will be given between the hours of and on Saturdays and and on other week-days, pending the [preparation *or* adoption] of the scheme by (the local authority). (The local authority) intend to proceed with the [preparation *or* adoption [with *or* without] modifications] of the scheme, and if any person inter-

ested or affected thereby desires to be heard in reference thereto, including any persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme, such person must give me notice in writing of such desire within twenty-one days from the date hereof.

[Ending—see *ante*, p. 177.]

NOTE.

Article XII. (*a*) of the Regulations (see *ante*, p. 155) requires that this notice shall be served upon all owners, &c., of land included in the sanctioned area, upon every local authority any part of whose district is included in that area, and upon the county council if any main road is affected. As to service on Government Departments, see *ante*, p. 193.

The statements made in the above Precedent are required by clause (*c*) of the same Article, and clause (*d*) requires that suitable provision shall be made for affording, to persons who come to inspect the Order, any necessary explanation or information in regard thereto.

Clause (*a*) of the same Article requires that this notice, or one to the like effect, shall be inserted in a local newspaper at least one month before deciding upon the scheme to be submitted to the Board.

Precedent No. 20.

NOTICE THAT BOARD HAVE EXCLUDED LAND FROM PROPOSED AREA.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that certain land, included in the area in respect of which (the local authority) made application for authority to [prepare or adopt] a Town Planning Scheme, has by an Order of the Local Government Board, dated the day of been excluded from the area in respect of which authority to [prepare or adopt] a scheme has by the said Order been given. Such excluded land is more particularly shown on the plan hereto annexed, and is thereon edged [blue].

[Ending—see *ante*, p. 177.]

NOTE.

This Notice is required by Article XII. (*b*) of the Regulations (see *ante*, p. 155). If the excluded land can be satisfactorily described otherwise than by reference to a plan, no plan need be annexed. The notice must be served upon all owners, &c., of excluded land, upon every local authority any part of whose district is included in such land, and upon the county council if any main road "would or might have been affected by the inclusion of the excluded land." As to service on Government Departments, see *ante*, p. 193.

Precedent No. 21.

MEMORANDUM OF MODIFICATIONS TO OWNERS' SCHEMES.

[Heading—see *ante*, p. 177.]

MODIFICATIONS proposed by (the local authority) to the — Town Planning Scheme proposed by owners.

I. *Area*.—It is proposed by (the local authority) that the area be [enlarged or decreased] in the following respects:—

[Here specify the alteration proposed and the reasons therefor.]

II. *Streets*.—It is proposed by (the local authority) that the following main traffic roads be provided for in the scheme, for the reasons specified:—

[Here give particulars.]

III. *Land, &c.*—It is proposed by (the local authority) that there be the following modifications in the owners' proposals, namely:—

Heading.	Owners' Proposal.	Modifications Proposed.
(a) Land. (b) Sewerage. (c) Lighting. (d) Water Supply. (e) Buildings. (f) Enforcement of Scheme. (g) Miscellaneous.		

NOTE.

Article XV. of the Regulations (see *ante*, p. 175) requires that, when the local authority have fully considered a scheme proposed by owners, and decided to adopt it, they are to have a copy of the proposed scheme printed, and, if they propose to adopt it with modifications, to have a copy of their suggested modifications printed.

It should be observed that owners' schemes will probably not be prepared in detail like a Town Planning Scheme prepared by a local authority. Local authorities may adopt schemes *proposed* (not made) by owners (see Introduction, Chapter XIII., *ante*, pp. 53-55).

Precedent No. 22.

NOTICE OF INTENTION TO SUBMIT DRAFT SCHEME TO BOARD.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that (the local authority) propose to submit to the Local Government Board for their approval under the above Act a draft Town Planning Scheme, which has been [prepared by them *or* proposed by owners, and is intended to be adopted by (the local authority) [with modifications *or* without modification]]; that the land proposed to be included in the scheme is surrounded by a red border on the plan attached hereto; and that the draft scheme and maps therein referred to have been deposited at the [Town Hall *or* Council Offices *or* some other place convenient for the purposes of inspection], and will be open for inspection for a period of twenty-one days from the date hereof by any person interested or affected by the draft scheme, without payment of any fee, between the hours of and on Saturdays, and and on other week-days during the said period. Suitable provision has been made for affording to any such person inspecting the draft scheme and maps any necessary explanation or information in regard thereto.

(The local authority) will be prepared to consider any objections or representations which may be made to them in writing during the said period by any persons affected, including any persons representing any architectural or archæological society, or otherwise interested in the amenity of the proposed scheme.

NOTE

This Notice is required by Article XVI. (a) and (c) of the Regulations (see *ante*, p. 157). It must be given "at least one month before deciding upon the scheme to be submitted to the Board for approval, and must be served upon all owners, &c., of land included in the scheme, upon every local authority any part of whose district is included in the scheme, and upon the county council if any main road is or may be affected (Article XVI. (a)). Notice of such proposal must also be given by advertisement in a local newspaper at least one month before the above-mentioned decision (*ibid.*).

Not later than the date on which the first of these notices is given, the authority must deposit and keep deposited for twenty-one days after the last of such notices is given, at a place convenient for purposes of inspection, (a) the draft scheme, and (b) Map No. 4; or, if the scheme is an owners' scheme, (a) the draft scheme, (b) the memorandum of modifications, and (c) Map No. 4, and suitable provision is again to be made for affording explanations and information (Article XVI. (b)).

As to service on Government Departments, see *ante*, p. 193.

Precedent No. 23.

NOTICE OF PUBLIC MEETING.

[Heading—see *ante*, p. 177.]

WHEREAS, by Articles III. and XVII. of the Town Planning Procedure Regulations (England and Wales), 1910, made by the Local Government Board under and in pursuance of the powers given to them by Part II. of the Housing, Town Planning, &c., Act 1909, it is provided that a local authority, before deciding upon the town planning scheme to be submitted to the Board for their approval, shall arrange for one meeting being held at which all the owners or other persons interested in the land proposed to be included in the scheme, and the owners and other persons interested in any lands in the neighbourhood of the land proposed to be included in the scheme which may be affected by the scheme, and the council of any borough or of any urban or rural district within which any part of the land proposed to be included in the scheme is comprised, and any other council who may be interested in or affected by the scheme, shall be entitled to attend or be represented for the purpose of considering the proposed scheme.

AND WHEREAS (the local authority) are proposing to decide upon such a scheme to be submitted to the Board for their approval :

NOTICE IS HEREBY GIVEN that such meeting of owners and other persons interested as aforesaid will be held at the [Town Hall or Council Offices], on the day of at o'clock, which meeting you are hereby invited to attend.

[Ending—see *ante*, p. 177.]

NOTE.

Article XVII. of the Regulations (see *ante*, p. 164) provides that Article III. (see *ante*, p. 150) shall "apply also in regard to procedure before the local authority decide upon the scheme to be submitted to the Board for approval," whether it has been prepared by the local authority or proposed by owners. The same persons and authorities must be notified as in the case of the first public meeting (see Precedent No. 9 and Note, *ante*, p. 194). No particular date is laid down for the meeting, but it is clear that it must be held before the above-mentioned decision is arrived at. The notice must be a fourteen days' notice (see Article III.). The provision with regard to the President of the first meeting applies with regard to this meeting (see Precedent No. 10 and Note, *ante*, p. 195). The next Precedent gives the *agenda* for this meeting, and it will be seen that there is much more scope for discussion than at the first public meeting. The full proposals of the local authority are now public, and at this meeting the authority must be prepared to meet all criticisms and counter proposals.

As to service on Government Departments, see *ante*, p. 193.

Precedent No. 24.

AGENDA FOR PUBLIC MEETING.

1. Appoint President, if necessary.
2. Read notice convening meeting.
3. President welcomes those present, explains shortly the reasons for calling the meeting, and asks for continued co-operation.
4. Explanation of the draft scheme.
5. Discussion and questions by persons present.
6. Taking of vote, if thought desirable.
7. Vote of thanks to President.

NOTE.

The Meeting.—See Note to preceding Precedent, and Notes to Precedents Nos. 9 and 10 (*ante*, pp. 194, 195). As to taking a vote, see Introduction, Chapter IV., pp. 16, 17.

Explanation of the Draft Scheme.—Unlike the first public meeting (see Note to Precedent No. 10), there is now a fully prepared scheme to explain and discuss; but as by this time all the owners and others interested will have been either pacified by the negotiations or given up as hopelessly antagonistic, it is quite likely that this meeting will not be as verbose as the first.

The main points to be impressed on the audience at this stage will be (1) that the objects of the meeting are: (*a*) to let ratepayers and others who have not been parties to the negotiations know what the result of these negotiations has been; (*b*) to ascertain whether these results are satisfactory to such ratepayers, &c., and (*c*) to secure the continued co-operation of all concerned until the scheme has been finally approved and put in force; and (2) that if any one has any reasonable objection to make to any of the proposals contained in the scheme, his best course will be, first, to call and see the officer in charge of the matter and make his suggestions to him personally, when the matter can be fully discussed in quietude, and secondly, if that step does not result in his complete satisfaction, to make his objection in writing when it will be fully considered by the Town Planning Committee and the Council, who will either give effect to it or send it to the Local Government Board for their consideration.

Precedent No. 25.

RESOLUTION DECIDING UPON SCHEME TO BE SUBMITTED TO BOARD.

RESOLVED that the Town Planning Scheme which has been [prepared by (the local authority) or proposed by owners for adoption by (the local authority)], and is now before (the local authority) be [with the modifications therein specified] the scheme which shall be sub-

mitted to the Local Government Board for their approval in pursuance of Articles XVIII. and XIX. of the Town Planning Procedure Regulations (England and Wales), 1910, and that the map now before (the local authority) and marked [Map No. 5 or Map No. 4] be the map which shall be submitted to the said Board with the said scheme, and that the Common Seal of (the local authority) be affixed to the Order of (the local authority) making the said scheme and to the said map.

NOTE.

This Resolution is required by Article XVIII. of the Regulations (see *ante*, p. 165) to be passed before a scheme, whether prepared or adopted by the local authority, can be submitted to the Board for their approval. The Order referred to will be found in the next Precedent. This Order must be sealed and authenticated as required by Article XVIII. (see Note to next Precedent), and then the Resolution given in Precedent No. 27 can be passed. These three separate formalities may all be complied with at the same meeting one after the other.

As to the use of Map No. 4 for this purpose, instead of preparing a separate Map No. 5, see Introduction, Chapter XIV., *ante*, p. 58, and Article XVIII., *ante*, p. 158.

Precedent No. 26.

ORDER OF LOCAL AUTHORITY MAKING OR
ADOPTING SCHEME.[Heading—*ante*, p. 177.]

WHEREAS, at a meeting of (the local authority) held on day
the day of 19 at It was resolved that [here
set out in full the resolution given in Precedent No. 25]: Now
THEREFORE the (local authority) do hereby, in pursuance of Article
XVIII. of the Town Planning Procedure Regulations (England and
Wales), 1910, Order that the Town Planning Scheme referred to in
the said Resolution, and annexed hereto, be made for the area
specified in such scheme and in the maps referred to therein; and
that the Common Seal of (the local authority) be affixed hereto.

The Common Seal of (the local authority) was hereunto affixed
on the day of in the presence of

[Mayor or Chairman of the Council]

[Town Clerk, or Deputy Town Clerk, or Clerk to
the Council, or Deputy Clerk to the Council].

L.S.

NOTE.

This Order and the Map or Maps must be sealed, and the Order must also be "authenticated by the signature" of the Clerk or his deputy, but the scheme itself need not be sealed or authenticated in that way (Article XVIII., *ante*, p. 158), though there should clearly be some authentication thereof.

Precedent No. 27.

RESOLUTION APPLYING TO BOARD FOR APPROVAL OF SCHEME.

RESOLVED that application be made to the Local Government Board to approve the Town Planning Scheme referred to in the Order of (the local authority), dated the — day of — 19—.

NOTE.

See Notes to the two preceding Precedents.

Article XIX. of the Regulations (see *ante*, p. 159) requires that a copy of this Resolution, certified by the clerk, shall be "transmitted without delay to the Board by the clerk with a covering letter" (similar to that provided for in Precedent No. 12, *ante*, p. 197), "and accompanied by" the same statement as to the voting as that required when the first application was made to the Board (see Precedent No. 13, *ante*, p. 198).

Article XX. of the Regulations (see *ante*, p. 159) also requires a statutory declaration, copies of objections, and various maps and exhibits, to be sent to the Board with the above-mentioned documents (see the next Precedent and Note thereto).

Precedent No. 28.

COVERING LETTER.

SIR,—I am directed by (the local authority) to apply to the Local Government Board for their approval of a Town Planning Scheme [prepared by them *or* proposed by certain owners and adopted [with modifications *or* without modification] by them] for an area specified in an Order of (the local authority), dated the day of , and to send to the Board the following documents, which will be found herewith:—

1. A certified copy of the resolution requesting the approval of the Board to the scheme.
2. A statement as to the attendance and voting upon such resolution.
3. My statutory declaration in proof of compliance with the requirements of Articles XII. and XVI. of the Procedure Regulations, together with the necessary exhibits to such declaration.
4. A sealed copy and three other copies of the above-mentioned Order of (the local authority), and a certified copy of every map referred to in such Order.
5. Map No. 6.
6. Map No. 7.

[7. A copy of all objections made in writing in reference to the scheme so far as such objections have not been withdrawn or removed in the scheme as finally [prepared or adopted] by (the local authority); or All objections made in writing in reference to the scheme have been withdrawn or removed in the scheme as finally [prepared or adopted] by (the local authority)].

I shall be pleased to furnish any further particulars that the Board may require.

I am to ask that an Order under the Seal of the Board granting the requisite approval may be made and dispatched in due course.

I am, Sir,
Your obedient Servant,

[Town Clerk or Clerk to
the Council.]

The Secretary,
Local Government Board,
Whitehall, London, S.W.

Precedent No. 29.

STATUTORY DECLARATION AS TO COMPLIANCE WITH ARTICLES XII. AND XVI.

[Heading—see *ante*, p. 177.]

I of do solemnly and sincerely declare as follows:—

1. I am the duly appointed [Town Clerk or Clerk] of (the local authority).

2. By an Order of the Local Government Board dated the — day of — authority was granted to (the local authority) to [prepare or adopt] a Town Planning Scheme for the area specified in such Order. A copy of such Order is now produced and shown to me marked — I., and is hereunto annexed.

3. Between the — day of — and the — day of — a Notice that such authority had been given was served upon each of the persons whose names are set out in column i. of the list now produced and shown to me marked — II. in the manner stated in column ii. of such list. A copy of such list is hereunto annexed. Such persons are, so far as can be ascertained, all the owners or reputed owners, lessees or reputed lessees, and occupiers [other than occupiers whose tenancy is less than a quarterly tenancy] of land within the said area. Such Notice was also served upon [the — County Council and] every local authority any part of whose district is included in the said area, namely upon the — and —. A copy of such notice is now produced and shown to me marked — III., and is hereunto annexed. Provision for affording to any person inspecting the said Order

any necessary explanation or information in regard thereto was made by [instructing an officer in the Surveyor's department to answer inquiries during the said hours].

4. Notice to the same effect was given by advertisement in the ———, a newspaper circulating in (the area of the local authority) in the issue dated ———. A copy of the said newspaper containing the said advertisement is now produced and shown to me marked ——— IV., and is hereunto annexed.

5. The said Order of the Local Government Board excluded certain land from the area of land in reference to which authority to [prepare *or* adopt] a scheme was given.

6. On the ——— day of ——— notice of the exclusion of such land was duly served upon the owners or reputed owners, lessees or reputed lessees, and occupiers of such excluded land, and upon the following local authorities within whose districts part of such excluded land was comprised, namely ——— and ——— and upon the ——— County Council. A copy of such notice is now produced and shown to me marked ——— V. and is hereunto annexed. Such notices were served in the manner following, namely ———. A list of the names of the persons served with such notice of exclusion is now produced and shown to me marked ——— VI., and is hereunto annexed.

7. On the ——— day of ———, being a date not later than the date on which was served the first of the notices referred to in Clause 8 hereof, a draft Town Planning Scheme [and the memorandum of modifications which (the local authority) propose should be made in such scheme] and Map No. 4 were deposited at the [Town Hall *or* Council Offices, *or* some other place convenient for the purposes of inspection] and the said draft scheme [and modifications] and map were kept deposited thereat and open for inspection without fee between the hours of ——— and ——— on Saturdays and ——— and ——— on other week-days until the ——— day of ———, which date was not less than twenty-one days from the day on which was served the latest of the notices referred to in Clause 8 hereof, and provision for affording explanations in regard thereto was made [by instructing an officer in the Surveyor's department to answer inquiries during the said hours].

8. Between the ——— day of ——— and the ——— day of ———, the last of such days being not less than one month before the date of the resolution referred to in Clause 10 hereof, a notice that the said scheme [and modifications] and Map had been so deposited and that (the local authority) proposed to submit the said scheme to the Board for their approval was served upon each of the persons whose names are set out in the list now produced and shown to me marked ——— VII., and hereunto annexed. A copy of such notice is now produced and shown to me marked ——— VIII., and is hereunto annexed.

9. Notice to the same effect was given in the ——— ——— a newspaper circulating in (the area of the local authority) in the issue dated ———. A copy of the said newspaper containing the

Precedent No. 30.

STATEMENT AS TO DETAILS OF SCHEME.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXI. (a) of the Town Planning Procedure Regulations (England and Wales), 1910, the following statement is furnished giving the particulars and information indicated in Articles VIII. and IX. of the said Regulations, so far as such particulars and information are not contained in the scheme [prepared by (the local authority) *or* adopted by (the local authority)] and transmitted to the Board on the day of .

[Further particulars under Article VIII.,

or

Further particulars under Article IX.]

[Ending—see *ante*, p. 177.]

NOTE.

These further particulars are required by Article XXI. (a) of the Regulations (see *ante*, p. 160) only “so far as such particulars and information are not contained in the scheme.” Article VIII. (see *ante*, p. 153) refers to schemes prepared by local authorities (see Precedent No. 15 A, *ante*, p. 200), and Article IX. (see *ante*, p. 154) to schemes adopted by local authorities (see Precedent No. 16, *ante*, p. 204). Article XXI. (a) further provides that “where the particulars and information furnished to the Board in accordance with Article VIII. or Article IX., or any division of either of these Articles, represent fully and accurately the particulars and information required by this Article in regard to the scheme as prepared or adopted by the local authority, it shall be sufficient if a reference be made to the particulars and information previously furnished under Article VIII. or Article IX. or any division thereof.”

Precedent No. 31.

FURTHER STATEMENT AS TO DETAILS OF SCHEME.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXI. (b) of the Town Planning Procedure Regulations (England and Wales), 1910, the following statement is furnished giving the particulars required by clauses (I.) to (X.) of the said Article:—

1. The scheme admits of satisfactory provision being made for the following matters [within *or* outside *or* partly within and

partly outside] the area included in the scheme in the manner indicated.

- (a) Water, ———.
 - (b) Gas, ———.
 - (c) Electricity, ———.
2. The following tramways [and light railways] are—
- (a) Constructed in the said area, namely :—

 - (b) Authorised to be constructed in the said area, namely :—

 - (c) Constructed in the neighbourhood of the said area, namely :—

 - (d) Authorised to be constructed in the neighbourhood of the said area, namely :—
3. The following lands are proposed to be acquired—
- (a) By (the local authority), namely :—

 - (b) By other local authorities, namely :—

 - (c) The probability of the lands being acquired by agreement is as follows :—
4. (a) The following land included in the scheme belongs to (the local authority), namely :—
- (b) The following land included in the scheme belongs to the local authorities named, namely :—

 - (c) The purposes for which, and the authority under which, such land was acquired are respectively as follows, namely :—

 - (d) It is proposed to use the following lands for the purposes indicated, namely :—

5. The following property will in the opinion of (the local authority) be injuriously affected by the scheme within the meaning of the Act to the extent indicated, namely :—

6. The following works are to be executed under the scheme—

(a) By (the local authority), namely :—

(b) By the following persons, namely :—

7. The scheme contains the following provisions suspending, for the reasons specified, enactments contained in public general Acts, namely :—

Suspending Provisions.	Enactments Suspended.	Reasons for Suspension.
------------------------	-----------------------	-------------------------

8. The scheme contains the following provisions suspending, for the reasons specified, local Acts, byelaws, and regulations in operation in the area, namely :—

Suspending Provisions.	Enactments Suspended.	Byelaws Suspended.	Regulations Suspended.	Reasons for Suspension.
------------------------	-----------------------	--------------------	------------------------	-------------------------

9. (a) The scheme authorises the acquisition, and appropriation for other purposes, of [no common *or* the following commons, and it is proposed to give the following lands in exchange therefor, namely :—

Commons to be Acquired.	Land to be given in Exchange].
-------------------------	--------------------------------

(b) The scheme authorises the acquisition, and appropriation for other purposes, of [no open space *or* the following open spaces,

and it is proposed to give the following lands in exchange therefor, namely:—

Open Spaces to be Acquired. Land to be given in Exchange].

(c) The scheme authorises the acquisition, and appropriation for other purposes, of [no allotments *or* the following allotments, and it is proposed to give the following lands in exchange therefor, namely:—

Allotments to be Acquired. Land to be given in Exchange].

[10. The following lands included in the scheme are situate within the prescribed distance from Royal Parks or Palaces, namely:—

Lands in Scheme.	Royal Park or Palace.	Distance.
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or No land included in the scheme is situate within the prescribed distance of any Royal Park or Palace.

[Ending—see *ante*, p. 177.]

NOTE.

Article XXI. (b) of the Regulations (see *ante*, p. 160) requires this statement to be made, independently of any other statement that may have been made previously, though the previous statement may contain similar information.

With regard to Clause 9 of the statement, the expressions “common,” “open space,” and “allotment” are specially defined in section 73 of the Act of 1909 (see *ante*, p. 118).

With regard to Clause 10, the distance from Royal parks and palaces has been prescribed by the Order set out *ante*, p. 121.

Precedent No. 32.

STATEMENT AS TO ESTIMATED EXPENDITURE ON SCHEME.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXII. (a) of the Town Planning Procedure Regulations (England and Wales), 1910, the following Statement is furnished giving the required information as to the estimated cost of the scheme :—

Expenditure.	Borne by (local authority applying).	Borne by other local authorities.	Receipts.
(i.) Purchase of land for open spaces.			(i.) In respect of property increased in value.
(ii.) Purchase of land for the following other purposes : (a) (b) etc.			(ii.) From the following other sources : (a) (b) etc.
(iii.) Purchase of buildings.			(iii.) Balance (if any).
(iv.) Demolition or alteration of buildings.			
(v.) Compensation in respect of property injuriously affected by the scheme.			
(vi.) Making or alteration of roads or ways.			
(vii.) Sewerage or drainage.			
(viii.) Cost of preparing the scheme.			
(ix.) The following other purposes : (a) (b) etc.			
(x.) Balance (if any).			
Totals			

[Ending—see *ante*, p. 177.]

NOTE.

This Precedent may need considerable variation according to circumstances.

Precedent No. 33.

STATEMENT AS TO AMENDMENTS TO BE MADE IN PREVIOUS STATEMENTS.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXII. (b) of the Town Planning Procedure Regulations (England and Wales), 1910, the following Statement is furnished giving those of the particulars which were furnished to the Board under Article X. (b) ^{and}/_{or} Article X. (c) of the said Regulations on the _____ day of _____ and have, owing to the lapse of time or other circumstances, become inaccurate in any material respect, namely :—

1. Referring to clause _____ of the Statement under Article _____ dated _____ it is now found that [as the case may be].
2. Etc. [as the case may be.]

[Ending—see *ante*, p. 177].

NOTE.

Article XXII. (b) will be found *ante*, p. 161. If there are no such inaccuracies, no Statement need be made, though it would be wise to write informing the Board that there are no such inaccuracies, as they will probably make inquiries.

Precedent No. 34.

STATEMENT AS TO ACTS, ORDERS, BYELAWS, ETC., IN FORCE IN AREA OF SCHEME.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXII. (c) of the Town Planning Procedure Regulations (England and Wales), 1910, the following list of all Local Acts, Provisional Orders, Byelaws, and Regulations in force in the area comprised in the scheme is furnished, and copies thereof accompany, namely :—

In (the area of the local authority) there are in force :—

1. The following Local Acts, namely :—
[as the case may be.]
2. The following Provisional Orders, namely :—
[as the case may be.]
3. The following Byelaws, namely :—
[as the case may be.]

Precedent No. 36.

NOTICE OF RECEPTION OF DRAFT ORDER OF BOARD WITH MODIFICATIONS AND CONDITIONS ATTACHED.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that the Local Government Board have transmitted to (the local authority) a Draft Order for approving (subject to certain modifications and conditions in such Order specified) a Town Planning Scheme which has been [prepared *or* adopted] by (the local authority) under Part II. of the above Act.

A copy of the said Draft Order accompanies this Notice.

Any objections or representations which you may desire to make in regard to such modifications and conditions should be made in writing, and addressed to The Secretary, Local Government Board, Whitehall, London, S.W., within a period of one month from the date on which this Notice is served upon you.

[Ending—see *ante*, p. 177.]

NOTE.

Article XXIV. (*a*) of the Regulations (see *ante*, p. 163) requires that the Notice shall be served, with a copy of the Draft Order, upon all owners, &c., and local authorities affected, and upon the County Council if a main road is affected, within fourteen days after the receipt of the Draft Order.

As to service on Government Departments, see *ante*, p. 193.

An Advertisement as to the receipt of the Draft Order, on somewhat different terms (see next Precedent), is also required.

Precedent No. 37.

ADVERTISEMENT OF RECEPTION OF DRAFT ORDER OF BOARD WITH MODIFICATIONS, AND CONDITIONS ATTACHED.

[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that the Local Government Board have caused a Draft Order to be prepared for approving, subject to certain modifications and conditions in such order specified, a Town Planning Scheme which has been [prepared *or* adopted] by (the local authority) under Part II. of the above Act, that a copy of the said Order may be inspected, and any information in regard thereto obtained, without payment of any fee, at the [Town Hall *or* Council Offices] between the hours of and on Saturdays, and and on other week-days, during the period of one

month from the date hereof, and that any objections or representations in regard to such modifications and conditions must be made in writing, and addressed to The Secretary, Local Government Board, Whitehall, London, S.W., within a period of one month from the date hereof.

[Ending—see *ante*, p. 177.]

NOTE.

Article XXIV. (b) of the Regulations (see *ante*, p. 163) requires this Advertisement in addition to the Notice provided for in the preceding Precedent. It must be published in at least one local newspaper within fourteen days after receipt of the Draft Order of the Board.

Precedent No. 38.

STATEMENT AS TO OBJECTIONS OF LOCAL AUTHORITY TO MODIFICATIONS AND CONDITIONS.

[Heading—see *ante*, p. 177.]

IN pursuance of Article XXIV. (c) of the Town Planning Procedure Regulations (England and Wales), 1910, the following Statement is furnished giving the objections and representations which (the local authority) desire to make in regard to the modifications and conditions which the Board have made in and attached to their Draft Order dated the day of .

1. With regard to the modification made in clause ——— of the Scheme, (the local authority) desire to point out that [as the case may be].

2. With regard to the condition attached to the provisions in clause of the scheme (the local authority) desire to point out that [as the case may be].

[Ending—see *ante*, p. 177.]

NOTE.

If the local authority are desirous of any of the Board's modifications or conditions being altered or removed, Article XXIV. (a) of the Regulations (see *ante*, p. 163) requires this Statement to be furnished to the Board within a period of one month from the receipt of the Draft Order.

Precedent No. 39.

STATUTORY DECLARATION AS TO COMPLIANCE
WITH ARTICLE XXIV.

[Heading—see *ante*, p. 177.]

I, _____ of _____ do solemnly and sincerely declare
as follows :—

1. I am the duly appointed [Town Clerk *or* Clerk] of (the local authority).

2. On the _____ day of _____ (the local authority) received from the Local Government Board a Draft Order for approving the Town Planning Scheme [prepared *or* adopted] by (the local authority) [with the modifications and conditions specified in such Draft Order].

3. Within fourteen days after the receipt of the said Draft Order a notice that such Order had been received was served upon each of the persons whose names are set out in column i. of the list now produced and shown to be marked — — I. in the manner stated in column ii. of such list. A copy of such list is hereunto annexed. Such persons are, as far as can be ascertained, all the owners or reputed owners, lessees or reputed lessees, and occupiers [other than occupiers whose tenancy is less than quarterly tenancy] of land within the said area. Such notice was also served upon [the County Council and] every local authority any part of whose district is included in the said area, namely, upon the — — and — —. A copy of such notice is now produced and shown to me marked — — II., and is hereunto annexed.

4. Notice to the same effect was given by Advertisement in the — —, a newspaper circulating in (the area of the local authority) in the issue dated — —. A copy of the said newspaper containing the said advertisement is now produced and shown to be marked — — III., and is hereunto annexed.

[5. On the _____ day of _____ a Statement was forwarded to the Board giving the objections and representations which (the local authority) desired to make in regard to the proposed modifications and conditions in the said Draft Order.]

AND I make this solemn Declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

Declared at — —

the — — day of — —

Before me — — — —

[Ending—see *ante*, p. 177.]

NOTE.

Articles XXIV. (c) and XXXI. of the Regulations (see *ante*, pp. 163, 166) require that this Statutory Declaration and the Exhibits shall be transmitted to the Board within a period of one month from the receipt of the Draft Order.

Precedent No. 40.

ADVERTISEMENT OF INTENTION OF BOARD TO APPROVE SCHEME.

[Heading, see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that the Local Government Board intend to approve the Town Planning Scheme [prepared or adopted] by (the local authority) under Part II. of the above Act, and propose, after the receipt by them of a copy of the newspaper containing this Advertisement, to publish forthwith in the *London Gazette*, in accordance with section 54 (4) of the said Act, a notice of such their intention. Any person or authority interested and deciding to object to the Scheme being approved should make his or their objection in the manner prescribed by Article XXVI. of the Town Planning Procedure Regulations (England and Wales), 1910, within twenty-one days from the date of such publication in the *London Gazette*. The Draft Order proposed to be made by the Local Government Board has been deposited at _____ for a period of twenty-one days from the date of the said publication in the *London Gazette*, and will be open for inspection by any person interested, without payment of any fee, at all reasonable hours on any week-day during the said period.

[Ending—see *ante*, p. 177.]

NOTE.

Article XXV. (a) of the Regulations (see *ante*, p. 163) requires that this Advertisement shall be published in at least one local newspaper within fourteen days after the receipt of a Draft Order for approving the Scheme and a notification from the Board that they have decided to approve the Scheme with or without modifications.

Article XXV. (b) of the Regulations requires that "a copy of the newspaper or newspapers containing the Advertisement shall be forwarded to the Board by the clerk to the local authority *immediately on the publication thereof*."

Article XXV. (c) of the Regulations requires the Draft Order to be kept deposited and open for inspection for twenty-one days from the date of its publication in the *London Gazette*.

For the prescribed method of objecting to the Draft Order, see Article XXVI., *ante*, p. 164.

No Statutory Declaration as to compliance with this Article is required.

Precedent No. 41.**ADVERTISEMENT OF FINAL APPROVAL OF
SCHEME BY BOARD.**[Heading, see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that by an Order, dated the day of , the Local Government Board have approved the Town Planning Scheme [prepared *or* adopted] by (the local authority) [with the modifications and conditions specified in the said Order]. The said Order and a copy of any map or plan referred to therein or in the said Scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at the [Town Hall *or* Council Offices, *or* some other place convenient for the purposes of inspection], between the hours of and on Saturdays and and on other week-days during the period of three months after the date of the said Order.

[Ending—see *ante*, p. 177.]**NOTE.**

Article XXVII. (a) of the Regulations (see *ante*, p. 163) requires that the local authority, "on receipt of a copy of the Order of the Board approving a Scheme, shall without delay first publish" this Advertisement of the approval of the Scheme, and then give the Notice provided for in the next Precedent. Suitable provision must also be made by the local authority for affording any person inspecting the Order or Scheme, or any map or plan therein referred to, within the said period any necessary explanation or information in regard thereto.

Precedent No. 42.**NOTICE OF FINAL APPROVAL OF SCHEME
BY BOARD.**[Heading—see *ante*, p. 177.]

NOTICE IS HEREBY GIVEN that by an Order, dated the — day of —, the Local Government Board have approved a Town Planning Scheme [made *or* adopted] by the local authority for the area specified in such Order, a copy of which said Order accompanies this Notice, and that a copy of any map or plan, referred to in the said Order, may be inspected, and any necessary explanation or information in regard thereto may be obtained, without payment of any fee, at the [Town Hall *or* Council Offices, *or* some other place convenient for purposes of inspection] between

the hours of — and — on Saturdays and — and — on other week-days during the period of three months after the date of the said Order.

[Ending—see *ante*, p. 177.]

NOTE.

Article XXVII. (a) of the Regulations (see *ante*, p. 164) requires that the local authority shall, “not earlier than the second day after the first publication” of the Advertisement provided for in the preceding Precedent, serve upon all owners, &c., and local authorities affected by the Scheme, and upon the County Council if any main road is or may be affected, “a copy of the Order approving the Scheme and a notice that a copy of any map or plan referred to in the Order or Scheme may be inspected, and any necessary explanation or information in regard thereto may be obtained.” Article XXVII. (b) requires that suitable provision shall be made for affording explanations.

As to service on Government Departments, see *ante*, p. 193.

Precedent No. 43.

STATUTORY DECLARATION AS TO COMPLIANCE WITH ARTICLE XXVII. (a).

[Heading—see *ante*, p. 177.]

- I — of — do solemnly and sincerely declare as follows:—
1. I am the duly appointed [Town Clerk or Clerk] of (the local authority).
 2. On the — day of — (the local authority) received from the Local Government Board a copy of an Order dated the — day of — approving the Town Planning Scheme [prepared or adopted] by (the local authority) [with the modifications and conditions specified in the said Order]. A copy of such Order is now produced and shown to me marked — — I., and is hereunto annexed.
 3. Notice of the approval of the Scheme was given by Advertisement in the —, a newspaper circulating in (the area of the local authority), in the issue dated the — day of —. A copy of the said newspaper containing the said Advertisement is now produced and shown to me to be marked — — II., and is hereunto annexed.
 4. Between the — day of — and the — day of —, Notice that the said Scheme had been so approved was served upon each of the persons whose names are set out in column i. of the list now produced and shown to me marked — — III., in the manner stated in column ii. of such list. A copy of such list is hereunto

annexed. Such persons are, so far as can be ascertained, all the owners or reputed owners, lessees or reputed lessees, and occupiers [other than occupiers whose tenancy is less than a quarterly tenancy] of land within the said area. Such Notice was also served upon [the County Council and] every local authority any part of whose district is included in the said area, namely, upon the — and —. A copy of such notice is now produced and shown to me marked — — IV., and is hereunto annexed.

NOTE.

Articles XXVII. (c) and XXXI. of the Regulations (see *ante*, pp. 165, 166) require that this Statutory Declaration shall be transmitted to the Board "within fourteen days after the receipt of the said Order."

PART V.

MODEL CLAUSES FOR TOWN PLANNING SCHEMES.

INTRODUCTION.

THE model clauses in the present Part of this work are not to be taken as covering all that could be included in a Town Planning Scheme, though an effort has been made not to omit anything essential and likely to be approved. They are based on those schemes which are already open to public inspection, and in certain cases on sections in private Acts of Parliament under which Town Planning or similar Schemes have been carried out. No assurance, however, can be given that the Local Government Board will approve any of the model clauses in any given scheme. The Board will, no doubt, consider each draft scheme submitted for their approval both as a complete draft and also clause by clause, and pay particular attention to the *status* of the authority making the application and to the extent of the scheme; and it may well be that, while they will be quite prepared to sanction clauses giving wide powers to large local authorities engaged in carrying through extensive schemes, they will decline to grant the same or even similar powers to a small local authority or in relation to a scheme of minor importance.

The model clauses are only intended as suggestions to guide and assist local authorities and owners in preparing their schemes. Each authority and owner must consider whether any of the suggested clauses is or is not suitable for their particular area and scheme.

It is recognised that there are many points of difficulty as to the powers which, having regard to the wording of the Act, a scheme may legally confer on a local authority, and though the Act is apparently intended to do away with the necessity of referring to the Courts, cases are certain to arise in which it will be necessary to take the opinion of His Majesty's Judges. In the meantime this attempt has been made to form a basis on which local authorities and owners may work in preparing their draft schemes, and those who use such basis are asked to accept it with the above reservations.

A full list of the model clauses, with their headings, will be found in the Table of Contents at the beginning of this work.

Act shall (subject as is hereinafter provided) have the same several meanings when used in this Scheme as are specified in the latter Act.

(3) The enclosure numbers mentioned in this Scheme refer to those shown upon the map.

(4) The maps appended to this Scheme shall with the marginal notes thereon operate and have effect as part of this Scheme and such maps are hereinafter referred to as Map A or Map B or as the case may be.

NOTE.

A comprehensive clause at the beginning of the scheme containing definitions such as those given above will shorten the wording of the scheme and make it more intelligible.

As in the Precedents in Part IV. of this work square brackets are used for alternative expressions.¹

The definition of "laying out a new street" (clause (x) *ante*, p. 233) has been inserted in order to get over the difficulty created by the well-known case of *Devonport Corporation v. Tozer & Sons*² in which it was held that if an owner changes the character of an existing road by erecting houses along it and so making it a street in the ordinary sense of the word "street" but does not do anything physical to the street itself, he does not "lay out a new street" within the meaning of the usual byelaws as to new streets.³

The Local Government Board have declined to sanction a byelaw for a similar purpose, but it is thought that different considerations will arise when the difficulty is sought to be overcome in a town planning scheme. It would seem to be desirable and equitable that a person developing an estate should be compelled to give up land to widen an existing narrow road and so provide proper access to his estate otherwise than at the cost of the ratepayers of the district, but as the law stands at present that cannot be done.⁴ See, however, *Bell & Sons v. Great Crosby U. D. C.*,⁵ where the local authority succeeded in obtaining for nothing the removal of a street's "bottle neck."

The word "includes" must be used in the definition, for the expression "laying out" is also used to mean a physical laying out of a street, see Model Clause 15, *post*, p. 241. For judicial expositions for various purposes of the difference between "means," "includes," "means and includes," and "extends to and includes," in a definition clause, see the cases cited below.⁶

2. *The Area*.—The area to which this scheme shall apply shall be that within the boundary line edged [red] on the map.

NOTE.

A short clause defining the area by reference to a map should in all cases be inserted early in a scheme.

(1) And see footnote (1) *ante*, p. 233.

(2) C. A., L. R. 1903, 1 Ch. 759.

(3) See also *Fellows v. Sedgely U. D. C.* (K. B. D. 1906, 4 L. G. R. 970).

(4) *Attorney-General v. Dorin* (Ch. D., L. R. 1912, 1 Ch. 369).

(5) 1912, K. B. D., 10 L. G. R. 1007.

(6) *Per Brett, M. R.*, in *Portsmouth Cpn. v. Smith* (1883, C. A., L. R. 13 Q. B. D. at p. 195), and *per Lord Watson* in *Dilworth v. New Zealand Comr. of Stamps* (P. C., L. R. 1899 A. C. at pp. 105, 106); and see also *Reg. v. Kershaw* (1856, 6 E. & B. at p. 1007), *Dyke v. Elliott* (1872, L. R. 4 P. C. at p. 192), *Reg. v. Hermann* (1879, Q. B. D., L. R. 4 Q. B. D. at p. 288), *Re Wells* (1889, Ch. D., 58 L. J. Ch. at p. 840), *Bristol Tramways Co. v. Bristol Corporation* (C. A. 1890, 59 L. J. Q. B. at p. 449), *Gough v. Gough* (C. A., L. R. 1891, 2 Q. B. at p. 674), and *Savoy Hotel Co. v. London County Council* (Q. B. D., L. R. 1900, 1 Q. B. at p. 669).

(3) *The Responsible Authority.*—(The local authority) shall be the authority responsible for enforcing the observance of this scheme and for the execution of any works which under this scheme or Part II. of the Act are to be executed by a local authority for so much of the area as is comprised within (the area of the local authority). The ——— shall be such authority for so much of the area as is comprised within (the area of that authority) and the ——— shall be such authority for [as the case may be].

NOTE.

When the area lies within the district of more than one Council, the Local Government Board will probably make the Council for each district the responsible authority for so much of the area as is comprised in their district. There will, no doubt, be exceptions; for example, where a Council refuses or neglects to fulfil the duties of the responsible authority.¹

CLAUSES FOR GARDEN CITY OR SUBURB.

NOTE.

The following short set of clauses (4–12) has been drafted for an area to be developed as a Garden City or Suburb. Clauses 4–11 have been based on "The Hampstead Garden Suburb Act, 1906."²

The Preamble to this Act contains the following clause showing the principle upon which the Legislature proceeded in passing the provisions of the Act: "And whereas it would be of public and local advantage that such lands should be developed and laid out on principles which will not detract from the public advantages accruing from the addition of the Health Extension to Hampstead and will enable a residential area (in this Act called 'The Garden Suburb') to be created for persons of all classes with gardens and open spaces and other special amenities and facilities for persons of the working class and others."³

The London County Council (General Powers) Act, 1912,³ authorises that authority to "make a scheme or schemes for developing on the lines of a garden suburb for the accommodation of persons of the working class and others" the White Hart Lane Estate in Tottenham and Wood Green.

4. *Residential Roads.*—(1) (The local authority) may in the area make form and lay out residential roads of such width and in such manner and with or without such footways riding tracks and grass margins as they may think fit subject as hereinafter provided.

(2) A "residential road" for the purposes of this clause means any road not exceeding five hundred feet in length constructed primarily for the purpose of giving access to a group of houses in the area and not designed for purposes of through traffic.

(3) A residential road may with the consent of (the local authority) be exempt from the operation of any byelaws of (the local authority) relating to the width of new streets and to footways but shall be subject nevertheless to all other byelaws of (the local authority) so far as such byelaws are applicable provided that no such residential road shall be of less width than twenty feet.

NOTE.

Cf. section 5 (1) (A) of the Hampstead Act. Existing or intended residential roads should, where possible, be coloured on the map and referred to in the scheme by such colour.⁴

(1) See sections 55 (2) & 60 (1) of the Act, *ante*, pp. 80 and 99, and Introduction, Chapter XII., *ante*, p. 49.

(2) 6 Edw. VII. c. cxcii.

(3) 2 & 3 Geo. V. c. civ., ss. 13–19 (see these sections, *post*, pp. 262 *et seq.*).

(4) See section 5 (2) of the Hampstead Act.

5. *Traffic Roads.*—(1) Any road other than a residential road shall be of the width of forty feet at the least but need not be of any greater width notwithstanding any future provision of any byelaws of (the local authority) relating to the width of new streets.

(2) If any road other than a residential road is made of a greater width than forty feet so much of the width of the said road as exceeds forty feet (hereinafter referred to as "the unmetalled part") may consist of grass margins or ground planted with trees or laid out as gardens, and shall not without the consent of (the local authority) be levelled paved metalled flagged channelled made good or taken over by (the local authority) and the powers of (the local authority) under section 150 of the Public Health Act 1875 or any statutory modification thereof shall not be put in force with reference to the unmetalled part of the said road so long as such unmetalled part is maintained in good order to the reasonable satisfaction of (the local authority).

(3) Subject to the provisions of this clause any road other than a residential road shall be subject to all byelaws of (the local authority) so far as such byelaws are applicable.

NOTE.

Cf. section 5 (1) (C) (D) and (E) of the Hampstead Act.

Garden suburbs do not usually comprise large areas, and a clause of this nature for providing traffic roads should be found sufficient.

6. *Suspension of Paving Enactments.* The provisions of the [Public Health Act 1875 or Private Street Works 1892] as to the levelling paving metalling flagging channelling and making good of streets not being highways repairable by the inhabitants at large and as to the declaration and dedication of such streets as highways and any statutory modification of such provisions shall not save with the consent of (the local authority) apply to any residential road so long as the same is maintained in good order to the reasonable satisfaction of (the local authority).

NOTE.

Cf. section 5 (1) (B) of the Hampstead Act. A clause of this kind is essential. Both the Council and the owners would suffer if it were omitted. If the Private Street Works Act 1892 has been adopted in the area, that Act should be mentioned in this clause instead of the Public Health Act 1875. If the Act of 1892 is not in force, it is well to include both Acts in this clause as it may be adopted at a later date, and unless this clause included it difficulties might arise.

This clause will operate as a suspension of "an enactment contained in a public general Act," and the provisions of section 55 (2) of the Act of 1909 (*ante*, p. 80) must be borne in mind.

7. *Adoption of Roads.*—(The local authority) may if they think fit with the consent of the owners take over and maintain as highways repairable by the inhabitants at large any roads which shall have been made up sewered drained levelled kerbed paved metalled flagged channelled made good and provided with proper means of lighting to the reasonable satisfaction of (the local authority) notwithstanding that such roads may not be of the full width prescribed by or may not be otherwise in accordance with the byelaws relating to new streets and footways for the time being in force in (the area of the local authority).

NOTE.

Cf. section 5 (1) (F) of the Hampstead Act. This clause enables a Council to adopt a narrow road. A useful addition in the form of a proviso, if the Local Government Board would approve of it, would be:—"Provided that when in the opinion of (the local authority) the traffic requirements necessitate the widening and completion in accordance with the byelaws of any highway so taken over the local authority may give notices to the frontagers to widen and complete such highway as aforesaid and failing compliance with such notice may themselves widen and complete such highway as aforesaid and recover the cost from the frontagers in the manner provided by [the Public Health Act 1875 or the Private Street Works Act 1892]". Such an addition would be useful where traffic is small to start with but increases later.

8. *Number of Houses to Acre.*—There shall not be built in the area on the average throughout more than 12 houses to the acre nor more than 20 houses on any one acre.

NOTE.

Cf. section 2 (1) of the Hampstead Act. The above figures are becoming the commonly accepted standard number of houses to the acre. Unless the scheme is comprehensive this short clause will be sufficient.

9. *Space between Opposite Houses in Streets.*—On every road in the area there shall be between any two houses standing on opposite sides of the road a space of not less than [50 feet] free of any buildings except walls fences or gates.

NOTE.

Cf. section 2 (2) of the Hampstead Act. This clause applies whatever the width of the roadway may be, and does not mean that the roadway must be 50 feet wide.

10. *Regulation of Joint Gardens.*—With respect to any gardens recreation grounds or open spaces provided for the common use of the inhabitants of any dwellings in the area (the local authority) may make byelaws for the regulation thereof and for fixing the days and times of admission thereto and for the preservation of order and the prevention of nuisances therein and may by such byelaws impose penalties not exceeding five pounds for breaches thereof Provided that such byelaws shall not be of any force or effect unless and until the same shall have been approved by the Board.

NOTE.

Cf. section 3 of the Hampstead Act. The kind of gardens here referred to are not intended for public use but for certain residents only—hence the need of the clause. A local authority may make byelaws for public parks, &c.,¹ and, in certain cases, for private recreation grounds.²

As to the establishment, maintenance, and regulation of open spaces and recreation grounds by local authorities and others, see Lord Halsbury's *Laws of England*.³

(1) Under the Public Health Acts, 1875 (38 & 39 Vict. c. 55, ss. 164, 172), 1890 (53 & 54 Vict. c. 59, ss. 44, 45—if in force), and 1907 (7 Edw. VII. c. 53, ss. 76, 77, 81—if in force), the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34, s. 135—if in force), and the Public Improvements Act, 1860 (23 & 24 Vict. c. 30, s. 1—if in force).

(2) Under the Open Spaces Act, 1906 (6 Edw. VII. c. 25), and the Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13). See also the Recreation Grounds Act, 1859 (22 Vict. c. 27).

(3) Vol. xxi., title "Open Spaces and Recreation Grounds," pp. 582-601.

11. *Charges for Admission to Gardens.*—(The local authority) may make such charges for the use of buildings gardens recreation grounds and open spaces as they may think fit.

NOTE.

Cf. section 4 of the Hampstead Act. No such charge could be made without this clause, As to the power of local authorities to make a charge for admission to public pleasure grounds, see *Attorney-General v. Leeds Corporation* (1880, Ch. D., 24 Sol. J. 539).

12. *Power of Local Authority to make Regulations.*—(The local authority) may with the approval of the Local Government Board make and enforce regulations prescribing

(i.) The space about buildings

(ii.) The character (architectural and otherwise) of buildings and

(iii.) Street and building lines

and dealing with any other matters necessary to enable (the local authority) to carry out the provisions of this scheme.

NOTE.

This is a general clause which would, if the Local Government Board approve it, shorten the scheme and not place any hardship on owners.

CLAUSES FOR SECURING WIDE ROADS.

NOTE.

The following ADDITIONAL clauses (13–19) have been drafted for an area in which wide roads are a necessity. All the clauses are based on the Liverpool Corporation (Streets and Buildings) Act, 1908.¹

13. *Approval of Formation of Streets.*—(1) No person shall commence or proceed with the formation of a new street or the widening of an existing street or the widening or adaptation of any road footpath or way so as to form or lay out a new street otherwise than in accordance with plans sections and particulars previously approved by (the local authority) nor otherwise than in accordance with any requirement condition or stipulation subject to which (the local authority) may in exercise of any authority in that behalf given to them by this scheme have approved such plans sections and particulars.

(2) Application for any such approval shall be made to (the local authority) in writing and shall be accompanied by such plans sections and particulars in relation thereto as may be reasonably required by regulations issued by (the local authority) and any application made otherwise than in accordance with such regulations shall be void.

(3) Whenever application shall be made to (the local authority) to approve the formation or laying out of a new street or the widening of an existing street or the widening or adaptation of a road footpath or way so as to form a new street within the area (the local authority) may require the owner of the estate or lands the development of which will be commenced or continued by the formation widening or adaptation of such street road footpath or way to furnish (the local authority) with plans and particulars showing the general scheme for the development or laying out of such estate or lands.

(1) 8 Edw. VII. c. clxv.

(4) If (the local authority) determine that main thoroughfares or continuations of main thoroughfares or means of communication between main thoroughfares in the area or main approaches or continuations of main approaches or means of communication between main approaches to the [city or town of —] (hereinafter in this clause called "main communications") will be necessary upon such estate or lands such main communications as so determined shall be shown on the plans to be furnished to (the local authority) under the last preceding subclause and the land required for the formation thereof shall be defined by posts and rails or otherwise as (the local authority) may allow and dedicated to the public before the formation or laying out or widening of any such street or the widening or adaptation of any road footpath or way so as to form such street is commenced or proceeded with.

NOTE.

Cf. section 4 (1)-(4) of the Liverpool Act.

It is gradually becoming a recognised principle that owners of estates should, when beginning to lay out a portion of an estate, submit for approval plans for the development of the whole.

As to the meaning of the "laying out" of a new street, see note to clause 1 (x.), *ante*, p. 234.

With regard to the insertion in a Town Planning Scheme of clauses which follow exactly or substantially the wording of an adoptive Act, without complying with the formalities which are prescribed by the Act before its provisions can be put in force, it would seem that, if this is done and the scheme containing such clauses is approved by the Local Government Board, no objection could be taken thereto, especially as the scheme when so approved has the force of an Act of Parliament (see section 54 (5), *ante*, p. 75 and Note).

Under the Public Health Acts Amendment Act, 1907, an advertisement of an application to the Board, for a declaration that any portion of the Act be in force in the district, has to be given "in each of two successive weeks" (see section 3 (2) of the Act). This is not necessary in the case of a Town Planning Scheme. So it might, perhaps, be possible to contend that inserting such a clause in a scheme would be such a "suspension" of that section of the Act of 1907 as would necessitate laying the draft scheme before Parliament under section 55 (2) of the Act of 1909 (see that section, *ante*, p. 80 and Note).

As section 17 of this Act of 1907 contains a very useful provision, and might well be inserted in a scheme, it is given at length. It provides as follows:—

- (1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

- (2) The powers of the local authority under this section shall not be exercisable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new

street is intended to be laid out, or the execution of works elsewhere than on those lands.

- (3) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.
- (4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

14. (1) *Width of New Streets.*—Whenever application shall be made to (the local authority) to approve the formation or laying out of a new street on any estate or lands it shall be lawful for (the local authority) to require that the new street shall be formed of such width as (the local authority) shall require :

Provided that in the event of (the local authority) requiring any new street to be of any greater width than the following (hereinafter in this scheme called “the prescribed width”) viz. :—

- (a) In the case of a new street which in the opinion of (the local authority) will form a main thoroughfare or a continuation of a main thoroughfare or means of communication between main thoroughfares in the area or a continuation of a main approach or means of communication between main approaches to the [city or town] eighty feet ; or
- (b) In the case of any other new street the width required for such street by any Act or byelaw for the time being in force within the area ;

(the local authority) shall purchase from the owner of such estate or lands and such owner shall sell to (the local authority) any additional land necessary to make such new street of such greater width as aforesaid and shall also make compensation to such owner for any loss or damage sustained by him by reason of (the local authority) requiring the street to be of such greater width as aforesaid.

(2) Nothing contained in this clause shall require an owner to incur any greater expense in the execution of any street works than he would have been required to incur if the new street had been of no greater width than the width required for such street under any byelaw for the time being in force within the area and any additional expense incurred in the execution of street works by reason of the new street being of such greater width shall be borne by (the local authority).

NOTE.

Cf. section 6 (1) and (5) of the Liverpool Act.

It is to be observed that byelaws will still play an important part in districts in which a Town Planning Scheme is in force.

It is uncertain whether the Local Government Board would approve of a clause conferring such wide powers as the above upon all urban or any rural district councils, but as such councils may widen roads at the present time,¹ and with the approval of the Local Government Board may borrow for the purpose,² it is possible that the clause might be approved subject to the

(1) As to urban authorities, see sections 154 and 160 (e) of the Public Health Act, 1875. Rural district councils can obtain the power under section 276 of the Act of 1875 with regard to particular roads.

(2) Under section 233 of the Public Health Act, 1875.

addition of a sentence requiring the consent of the Board before the council exercise their powers under the clause.

As Parliament has already conferred powers on municipal corporations similar to this clause, such consent would probably not be required in their case.

Somewhat elaborate provisions as to ascertaining the purchase money will be found in section 6 (2) to (4) of the Liverpool Act.

15. *Widths of Carriage-way and Footway.*—(The local authority) shall determine in any case what proportion of the width of any new street or of any street of which a new street may form part shall be laid out as carriage-way and as footway or footways respectively and any new street shall be formed accordingly.

NOTE.

Cf. section 7 of the Liverpool Act.

This clause overrides the Local Government Board model bye-law No. 8, which most councils have adopted in their districts.¹

When once a street has been laid out with definite footpaths, the local authority may not subsequently alter the respective widths of carriage-ways and footways.²

16. *Widening Old Ways from Centre.*—(1) When a road footpath or way within the area becomes in consequence of building operations a new street within the meaning of the Public Health Act 1875 but the land on only one side of such street has been or is in course of being built on (the local authority) may instead of requiring the owner of the land built on or in course of being built on to widen such road footpath or way to a width prescribed by this scheme or by any Act of Parliament or byelaw in force within the area require such owner to widen such road footpath or way so as to give a width of not less than one half of such prescribed width from the original centre line of such road footpath or way as determined by the surveyor of (the local authority) by certificate under his hand to the boundary thereof adjoining such land.

(2) If and when the land on the opposite side of such road footpath or way shall be built on (the local authority) shall require the owner of such land to complete the widening of such road footpath or way so as to give the complete width prescribed by any such scheme Act or byelaw.

NOTE.

Cf. section 8 (1) and (2) of the Liverpool Act, and Model Clause 20.³ This clause removes any difficulty that an owner might have when building on one side of a street only. The cases as to "laying out a new street"⁴ are so complicated that in many cases the council and the owner are unable to ascertain their legal positions.

17. *Building Lines on Plans.*—(1) Every person who intends to form or lay out a new street shall in addition to the information required to be supplied to (the local authority) by virtue of any schemes enactments or byelaws with respect to streets and buildings in force within the area distinctly define and mark on a plan drawn to such scale as (the local

(1) See Knight's *Model Byelaws*, 1905 Ed., at p. 76.

(2) *Robertson v. Bristol Corporation* (C. A., L. R. 1900, 2 Q. B. 198); *Wandsworth B. C. v. Golds* (K. B. D., L. R. 1911, 1 K. B. 60). See, however, the dictum of Farwell, L. J., in *Tottenham U. D. C. v. Rowley* (1912, C. A.), commented on in Glen's *Local Government Case Law*, 1912, title "Highways."

(3) *Post*, p. 244.

(4) See *ante*, p. 234.

authority) may require and to be prepared and submitted by such person to (the local authority) for their approval the proposed line of frontage of any house or building to be erected in or fronting such street (in this clause called "the building line.")

(2) It shall not be lawful to erect or bring forward in any such street any house or building or any part thereof nor any addition to any house or building until the building line for such street has been approved by (the local authority) nor beyond or in front of the building line approved by (the local authority).

(3) The provisions of section 3 of the Public Health (Buildings in Streets) Act 1888 shall not apply to any house or building erected or proposed to be erected on lands in respect of which a building line as aforesaid shall have been submitted to and approved by (the local authority).

(4) In the event of (the local authority) requiring as a condition of their approval of any such plan the setting back of the building line shown on the plan to a greater distance from the centre of any such street than one-half of the prescribed width of the street and an additional one-tenth to such prescribed width (the local authority) shall make compensation to the owner of any land lying between such one-tenth and the building line for any damage sustained by him by reason of his being unable to build upon such land.

(5) For the purpose of this section the surveyor of (the local authority) shall by certificate under his hand at or before the time of the approval of the building line by (the local authority) determine the centre of any street or intended street.

NOTE.

Cf. Section 9 (1) to (5) of the Liverpool Act.

As subclause (3), *supra*, suspends "an enactment contained in a public general Act," the provisions of section 55 (2) of the present Act must be borne in mind.¹

The suspended Act of 1888² provides that "it shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building in any street, or any part of such house or building beyond the front main wall of the house or building on either side thereof in the same street, nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same."

The cases cited below deal with the expressions "front main wall,"³ "on either side thereof,"⁴ and, "in the same street."⁵

The demand for a gratuitous widening of the street in return for such consent would not be legal.⁶

(1) See *ante*, p. 81.

(2) 51 & 52 Vict. c. 52, s. 3.

(3) See *Reg. v. Ormesby Local Board* (1894, Q. B. D., 43 W. R. 96), and *Attorney-General v. Edwards* (Ch. D., L. R. 1891, 1 Ch. 194).

(4) See the cases cited in footnote (3) *supra*, and *Leyton Local Board v. Cavston* (1893, Q. B. D., 57 J. P. 135), *Ravensthorpe Local Board v. Hinchcliffe* (1889, Q. B. D., L. R. 24 Q. B. D. 168), and *Warren v. Mustard* (1891, Q. B. D., 56 J. P. 502).

(5) See *Edward's Case* (*supra*), *Reg. v. Fulwood Local Board* (1895, Q. B. D., 59 J. P. 311), and *Attorney-General v. Siddall* (C. A., *Times*, June 24, 1898).

(6) See *Rex (White) v. Newcastle-upon-Tyne Corporation* (1912, K. B. D., *Glen's Local Government Case Law*, 1912, title "Public Health," applying *Southwark B. C. v. Partington Advertising Company*, 1905, K. B. D., 3 L. G. R. 505).

18. *Relaxation of Laws in return for Open Spaces.*—(1) If at any time the owner of any estate or lands shall in connexion with the laying out and development of the same for building purposes set apart on such estate or lands to the approval of (the local authority) a piece of land (being not less than [one-tenth] of the estate or lands being or about to be laid out or developed or [one acre] in extent whichever shall be the greater) as a garden or open space or if (the local authority) and the owner so agree as a public garden or public recreation ground (the local authority) may in granting their approval to the formation laying out or widening of any street or the widening or adaptation of any way so as to form a street on any such estate or lands or the laying out or development of any such estate or lands dispense with the observance in relation to so much of any street or road on such estate or lands as (the local authority) shall think fit of any of the provisions of any Act or byelaw for the time being in force within the area relating to paving metalling flagging channelling or making up of streets and (the local authority) may thereupon at their own expense pave metal flag channel or make up in such manner as they shall think fit any such street or road.

(2) From and after the date of the grant of any such approval as mentioned in the preceding subclause no building or structure shall except with the consent of (the local authority) and on such terms and conditions as (the local authority) shall prescribe be erected on any piece of land so set apart as aforesaid.

(3) If (the local authority) and the owner agree that any such piece of land shall be set apart as a public garden or public recreation ground the same shall thereupon vest in and be maintained by (the local authority) and it shall be lawful for (the local authority) to exercise with regard thereto all or any of the provisions relating to the management control maintenance and user of public gardens and public recreation grounds within (the area of the local authority).

(4) If any garden or open space set apart under the provisions of this clause otherwise than as a public garden or public recreation ground has become from want of care or other cause in a neglected condition (the local authority) may after giving not less than [twenty-one] days' notice to the owner of such garden or open space by resolution require the same to be set apart as a public garden or public recreation ground and the same shall thereupon as from the date specified in such resolution become a public garden or public recreation ground accordingly and be subject to the provisions of this section as if it had been originally agreed by and between (the local authority) and the owner that it should be so set apart as a public garden or public recreation ground.

NOTE.

Cf. section 14 (1) to (4) of the Liverpool Act. This clause is particularly adapted to garden city conditions.

As to the waiving of byelaws, see the Note to section 55 (2) of the Act of 1909, *ante*, p. 84.

19. *Grass Margins and Gardens in Streets.*—(The local authority) may lay out with grass margins or plant with trees or lay out as gardens any part of any street or highway now or hereafter maintained by (the local authority) provided that (the local authority) shall not reduce below a total width of [thirty-six] feet the part available for traffic of any such street or highway and (the local authority) may from time to time as circumstances require throw into the carriage-way or footway of any such

street or highway any part of such grass margins parts planted with trees or parts laid out as gardens as aforesaid and may from time to time alter or re-arrange the parts of any street or highway laid out as a carriage-way or footway respectively:

Provided always that nothing contained in this clause shall empower (the local authority) to prevent any person residing in any premises in or abutting on any such street or highway having full and free right and liberty of access to and from such premises from and to the metalled portion of such street or highway.

NOTE.

Cf. section 17 of the Liverpool Act. This clause providing for spaces not devoted to traffic has universal approval, though the wisdom of providing grass margins is not universally acknowledged. As to access, see Note to next clause.

20. *Communication to Premises across Footways and Grass Margins.*—The provision and use of new means of access for any cattle any beast of draught or burden any waggon cart or other wheeled carriage exceeding [four] feet in width or [two hundredweight] in weight to or from any premises fronting adjoining or abutting on any street which has become a highway repairable by the inhabitants at large may where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway or grass margin, be allowed by (the local authority) subject to the following conditions (that is to say):—

- (a) Every person who intends to provide the new means of access shall give notice in writing of his intention to (the local authority) and shall at the same time submit for the approval of (the local authority) a plan showing the position gradient and mode of construction of the intended means of access;
- (b) When the plan with or without amendment has been approved by (the local authority) the person may upon receiving notice of their approval proceed to execute the necessary works but those works shall be executed under the supervision and to the reasonable satisfaction of (the local authority) and in accordance with the plan as approved by (the local authority);
- (c) After the completion of the works the new means of access may be used subject to the conditions which in pursuance of any provisions of the law relating to highways attach to the use for the like purpose of any carriage-way forming part of a highway repairable by the inhabitants at large.

NOTE.

Every owner of land adjoining a highway has a common law right of access to such highway from any point in his land which touches it;¹ an obstruction to this right was recently restrained.²

As to a frontager's right at common law to form a crossing over a footway for the purpose of obtaining more convenient access to the highway, see the cases cited below.³

(1) See *per* Lord Selbourne in *Lyon v. Fishmongers' Co.* (1876, L. R. 1 A. C. at p. 684, and the other cases cited in Lord Halsbury's *Laws of England*, title "Highways," p. 59, 61.

(2) See *Tottenham U. D. C. v. Rowley* (1912, C. A.), and comment thereon in *Glen's Local Government Case Law*, 1912, title "Highways."

(3) *St. Mary, Newington, Vestry v. Jacobs* (1871, Ct. of Q. B., L. R. 7 Q. B. 47), and *Chaplin v. Westminster City Council* (Ch. D., L. R. 1901, 2 Ch. 329).

MISCELLANEOUS ADDITIONAL CLAUSES.

21. *New Streets and Widening of Streets.*—(1) The new streets indicated on the map by the colour — shall be constructed in the positions shown thereon.

(2) The existing streets shall be widened to the extent shown and coloured — on the map.

(3) No person shall build on any land shown on the map as being required for the purposes of making any new street or widening any existing street.

(4) (The local authority) may agree with any owner of lands adjoining any street for the adjustment of the boundary of any such street and for such purpose may give up to such owner land in exchange for other land provided that in no case shall the land so given up by (the local authority) exceed in area that given in exchange by such owner.

NOTE.

Cf. clause 16, *ante*, p. 241. Subclause (4) renders legal what was held to be illegal in *Craft v. Fulwood U. D. C.*, C. P. Ct. of Lanc., 76 J. P. Journal, 282; 1911 Loc. Gov. Chron. 523; settled in C. A., 1912, W. N. 197 n.

22. *Relaxation of Byelaws as regards New Streets and Construction of New Streets where Byelaws relaxed.*—(1) Notwithstanding any provision of the byelaws every person who shall lay out a new street which shall be intended for use as a carriage road and shall not be more than [nine hundred] feet in length and in which no buildings other than domestic dwellings are proposed to be erected may lay out such street so that whatsoever the width of such street the carriage-way thereof shall be at least [fourteen] feet and the width of any footway therein shall be at least [five] feet.

(2) Every person who shall lay out a street in accordance with the provisions of the preceding clause shall construct such street as a carriage road and shall comply with the following requirements:—

(a) In respect of streets of a width not exceeding [twenty] feet

(i.) He shall construct the carriage-way of such street so that the width thereof shall be [fourteen] feet at the least.

(ii.) He shall construct at least one turning place in the carriage-way which shall have an area of not less than [four hundred] feet and a width of not less than [twenty] feet.

(iii.) He shall plant with grass trees or shrubs or otherwise suitably lay out the space if any between the carriage-way and the boundary of such street.

(b) In respect of streets of a width not exceeding [twenty-four] feet

(i.) He shall construct the carriage-way of such street so that the width thereof shall be [sixteen] feet at the least.

(ii.) He shall construct on one side at least of such street a foot-path of a width not less than [five] feet except opposite turning spaces.

(iii.) He shall construct turning spaces in the carriage-way at distances not exceeding [three hundred] feet apart, each of which shall have an area of not less than [five hundred] feet and a width not less than [twenty] feet.

(iv.) He shall plant with grass trees or shrubs or otherwise suit-

ably lay out to the satisfaction of the local authority the space between the carriage-way and the footpath of each street or between the footpath and the boundary of such street or between the carriage-way and the boundary of such street.

(c) The whole surface of the carriage-way and of the footpaths if any of such streets shall be constructed of suitable materials to the satisfaction of (the local authority).

23. *Construction of New Streets and Sewers by Local Authority.*—(1) If at any time (the local authority) shall desire to construct any of the new streets indicated on the map by the colour — together with all necessary slopes and embankments or (where sewers are also indicated on the map as to be constructed through across or under the same) to construct such sewers (the local authority) may give to the owner or owners of the land over which any such street is shown on the map to pass [six] calendar months notice of their said desire and at the expiration of [six] months from the date of such notice the said owner or owners shall permit (the local authority) to enter upon the said lands for the purpose of constructing any such street or laying such sewer as the case may be with all necessary slopes and embankments and (the local authority) shall construct the same accordingly. All costs incurred by (the local authority) of and incident to the construction of any such street including the sewerage thereof and the placing and keeping in repair of fences and posts pursuant to clause 19 hereof or of laying such sewers shall be deemed to be expenses of private street works within the meaning of the Private Street Works Act 1892 and (the local authority) shall have all such powers of apportioning the said costs and expenses upon the lands and premises fronting adjoining or abutting upon any such street and upon any other lands or premises which in their opinion will be benefited by the construction of such street and of recovering the said costs and expenses as are conferred upon (the local authority) in respect of expenses of private street works under the said Private Street Works Act 1892.

(2) (The local authority) may in such apportionment prescribe a period of time within which the sum or sums so apportioned upon any person shall be payable and in prescribing such time for payment shall take into consideration the time at which the construction of such street will be of benefit to any person upon whom any apportionment is proposed to be made as aforesaid. Any person who deems himself aggrieved by such apportionment or the prescribing of a period of time for payment as aforesaid may appeal to the Board by giving notice of appeal to the Board within twenty-one days after the service upon him of notice of such apportionment and the Board may make such order in the matter as to the Board may seem equitable and the order so made shall be final and conclusive upon all parties.

NOTE.

For a thoroughly exhaustive treatise on the law relating to Private Street Works, see the work by Mr. Joshua Scholefield.¹

24. *Sewers.*—Any street or streets referred to in the last preceding clause where sewers are also indicated on the map as to be constructed through across or under the same shall be deemed to be places laid out or intended for streets within the meaning of section 16 of the Public Health Act 1875.

NOTE.

Section 16 of the Act of 1875 provides as follows:—" Any local authority may carry any sewer through across or under [*any turnpike road, or*] any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriage-way of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into through or under any lands whatsoever within their district. They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage."¹

25. *Sanction of Board as to Modifications of New Streets.*—The Board may sanction any modification in detail with reference to the position construction or widening of any street shown on the Map which at any time and from time to time may be agreed upon between (the local authority) and the owner or owners interested

Provided that no such sanction shall be given until the expiration of [twenty-one] days from the date on which notice has been given by advertisement in some newspaper circulating in the district to the effect that (the local authority) have applied under the authority of this clause for the sanction of the Board to a modification described in the notice and that any person objecting to such sanction being given may within such [twenty-one] days give written notice of their objection to the Board who shall take any such objection into their consideration before granting any sanction as aforesaid.

26. *Diversion and Stopping up of Highways.*—The respective public highways described in this clause shall as from but not until the respective dates on which the said proposed new streets set opposite to each (or where more than one the last of them to be constructed and opened as herein mentioned) shall have been constructed to the satisfaction of (the local authority) and opened for public traffic be deemed to be diverted or stopped up and all public rights thereover shall cease as from such respective dates subject always to the rights of (the local authority) and others being reserved in regard to sewers gas and water mains electric cables or wires and other works.

The same proceedings may be taken and the same powers exercised pursuant to the Private Streets Works Act 1892 in respect of any of the new streets mentioned in this clause of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street were a highway not repairable by the inhabitants at large.

Description of Highways or Footways to be diverted or stopped up.	Numbers on Map.
The highway or footway leading from — Lane crossing the enclosure numbered — on the Map and then rejoining — Lane. The [as the case may be].	

(1) See the Note to this section in *Glen's Law Relating to Public Health*, 13th ed., at pp. 324, 325. The "provisions relating to sewage works without the district" are sections 28, 32-34 (see *ibid.* pp. 350, 351, 353, 359).

NOTE.

For a summary of the law relating to the Diversion and Stopping up of Highways, see the July issue of *The Local Government Review*, 1910, pp. 113-118.

As to the last paragraph of this clause, see the recent decision of the Court of Appeal noted below.¹

27. *Public and Private Open Spaces.*—(a) The expression “public open space” includes the spaces shown on the Map by the colour — and all spaces which may hereafter be acquired by (the local authority) as public open spaces and the expression “private open space” includes the spaces shown on the map by the colour — and all spaces which may hereafter be regulated by (the local authority) as private open spaces.

(b) Subject to any special agreement relating to any public open space such spaces shall be maintained by (the local authority) and may be laid out or used as public pleasure grounds ornamental grounds or gardens recreation grounds bathing places or gymnasia.

(c) No building shall be erected on any public or private open space other than lodges bandstands lavatories pavilions refreshment rooms shelters sheds and buildings of a like nature.

(d) Private open spaces shall be maintained in good order and fenced by and at the expense of the owner or owners thereof and if at any time any such space or the fences thereof become neglected or are a nuisance (the local authority) may execute any works for the purpose of maintaining the same in good order and keeping the space properly fenced and any expenses incurred by (the local authority) shall be recoverable by (the local authority) from the owner or owners of such space under the provisions of this scheme.

(e) (The local authority) may at any time accept a conveyance of any private open space and limit the right to use receive rent for and make charges for the use of the space.

(f) Subject to the provisions of this clause the Open Spaces Act 1906 shall apply to public and private open spaces.

NOTE.

The Act of 1906² defines “open space” as meaning “any land, whether enclosed or not, on which there are no buildings, or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied”; and “owner,” when “used in relation to an open space (not being a burial ground),” as meaning “any person in whom the open space is vested for an estate in possession during his life or for any larger estate.”

For a summary of the provisions of this Act, see Lord Halsbury's *Laws of England*.³

28. *Distance between Building Line and Centre of Street.*—No building or erection other than a boundary wall or fence not exceeding [four] feet in height shall be erected or set up nearer to the centre of any street than [thirty] feet or nearer to the boundary of such street than [ten] feet.

(1) *Brockman v. Folkestone Corporation* (1912, C. A., 10 L. G. R. 856).

(2) 6 Edw. VII. c. 25, s. 20.

(3) Volume xxi., title “Open Spaces and Recreation Grounds,” at pp. 584-587.

29. *Distance between Building Line and Boundary of Street.*—(a) In any street having a width of not less than [forty] feet within areas where the number of buildings is limited to [eight] to the acre no building or erection other than boundary walls or fences such height as aforesaid shall be erected or set up within [fifteen] feet of the boundary of such street.

(b) In any street having a width not less than [forty] feet within areas where the number of buildings is limited to [six] to the acre no building or erection other than boundary walls or fences of such height as aforesaid shall be erected or set up within [twenty] feet of the boundary of such street.

(c) In any street having a width not less than [forty] feet within areas where the number of buildings is limited to [four] to the acre no building or erection other than boundary walls or fences of such height as aforesaid shall be erected or set up within [thirty] feet of the boundary of such street.

30. *Lodges.*—Subject to the provisions of the Public Health (Building in Streets) Act 1888 a lodge or other similar building appurtenant to a dwelling-house may be built in advance of the building lines prescribed in the foregoing clauses subject to the following conditions (a) such lodge or other similar building shall not exceed two storeys in height and one of such storeys shall be constructed wholly or partly in the roof (b) such lodge or similar building shall not in any case be nearer than [ten] feet to the boundary of the street (c) such lodge or other similar building shall be appurtenant to a dwelling house the curtilage of which shall not be less than [one] acre in extent.

NOTE.

As to this Act, see the Note to Clause 17, *ante*, p. 242.

As to the term "curtilage," see the Note to Clause 33, *post*, p. 250.

31. *Long Frontages.*—Any owner of land having a continuous frontage to one street of not less than [one hundred] feet may with the consent in writing of (the local authority) erect buildings in advance of the building line fixed in the foregoing provisions, subject to the following conditions namely (a) no part of any such building shall project more than [five] feet in advance of the building line (b) the projections of such building shall not taken together exceed [one-fourth] of the total widths of the buildings erected on each frontage (c) the projections of such buildings shall not be in any case nearer to the boundary of any adjoining lands than the extreme amount of such projection.

32. *Difficulties as to Drainage.*—Where in the opinion of (the local authority) the provisions of this scheme relating to building lines would prevent any intended building from being erected (the local authority) may upon the application of the owner vary such provisions in such manner as may seem necessary or desirable.

33. *Proportion of Area of Site for Shops, &c.*—The proportion of land which may be occupied by buildings within the curtilage of the site of a shop (including a dwelling-house forming part thereof) hospital work-house college or school (not being in any such case merely a dwelling-house so used) building of the warehouse class or domestic building not being a dwelling-house shall not exceed [one-half] of the whole area of the curtilage.

NOTE.

In East's *Pleas of the Crown*¹ the expressions "within the curtilage or same common fence" and "common enclosure or curtilage" occur. The expression "premises within the same curtilage" occurs in the definition of "drain" in the Metropolitan Management Act, 1855,² and the Public Health Act, 1875.³ In this connexion it has received judicial interpretation⁴ and may be taken as equivalent to "boundary wall," including party walls and exterior walls as well as garden walls or fences.⁵

34. *Proportion of Area of Site for Dwelling-houses.*—The proportion of land within the curtilage of the site of a dwelling-house occupied by buildings shall not exceed [one-third] of the whole area of the curtilage where such buildings are dwelling-houses not exceeding one storey in height and one storey in the roof with offices and outbuildings attached thereto or used in connexion therewith. In all other cases of dwelling-houses such proportion of land shall not exceed [one-fourth].

36. *Height of Buildings.*—No buildings shall without the consent in writing of (the local authority) be erected at a greater height measured from the level of the street in front thereof to the eaves or parapet or to half the height of the gable whichever is the highest than the distance from the main front wall of such building to the centre of the street in front. Provided that

- (a) In the case of a building on a corner site the opposite boundary of the street shall be substituted for the centre of the street mentioned in the preceding clause for the purpose of measuring the height of the flank wall of such building.
- (b) No domestic building (other than shops or flats or sets of chambers) erected in areas in which the limit of buildings to the area exceeds [eight] shall contain more than two storeys exclusive of any storey constructed wholly or partly in the roof.

36. *Character of Buildings.*—Except with the consent in writing of (the local authority) which may be given subject to such conditions as (the local authority) may think fit

- (a) No building of the warehouse class shall be erected except on the areas shown on the map by the colour —.
- (b) No building erected for the purpose of or adapted to be used as a shop or business premises or for any trade shall be erected except on the areas shown on the map by the colour —.
- (c) No building except those erected for the purpose of or adapted to be used as shops or business premises with stabling motor-houses and

(1) Vol. ii, title "Burglary," p. 493.

(2) 18 & 19 Vict. c. 120, s. 250.

(3) 38 & 39 Vict. c. 55, s. 4.

(4) In *St. Martin-in-the-Fields Vestry v. Bird*, the Lowther Arcade Case (C. A., L. R. 1895, 1 Q. B. 423); *Pilbrow v. St. Leonard Shoreditch Vestry* (C. A., L. R. 1895, 1 Q. B. 433); *Blundell v. Price* (1898, Q. B. D., Loc. Gov. Chron. 512); *Harris v. Scurfield* (1904, K. B. D., 68 J. P. 516); and *Brass v. London C. C.* (K. B. D., L. R., 1904, 2 K. B. 336).

(5) See also *Marson v. London, Chatham, &c., Ry. Co.* (1868, V. Ch., L. R. 6 Eq. 101); *Lewis v. Gilbertson* (1904, K. B. D., 91 L. T. 377); *Nicholls v. Malim* (K. B. D., L. R. 1906, 1 K. B. 272); *Chester Water Co. v. Chester Guardians* (1907, K. B. D., 5 L. G. R. 215); and *Irving v. Carlisle R. D. C.* (1907, K. B. D., 5 L. G. R. 776).

out-buildings to be used in connexion therewith or appurtenant thereto shall be erected on the areas shown on the map by the colour —.

- (d) No buildings except private or professional dwelling-houses with stabling motor-houses and out-buildings to be used in connexion therewith or appurtenant thereto shall be erected on the remaining portion of the area.

37. *Expenses of Works.*—(a) The carrying out of works authorised or required by any provision of this scheme and also the sum required to be paid in respect of any increase in value of land which is increased in value by the making of this scheme shall be deemed “an improvement of land” authorised by the Improvement of Land Acts 1864 and 1899 and the provisions of those Acts shall apply accordingly.

(b) (The local authority) may with regard to expenses incurred by them and declared by or under this scheme to be repayable by an owner declare any such expenses to be payable by annual instalments within a period not exceeding [thirty] years with interest at a rate not exceeding £5 per centum per annum from the date of service of a notice of demand until the whole amount is paid and any such instalments and interest or any part thereof may be recovered in a summary manner from the owner of such premises and may be deducted from the rent of such premises in the same proportion as is allowed in the case of private improvement rates under the provisions of section 214 of the Public Health Act 1875 and until recovered all such expenses shall be a charge upon the land in respect of which they were incurred as in the case of the charge created by section 257 of the Public Health Act 1875.

(c) (The local authority) may if they think fit from time to time in addition to and without prejudice to any other remedy recover in a Court of summary jurisdiction or as a simple contract debt in any Court of competent jurisdiction from the owner of any such premises the whole or any portion of any such expenses and interest.

(d) (The local authority) may by way of additional remedy whether any action or proceeding has or has not been brought or taken against the owner of the premises require payment of all or any part of any such expenses and interest payable by the owner for the time being from the person who then or at any time thereafter occupies such premises under such owner and in default of payment thereof by such occupier on demand the same may be levied by distress and any justice may issue his warrant accordingly and every occupier shall be entitled to deduct from the rent payable by him to his landlord so much as is so paid by or recovered from him in respect of any such expenses and interest. Provided that no occupier of any premises shall be liable to pay more money in respect of any such expenses and interest than the amount of rent due from him for the premises for the benefit or for or in respect of which any such expenses are payable at the time of the demand made on him or which at any time after such demand and notice not to pay the same to his landlord have accrued and become payable by him unless he neglect or refuse on application made by him for that purpose by (the local authority) truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable but the burden of proof that the sum demanded of any occupier is greater than the rent which was due by him at the time of such demand or which has since accrued shall fall on the occupier. Provided further that nothing herein contained shall be taken to affect any special contract made between any such owner or occupier respecting the payment of any such expenses and interest.

(e) Any expenses incurred by (the local authority) under section 57 of the Act which are not expenses recoverable as hereinbefore provided may be recovered by (the local authority) in any Court of summary jurisdiction or as a simple contract debt by action in any Court of competent jurisdiction from the person by whom at whose order or on whose behalf any building or other work contravening this scheme shall have been erected or done or whose duty it was to execute the work executed by (the local authority).

NOTE.

The Improvement of Land Acts¹ provide a method of charging upon land the expenses of various improvements effected upon it.²

The recovery of expenses of private improvements which are declared a charge on land by section 257 of the Public Health Act, 1875,³ must be distinguished from the recovery of private improvement rates under that Act.⁴ As to enforcing the charge, see the cases already cited.⁵

38. *Recovery and Application of Sums from Owners.*—Where the value of land is increased by the making of this scheme the amount payable in respect thereof shall until payment thereof be a charge upon the inheritance of such land and such sum may be dealt with and recovered in addition to the means provided by section 58 sub-section 5 of the Act in the same way as expenses may be dealt with and recovered under this scheme.

All amounts so recovered by (the local authority) or received from owners as contributions towards the cost of street construction or from the sale of surplus lands shall be applied in payment of moneys borrowed under the Act for purposes of this scheme or to such other purposes as may be approved by the Board.

39. *Paving of Footpaths at request of Majority of Owners.*—In the event of the owners representing not less than three-quarters of the total length of frontage to a street requesting (the local authority) to pave the footpaths (the local authority) may if they deem it desirable so to do take up the gravel and lay paving in lieu thereof and declare the cost to be private improvement expenses in which case such cost shall be dealt with in the same way as private improvement expenses under the Public Health Act 1875 or the Private Street Works Act 1892.

40. *Lands set apart for Purposes of Scheme.*—The following lands shall be deemed to be set apart for the purposes of this scheme viz.:—

(a) For the purpose of parks and open spaces.

(i.) Enclosures Nos. and and part of in the parish
of as coloured and marked A on the
Map

(ii.) Part of Enclosure No. in the Parish of as
coloured and marked B on the Map.

(iii.) [Etc., as the case may be.]

(b) Any other lands which are shown on the map as set apart for the purpose of this scheme, including the sites of the new streets above described and of any necessary slopes or accessory works in connexion therewith.

(1) 1864, 27 & 28 Vict. c. 114; 1899, 62 & 63 Vict. c. 46.

(2) See Lord Halsbury's *Laws of England*, vol. xviii., title "Land Improvement," pp. 280-283.

(3) See the Note to this section in Glen's *Law relating to Public Health*, 13th edition, pp. 827-847.

(4) See sections 213-215 and Notes, *ibid.*, at pp. 756-758.

(5) In footnote (1), *ante*, p. 89.

41. *Noxious Trades*.—Except on lands already so used or appropriated therefor under this scheme no clay shall be burnt nor shall any bricks or tiles be made or burnt nor shall any trade manufacture business or process which is dangerous noxious or offensive *per se* or as carried on by any person be carried on and except with the consent of (the local authority) no factory of any kind shall be erected and no manufacturing business carried on.

NOTE.

As to the distinction between a trade which is offensive *per se* and one which is offensive as carried on by the defendant, see the case cited below.¹ As to other cases on this subject see the cases on section 112 of the Public Health Act, 1875.²

42. *Nuisances in Gardens, &c.*—(a) All private gardens open spaces and allotments shall be kept in such a state and shall be so used as not to cause a nuisance or annoyance to neighbours or to persons using the highways.

(b) (The local authority) may on the report of their surveyor for the time being serve notice on any person or persons whether individually or jointly owning occupying or using any such lands as aforesaid requiring that the nuisance or annoyance shall be abated forthwith or within a reasonable time to be specified in such notice and in default of compliance with such notice (the local authority) may do what is necessary to abate the nuisance or annoyance and may recover the cost from the person or persons served with the notice or from any one or more of them.

43. *Claims for Compensation or Betterment*.—Claims under section 58 of the Act for compensation or in respect of any increase in value of property shall be made in writing within [twelve months] from the date of the approval of this scheme by the Board and claims for compensation shall be addressed to the clerk to the responsible authority and give full particulars of the property in respect of which any injury is alleged and of such injury. Claims by or on behalf of and against limited owners and persons under disability and the satisfaction of such claims shall be subject to the provisions of the Lands Clauses Acts relating to such owners and persons.

44. *Enforcement of Scheme*.—In addition to and notwithstanding any other procedure or remedy any person committing or knowingly permitting any breach or non-observance of any of the conditions of this scheme shall be guilty of an offence and shall be liable on conviction in any Court of summary jurisdiction to a penalty not exceeding 40s. for each offence and to a further penalty not exceeding 20s. for each day upon which any offence is continued after conviction or after notice in writing of the offence has been served by (the local authority) or by any party interested on the party charged. Furthermore the High Court of Justice may on the application of (the local authority) or any party interested grant any injunction mandatory or otherwise which such Court may consider necessary in order to enforce the due and continued observance of this scheme and may make such order as to costs and as to enforcing any such injunction as to such Court may seem expedient.

45. *Works contravening Scheme*.—(a) Where it appears to (the local authority) that any building or other work in the area is at any time such as to contravene this scheme or that in the erection or carrying out of such build-

(1) *Braintree Local Board v. Boyton* (1884, Q. B. D., 48 J. P. 582).

(2) Noted in *Glen's Law relating to Public Health*, 13th ed., pp. 464-467.

ing or other work any provision of this scheme has not been complied with or that any person has failed to execute any work which it is the duty of such person to execute under this Scheme and it appears to (the local authority) that delay in the execution of the work would prejudice the efficient operation of this scheme the person by whom at whose order or on whose behalf such building shall have been erected or such work shall have been begun or done or the person who has failed to execute any work as aforesaid shall by a notice in writing signed by [the Town Clerk] and served upon such person and containing a copy of section 57 of the Act and of this clause be required on or before such day as shall be specified in such notice (not being less than [one calendar month] from the date of service of such notice) by a statement in writing under his hand or under the hand of an agent duly authorised in that behalf and upon (the local authority) to show sufficient cause why such building or other work should not be removed pulled down or altered or be executed by (the local authority).

(b) If at the expiration of the notice such person shall have failed to show sufficient cause why such building or other work should not be removed pulled down or altered or as the case may be executed by (the local authority) and it shall not have been notified to (the local authority) by such person or by the Board that such person has referred any question to the Board under sub-section (3) of the section 57 of the Act (the local authority) after giving such person notice that at the expiration of a further period specified in the notice not being less than [14 days] from the date of service of such notice they intend to exercise their powers under section 57 of the Act may proceed to remove pull down or alter or execute such building or work as the case may be. Provided that a power proposed to be so exercised shall not be exercised pending the determination of any question referred to the Board under sub-section (3) of the said section in relation to the building or other work in respect of which that power is proposed to be exercised and of which reference (the local authority) shall have received written notice within the last mentioned period.

(c) When on any question referred to the Board under sub-section (3) of the said section it is determined that any building or work contravenes this scheme or that any provision of this scheme is not complied with in the erection or carrying out of any such building or work (the local authority) after giving such person as aforesaid notice that at the expiration of a period specified in the notice not being less than one calendar month from the date of service of such notice they intend to exercise their powers under the said section may proceed to remove pull down or alter any such building or work.

46. *Notices.*—Notices under this scheme must be in writing and may be served on (the local authority) by being delivered addressed to [the Town Clerk] at his office or on owners or occupiers by being sent by post addressed to them respectively or to their respective agents at the last known place of abode or business of such owners or agents.

47. *Agreements.*—(The local authority) may subject to the approval of the Board make any agreements they think fit with any person or persons for the purpose of carrying out this scheme or any part thereof or any adjustment in connexion therewith. Any provision in any such agreement shall be void if inconsistent with this scheme but otherwise all such agreements shall have full force and effect and shall be deemed to apply to and bind all persons parties to such agreements and all successors in title to such persons.

48. *Disposal of Lands, Appropriation, &c.*—Where under the authority of any public general Act or under any special Act or other statutory enactment or Department Order in force for the time being in the area (the local authority) have acquired or have power to acquire any land or other property and may exercise any rights or powers of dealing with maintaining or regulating whether by byelaws or otherwise the use of such land or property (the local authority) shall have and may exercise the same rights and powers with respect to any lands or other property acquired by them for the purpose of this scheme so far as having regard to the purposes for which the land or property in question shall have been acquired or shall for the time being be lawfully appropriated any such rights or powers are applicable.

(b) Whenever in the area (the local authority) acquire any land under or for the purpose of this scheme (the local authority) may dispose of any part of such land not required for the purpose or may apply such land not so required or any part thereof to some other purpose approved by the Board.

(c) (The local authority) may make special regulations in regard to any matter affecting the user of any land acquired by them under this scheme for the purpose of parks or open spaces and particularly may limit the right to use the same or any part thereof and may receive rent and may make other charges for the use of the land or any part thereof.

49. *Power to make Byelaws.*—(a) (The local authority) shall have power subject to the approval of the Local Government Board to make byelaws with regard to all or any of the following matters that is to say :—

(a) Entry and inspection of premises.

(b) Imposition of penalties for failure to comply with the scheme.

(c) Prevention of surface water flowing on footpaths and soil and matter being washed into streets.

(d) Provision of fences to streets.

(e) Damage to trees plants fences and the like.

(f) Exhibition of goods for sale.

(g) Access across grass margins.

(h) Position of shops and buildings at street corners.

(i) Projections at corner sites.

(j) Spaces in front and rear of buildings.

(k) Stores for food.

(l) Height of fences.

(m) Architectural character of buildings.

(n) Prohibition of disfiguring advertisements.

(o) Prohibition of heavy motor car traffic in residential roads.

(b) Such byelaws when so made shall have effect as if included in this scheme.

NOTE.

See Introduction, Chapter IX., *ante*, p. 39, and the Note to section 55, *ante*, p. 85.

50. *Commencement Duration and Short Title of Scheme.*—This scheme shall commence on the day on which it is approved by the Board and shall continue in operation until varied by any subsequent scheme and may be cited as “The ——— Town Planning Scheme.”

PART VI.

OUTLINE OF IMPROVEMENT AND OTHER HOUSING SCHEMES.¹

IMPROVEMENT and other housing schemes may in some cases be required in conjunction with town planning schemes, and for this reason, and also because so many councillors and others have confused Town Planning Schemes with Housing Schemes, a short summary of the provisions of the Housing of the Working Classes Acts with regard to the latter schemes is given here. For a detailed treatise on the Housing Acts readers are referred to the work by Mr. Allan which is mentioned in the Preface.

The housing law of England, Scotland, and Wales may be classified into three groups of powers possessed by sanitary authorities, namely their powers (1) to deal with existing areas; (2) to deal with existing single houses; and (3) to provide or regulate the provision of new houses.

With regard to existing areas, a large unhealthy area or "slum" in an urban district may be dealt with by an "improvement scheme," and a small unhealthy area in any district may be dealt with by a "reconstruction scheme." With regard to existing single dwelling-houses, these may be closed if unfit for human habitation, and in certain cases demolished. With regard to the provision of new houses, certain local authorities have power to provide these themselves, or, when they are provided by others, to insist on proper sanitary conditions and amenities. Each of these three classes is now dealt with in as much detail as seems appropriate to the objects of this Part of the present work. Clauses in inverted commas are quotations from Acts.

IMPROVEMENT AND RECONSTRUCTION SCHEMES.

With regard to Improvement Schemes, these are usually initiated by the medical officer of health, though that officer may be set in motion by outside representations. If the local authority are

(1) The main portion of this Part of the present work is taken from a paper written by Mr. Randolph Glen, and read at the Congress held by the Royal Institute of Public Health at Berlin in July 1912.

supine in the matter, their hands may be forced by the Local Government Board.

Before such a scheme can be started there must be (1) a representation to the local authority (*a*) that "houses, courts, or alleys are unfit for human habitation," or that the "narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses, or groups of houses, within such area, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings in the said area or of the neighbouring buildings"; and (*b*) that the "most satisfactory method of dealing with the evils connected with such houses, courts, or alleys, and the sanitary defects in such area, is an improvement scheme for the rearrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses"; and (2) a resolution of the authority "that the area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area."

These schemes (1) *must* (*a*) be accompanied by various maps, particulars, and estimates specified in Instructions issued by the Local Government Board, (*b*) "provide for proper sanitary arrangements," (*c*) "distinguish the lands proposed to be taken compulsorily," and (*d*) in many cases provide suitable dwelling accommodation in the area or its vicinity for the working classes displaced by the scheme; and (2) *may* (*a*) enlarge or diminish the area referred to in the representation, (*b*) "provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health," (*c*) provide for the carrying out of the whole or part of the scheme by owners, or by others with the concurrence of the owners, under the superintendence of the local authority upon terms to be agreed upon and inserted in the scheme, and (*d*) "provide for any other matter, including the closing and diversion of highways, for which it seems expedient to make provision with a view to the improvement of the area or the general efficiency of the scheme."

As to the provision of accommodation for those displaced by these schemes, often the most difficult of the problems to be faced, the requirement is more stringent in the city and county of London than elsewhere. In London it must be provided for at least as many as may be displaced, unless the Local Government Board—having regard "to the special circumstances of the locality and to the number of artisans and others belonging to the working class dwelling within the area, and being employed within a mile thereof,"—dispense with this requirement; though even then the Board may not dispense with the requirement in respect of more than one half of the persons displaced. Outside London the matter is optional unless the Board, as they frequently do, order the requirement to be complied with by the local authority.

When the preparation of the scheme has been completed, that fact, and the limits of the area, and a place where a copy of

the scheme may be seen, must be advertised during three consecutive weeks in a local newspaper, and, during the thirty days next following the date of the last publication of the advertisement, notices must in cases where land is to be purchased compulsorily be served "on every owner or reputed owner, lessee or reputed lessee, and occupier" of such land "so far as such persons can reasonably be ascertained." Great care has to be exercised in the drafting and service of these and all other notices under the Housing Acts, for defects may result, as they have resulted in the past, in the interference of the High Court with the continuance of the scheme.¹

These matters having been attended to, the local authority petition the Local Government Board for England or Scotland, as the case may be, for an order confirming the scheme. This order is not made till a local inquiry has been held by an inspector of the Board, and all objectors have had an opportunity of stating their case. Unless it is proposed to take a part of a common, open space, or allotment, without giving in exchange other equally advantageous land, the confirming order comes into force without the sanction of Parliament.

The scheme with such modifications as may be allowed by the Board, must then be carried out in accordance with special provisions relating to acquisition of land, payment of compensation, and defraying the expenses incurred.

With regard to Reconstruction Schemes, when the local authority consider that an area is too small to be dealt with by means of an Improvement Scheme, and that "the closeness, narrowness, and bad arrangement or bad condition of any buildings, or the want of light, air, ventilation, or proper conveniences, or any other sanitary defect in any buildings, is dangerous or prejudicial to the health of the inhabitants, either of the said buildings or of the neighbouring buildings, and that the demolition or the reconstruction and rearrangement of the said buildings or of some of them is necessary to remedy the said evils," a reconstruction scheme may be prepared. The procedure is similar to that to be followed in the case of an improvement scheme. There may also be a "reconstruction scheme" in connexion with demolition proceedings, which are the subject of the next heading.

UNHEALTHY DWELLINGS.

All sanitary authorities are now required to make a systematic inspection of their district for the purpose of ascertaining whether any dwelling-houses are too dangerous or injurious to health to be used for human habitation, and to keep proper records of such inspection and the steps taken as a result. The officer to perform

(1) See, e.g., *Rayner v. Stepney B. C.*, Ch. D., L. R. 1911, 2 Ch. 312, where the omission of a footnote from a prescribed form of notice resulted in the invalidation of all proceedings taken up to the date of the service of such notice.

this initial work is the inspector of nuisances, and the medical officer of health, and, subsequently if necessary, the clerk, have to carry on the matter. The medical officer has to report annually to the Local Government Board what his authority have done in this direction, and if the Board think that the authority have not been sufficiently active, they can make an order, enforceable in the High Court, specifying what must be done.

A "dwelling-house" for this purpose is a building—with its yard, garden, outhouses and appurtenances—which is adapted for human habitation, though it need not be actually inhabited, and, according to a Scottish decision of December 1911,¹ it may be a separate tenement in a block of tenements or the whole of such a block.

Where such a house appears to the medical officer of health, on a complaint by four neighbouring householders, or on his own inspection without any such complaint, to be "in a state so dangerous or injurious to health as to be unfit for human habitation," he must report that opinion to the local authority. If they agree with that opinion, or, in the case of certain underground sleeping-places which are declared by the Act to be unfit for that purpose, without any such opinion, they are required to make a "closing order" in respect of the house or place. This is an order "prohibiting the use of the dwelling-house for human habitation until, in the judgment of the local authority, the dwelling-house has been rendered fit for that purpose." Notice of such an order has to be served on the owner, who may within fourteen days give notice of appeal to the Local Government Board. After the expiration of that fourteen days, or the determination of an appeal, if there is one, notice of the order has to be served on every occupying tenant. Within a period to be specified in this notice, which may not be less than fourteen days after its service, the tenant must leave or be subject to summary proceedings. A difficulty has been created by the repeal of, and omission to re-enact, the old provision under which the owner could be subjected to such proceedings if he disobeyed the closing order, for some owners have evaded the new provision by promptly putting in a new tenant when the old one leaves,² and the remedies available in such a case are too expensive and tardy to be of any use.

If the owner executes work which satisfies the local authority, the closing order may be determined by them or, if the Local Government Board, on an appeal to them, consider that sufficient work has been done, the Board may themselves determine the order. If sufficient work is not done, and three months have elapsed since the closing order became "operative," the local authority are to consider the question of making a "demolition order." A closing order becomes "operative" either (a) when

(1) *Kirkpatrick v. Maxwelltown Town Council*, 1912, S. C. (S.) 288; 49 Sc. L. R. 261; *Glen's Loc. Gov. Case Law*, 1912, title "Public Health."

(2) See the Report of a Housing Inquiry at Aylesbury, where this had been done, in 76 J. P. Jo. 472, 561; 1911, L. G. C. 891, 1068.

the fourteen days allowed for appealing against it have expired without an appeal; (b) when an appeal has been determined against the appellant; or (c) when the owner has declared his intention to close the house for human habitation, and twenty-one days have elapsed since such declaration. Before the authority consider the question of making a demolition order, that is an order to "take down and remove the building," they must give the owner one month's notice of the time when and the place where they will consider it, and allow him to state his case; and before they determine to make the order, they must be satisfied either that "the dwelling-house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, or that the continuance of any building, being or being part of the dwelling-house, is a nuisance, or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses."¹ If they are so satisfied, they must make the order and serve notice of it on "every owner" of the building, and any owner aggrieved may, within twenty-one days after service of the order, appeal to the Local Government Board. If the authority consider that the building can be rendered fit for human habitation, they may postpone the operation of the order for not more than six months. Within three months after the order becomes operative, the owner must proceed to pull down the building. If he makes default, the authority may do the work and recover the expenses.

OBSTRUCTIVE BUILDINGS.

In addition to the above powers for improving or removing unhealthy dwelling-houses, there is power to deal with "obstructive buildings." A building is "obstructive" for this purpose if "by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say; (a) it stops or impedes ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or (b) it prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings." When the medical officer of health represents to the local authority the existence of such a building, or four inhabitant householders in the district do so, the authority are required to have a report made to them "respecting the circumstances of the building and the cost of pulling down the building and acquiring the land." This report is usually prepared by the surveyor. If the authority decide to proceed in the matter, they are to have a copy of the representation and a copy of the report sent to the owner with notice as to when and where they will be considered,

(1) As to the meaning of "dangerous," see *Kirkpatrick's Case*, *supra*, and *London County Council v. Jones*, 1912, K. B. D., 76 J. P. 293, 10 L. G. R. 471.

and the owner can attend and object. If they again decide to proceed, the owner can appeal to the Local Government Board as in the case of an appeal against a demolition order. If there is no such appeal, or the appeal is dismissed, the authority may proceed to purchase the building and its site, but the method of procedure is complicated by an incomplete incorporation of the Lands Clauses Acts.

The owner may if he likes retain the site, in which case he is merely compensated for the loss of the building. In assessing the compensation, improvement to other property of the same owner may be considered, and other owners whose property has been improved by the removal of the obstructive building may be made to contribute to the expenses by means of a private improvement rate. If the owner keeps the site, he may not erect another obstructive building upon it, and if the local authority purchase it, they must "keep as an open space the whole site, or such part thereof as may be required to be kept open for the purposes of remedying the nuisance or other evils caused by such obstructive building," and may sell the rest, or they may, if they think fit, dedicate the whole "as a highway or other public place."

WORKMEN'S DWELLINGS.

All sanitary authorities have power, either in connexion with or apart from improvement or reconstruction schemes, to provide "separate houses or cottages for the working classes, whether containing one or several tenements," the term "cottage" including a garden of not more than one acre, and "working class" including "mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons—other than domestic servants—whose income in any case does not exceed an average of 30s. a week, and the families of any such persons who may be residing with them." For this purpose the authority may, compulsorily if necessary, purchase or take on lease land and erect and furnish the dwellings, and may, with the consent of the Local Government Board, provide "any building adapted for use as a shop, any recreation grounds, or other building or land which, in the opinion of the Board, will serve a beneficial purpose in connexion with the requirements of the persons for whom" the dwellings are erected; or they may purchase, or take on lease, or take over the management of, existing working-class dwellings, or contract for the erection of new dwellings, or, subject to certain restrictions, exchange land which is vested in them for this purpose for other land which is more suitable, or sell such land and apply the proceeds in acquiring more suitable land, or appropriate for this purpose land vested in them for other purposes.

The management of such dwellings is vested in the authority

that provides them, and a reasonable charge may be made for their occupation. Byelaws may be made with respect to their use, and must, except in the case of separate dwellings, be made (and exhibited in every room) with respect to the separation of the sexes at night, the good conduct of the occupants, and the duties of the servants and others appointed by the authority for the purpose of regulating the dwellings. Persons in receipt of poor relief are no longer disqualified as tenants. If, after such a dwelling has been established for seven years, it is found by the authority to be unnecessary or too expensive, it may, in rural districts, with the consent of the County Council, and elsewhere with the consent of the Local Government Board, be sold "for the best price that can reasonably be obtained for the same."

Powers are also conferred upon local authorities, enabling them to encourage the erection of workmen's dwellings by public companies for their own employees, and by co-operative and other societies. There is a statutory covenant implied in most tenancy agreements in respect of houses below certain rentals (namely £20 in the metropolis, £13 in Liverpool, £10 in Manchester or Birmingham, and £8 elsewhere (except in Scotland and Ireland, where the amount is £4)), that *at the commencement of the tenancy* the dwelling is "in all respects reasonably fit for human habitation"; and in contracts made after December 3, 1909, with respect to dwellings let at rents not exceeding £16 (or, in urban districts with populations of 50,000, £26, or, in London, £40), there is also a statutory implied "undertaking that the house shall, during the holding, be *kept by the landlord* in all respects reasonably fit for human habitation"; and the local authority are empowered to enforce such undertakings. The erection of what are called "back-to-back houses"¹ is now prohibited so far as workmen's dwellings are concerned; but the Local Government Board have power to relax byelaws with respect to new streets or buildings if, in the opinion of the Board, the erection of such dwellings is "unreasonably impeded" thereby.

Local authorities have ample powers, when settling a town planning scheme, to ensure the laying out of this kind of property on lines which will secure for the workers inexpensive yet comfortable and sanitary dwellings, quiet and healthy surroundings, and the amenities to which this class of the community is entitled, and for which there is such manifest need.

LONDON COUNTY COUNCIL SCHEME.

Whereas² the London County Council (in this Act called "the Council") have acquired certain lands in the county of Middlesex

(1) The meaning of this expression was discussed in *Murrayfield Real Estate Co., Ltd., v. Edinburgh Magistrates*, 1912, S. C. (S.) 217; 49 Sc. L. R. 148; *Glen's Loc. Gov. Case Law*, 1912, title "Public Health."

(2) Here follow the Preamble and sections 13 to 19, 28, and 31 to 33 of the London County Council (General Powers) Act, 1912 (2 & 3 Geo. V. c. civ.).

known as the White Hart Lane Estate, for the purposes of the Housing of the Working Classes Acts 1890 to 1909 :

And whereas a part of the said lands is being used for the purposes of the said Acts but with regard to other parts thereof it is expedient that provision should be made for enabling the same to be developed and used as a residential area with gardens and open spaces and other special amenities for persons of the working class and others :

13. *Development of Lands as Garden Suburb.*—(1) The Council may make a scheme or schemes for developing on the lines of a garden suburb for the accommodation of persons of the working class and others all or any of the lands of the Council situate in the urban districts of Tottenham and Wood Green in the county of Middlesex shown by a pink colour on the plan signed by Sir Charles Nicholson Baronet the Chairman of the Committee of the House of Commons to whom the Bill for this Act was referred (one copy of which has been deposited in the Private Bill Office of the House of Commons and one copy in the Parliament Office of the House of Lords).

(2) The Council may in such manner as may be prescribed by any such scheme or schemes as aforesaid utilise lay out and develop on such lines as aforesaid the said lands or the part thereof to which the scheme relates and any such scheme may authorise the Council to sell or let on lease all or any of the said lands for the purpose of such laying out or development Provided that the Council shall not themselves undertake the erection of any houses on the said lands except houses for persons of the working class.

(3) Any such scheme as aforesaid may confer exemptions from or may relax or vary any byelaws or regulations in force in any district in which such lands are situate in respect of the construction of new buildings and the laying out of new streets on such lands.

(4) No such scheme as aforesaid shall have any force or effect unless or until it shall have been approved by the Local Government Board who before approving any such scheme shall take into consideration any representation which may within one month after receipt by the Board of the application of the Council be made to that Board by the local authority of the district in which any land the subject of the application is situate and in approving the same the Board may make such modifications therein and impose such conditions as they may think fit.

(5) The Council may with the approval of the Local Government Board from time to time revoke modify extend or vary any such scheme as aforesaid.

(6) At least one month before making an application to the Local Government Board under this section the Council shall give notice in writing to the local authority of the district in which any land the subject of the application is situate of their intention to make such application and such notice shall be accompanied by a

copy of the scheme revocation modification extension or variation for which approval is intended to be sought and of all plans referred to therein or intended or required to be forwarded to the Local Government Board therewith.

14. *Open Spaces &c. and Byelaws.*—The Council may on any part of the said lands laid out and developed as aforesaid provide gardens recreation grounds open spaces and buildings and facilities and apparatus for games for the common use of the inhabitants of any dwellings on the said lands or of other persons and may make and enforce byelaws with respect to the management use and regulation thereof and sections 202 and 203 of the Metropolis Management Act 1855 shall apply to such byelaws.

15. *Power to make Charges.*—The Council may make such charges as they think fit with respect to the use of any gardens recreation grounds open spaces buildings and facilities and apparatus for games provided as aforesaid.

16. *Power to Local Authorities to make Agreements and take over Roads.*—(1) The Council on the one hand and any local authority in whose district any part of the said lands is situate on the other hand may with the approval of the Local Government Board enter into and carry into effect agreements with respect to the construction laying out widening extending improving or lighting of streets roads sewers drains open spaces or recreation grounds in the district of such authority.

(2) Any local authority in whose district any part of the said lands is situate may if they think fit with the consent of the Council take over and maintain as highways repairable by the inhabitants at large any roads in their district made by the Council on the said lands when such roads shall have been made up sewered drained levelled kerbed paved metalled flagged channelled made good and provided with proper means of lighting to the reasonable satisfaction of the local authority notwithstanding that such roads may not be of the full width prescribed by or may not be otherwise in accordance with the byelaws relating to new streets and footways for the time being in force in the district of such local authority.

(3) If the consent of the Council as required under the last preceding subsection of this section is withheld or if any other difference arises under that subsection between the Council and the local authority the matter in question shall be referred to the determination of an arbitrator to be appointed by the Local Government Board on the application of either party.

17. *Expenditure Borrowing and Receipts by Council.*—(1) The Council may incur such expenditure and may borrow to such extent as may be necessary for the purposes of this Part of this Act.

(2) Such expenditure and borrowing and also any moneys received by the Council under or in pursuance of the provisions of this Part of this Act shall in all respects be subject to the provisions applicable to expenditure borrowing and receipts by the

Council under Part III. of the Housing of the Working Classes Act 1890 as amended or extended by any other Act.

18. *Saving for Powers under Housing of Working Classes Acts.*—Nothing contained in this Part of this Act shall prevent or interfere with the exercise in relation to any of the lands referred to in this Part of this Act of any powers vested in the Council or in the Local Government Board under or by virtue of the Housing of the Working Classes Act 1890 as amended or extended by any other Act.

19. *Inquiries by Local Government Board.*—(1) The Local Government Board may direct any inquiries to be held by their inspectors which they may deem necessary in regard to the exercise of any powers conferred upon them or the giving of any approval under this Part of this Act and the inspectors of the Local Government Board shall for the purposes of any such inquiry have all such powers as they have for the purposes of inquiries directed by that Board under the Public Health Act 1875.

(2) The Council shall pay to the Local Government Board any expenses incurred by that Board in relation to any inquiries referred to in this section including the expenses of any witnesses summoned by the inspector holding the inquiry and a sum to be fixed by that Board not exceeding three guineas a day for the services of such inspector.

28. *Power to lease Houses and Cottages provided under Housing of the Working Classes Acts 1890 to 1909.*—(1) Notwithstanding anything contained in the Housing of the Working Classes Acts 1890 to 1909 it shall be lawful for the Council from time to time to let on lease on such terms and conditions and for such period not exceeding ninety-nine years as they may think fit any house or cottage provided by them in pursuance of the said Acts to any person occupying or intending to occupy the same and to impose in any lease such restrictions as to the assignment thereof by the lessee or his sequels in title or as to sub-letting or parting with the possession of the premises comprised in such lease as the Council may think fit and to accept or agree to accept the surrender of any such lease on such terms and conditions as they may think fit and particularly upon the terms of making any such payment to the lessee or other person making the surrender as the Council may consider reasonable.

(2) All expenses incurred by the Council under this section shall be deemed to be expenses of the Council under the Housing of the Working Classes Act 1890 and be defrayed accordingly.

31. *Application of Penalties under Act.*—Notwithstanding anything contained in the Metropolitan Police Courts Act 1839 or in any other Act every penalty recovered under or in pursuance of this Act or any byelaw made thereunder shall be payable to the authority taking the proceedings leading to the recovery of the penalty.

32. *Saving Crown and other Rights.*—Nothing in this Act affects prejudicially any estate right power privilege or exemption of the Crown nor in particular authorises the entry upon or interference with any land or building belonging to or under the control of the Admiralty or of His Majesty's Principal Secretary of State for the War Department nor imposes any obligation or liability upon the Admiralty or the said Secretary of State in relation to any such land or building or the user thereof for any purpose.

33. *As to Payments under this Act.*—(1) All costs and expenses of the Council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general or special county purposes within the meaning of the Local Government Act 1888 as the Council may decide and the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be paid by the Council in like manner.

(2) Any moneys expended by the corporation in the execution of this Act shall be paid out of the general rate authorised to be levied by them.

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PART VII.

TOWN PLANNING ABROAD.

This Part of the present work¹ compares the various town planning statutes and regulations in force in those countries that have adopted such legislation—namely, Great Britain, New Zealand, the Transvaal, the Orange River Colony, the British Crown Colonies in Africa, and Germany, Sweden, and Italy.

In the legislative measures in force in Great Britain, Germany, New Zealand, Sweden and Italy there is not very much difference in the general idea, which is to safeguard the inhabitants of towns from living in overcrowded sunless, airless, and unhealthy areas, and also to provide adequate open spaces for recreation. The difference of procedure, however, is naturally extremely varying, and Great Britain has a system of procedure which is entirely her own, and would hardly be applicable in such countries as New Zealand or the Union of South Africa, although British Dominions, on account of the different circumstances of the three countries.

The system of holding a local inquiry by an inspector or official of the central administrative department of the State is to be found only in Great Britain and the Orange River Colony. In other countries no open inquiry is held, and the persons or bodies interested have not the same latitude for stating their views of the proposed town planning scheme, and appealing to the Central State Department in case of an unsatisfactory decision by the local authority.

It is interesting to note that the Swedish and Prussian Acts were passed in 1874 and 1875 respectively, and that in England and Scotland the great Public Health Acts were passed in 1875 and 1876 respectively.

The Prussian Act of 1875 was passed by the Parliament of that State, but has since been adopted by all the other States in the German Empire. This Act contemplates the reforming of cities already in existence. This is not contemplated by the British Act, unless it may be said to apply to areas unfit for human habitation, and condemned as such under Part I. of the Housing Act of 1890.

In the Prussian Act, town planning occupies the principal part

(1) It has been compiled, by permission, from a paper written by Mr. R. E. Willcocks, barrister-at-law, and read at the Congress held by the Royal Institute of Public Health at Berlin in July 1912.

of the Act, and housing takes a minor position, though the Prussian ministerial orders based on the Act deal very largely with housing questions. These ministerial orders are very comprehensive, and their rules are very rigid and stringent as regards the width of streets and provision for light and air.

The Swedish town planning regulations are contained in an Act called "Building Law for Towns," and are such as suit a northern and comparatively sparsely populated country. There is nevertheless a very strong general resemblance between the Swedish and Prussian Acts, and the section of the Swedish Act dealing with the actual laying out of the town is almost identical with the corresponding section in the Prussian Act.

In New Zealand, town planning is part of the land policy of the Government, occupying a portion of the Land Act of 1908. This being a new country with a comparatively small population, the Acts which have been passed to regulate town planning do not contain the same elaborate machinery for the approval of a scheme by the Central State Authority as exists in Great Britain, and in a lesser degree in Germany and Sweden.

The legislature of the Transvaal has seen fit to impose regulations and rules more in accordance with the British Town Planning Act, probably in consequence of the less agricultural nature of the Transvaal as compared with New Zealand.

In New Zealand the portion of the Act which regulates town planning comprises only four sections. The Town Council, if there is one, has the power of administering these sections, and in every case where allotments or sections or blocks of land are to be sold or are advertised for sale as a town, the proposed name of such town, plans showing the roads and the widths thereof respectively, and the reserves for open spaces in such towns, are to be prepared by an authorised surveyor, and approved by the Governor before the sale. In all towns which are laid off on any Crown lands, or upon private lands outside the area of a local authority, the main roads must be at least ninety-nine feet wide and the side roads sixty-six feet wide. In towns on Crown lands one-seventh of the area in the town must be laid out as open spaces and vested in the Governor-General, and certain plots are to be reserved for municipal property. An important and original provision occurs in this Act—namely, that on the side of the town opposite to that from which the prevailing summer winds blow, a sufficient piece of land must be reserved for depositing refuse. Provision is also made for cemeteries and gravel pits in the proximity of a town. The Government may reserve land for the disposal of the Crown within any existing borough or town district, although such borough or district was laid out before the passing of the Act.

In the New Zealand Act, with some exceptions, the Town Council seems to be given a free hand in the matter of town planning schemes, and the Governor-General through the Minister of Lands has power to enforce the provisions of the Act. In towns on Crown lands the open spaces vest in the Government for the

benefit of the people. Though there is no express power to enforce the requirements of the Government, it is presumed that the High Court would enforce any legitimate requirements that they might make.

Under the Prussian Act, the making or alteration of streets and street-lines and building lines has to be arranged and carried out by the Municipal Executive with the concurrence of the elected members of the Local Council.

The Building Police (*Bau-Polizei*) who regulate building operations in Prussia, and from whom leave to erect any building or house has to be obtained, can demand the fixing of such lines, and care must be taken for proper facilities as regards traffic, arrangements for avoiding fires, and public health. If the plan affects a railway station or fortress, or if public rivers, highways, or railways fall within the compass of the proposed town planning scheme, the Building Police must notify the Ministers of Railways and War and other persons concerned. By an order of the Prussian Minister of Public Works, which is based upon the Prussian Act of 1875, the Minister points out that it is desirable to have gardens facing the streets in residential quarters, and that it is as well to encourage gardens in business quarters, as it facilitates the widening of the road in case of increase of traffic. The order also says: "Care must be taken for keeping clear from building a sufficient number of open spaces of adequate size for ornament, playgrounds, and parks, as well as for the public buildings of the future."

In Prussia the administration of the Town Planning Act was originally put into the hands of the Minister of Commerce, but by a Royal Proclamation of 1878 it was transferred to the Minister of Public Works. The Minister from time to time, when occasion requires it, issues an order in the form of a general letter to local authorities (called district committees) under his control; the final decision in cases of dispute rests with this Minister, or in certain cases with the Ober-Präsident or administrator of a province. An appeal against decisions of the District Committee in certain cases may be made by any one concerned to the *Bezirk Council* (a kind of superior local authority). The German law on the subject of enforcing town planning schemes is very stringent. When the town planning scheme has been prescribed, the owner of the land is definitely restricted from building beyond the line. New buildings, and the alteration or completion of existing buildings can be prohibited. The local authority are also empowered, as soon as the scheme is prescribed, to take the areas of the land indicated by the street lines.

The Swedish Act in many ways resembles the Prussian Act, though the wording of the former is possibly capable of a wider construction. According to Swedish law, "there shall be prepared for every town a plan for the regulation of its general arrangement and of the buildings within it," and it is enacted that care shall be taken when preparing a town planning scheme that roads shall be so designed and laid out as to ensure the safety of traffic, that pro-

vision shall be made for light and air, and that houses shall be so constructed as to be as far as possible safe from fire. The clause further lays stress on the necessity for open spaces, and enacts that sites must be provided for harbours and markets if required. The local authorities are encouraged to lay out back gardens, which when once made may not be built upon. In the event of a town out-growing the original planning, all matters dealing with the preparation of town plans are in the hands of the local authority, but the plan has to receive Royal sanction before it can be acted upon, and exact and careful plans have to be submitted to the Home Office. The plans must regulate not only the buildings but the streets, the markets, and other public places. There does not appear to be any provision for an appeal to the Home Office or the Sovereign by any person or persons interested in or affected by the scheme. The Swedish law as regards enforcing town planning schemes is extremely definite. The Act opens with the following words: "It shall be the duty of the surveyors of buildings to see that this Law of the Urban Building Byelaws is duly enforced, and to deal with all those matters to which the Law and the Byelaws apply, and which do not come into the province of another authority." The surveyors are also enjoined to improve the plan, if necessary, and are empowered to enforce compliance with the scheme when it has been duly authorised.

In Italy there are but few clauses in the Act of 1865 which deal with the laying out of building areas and their extensions. Communal towns, the population of which exceeds 100,000, are permitted to draw up a general scheme indicating the street lines which are to be followed in the event of portions of the town having to be rebuilt for the purposes of public health and for facilitating proper intercommunication. In those communes which are under the necessity of increasing the inhabited area, a general plan must, as in the case of communal towns with a population of 100,000 or over, above referred to, be followed; and in order to carry out this plan the communal (*i.e.* local) authority must construct the necessary roads, and for this purpose the owners affected have to cede the land required. The Italian law lays down no special regulations as to procedure for adoption of a general town planning scheme, or as to how the matter of compensation for land compulsorily taken for the purpose of putting the town planning scheme into execution is to be determined. But the general scheme, which is drawn up by the local authority and approved by central State authority, namely the Government of Italy, has to be publicly exhibited, so that any persons affected may, if they desire, object. These objections are laid before the Government by the local authority. The Government is the only body that can order the execution of a town planning scheme, and to effect this there are three modes of procedure:—(1) By a special Act of Parliament, (2) by a Royal Decree, and (3) by a Decree of the Prefecture. The necessary formalities, before a Bill is introduced and carried through Parliament, are very much more lengthy and

elaborate than if only a Royal Decree is sought. If the whole of a piece of property be compulsorily taken, an indemnity equal to the price that would ordinarily have been obtained must be paid to the expropriatee by the local authority. In the event of only a portion of the property being taken "the amount of the indemnity is to be assessed at the difference between the estimated value of the property as a whole in its original state and the estimated value of the residue when the expropriated portion has been duly annexed." But, as the Act contemplates the fact that these improvements will benefit the unannexed property, there is a direction that in such a case the indemnity shall be reduced by the estimated value of the benefit accruing. In the event of the benefit being assessed at a greater sum than the value of a quarter of the indemnity, the expropriatee is to be allowed to sell the whole property to the expropriator at a reasonable and just price. Although in theory these provisions are just, in practice they are not so.

As to the Transvaal and the Orange River Colony the first town planning legislation to be introduced by the Government of the Transvaal since the Colony became British was by Proclamation in 1908. Since that date three other Township Acts have been passed by the Parliament of the Transvaal. The main Act of the Orange River Colony was passed in 1909, and is very similar to the Transvaal Acts in its general provisions as regards laying out and proclaiming townships. The special provisions for mining districts necessitate special clauses in the Transvaal Act which are not required in the Orange River Act, that colony being one which contains relatively small mining interests. In both Colonies when it is required to found a township, a formal application must first be lodged with the Surveyor-General, and his sanction, and afterwards that of the Colonial Secretary for the Colony, must be obtained in both cases. In the Orange River Colony the application is made to the Township Commission, and in the Transvaal to the Township Board. The functions of the two bodies are similar. The Surveyor-General in the Orange River Colony has a right to be represented on the Commission while the Surveyor-General of the Transvaal has a statutory claim to be chairman of the Township Board. Provision is made in both Colonies for laying out healthy towns with open spaces which shall ultimately become the property of the municipality.

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