GOV•UK

Guidance

Compulsory purchase and compensation: guide 4 - compensation to residential owners and occupiers

Guidance about compensation to owners and occupiers of residential properties once a compulsory purchase order comes into force.

From: **Ministry of Housing, Communities and Local Government (/government/organisations/ministry-of-housing-communities-local-government)** and **Department for Levelling Up, Housing and Communities (/government/organisations/department-for-levelling-up-housing-and-communities)**

Published 17 December 2021

Last updated 2 October 2023 —

Applies to England

Contents

— Introduction

— Compensation when land taken

— Compensation for tenants with short tenancies and occupiers with no compensateable interest in land

— Compensation when no land is taken

— Appendix 1: Terms used in compulsory purchase

— Appendix 2: Useful contacts

Introduction

Overview

1. Compulsory purchase is a legal mechanism by which certain bodies (known as ‘acquiring authorities’) can acquire land without the consent of the owner. Compulsory purchase powers can support the delivery of a range of development, regeneration and infrastructure projects in the public interest. In doing so, they can help to bring about improvements to social, economic and environmental wellbeing.

2. Although compulsory purchase powers can help to deliver positive change, the government recognises that it can be upsetting and stressful to discover that land which you own or occupy is to be compulsorily acquired. Furthermore, the law and procedures relating to compulsory purchase are complex, which can be daunting. This series of 4 plain English guides is intended to help those affected by compulsory purchase by explaining how the system works in simple terms. The guides reflect legislative changes up to and including the Neighbourhood Planning Act 2017.

3. Before reading this guide, you should first read Guide 1 (https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure) which provides an end-to-end overview of the compulsory purchase order (CPO) process in England and Wales. It outlines the procedures which acquiring authorities must go through to use their powers and explains what opportunities those affected have to influence the outcome.

4. This guide – Guide 4 – deals solely with the issue of compensation for residential owners and occupiers affected by a CPO. Other guides in the series explain rights to compensation for business owners and occupiers (Guide 2 (https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-2-compensation-to-business-owners-and-occupiers)) and for agricultural owners and occupiers (Guide 3 (https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-3-compensation-to-agricultural-owners-and-occupiers)). The compensation and valuation principles explained in these guides apply to all compulsory purchase schemes, regardless of the type of legal instrument being used: this includes CPOs, Transport and Works Act Orders (TWAOs), development consent orders (DCOs) and Hybrid Acts of Parliament.

5. These guides are aimed at the layperson. and wherever possible, the use of jargon and technical language has been avoided. There are, however, a number of important terms which have specific meaning in compulsory purchase matters. These words and expressions are explained within Appendix 1 of this guide. There are also a number of bodies and organisations who may be able to offer their advice if you are affected by

compulsory purchase. A list of useful contact names, addresses and telephone numbers is set out in Appendix 2 of each guide.

Key points to note

Professional advice

6. These guides are intended to help affected parties to understand the basics of the CPO process but cannot cover every circumstance that may arise. The information they contain carries no legal force and does not constitute legal advice. The guides are not a substitute for professional advice. If you think your land may be the subject of compulsory purchase you should seek advice from a suitably experienced property adviser such as a chartered surveyor, an agricultural valuer or a solicitor, who should be able to advise on your rights and also act on your behalf if appropriate. It is best to seek professional help as early as possible.

7. When choosing a professional adviser you may wish to consider the following points:

- can they demonstrate experience in advising people with your type of business/property who have been affected by compulsory purchase?
- are they bound by professional standards in the way they undertake their work? The Royal Institution of Chartered Surveyors has a Professional Statement outlining the standards which its members must follow in advising on compulsory purchase (https://www.rics.org/uk/upholding-professional-standards/sector-standards/land/surveyors-advising-in-respect-of-compulsory-purchase-and-statutory-compensation-uk/)
- have they been clear about the basis for fees that will be charged?
- have they been clear about circumstances where their fees may be recoverable from the acquiring authority and when?

8. Firms who offer compulsory purchase as a surveying service and who offer 30 minutes of free advice on the subject can be found under the Find a Surveyor (https://www.ricsfirms.com/helplines/compulsory-purchase/) service offered by the Royal Institution of Chartered Surveyors.

9. For rural property, the Central Association of Agricultural Valuers (https://www.caav.org.uk/) (tel: 01452 831815) will provide contact details for suitably experienced agricultural valuers in your area.

Can I recover the costs of employing a professional adviser?

Any costs associated with objecting to a CPO – including professional fees incurred in pursuing the objection – need to be met by you as the objector. However, if you are a remaining objector whose objection is sustained, such that the CPO is not confirmed or your land is excluded from the CPO, then you are entitled to seek an award of reasonable costs once the confirming authority's decision is issued. If you are partially successful in objecting i.e. part of your land is excluded from the CPO, you will be awarded your reasonable costs that relate to that part of your objection.

If a CPO is confirmed and implemented, reasonable professional fees incurred in preparing and negotiating your claim for compensation can generally be reclaimed from the acquiring authority. For further information, please refer to paragraphs 51 to 64 on disturbance.

Comprehensive records

10. It is important that you keep a comprehensive record of all communications with the acquiring authority, including notes of any meetings. You should also keep detailed records of all expenses incurred and losses sustained as you may be able to recover these as part of your claim for compensation. You should bear in mind that you can only receive compensation for expenses and losses which occur as a direct and reasonable consequence of the acquisition of your land. You may also wish to keep a record of the condition and state of your land.

Duty to mitigate your loss

11. Those affected by compulsory purchase are under a duty to mitigate losses. This means that you need to take reasonable steps to eliminate or reduce your losses. For example, if you need to employ a removals firm to assist with your move, you should obtain quotes from at least 2 reputable firms. Assuming the firms all offer the same service, instructing the cheapest would be a way of mitigating your loss.

Outline of the compensation system

12. This guide provides a description of the statutory framework for compensation. Acquiring authorities may choose to have discretionary schemes on top of this. Your professional adviser will be able to advise if any such schemes exist and are relevant to your particular case.

13. The rights to compensation for those affected by compulsory purchase - and the procedures for assessing the correct amount – are governed by a combination of legislation, case law and established practice. These are sometimes referred to collectively as the 'compensation code'. However, there is no single, published document called the compensation code.

14. The overriding principle of compulsory purchase compensation is ‘equivalence’. This is the principle that people whose land is acquired compulsorily should be left neither better nor worse off financially as a result of their land being acquired – being entitled to compensation which is neither more nor less than the value of their loss.

Right to compensation

15. The right to compensation may arise as a result of:

- all or part of your land, or a right over that land, being acquired compulsorily (or under the threat of compulsory purchase) – depending upon the particular circumstances in each case, compensation can be claimed under the following categories, which are referred to as ‘heads of claim’:
  - value of the land taken (see paragraphs 25 to 50)
  - disturbance payments (see paragraphs 51 to 64)
  - loss payments (see paragraphs 65 to 71); and
  - severance and injurious affection for retained land (see paragraphs 81 to 89)
- your land being adversely affected by the construction and/or use of works but where none of your land is acquired - compensation can be claimed for a reduction in the value of your land caused by:
  - the execution (the construction) of public works (injurious affection) (see paragraphs 108 to 110); and
  - the subsequent use of public works (Part 1 claim) (see paragraphs 111 to 121).

Rehousing

16. In some circumstances, a local housing authority has a duty to rehouse residents whose homes are subject to compulsory purchase. This is explained at paragraphs 72 to 78.

Disabled people

17. Paragraphs 79 to 80 explain the circumstances in which disabled people may be entitled to compensation for the costs of adapting a new property to meet their special needs or, in the case of tenants, to rehousing in suitable properties.

Mitigation works

18. Acquiring authorities also have certain duties and discretionary powers to take action to help to reduce the impact of their development works. The exercise of these powers is referred to as ‘mitigating the injurious effects’ of the development. The main duty is a requirement to undertake noise insulation works where certain specified criteria are fulfilled. This duty only

applies to dwellings or other buildings used for residential purposes. Your professional adviser will be able to provide further advice on this matter.

Short term tenancies and occupiers with no compensateable interest in land

19. Paragraphs 91 to 100 of this guide set out the compensation entitlement for those who have short term tenancies and those who are in lawful occupation of the land to be acquired but who have no compensateable interest in the land.

Advance payments

20. At any time after a CPO has been confirmed, you can make a claim for an advance payment on account of any compensation you are entitled to. See paragraphs 101 to 105 of this guide for further information.

Interest

21. Where an acquiring authority enters and takes possession of land or executes a general vesting declaration before agreeing compensation, simple interest, at a prescribed rate (published under the 1997 subheading) (https://www.gov.uk/guidance/planning-guidance-letters-to-chief-planning-officers#section-17), is payable from the date of entry or the vesting date until compensation is paid. If a claim is made for compensation which arises as a result of nearby public development, but no land is actually acquired, interest is payable on any sum due from the date you submit your claim to the date of payment.

Blight

22. If your land is ‘blighted’ you may be able to serve a blight notice to compel an authority to acquire the land. The definition of blight, and the requirements and procedures for serving a blight notice, are set out in Guide 1: Compulsory purchase procedure (https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure). If you are successful and your blight notice is accepted, the principles of valuation and assessment of compensation are identical to those which apply had the land been compulsorily acquired.

Disputes

23. There is a formal process (through the Upper Tribunal (Lands Chamber)) for dealing with disputes over compensation entitlement. However, acquiring authorities are also encouraged to offer alternative dispute resolution techniques (e.g. mediation) to those with concerns about any stage of the CPO process. These should involve a suitably qualified independent third party.

Compensation when land taken

Overview

24. Depending upon the particular circumstances in each case, compensation when some or all of your land is taken can be claimed under the following categories, which are referred to as ‘heads of claim’:

- value of the land taken
- disturbance payments
- loss payments
- severance and injurious affection (where only part of your land is taken)

Value of the land taken

Valuation date

25. The legislation requires compensation claims to be assessed at a specific point of time called the ‘valuation date’. This is the earliest of:

- the date of entry and taking possession if the acquiring authority has served a notice to treat and notice of entry; or
- the vesting date if the acquiring authority has executed a general vesting declaration; or
- the date when compensation is agreed if prior to either of the above

Market value

26. The law specifies that the compensation to be paid where land is compulsorily acquired shall reflect what that land might be expected to realise if it were sold in the open market by a willing seller at the valuation date. In other words, compensation is based on the market value of the land which is to be acquired.

27. However, the assessment of compensation ignores any increase or decrease in value caused by the acquiring authority’s proposed scheme (e.g. regeneration project, new road, railway line etc) or the prospect of that scheme. This is known as the ‘no scheme principle’. The basic premise is that compensation should reflect what your land would be worth if the scheme to which the CPO relates did not exist (i.e. in the ‘no scheme world’).

28. The acquiring authority will normally appoint a chartered surveyor to undertake the estimate of the market value. You may appoint a surveyor to carry out your own assessment and to negotiate with the acquiring authority on your behalf.

Land with development potential

29. The market value of land may reflect what it is worth in its existing use (‘existing use value’). However, the market value of land may in some cases be affected by:

- its development potential, taking account of:
  - existing planning permission(s) for an alternative use or development
  - the prospect of obtaining planning permission for an alternative use or development (‘hope value’)
- its ability to unlock the development potential of an adjoining site by, for example, providing the only possible access to it (‘ransom value’)
- the extent to which, if combined with one or more other land interests, it would be worth more than the sum of their individual values (‘marriage value’)

30. In accordance with the no scheme principle, however, compensation will only include a degree of hope, marriage or ransom value if it can be demonstrated that these would have existed in the absence of the acquiring authority’s scheme. In effect, only pre-existing value is paid. The location, nature and planning status of your land will be important in determining what – if any – pre-existing value it has.

31. The law sets out a series of rules about what developments planning permission can be assumed for, and the extent to which these are to be taken into account, when assessing compensation. These are sometimes referred to as the ‘planning assumptions’.

32. In broad terms, compensation may take account of:

a) planning permission which is in force on the valuation date (this includes not just planning permission granted by the local planning authority but also planning permission granted through permitted development rights);

b) development which could reasonably have been expected to be granted planning permission on the valuation date if the acquiring authority’s scheme did not exist (‘appropriate alternative development’); and

c) the prospect of planning permission being granted for other development.

33. National and local planning policies (e.g. those contained in a local or neighbourhood plan) will be relevant in determining the type(s) of development which might have been acceptable had there been no CPO, and the likelihood of planning permission being granted.

34. Where there is a disagreement about what might have been granted planning permission in the absence of the CPO, you may seek a ‘Certificate of Appropriate Alternative Development’ from the local planning authority. This will confirm whether a particular use would have been permitted in the absence of the acquiring authority’s scheme. Although the procedures for applying for a certificate are similar to submitting a planning application, there are some important differences.

You should ask your professional adviser about these if you are considering applying for a certificate.

35. It is important to note that even where planning permission for alternative development has been granted (or can be assumed), compensation will be based on how the market would price the land with the benefit of that permission. The valuation will reflect the likely development costs, as well as uncertainties and risks, associated with implementing an alternative development in the absence of the acquiring authority's scheme. For example, there may be doubts about whether infrastructure will be delivered if the acquiring authority's scheme does not proceed.

36. If the market value of your land reflecting its development potential is greater than the market value of your land for its existing use you may not be entitled to disturbance compensation (see paragraph 63).

Unlawful use of the land

37. Any increase in the value of land which is attributable to a use of the land which is unlawful or detrimental to the health of the occupants of the land or to public health, may not be taken into account.

38. A use which is unlawful is one which could be subject to planning enforcement proceedings. Therefore, if your land is used for a purpose which requires, but does not have, planning permission, no account can be taken of any increase in value attributable to that use. However, if that use could not be subject to enforcement proceedings (for example, because the use had been undertaken for such a length of time that a lawful development certificate would be granted) any increase in value attributable to that use may be taken into account.

Equivalent reinstatement

39. In exceptional circumstances, such as specialised land for which there is no general market (e.g. a place of worship), it may not be possible to arrive at a market valuation. In such cases, compensation may be assessed on the basis of how much it would cost to reinstate the facility elsewhere ('equivalent reinstatement').

40. It is unlikely that circumstances giving rise to a claim for equivalent reinstatement will occur in the case of residential properties. Accordingly, this basis of compensation is not covered in this guide. However, if you feel that your property which is being acquired is one for which there is no general market or demand, you should discuss the matter with your professional adviser.

Mortgages

41. It is common for dwellings to be subject to a mortgage. Both mortgagees (lenders) and mortgagors (borrowers) have an interest in land

for which there is an entitlement to compensation.

Compensation to lender

42. When compensation is settled, the outstanding loan from the lender (usually a bank or a building society) is paid off and the mortgage is redeemed.

43. There may be circumstances where the outstanding loan on the mortgage exceeds the value of the property. This may arise, for example, where arrears have built up or where there is ‘negative equity’ as a result of falling values.

44. In these circumstances, the value of the property being acquired is agreed between the acquiring authority, the lender and the borrower. If the value of the property is less than the outstanding debt on the mortgage there will be no compensation payable to the borrower.

45. The lender will receive payment of the agreed sum including any arrears and interest due. The lender will retain the right to recover the outstanding sum and any interest due thereon from the borrower.

Compensation to borrower

46. The borrower will receive compensation for the value of the property being acquired less the sum outstanding on the mortgage which is paid to the lender.

47. Where the outstanding loan on the mortgage exceeds the value of the property (known as ‘negative equity’) there is no compensation to the borrower in respect of the property interest. The acquiring authority will pay the value of the property to the lender. The borrower will still be liable to the lender for the amount of any outstanding sum plus interest due thereon. (If you find yourself in a negative equity position, you should contact your lender to discuss the matter.)

48. The borrower may still have an entitlement to other heads of compensation such as a home loss payment.

49. There is also an entitlement to compensation if losses occur as a result of having to take out a new mortgage. This falls within the compensation for disturbance and is considered below in the section on disturbance.

50. In some instances, the acquiring authority may pay compensation for the full value of the property being acquired to the borrower, who will then be responsible for repaying their outstanding mortgage.

Disturbance payments

51. Disturbance payments provide compensation for losses caused by being disturbed from possession of the land taken and other losses which are not based on the value of the land.

52. Losses will generally be recoverable if they are a natural and reasonable consequence of being disturbed and are not too remote. Additionally, in order to claim disturbance payments, you must act reasonably to reduce or eliminate your loss. There is a large amount of case law on disturbance and you should seek professional advice on this matter.

53. The burden of proof for losses claimed as disturbance is with the claimant: the onus is on you to justify your claim. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the acquisition of your land. You should keep all relevant documentary evidence such as receipts, invoices and fee quotes. You should also keep a record of the amount of time you have spent on matters relating to the compulsory purchase of your land.

54. For the most part the right to disturbance compensation is restricted to occupiers. There is however, a limited right for investment owners to recover their costs of reinvestment in a replacement property investment in certain circumstances as set out in paragraph 64.

55. If you have to sell or move out of your property you are entitled to the costs and expenses reasonably incurred in vacating that property.

56. The claim can include the costs incurred in acquiring a replacement property (but not the cost of the property itself) and the costs of moving into the property. These costs will be paid up to the amount that would be payable if the purchase price of your new property was not more than the market value of your old one. Above this level the acquiring authority may refuse on the grounds that you are benefiting from the fact that you are ending up with a more valuable property than you started with.

57. Subject to the provisions on ‘rehousing’ in paragraphs 72 to 78, there is no obligation on an acquiring authority to provide alternative premises. However, acquiring authorities may assist you to identify potential possible properties available on the market. Accordingly, you should contact the acquiring authority and local estate agents at an early stage to register property search requirements.

58. Although not an exhaustive list, typical items which can be claimed depending on your circumstances are set out below:

- removal expenses;

- legal fees arising from the acquisition of a replacement property
- stamp duty arising from the acquisition of a replacement property
- survey fees and costs in connection with the acquisition of a replacement property
- special adaptations to your replacement property
- altering soft furnishings and moveable fittings and fixtures to fit your new home
- disconnection and reconnection of services telephone, electricity, etc
- forwarding of post (for a reasonable period)
- incidental costs of acquiring replacement property
- if a tenant is displaced from rented accommodation as a result of a compulsory purchase the acquiring authority may agree to pay the reasonable expenses incurred (other than the price of the property) of buying a reasonably comparable dwelling, provided it is bought within a year of the displacement

Mortgages

59. Losses may occur as a result of having to transfer a mortgage. Provided the losses flow as a direct and reasonable consequence of the acquisition you will be entitled to compensation.

60. There may be circumstances where you have a mortgage which is fixed at a favourable rate and you have to take a new mortgage at a higher rate which will be more expensive. Where this occurs it may be appropriate for compensation to be paid based on the difference between the net amount it would cost to repay the outstanding sum on the mortgage at the old rate and how much it would cost at the new rate.

Other costs

61. An acquiring authority has discretion if a displaced tenant whose interest is for a year or yearly decides to buy a house or flat rather than take out a new lease. If this occurs the acquiring authority may agree to pay the reasonable expenses incurred in purchasing a reasonably comparable dwelling (but not the cost of the property itself) provided it is bought within 12 months of displacement.

62. In all disturbance cases, there is a duty on claimants to mitigate their loss. This means that you must act reasonably at all times and take all rational and reasonable steps to avoid incurring additional losses where possible. If the acquiring authority is able to show that your losses were greater than they might have been, due to unreasonable behaviour on your behalf, the compensation should be adjusted to reflect this.

Disturbance when compensation reflects development potential

63. If the market value of your land reflecting its development potential is greater than the market value of your land for its existing use you may not be entitled to disturbance compensation. This is in line with the wider principle of equivalence i.e. that you should be left no better or worse off in financial terms.

Disturbance to investment owners

64. In order to be entitled to compensation for disturbance you must normally be in physical occupation of the land. There is, however, a limited right to disturbance for owners of investment properties who are not in occupation. Compensation is payable in respect of incidental charges or expenses incurred in acquiring, within a period of 1 year of the date of entry, an interest in other land in the United Kingdom. These costs will be paid on the same basis as if you were an occupier.

Home loss payments

65. If you are actually living in the property you may be entitled to a home loss payment in addition to any other compensation due. The home loss payment is an additional sum to reflect and recognise the distress and discomfort of being compelled to move out of your home. A number of criteria need to be fulfilled to qualify for payment.

Occupation of the property

66. To qualify for a home loss payment:

- you must have lived in the dwelling, or a substantial part of it, as your only or main residence, for a period of not less than 1 year ending with the day you have to move out; and
- your interest or right to occupy the property was freehold, leasehold or under certain statutory tenancies, contracts and licences (your professional adviser will be able to confirm whether any of these apply to you)

67. If you occupy a caravan you may qualify for a home loss payment if you have lived in a caravan on the same permanent site for a minimum period of 1 year and no suitable alternative site for stationing your caravan is available on reasonable terms.

Amount of home loss payment

68. If you are the owner of a freehold or a lease with at least 3 years unexpired in England you are entitled to 10% of the market value of your interest, subject to a maximum payment of £81,000 and a minimum payment of £8,100 (from 1 October 2023). Any other claimant is entitled to a flat rate of £8,100. In Wales, the maximum amount is £62,000, the minimum and flat rate amount is £6,200. (These prescribed amounts may be

reviewed from time to time – your professional adviser will be able to confirm the amounts which will apply in your particular case).

69. Where 2 or more people are entitled to make a claim for a home loss payment in respect of the same interest (such as a husband and wife who are joint owner-occupiers or joint tenants who share the same home) the payment is divided equally between claimants.

70. The claim for a home loss payment must be submitted within 6 years of the date you have to move out and must be in writing.

71. The acquiring authority must make the payment on or before the latest of:

- the date of displacement; or
- 3 months from the date of the claim; or
- the date on which the market value of the interest (upon which the payment is based) was agreed or determined

Rehousing

72. Where no suitable alternative accommodation is available on reasonable terms the local housing authority has a duty to rehouse a resident whose dwelling has been compulsorily acquired regardless of which acquiring authority was responsible for the acquisition.

73. In order to qualify you must have been in residence from the date the notice of the making of the CPO was published.

74. There is no entitlement to rehousing for a trespasser, a person permitted to reside pending demolition, or a claimant who brings about the acquisition by serving a blight notice. (Further details about blight notices can be found in Guide 1: Compulsory purchase procedure (https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure).)

75. If you are genuinely made homeless but you do not qualify for rehousing you should contact your local housing authority immediately as they may still be able to help.

76. If you are rehoused this will not affect the amount of compensation which the acquiring authority pays and an authority must not seek to make a reduction to reflect rehousing.

77. The compensation payable to a landlord will not be affected if his tenants are rehoused by the council. Provided they are rehoused after the landlord receives his notice to treat or the date a general vesting declaration

is executed, compensation will continue to be assessed at market value subject to the occupational tenancies.

78. The right to rehousing applies not only to houses and flats but also extends to permanent caravan sites. The qualifying conditions are the same as for other dwellings except that there is no right to be rehoused if there is a suitable alternative site for stationing the caravan available on reasonable terms.

Disabled persons

79. If the home of a disabled person has been adapted to meet their special needs, the compensation to the occupier or the landlord may reflect the cost of providing or modifying a similar dwelling.

80. There may be circumstances where a disabled person is a tenant in a dwelling which is acquired and the landlord is not prepared to provide another dwelling which is suitable for occupation by a disabled person. If this occurs and there is no other suitable alternative accommodation available on reasonable terms, the council may rehouse the disabled tenant and make alterations to the dwelling they provide as necessary.

Severance and injurious affection

81. If you have only part of your land acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain. The compensation is for the depreciation in value of the retained land and is referred to as ‘severance’ and/or ‘injurious affection’. If you have retained land you should consult your professional adviser.

82. The 2 elements of this head of claim should be considered in isolation.

83. Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across the garden of a house it may make the house less desirable, and consequently less valuable, because the garden added to the value of the house.

84. Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of the garden of a house may be acquired for a new road, the loss of amenity due to noise, fumes, vibration, loss of view, etc resulting from the use of the road may reduce the value of the property further. It is the impact of the whole of the proposed scheme that is to be considered, not just the

effect on the area acquired from you. Compensation is claimable both for the construction of works and their subsequent use.

Betterment

85. In assessing compensation, the acquiring authority will have regard to any increase in value of land you retain that is adjacent to or adjoining the land acquired. This is generally referred to as ‘betterment’.

86. Betterment is the opposite of injurious affection. There may be instances where the acquiring authority’s scheme may increase the value of your retained land.

87. An example of this would be if you owned a house, of which a small part of the garden is acquired for the construction of a new road and that new road enhances access to the house thereby increasing its value. In such circumstances, the acquiring authority will seek to offset this increase in value against the compensation that is payable in respect of the land acquired.

88. The acquiring authority should, of course, be able to explain their grounds for considering that their proposal has generated an increase in the value of your retained land.

89. In an extreme case you would receive no compensation because the enhancement in value of the retained land is equal to or greater than the compensation for the land acquired. The least compensation you can receive is nil. In no circumstances can the acquiring authority expect you to pay them.

Material detriment

90. There is another course of action which you may be able to take if the acquiring authority is only proposing to acquire part of your land and the part of the land you retain will be less useful or less valuable in some significant degree. In these circumstances, it may be possible to advance a claim for ‘material detriment’, seeking to make the acquiring authority acquire the whole of the land interest rather than just a part. In the case of a dispute the issue will be determined by reference to the Upper Tribunal (Lands Chamber). This can be a complicated matter which you should discuss with your professional adviser.

Compensation for tenants with short tenancies and occupiers with no compensateable interest in land

Short term residential tenancies

Market value

91. Compensation is payable under section 20 of the Compulsory Purchase Act 1965 if you have no greater interest than as tenant for a year or from year to year. (Many residential tenancies / assured shorthold tenancies are from year to year.) In most cases, tenants with a short term residential tenancy are unlikely to be eligible for compensation for the market value of their unexpired term or interest in the land. This is because the terms of a short term residential tenancy agreement are likely to prohibit the tenant from selling the tenancy to another person. This means that the tenancy will not have a market value.

92. However, if the terms of your tenancy do not prohibit you from offering it for sale, and you can show that the tenancy would have a value if put on the market, you may be entitled to compensation under this head of claim.

93. The main elements of compensation which are normally payable in relation to short term residential tenancies are therefore, disturbance payments and home loss payments.

Disturbance payments

94. The principles for assessing disturbance compensation are set out in paragraphs 51 to 64 above. However, only losses relating to the period before the expiry of the term are recoverable. Regard should be had to any right or likelihood of renewal which the tenant may have.

Home loss payments

95. The home loss provisions are set out in paragraphs 65 to 71. Normally, tenants who are eligible for a home loss payment and occupy their homes under a short term tenancy are likely only to receive the flat rate payment (see paragraph 68).

96. Only a single home loss payment may apply to each tenancy. Therefore, if there are 2 or more eligible occupiers residing within a dwelling, the home loss payment is shared equally between them.

Occupiers with no compensateable interest

97. There is a limited right of compensation for disturbance to a displaced person who was in lawful occupation of land but has no ‘compensateable’ interest in the land. This is set out in section 37 of the Land Compensation Act 1973 and only applies if the claimant was in occupation on the date when notice was first published of the making of the CPO prior to its submission for confirmation. This may include tenancies at will, tenancies on sufferance and licences. Each of these amount to occupation of land by some form of agreement with the owner which is less than a formal lease and, in most cases, they may be terminated at short notice by either party.

98. Trespassers and squatters do not have any rights to compensation.

99. Compensation should reflect disturbance items such as removal costs.

100. In addition, section 37(5) of the Land Compensation Act 1973 includes a provision which allows an acquiring authority to make a discretionary payment to a person who is displaced but is not entitled to a disturbance payment in line with the above or any other enactment.

Advance payments

101. At any time after a CPO has been confirmed (see Guide 1), you can make a claim for an advance payment on account of any compensation you are entitled to. If requested, and subject to sufficient information being provided, the acquiring authority is obliged to make an advance payment by the end of the day on which the notice of entry is given or general vesting declaration is executed or if later, within 2 months of the later of:

- the date of receipt of the claim: or
- the date any further information requested

However, an acquiring authority may make an advance payment earlier if it chooses to do so.

102. The level of advance payment is 90% of either:

- the agreed sum for the compensation; or
- the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

103. It is important that in making a claim for an advance payment that you provide sufficient information to allow the acquiring authority to properly estimate your entitlement. There is no specific format for the claim other than that it must be in writing and include the required information. However, there is a model claim form on GOV.UK (https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance). Some acquiring authorities may use their own form.

104. If the property is mortgaged the acquiring authority will reduce the advance payment by the amount of the outstanding mortgage sum. However, in some circumstances it may be possible to require the authority to make an advance payment direct to your lender.

105. If you accept an advance payment which is based on an acquiring authority's estimate of the compensation due this does not prejudice the final amount of compensation that you will receive. If the estimate is subsequently found to be either too low or too high, your final payment will be adjusted accordingly.

Compensation when no land is taken

106. The procedures outlined so far apply only where land (or new rights over land) is acquired. However, a right to compensation may also arise in limited circumstances when no land is taken but when statutory powers are exercised.

107. Compensation can be claimed for a reduction in the value of your land caused by:

- the ‘execution’ (i.e. construction) of public works (injurious affection); and
- the subsequent use of public works (Part 1 claim)

Reduction in value caused by the execution of works

108. Compensation for a reduction in value caused by the execution of works is payable when a loss occurs because some right in land (as opposed to the actual land itself) is taken away or interfered with. The requirements are that the injury done must:

- be authorised by statutory power
- arise from that which would, if done without the statutory authority, have been actionable at law, for example as a nuisance
- arise from a physical interference with some right, public or private, which attaches to the land
- arise solely from the execution of the works and not as a result of their subsequent use

Valuation date

109. The relevant date for the assessment of compensation is the date at which the loss occurred. This is most likely to be the date of interference with the right in land.

Basis of compensation

110. You must be able to demonstrate that the loss is a natural and reasonable consequence of the execution of the works. Compensation is based upon the reduction in value of the land which had benefited from the right which has been interfered with. Business losses cannot be claimed unless they result in a reduction of the land value.

Reduction in value caused by the use of public works

111. This right to compensation for a reduction in value caused by the use of public works is set out in Part 1 of the Land Compensation Act 1973. It is

commonly referred to as a ‘Part 1 claim’. It applies in relation to certain ‘public works’ i.e. a highway, an aerodrome and other works provided under statutory powers. In addition to new works, the provisions cover substantial alterations and changes of use to existing works but not intensification of a use (unless alterations are also carried out).

112. Separate guidance on Part 1 claims in respect of new or altered roads (https://www.gov.uk/government/publications/a-guide-to-part-i-claims) is published by Highways England.

113. In order to be able to submit a claim you must own a qualifying interest in the land before the relevant date.

The relevant date

114. If the public works in question is a highway, the relevant date is the date on which it was first open to public traffic. With regard to any other public works it is the date on which they were first used after completion.

Qualifying interest

115. A qualifying interest is a freehold or a tenancy in a dwelling house or flat with at least 3 years unexpired at the date of notice of claim.

Valuation Date

116. Compensation is based upon prices current on the first claim day, which is 12 months after the relevant date (see paragraph 25). Interest is payable from the date the claim is submitted until payment.

Basis of Compensation

117. Compensation is based upon the depreciation in the value of the land due to the ‘physical factors’ caused by the use of the public works.

118. The 7 physical factors are:

- noise
- vibration
- smell
- fumes
- smoke
- artificial light
- discharge onto the land of any solid or liquid substance

119. Any depreciation in value which is attributable to reasons other than these 7 specific factors is not compensateable. For example, the loss of a view is not compensateable.

120. The important distinction between this and a claim for the execution of works (described at paragraph 108) is that it is the use of the works which must cause the depreciation. For example, if a motorway is constructed in close proximity to an house, any claim under Part 1 must relate to the depreciation in value caused by the noise and other physical factors associated with the traffic using the road and not to the physical existence of the highway.

121. If you sell your property in the 12 months between the relevant date and the first claim day (see paragraph 116) you must make a claim between exchanging contracts and completion or you will lose your rights to compensation.

Moveable homes

122. In addition to the circumstances explained above, there are further compensation provisions to be considered for occupiers of moveable homes (which include caravans and houseboats). If you occupy a moveable home you may be able to receive a 'noise payment' of up to £1,650 if a new highway or altered highway is constructed or opened to the public within 300 metres of your moveable home. Your professional adviser will be able to provide further advice on this matter.

Appendix 1: Terms used in compulsory purchase

Set out below is a list of terms and definitions commonly referred to when dealing with compulsory purchase matters.

Acquiring authority
Bodies authorised through an Act of Parliament to acquire land by compulsion for a specific purpose.

Compensation code
A collective term for the principles derived from Acts of Parliament and case law relating to compensation for compulsory acquisition.

Confirming authority
Once a CPO is made by the acquiring authority it must be approved by the confirming authority before it can be implemented. The confirming authority is either the relevant government minister (the confirmation of CPOs in Wales is the responsibility of Welsh Ministers) or an independent inspector appointed by the relevant minister to take the confirmation decision on their behalf.

Duty to mitigate loss
The duty of a claimant seeking compensation to take any reasonable steps open to them to reduce or avoid loss. For example, a claimant could

mitigate loss by seeking a number of quotes from reputable contractors and instructing the cheapest.

Equivalence
This is the overriding principle of compensation that people whose land is acquired compulsorily should be left neither better nor worse off financially as a result of their land being acquired.

Existing use value
The market value of land reflecting what it is worth in its existing use.

General Vesting Declaration (GVD)
A legal procedure used in connection with compulsory purchase whereby an acquiring authority, having obtained a CPO, is able to obtain possession and ownership of the land. This is a procedure for the speedy acquisition of land and normal conveyancing practice does not have to be adopted.

Home loss payment
An additional sum paid to owner-occupiers and tenants of dwellings displaced by compulsory purchase or public redevelopment (on top of compensation based on the market value of the land which is taken).

Investment property
Generally, any property purchased with the primary intention of retaining it and enjoying the total return, i.e. income and/or capital growth, over the life of the interest acquired.

Land
Land includes buildings and structures. Existing interests and rights in land, such as freehold or leasehold together with any existing rights can be compulsorily acquired either as a whole or in part.

Lawful development certificate
A certificate obtainable on application to a local planning authority (under section 191 or 192 of the Town and Country Planning Act 1990) which confirms that an existing or a proposed land use, operation or activity is lawful for planning purposes.

Marriage value
Latent value which is or would be released by the merger of 2 or more interests in land. For example, 2 adjoining parcels may be worth more as 1 property than the aggregate of their separate values. Similarly, 2 interests in the same property (such as the freehold and the leasehold) may have a greater value when merged than the sum of their individual values.

New rights
Compulsory purchase can be used by most acquiring authorities to create and acquire new rights over land. An example would be the creation of a right of way or a right of support.

Noise payment
A noise payment is available to moveable homes within 300 metres of a new or altered road who have been seriously affected by increased noise levels as a result. It is payable at the discretion of the highway authority.

No scheme principle The principle that the assessment of compensation ignores any increase or decrease in value caused by the acquiring authority's proposed scheme or the prospect of that scheme.

Notice of entry
A notice served on the owner and occupier(s) of a property by an authority possessing compulsory purchase powers requiring possession to be given by a date prescribed in the notice.

Notice to treat
A notice served on owners, lessees and mortgagees by an authority with compulsory purchase powers to acquire land. The notice gives particulars of the property to be acquired, demands details of the recipient's interest in the land and their claim for compensation and states that the authority is willing to treat (negotiate) for the purchase of the land.

Public development
A new or altered highway, aerodrome or other public works.

Qualifying person
A qualifying person is:

- an owner, lessee, occupier or tenant of land within the CPO; or
- a person who may have the right to claim compensation either because:

(a) they own rights in the land being acquired and these will be interfered with; or

(b) the value of their land will/may be reduced as a result of works carried out on the land being compulsorily acquired (even though none of their land is being compulsorily acquired)

Ransom value
The ability to obtain a high price for a small area which is key to the site being developed. For example, where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Remaining objector
A qualifying person who has a remaining objection within the meaning of section 13A of the Acquisition of Land Act 1981.

Upper Tribunal (Lands Chamber)
A tribunal for England and Wales set up under the Lands Tribunal Act 1949

and proceeding in accordance with rules made by the Lord Chancellor. Its jurisdiction, amongst others, includes adjudication on disputed compensation for the compulsory acquisition of land. The tribunal comprises the President (who must be a barrister or have held judicial office) and members who are all either legally qualified or experienced in valuation.

Appendix 2: Useful contacts

Set out below is a list of contact details of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase.

Central Association of Agricultural Valuers

The Central Association of Agricultural Valuers (https://www.caav.org.uk/) is the professional body for rural property specialists. They can provide contact details for suitably experienced agricultural valuers in your area who can advise rural property and business owners on CPO.

Compulsory Purchase Association (CPA)

The Compulsory Purchase Association (http://www.compulsorypurchaseassociation.org/index.html) is a membership organisation which promotes best and effective practice in delivering land for infrastructure, housing and regeneration. Its members offer CPO and compensation advice, and a list of members, together with other useful information, is available on its website.

Ministry of Housing, Communities and Local Government (MHCLG)

The Ministry of Housing, Communities and Local Government (https://www.gov.uk/government/organisations/ministry-of-housing-communities-local-government) is the government department responsible for the compulsory purchase system in England. MHCLG can provide guidance on the operation of the compulsory purchase system. However, the Department cannot provide advice on individual cases.

Royal Institution of Chartered Surveyors (RICS)

The Royal Institution of Chartered Surveyors (https://www.rics.org/) can provide advice on land value and compensation. RICS also hold a list of surveyors who are experienced in offering support on compulsory purchase matters.

Published 17 December 2021
Last updated 2 October 2023 + show all updates

All content is available under the Open Government Licence v3.0, except where otherwise stated

© Crown copyright