



Office of the
Deputy Prime Minister

Creating sustainable communities

Compulsory Purchase and Compensation

Compensation to Business Owners and Occupiers





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Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU
Tel: 020 7944 4400
Website: www.odpm.gov.uk

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ODPM Publications
PO Box 236
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LS23 7NB
Tel: 0870 1226 236
Fax: 0870 1226 237
Textphone: 0870 1207 405
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or online via www.odpm.gov.uk

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Contents

Foreword	5
1. Introduction	6
How to Use this Booklet	6
Terms Used in Compulsory Purchase	6
Useful Contacts	6
2. Compensation When Land is Taken	7
General Principle	7
Valuation Date	8
Heads of Claim	8
Compensation for Land Taken	10
Land for Which There is a General Market or Demand	10
Compensation Where Additional Development Permitted After Acquisition	11
Land for Which There is Not a General Market or Demand	12
Acquisition of Part Only	12
Disturbance Compensation	16
Loss Payment	20
Acquisition of Short Term Leasehold Interests	21
Occupiers with no Compensateable Interest in Land	22
Advance Payment of Compensation	22
Blight	23
3. Compensation When No Land is Taken	23
Reduction in Value Caused by the Execution of Works	24
Reduction in Value Caused by the Use of Public Works	25
4. Compensation for the Adverse Effects of Development	26
5. Fees	27
6. Interest	27



DIAGRAMS

Diagram 1 How am I affected?	7
Diagram 2 Can I make a claim?	9
Diagram 3 Claim for Land When Whole or Part is Taken	13
Diagram 4 Claim for disturbance	16
Diagram 5 Am I entitled to a loss payment?	20
Diagram 6 Claim when no land is taken	24

APPENDICES

Appendix 1 Terms Used In Compulsory Purchase	28
Appendix 2 Useful Contacts	31

Foreword

This is Booklet 2 in a series of five which explain, in simple terms, how the compulsory purchase system works. The booklets in the series are:

Booklet 1	Compulsory Purchase Procedure
Booklet 2	This Booklet
Booklet 3	Compensation to Agricultural Owners and Occupiers
Booklet 4	Compensation to Residential Owners and Occupiers
Booklet 5	Mitigation Works

Before reading this booklet you should first read Booklet 1 – “Compulsory Purchase Procedure” which sets out the process of how authorised bodies obtain compulsory purchase powers and implement them, and what your rights are. Booklet 5 deals with the limited circumstances in which acquiring authorities may undertake works to help to reduce the adverse effects of their development on your property.

This booklet deals solely with the issue of compensation to owners and occupiers of business premises once a compulsory purchase order (CPO) comes into force. The right to compensation may arise as a result of the compulsory acquisition of part or all of your land or a right over that land (“land” includes the buildings on it). You may also have a right to compensation if your land is adversely affected by the construction and use of development works in close proximity but where no land is actually acquired from you. Both situations are covered in this booklet.

Legislation in England and Wales gives many authorised bodies (referred to in this booklet as “acquiring authorities”) the power to acquire land compulsorily where the landowner or occupier is not willing to sell by agreement. The rights to compensation and methods and procedures for assessing the correct amount are derived from what is commonly referred to as the “Compensation Code”. This is made up of Acts of Parliament, case law and established practice. The principal Acts are the Land Compensation Acts of 1961 and 1973 and the Compulsory Purchase Act 1965.

In some cases, an acquiring authority may be able to satisfy their requirements by the creation of a new right over land rather than needing to seek full ownership. For example, it has become common in the case of acquisitions for town centre schemes for authorities to seek rights to carry out works to adjoining premises for the provision of services. The Compensation Code for the acquisition of new rights over land is the same as for the actual acquisition of land.

The law relating to compulsory purchase is complex. Of necessity, the information set out in this series of booklets is a simplification and cannot cover every circumstance that may arise. This booklet is not intended to be a complete guide to the law and carries no legal force.

Nor should this guidance be regarded as a substitute for professional advice. If your property is, or seems likely to be, affected in any of the ways described in this booklet, you should seek advice from a professionally qualified person such as a surveyor or solicitor, who can advise you on your rights and act on your behalf if appropriate. The reasonable professional fees incurred in preparing and negotiating your compensation claim may be met by the acquiring authority.

The Royal Institution of Chartered Surveyors operates a Compulsory Purchase Helpline which can be contacted on 0870 3331600. This helpline puts you in touch with experienced chartered surveyors in your local area who will provide up to 30 minutes of free advice.



1. Introduction

- 1.1 The guidance contained in this booklet is divided into two principal sections as follows:
- Compensation where land is taken.
 - Compensation where no land is taken.
- 1.2 There are six flow diagrams within the booklet. A list of the diagrams is detailed in the contents section. These diagrams guide you to the sections of the booklet which are relevant to your particular circumstances and provide summary assistance as to the compensation provisions which may be appropriate in each case.

How to Use this Booklet

- 1.3 In order to gain a better understanding of the entire subject you should read the whole booklet at least once. Then, starting in the box at the top of Diagram 1 and answering the simple questions in this diagram, you are directed to other relevant diagrams and text.

Terms Used in Compulsory Purchase

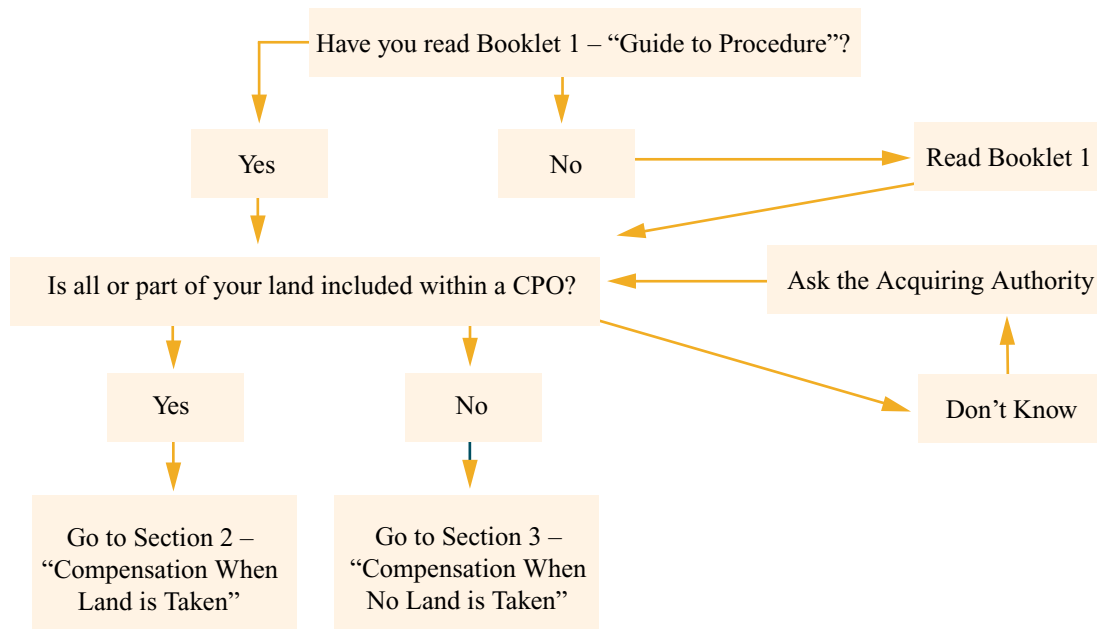
- 1.4 This series of booklets is aimed at lay people and wherever possible the use of jargon and technical language has been avoided. However, there are a number of important terms which have a specific meaning in compulsory purchase matters. These are explained in Appendix 1 to this booklet.

Useful Contacts

- 1.5 There are 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 to this booklet.

Diagram 1

HOW AM I AFFECTED?



2. Compensation When Land is Taken

General Principle

- 2.1 Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that you should be no worse off in financial terms after the acquisition than you were before. Likewise you should not be any better off.
- 2.2 Because the effects of the CPO on the value of a property are ignored when assessing compensation, it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the CPO.



Valuation Date

2.3 The valuation date for the assessment of compensation is the earliest of:

- The date the acquiring authority enters and takes possession of the land where the notice to treat procedure is used, or the date the title of the land vests in the acquiring authority when the general vesting declaration procedure is followed.
- The date values are agreed.
- The date of the Lands Tribunals decision.

Heads of Claim

2.4 Depending upon the particular circumstances in each case compensation can be claimed under the following categories, which are referred to as “Heads of Claim”:

- **The Value of the Land Taken**
- **Severance & Injurious Affection**
This means the depreciation in the value of land you retain where part only of your land holding is acquired.
- **Disturbance**
Apart from the limited rights of an investment owner to recover incidental costs in particular circumstances (see paragraph 2.64), this Head of Claim is only available to occupiers of the property. It represents the costs and losses incurred as a result of being disturbed from the occupation of the property.
- **Fees**
The reasonable surveyors fees incurred in preparing and negotiating a compensation settlement together with solicitors fees for any conveyancing are normally paid by the acquiring authority.

2.5 A more detailed explanation of the basis of compensation under each of these heads of claim is set out below.

2.6 Diagram 2 sets out which items of claim you may be entitled to in particular circumstances and provides directions to the relevant parts of the booklet.

CAN I MAKE A CLAIM?





Compensation for Land Taken

- 2.7 When dealing with land for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, such as specialised land for which there is no general market, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property. Each is dealt with separately below.

Land for Which There is a General Market or Demand

Disregard Compulsion

- 2.8 No addition to or reduction from the value of the land is made to reflect the fact that it is being compulsorily acquired. The acquisition of the land is assumed to be an open market transaction between willing parties.

Market Value

- 2.9 The value of the land is based upon what the land might be expected to realise if sold in the open market by a willing seller.
- 2.10 In assessing the open market value of your land you are assumed to be a willing seller. However, it is assumed that you would only be willing to sell at the best price which you could reasonably achieve in the open market.
- 2.11 This open market value may be based on the existing use of the property. However, it may reflect development value, “marriage value” and “ransom value” provided it can be demonstrated that these would have existed in the absence of the scheme which gives rise to the compulsory acquisition. An example of ransom value would be where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Planning Assumptions

- 2.12 When considering the potential development value of your property you may assume that permission would be granted for particular uses of the land. Broadly the planning permissions which may be assumed are as follows:
- Any existing permission on the property.
 - Any permitted development which has not yet been implemented.
 - Any development which would be in accordance with an allocation in a development plan.
 - The development which the acquiring authority proposes for the land. (However, the valuation cannot take into account a specialist use which could only be undertaken by a body with statutory powers. This is known as “Special Suitability”).

- 2.13 It is important to note that whilst you can assume you would have obtained planning permission for the use of the acquiring authority's scheme, you cannot assume that the scheme itself would take place. So, for example, if your property is being acquired as part of a major residential development you can assume that your property would have been granted a residential planning permission. However, you have to consider that in isolation. You cannot assume that all of the other parts of the acquiring authority's scheme, such as the new roads, open space, community facilities, etc will occur.
- 2.14 **Where there is a disagreement as to the planning permission to be assumed, you may seek a “Certificate of Appropriate Alternative Development” from the local planning authority which will confirm whether a particular use or list of uses would have been granted planning consent if there was no CPO.** The procedure for dealing with this is similar to that applied when submitting a planning application but there are a number of differences. **Ask your professional adviser about these.**

Unlawful Use

- 2.15 Any increase in the value of property which is attributable to a use of the property which is unlawful or detrimental to the health of the occupants of the premises or to public health, should not be taken into account.
- 2.16 A use which is unlawful is one which could be subject to planning enforcement proceedings. Therefore, if your property 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 if it could be terminated through enforcement proceedings. If, however, that use could not be subject to enforcement proceedings (for example, the use had been undertaken for such a length of time that a Certificate of Lawful Use would be granted) any increase in value attributable to that use should be taken into account.

Compensation Where Additional Development Permitted After Acquisition

- 2.17 **In certain circumstances there is limited opportunity to make a claim for additional compensation after your land has been acquired.**
- 2.18 Where planning permission is granted for additional development on the land within a period of ten years from the valuation date you are entitled to the difference between the amount you actually received and the amount you would have received if the permission had been in force when notice to treat was served (in the case of a compulsory acquisition) or at the date of the contract (in the case of a sale by agreement).
- 2.19 Additional development is defined as meaning any development of the land other than:
- for the purposes of the functions for which the authority acquired the land; and,
 - development for which planning permission was in force or was assumed for the purposes of assessing compensation (see paragraph 2.12 dealing with planning assumptions). The provisions also apply to planning permission granted in respect of any larger area of land which includes within it the land compulsorily acquired.



Land for Which There is Not a General Market or Demand

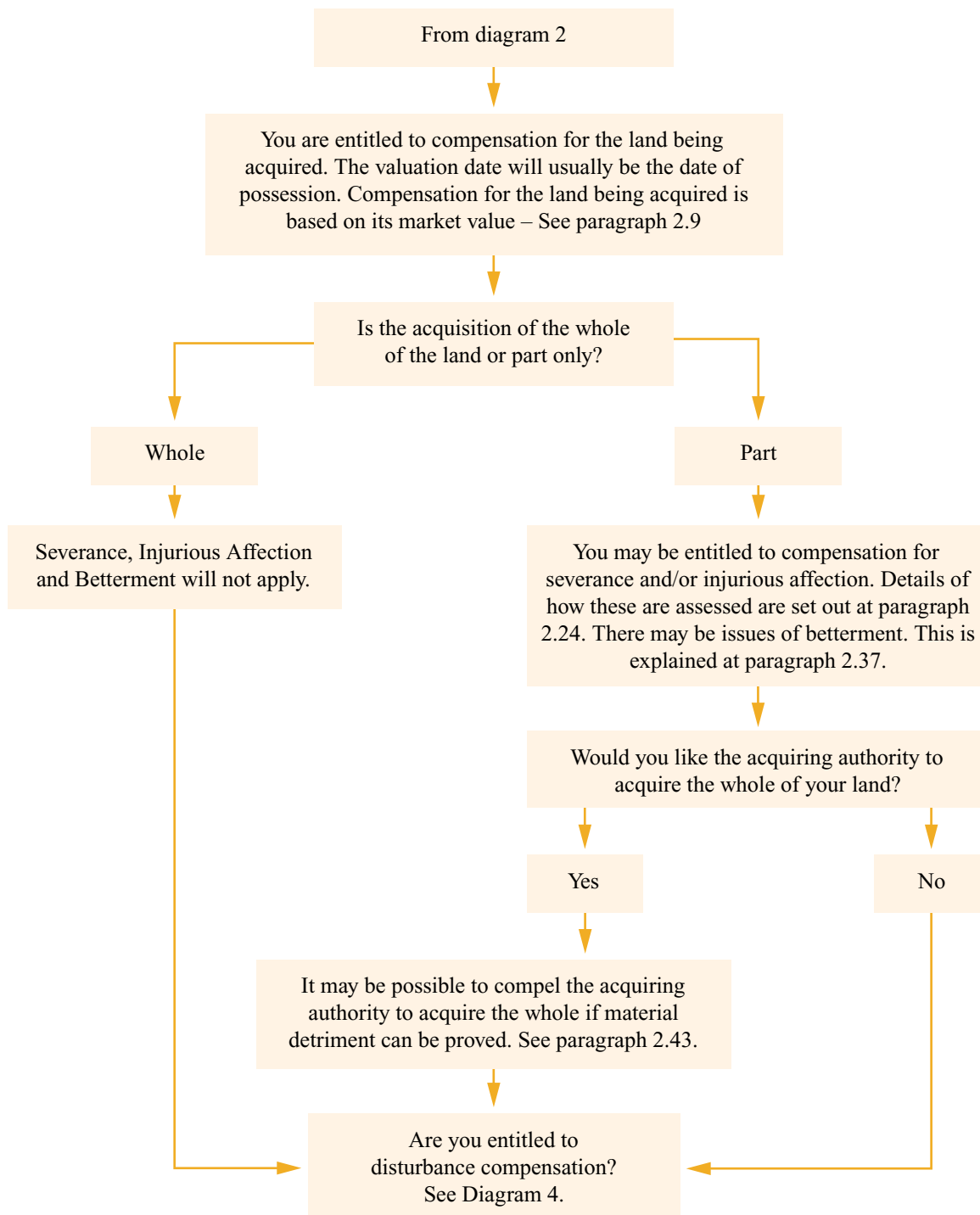
Equivalent Reinstatement

Acquisition of Part Only

- 2.23 In addition to the value of the actual land acquired there may be other issues to consider if the acquiring authority only acquires a part of your land. This is summarised in Diagram 3.

Diagram 3

CLAIM FOR LAND WHEN WHOLE OR PART IS TAKEN





Severance & Injurious Affection

- 2.24 If you have a part only of your land acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain.
- 2.25 The compensation is for the depreciation in value of the retained land and is referred to as “severance” and/or “injurious affection”.
- 2.26 The two elements of this head of claim should be considered in isolation.

Severance

- 2.27 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 railway is built across a car park it may no longer be possible to have access by vehicle to part of the car park, rendering it virtually useless and therefore less valuable.

Injurious Affection

- 2.28 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 its car park may be acquired for a new road, the impact on a commercial building of increased noise and vibration could be considerable.
- 2.29 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.
- 2.30 Therefore it can be seen that both severance and injurious affection can reduce the value of the retained land. Severance occurs when the land becomes separated whereas injurious affection occurs as a result of the construction and use of the acquiring authority’s scheme.
- 2.31 This can be demonstrated with a simple hypothetical example. You might own a business unit of say 1,000m² which was split into two equal bays of 500m² and one of those bays gets acquired for the construction of a new railway. In these circumstances, you would receive compensation for the land acquired based on its market value.
- 2.32 If you could demonstrate that there was greater demand for, and value in, units of 1,000m² than 500m² and that accordingly the retained property actually depreciated in value as a result of not being held with the part acquired, the compensation would include an amount in respect of severance.
- 2.33 If it could also be demonstrated that the value of the retained land had depreciated as a result of being adjacent to a railway line the compensation would also reflect this reduction in value under the heading of injurious affection.

“Before and After” Approach

- 2.34 If you only have a part of your property acquired, the claim for land taken, severance and injurious affection can all be dealt with together by adopting a “Before and After” approach. This is in line with the principle of equivalence which states that you should be in the same position after the acquisition as you were before, in monetary terms.
- 2.35 The way this works is to agree the value of the whole of the property in the “no scheme world” (this means disregarding the development that gave rise to the CPO) prior to acquisition and to compare this with the value of what you are left with in the “scheme world” (this means taking that development into account) after the acquisition. The difference between the two (if any) should be payable as compensation.
- 2.36 The “Before and After” approach can also be used to take account of betterment which is considered below.

Betterment

- 2.37 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”.
- 2.38 Betterment is the opposite of injurious affection. There may be instances where the scheme of the acquiring authority may increase the value of your retained land.
- 2.39 An example of this would be if you owned development land, part of which is acquired for the construction of a new road and that new road enhances access to the remaining land 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.
- 2.40 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.
- 2.41 Where betterment occurs it may sometimes be appropriate to adopt the “Before and After” approach referred to above. This will take into account the issues of land taken, severance, injurious affection and betterment.
- 2.42 **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

- 2.43 There is another course of action which you may be able to take if the authority is only proposing to acquire part of your property. It may be possible to advance a claim for “material detriment”, seeking to make the authority acquire the whole of the property interest rather than just a part.



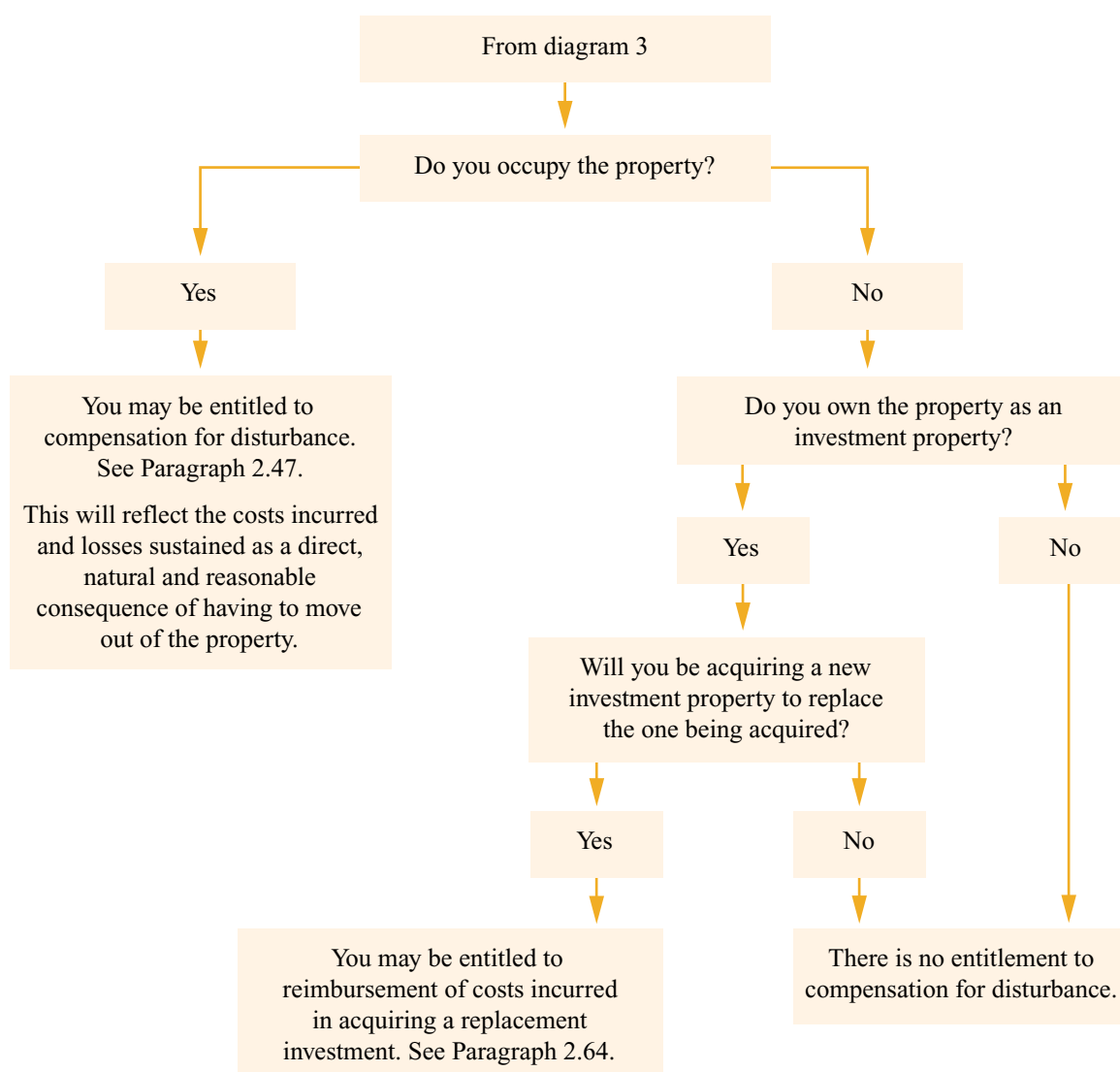
- 2.44 Where part only of a business premises is to be acquired you may require the authority to acquire the whole where the part retained will be less useful or less valuable in some significant degree. In the case of a dispute the issue will be determined by reference to the Lands Tribunal. **This can be a complicated matter which you should discuss with your professional adviser.**

Disturbance Compensation

- 2.45 In addition to being compensated for the value of the land taken and severance and injurious affection you are also entitled to the losses occasioned by being “disturbed” from land or premises. The right to compensation for disturbance only applies if the compensation for the land taken is based on existing use value. This is considered further at paragraph 2.62.
- 2.46 The general principles of disturbance are summarised in Diagram 4.

Diagram 4

Claim for disturbance



- 2.47 **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 see paragraph 2.64.
- 2.48 Depending upon the particular circumstances of the acquisition, disturbance compensation may be based on the costs of relocating the business or the cost of extinguishing it. It is usually incumbent on you to seek to relocate your business. If this is not possible it may be necessary for the business to close, in which case compensation will be based on the cost of the “total extinguishment” of the business.
- 2.49 Occasionally a business will be willing and able to relocate but the acquiring authority will still seek to base compensation on extinguishment. This can occur where the costs of relocating the business are greater than the value of the business. In these circumstances there is a strong case to say that the correct basis of compensation is extinguishment as no prudent businessman would incur the costs of relocating the business, if these far exceeded the end value of the business.
- 2.50 However, there is no rule that the cost of total extinguishment must always form the ceiling to compensation and this is an area of law where there are often disputes between the parties. **Each particular case must be treated on its merits and you should seek professional advice on business valuation issues.**
- 2.51 There is no obligation on an acquiring authority to provide alternative premises. However, most will assist claimants to identify potential relocation 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.**
- 2.52 In certain circumstances, for example town centre redevelopment, the acquiring authority or developer may be prepared to offer premises within the new scheme. However, this may entail a move to temporary accommodation whilst the development is being built followed by a further move into the new scheme once it is complete. This may lead to increased costs which the acquiring authority may not be prepared to compensate if it can demonstrate that suitable properties were available outside the scheme and hence a double move was not necessary. **It is therefore prudent to establish the position before accepting such an offer.**
- 2.53 Examples of items which can be claimed in various scenarios are set out below.

Relocation

- 2.54 You are entitled to claim the reasonable costs and expenditure which arise as a natural and reasonable consequence of having to relocate your business as a result of the acquisition of the property.



2.55 Typical items of compensation for relocation include:

- removal expenses;
- legal fees arising from the acquisition of a replacement property;
- stamp duty arising from the acquisition of a replacement property;
- surveyors and architects fees arising from the acquisition of a replacement property;
- special adaptations to your replacement premises;
- temporary loss of profits during the period of the move;
- diminution of goodwill following the move (reflected in reduced profits);
- depreciation in the value of stock;
- notification of new address to customers;
- new stocks of stationery due to change of address.

2.56 This is not an exhaustive list. Every loss should be considered on its merits and should be recoverable if a natural, direct and reasonable consequence of being disturbed. **The onus is on the claimant to justify his or her claim. Therefore it is up to you to prove that you should be compensated rather than expect the acquiring authority to come up with anything. 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 property. 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 property.**

Extinguishment

2.57 Typical items of compensation for extinguishment include:

- the value of the business goodwill;
- loss on forced sale of stock, vehicles and plant and machinery;
- redundancy costs;
- administrative costs of winding up the business.

2.58 As with the relocation items listed above, this list is not intended to be exhaustive and any other matters which can be demonstrated to occur as a reasonable and natural consequence of the acquisition may be compensatable.

Relocation or Extinguishment?

2.59 **In most cases you will be expected to try and relocate your business if possible. You cannot choose to take compensation for extinguishment if you are able to relocate and it is economically viable for you to do so.**

- 2.60 There is one set of circumstances when you would be statutorily entitled to choose compensation based on extinguishment if you wished. The criteria to be fulfilled are:
- you are the sole proprietor of the business or it is run jointly by you and your spouse;
 - you are aged 60 or over on the date that you give up possession;
 - on that date the land is or forms part of a property with an annual (rateable) value not exceeding a “prescribed amount” (£34,800 in the 2010 Valuation List);
 - you have not disposed of the goodwill of the business and you give the acquiring authority an undertaking that you will not at a later date do so nor, within a specified area will you engage in the same or substantially the same business as that which you undertook on the land acquired.
- 2.61 **In all disturbance cases, whether on the basis of a relocation or a total extinguishment, there is a duty on the claimant to “mitigate his 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.**

No Disturbance When Land Value Reflects Development Potential

- 2.62 You are only entitled to compensation for disturbance where the compensation for land taken has been based upon the market value for its existing use. Where the land compensation is based upon the development value of the land there is no entitlement to disturbance compensation.
- 2.63 This restriction only applies within a single claim. Where there are two or more claimants within one property (for example a landlord and a tenant), the actions of one claimant will not bind the other. So, for example, if the landlord of a property submits a claim based on the development value of his freehold interest in the property, this will not preclude the tenant being compensated for the existing use value of his leasehold interest plus the disturbance compensation for having to move out of the property.

Disturbance to Investment Owners

- 2.64 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 one year of date of entry, an interest in other land in the United Kingdom.

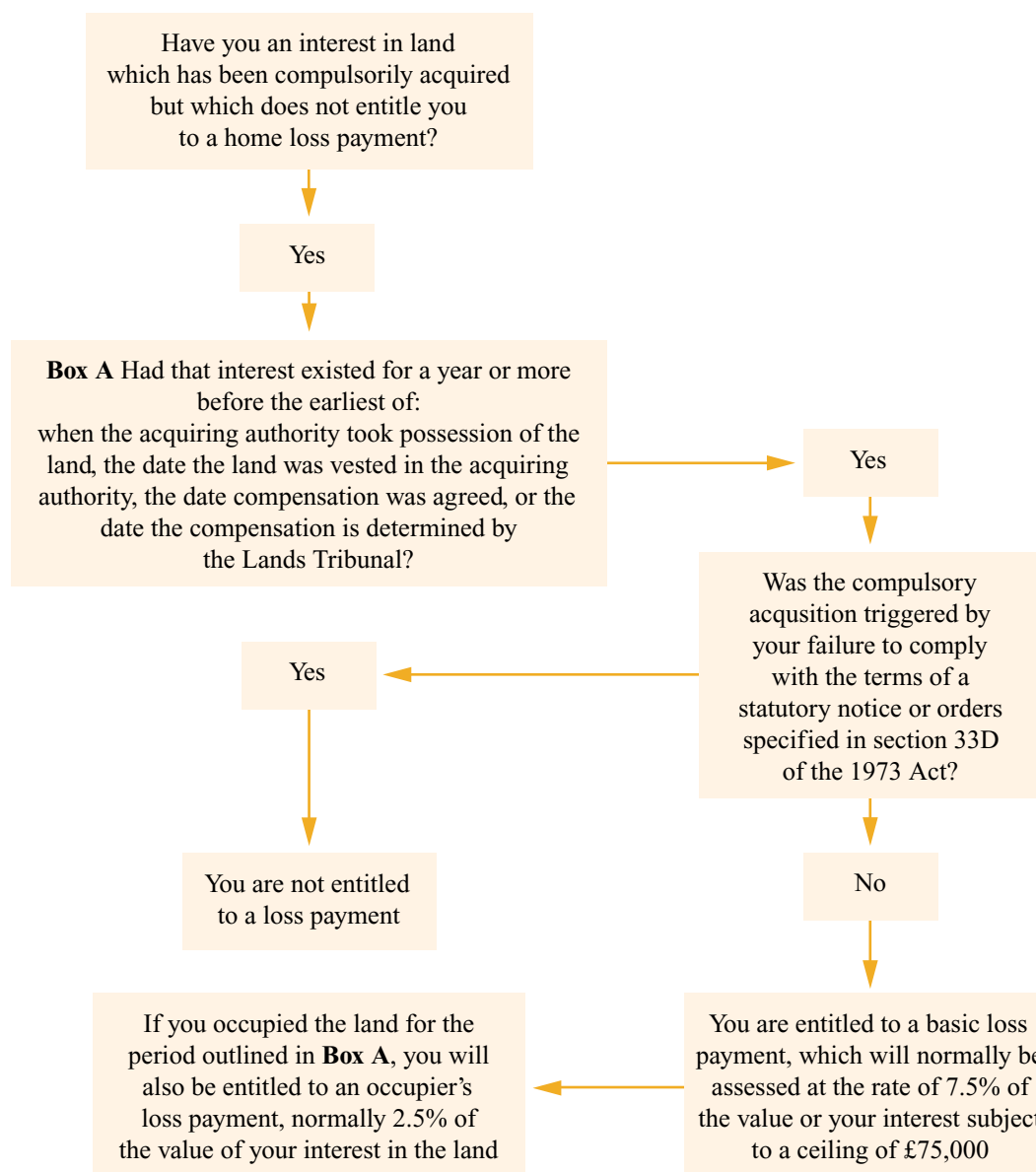


Loss Payment

- 2.65 For orders made after 31 October 2004¹, if you have a certain type of interest in the order land for which you are not entitled to receive a home-loss payment, you may be entitled to a loss payment in addition to any other compensation due. This is an additional amount to reflect and recognise the inconvenience and disruption caused by the acquisition. It is split into the basic loss payment related to the value of your interest in the property and an occupier's loss payment payable on top of that if you are also the occupier of the property. A number of criteria have to be fulfilled to qualify for the payments. These are summarised in Diagram 5 below.

Diagram 5

AM I ENTITLED TO A LOSS PAYMENT?



¹ the date on which the provisions of Part 8 of the Planning and Compulsory Purchase Act 2004 came into force.

Basic loss payment

2.66 To qualify for a basic loss payment:

- you must have an interest (whether freehold or leasehold)
- you must have held that interest for a **year or more** ending on whichever was the earliest of:
 - the date the acquiring authority took possession;
 - the date the land vested in the acquiring authority under a general vesting declaration;
 - the date compensation was agreed; or
 - the date the Lands Tribunal determined the amount of compensation.

Occupier's loss payment

2.67 You will also qualify for an additional occupier's loss payment if you qualify for the basic loss payment **and** for the period on which that qualification is based you also occupied the land.

Amount of Loss Payment

2.68 The basic loss payment is 7.5% of the value of the interest in land concerned, subject to a ceiling of £75,000.

2.69 The occupier's loss payment is subject to a ceiling of £25,000. Within that limit it is whichever is the highest of 2.5% of the value of the interest in the land concerned or either the "land amount" or the "buildings amount" as defined in sections 33B and 33C of the Land Compensation Act 1973. The methodology for calculating these amounts is complex, and you will need to seek professional advice.

Acquisition of Short Term Leasehold Interests

2.70 Different rules apply to the acquisition of what are known as short tenancies – a tenancy with less than a year left to run, or a tenancy from year to year.

2.71 The procedure adopted by the acquiring authority is different as there is no requirement to serve a Notice to Treat. This is explained in greater detail in Booklet 1 "Compulsory Purchase Procedure".

2.72 The principles adopted for the assessment of compensation are very similar to those applied to other interests in land. Compensation is payable in respect of the market value of the leasehold interest and this should reflect any rights of renewal which the tenant may have.



- 2.73 As with other interests in land there is a right to compensation for the diminution in value of retained land caused by severance and/or injurious affection. This right exists even if the land retained is held under a different lease from the land acquired, provided it is adjoining or adjacent.
- 2.74 Short term tenants are entitled to compensation for being disturbed in their occupation of the property. However, only losses relating to the period between the date of entry and expiry of the term are recoverable. Regard should be had to any right of renewal, which the tenant may have.
- 2.75 **If the short tenancy being acquired is within the security of tenure provisions of the Landlord and Tenant Act 1954, you have the choice of claiming compensation under the compulsory purchase legislation or the Landlord and Tenant Act 1954. Compensation under the Landlord and Tenant Act 1954 is based upon a multiplier of the Rateable Value of the property. You may choose whichever basis gives the higher level of compensation. You can choose one or the other, but not both.**

Occupiers with no Compensateable Interest in Land

- 2.76 There is a limited right of compensation to a displaced claimant who was in lawful occupation of land, but has no “compensateable” interest in the land. This may include tenancies at will, tenancies on sufferance and licences. Each of these amount to occupation of land or buildings 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. A fuller explanation is contained in Appendix 1 “Terms Used in Compulsory Purchase”.
- 2.77 Compensation should reflect relocation costs and any loss of goodwill. Regard is had to the amount of time the land occupied would have been likely to have remained available for the purposes of the business and to the availability of other land suitable for that purpose.
- 2.78 The rights to compensation on the basis of statutory extinguishment to a business proprietor over the age of 60 also apply. These are set out at paragraph 2.60.
- 2.79 In the case of a business tenant holding over, beyond the expiry of his lease, under the security of tenure provisions of the Landlord and Tenant legislation, there is the right to opt for Landlord and Tenant compensation if this is greater than the disturbance payment. This is described above at paragraph 2.75.

Advance Payment of Compensation

- 2.80 **It is not unusual for the acquiring authority to have taken possession of your property before compensation has been paid, or even agreed. In these circumstances, you are entitled to request an advance on your compensation. The advance payment request may be made before or after possession of the land has taken place.** The authority is obliged to make the payment within three months of receipt of the request provided they have taken possession of the land. If they have not taken possession of the land within three months from receipt of the request, the advance payment must be paid once entry onto the land occurs.

- 2.81 The level of advance payment is 90% of either:
- the agreed compensation, or
 - where there is no agreement, the acquiring authority's estimate.
- 2.82 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 mortgagee.

Blight

- 2.83 **If your property is “blighted” you may be able to serve a blight notice to compel an authority to acquire the property.**
- 2.84 The definition of blight, and the requirements and procedures for serving a blight notice are set out in Booklet 1 “Compulsory Purchase 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.

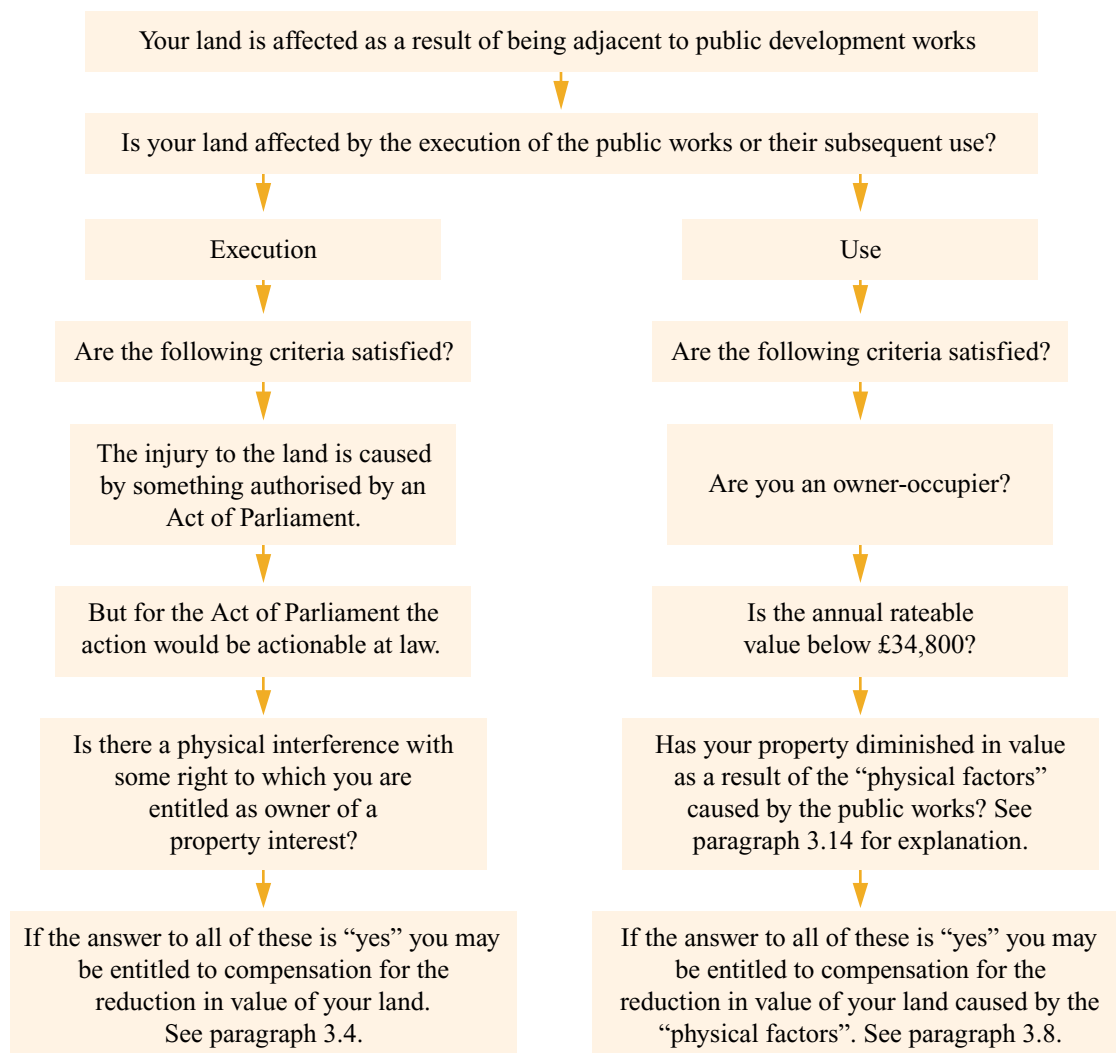
3. *Compensation When No Land is Taken*

- 3.1 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.
- 3.2 Compensation can be claimed for:
- A reduction in the value of your land caused by the **Execution** (the construction) of Public Works.
 - A reduction in the value of your land caused by the subsequent **Use** of Public Works.
- 3.3 Each is summarised in Diagram 6. Greater detail is provided in the text which follows.



Diagram 6

CLAIM WHEN NO LAND IS TAKEN



Reduction in Value Caused by the Execution of Works

3.4 Compensation is payable when a loss occurs because some right in property (as opposed to the actual property 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

- 3.5 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

- 3.6 Were it not for the fact that the works giving rise to the loss are authorised by an Act of Parliament a claim for damages could be pursued.
- 3.7 **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

- 3.8 This right to compensation is set out in Part I of the Land Compensation Act 1973. It is commonly referred to as a “Part I claim”. It applies 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).
- 3.9 **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

- 3.10 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

- 3.11 In the case of business premises, a qualifying interest is one which has an annual (rateable) value not exceeding a prescribed amount which is £34,800 in the 2010 Rating List.

Valuation Date

- 3.12 Compensation is based upon prices current on the first claim day, which is 12 months after use of the public works first commenced. Interest is payable from the date the claim is submitted until payment.



Basis of Compensation

- 3.13 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.
- 3.14 The seven physical factors are:
- Noise
 - Vibration
 - Smell
 - Fumes
 - Smoke
 - Artificial light
 - Discharge onto the land of any solid or liquid substance.
- 3.15 Any depreciation in value which is attributable to reasons other than these seven specific factors is not compensatable. For example, the loss of a view is not compensatable.
- 3.16 The important distinction between this and a claim for the execution of works (described at paragraph 3.4) 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 office, any claim under Part I 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.
- 3.17 **If you sell your property before the first claim day (see paragraph 3.12) you must make a claim between exchanging contracts and completion or you will lose your rights to compensation.**

4. Compensation for the Adverse Effects of Development

- 4.1 In addition to decreasing the value of land, development works may cause inconvenience and discomfort to people living in the area. An obvious example is the development of a new motorway.
- 4.2 Although financial compensation can be paid for the reduction in value of your property if the requirements of the Compensation Code are fulfilled, this will not remove the source of the discomfort. Acquiring authorities have therefore been given certain duties and discretionary powers to take action which will 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.

- 4.3 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. Thus, in the case of business owners and occupiers it is only relevant for those businesses which involve the provision of residential accommodation (for example, nursing homes), or where business premises include elements of residential accommodation (for example, a flat above a shop). If your premises do include some form of residential accommodation you should also read booklet 4.**
- 4.4 In addition to their duty to undertake noise insulation works, acquiring authorities have certain discretionary powers to reduce the effects of their development by agreement with those whose premises are affected. Such measures can include sound-proofing (in a wider range of circumstances than those to which the statutory duty applies); acquiring more land than that required for the actual development; carrying out earth-moulding and other landscaping works; and paying your expenses if the authority were to agree that you needed to move out temporarily during the construction works. These powers are aimed at residential properties but can be applied more widely by agreement between the authority and those directly affected.
- 4.5 Further details about these duties and powers are provided in Booklet 5 “Mitigation Works”.

5. Fees

- 5.1 The acquiring authority will usually pay the reasonable surveyors fees which you incur for negotiating claims. Before employing a surveyor it is wise to ensure that you both agree a reasonable basis for calculating fees. **The acquiring authority should be able to advise you on the payment of fees and should be consulted if there is any doubt.**
- 5.2 Legal fees for conveyancing are also payable, and likewise a reasonable basis for their calculation should be agreed.

6. Interest

- 6.1 Where an acquiring authority enter and take possession of land before agreeing compensation, simple interest, at a prescribed rate, is payable from the date of entry until compensation is paid.
- 6.2 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.

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.

Compensation Code

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

Entry

See “Taking of Entry”.

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.

Goodwill

The price which a purchaser of a business is prepared to pay, above the value of the premises and stock, for the probability that customers will continue to resort to the old place of business, or continue to deal with the firm of the same name: it is the benefit or advantage which a business has in its connection with its customers.

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.

Lands Tribunal

Marriage Value

Latent value which is or would be released by the merger of two or more interests in land. For example, two adjoining parcels may be worth more as one property than the aggregate of their separate values. Similarly, two 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.

Mitigation of Loss

The duty of a claimant seeking compensation to take any reasonable steps open to him 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.

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.

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. A minimum of 14 days notice must be given.

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 recipients interest in the land and his claim for compensation and states that the authority are willing to treat for the purchase of the land.

Public Development

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

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.



Relevant Date

In the context of a Public Inquiry it is the date of the letter which the Confirming Minister sends to the acquiring authority and the objectors confirming that an Inquiry is to be held. This date is used to establish timetables for the Inquiry procedure.

Statement of Case

A statement prepared by the acquiring authority which sets out full particulars of the case to be put forward at the inquiry and justifies the reasons for making the CPO.

Statement of Reasons

Taking of Entry

This is the act of an acquiring authority physically entering and taking possession of a property following service of Notice to Treat and Notice of Entry.

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.

British Property Federation (BPF)

7th Floor
1 Warwick Row
London SW1E 5ER
Tel: 020 7828 0111
Web Site: www.bpf.org.uk
E-mail: info@bpf.org.uk

Community Legal Service (CLS)

Tel 0845 345 4345
Web Site: www.clsdirect.org.uk

Council for the Preservation of Rural England (CPRE)

128 Southwark Street
London SE1 0SW
Web Site: www.cpre.org.uk
E-mail: info@cpre.org.uk

Country Land and Business Association (CLA)

16 Belgrave Square
London SW1X 8PQ
Tel: 020 7235 0511
Web Site: www.cla.org.uk
E-mail: mail@cla.org.uk

Office of the Deputy Prime Minister (ODPM)

Eland House
Bressenden Place
London SW1E 5DU
Tel: 020 7944 3000
Web Site: www.odpm.gsi.gov.uk
E-mail: cpocrown@odpm.gsi.gov.uk

Law Society

113 Chancery Lane
London WC2A 1PL
Law Society Information Services: 0870 606 6575
Web Site: www.lawsociety.org.uk



National Assembly for Wales

Cathays Park
Cardiff CF10 3NQ
Tel: 029 20 825111
Web Site: www.wales.gov.uk

National Association of Citizens Advice Bureaux (NACAB)

You should check your local telephone directory or call directory enquiries to find out details of your local branch office. Details of local offices can be obtained from the web site below.

Web Site: www.nacab.org.uk
E-mail: adviceguide@nacab.org.uk

National Farmers Union (NFU)

Agriculture House
164 Shaftesbury Avenue
London WC2H 8HL
Tel: 020 7331 7200
Web Site: www.nfu.org.uk
E-mail: NFU@nfu.org.uk

Royal Institution of Chartered Surveyors (RICS)

RICS Contact Centre
Surveyor Court
Westwood Way
Coventry CV4 8JE
Compulsory Purchase Helpline: 0870 333 1600
Web Site: www.rics.org
E-mail: contactrics@rics.org

Royal Town Planning Institute (RTPI)

41 Botolph Lane
London EC3R 8DL
Tel: 020 7929 9494
Web Site: www.rtpi.org.uk

17 Carlton House Terrace
London SW1Y 5AS
Tel: 020 7930 8903
Web Site: www.tpca.org.uk
E-mail: tpca@tpca.org.uk

Valuation Office Agency (VOA)

Head Office

New Court

Carey Street

London WC2A 2JE

Tel: 020 7506 1700

Web Site: www.voa.gov.uk

E-mail: customerservices@voa.gsi.gov.uk



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