

Guidance

Compulsory purchase and compensation: guide 2 - compensation to business owners and occupiers

Guidance about compensation to owners and occupiers of business premises 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>)

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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) (<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 2 – deals solely with the issue of compensation for owners and occupiers of businesses affected by a CPO. Other guides in the series explain rights to compensation for [agricultural owners and occupiers](https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-3-compensation-to-agricultural-owners-and-occupiers) (Guide 3) (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-3-compensation-to-agricultural-owners-and-occupiers>) and for [residential owners and occupiers](https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-owners-and-occupiers) (Guide 4) (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-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 service (<https://www.ricsfirms.com/helplines/compulsory-purchase/>) 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 39 to 56 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 23 to 38](#))
 - disturbance payments (see [paragraphs 39 to 56](#))
 - loss payments (see [paragraphs 57 to 62](#))
 - severance and injurious affection for retained land (see [paragraphs 63 to 75](#))
- 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 93 to 95](#))
 - the subsequent use of public works (Part 1 claim) (see [paragraphs 96 to 106](#))

Mitigation works

16. 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. It is only relevant therefore, in the case of business owners and occupiers where the business involves 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). Your professional adviser will be able to provide further advice on this matter. (If your premises do include some form of residential accommodation you should also read [Guide 4: Compensation to residential owners and occupiers](#) (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-owners-and-occupiers>).)

Short term leasehold interests and occupiers with no compensatable interest

17. Paragraphs 76 to 85 of this guide set out the compensation entitlement for those who have short term leases and those who are in lawful occupation of the land to be acquired but who have no compensatable interest in the land.

Advance payments

18. 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 86 to 90 of this guide for further information.

Interest

19. 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

20. 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

21. 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

22. 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

23. 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

24. 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.

25. 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').

26. 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

27. 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 1 or more other land interests, it would be worth more than the sum of their individual values ('marriage value')

28. 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.

29. 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'.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 55](#)).

Unlawful use of the land

35. 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.

36. 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

37. 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'). Both freeholders and leaseholders can claim on this basis although it is more difficult to justify if there is only a short lease.

38. There are 4 general tests that must be satisfied to justify payment of the reasonable cost of reinstatement:

- the land must be used for a purpose which would continue if it was not acquired
- there must be no general demand or market for land for the purpose
- there must be a 'bona fide' intention to reinstate – this is generally a question of fact

- if the cost of reinstatement would be disproportionate to the value of the whole enterprise then compensation for equivalent reinstatement may not be allowed – the Upper Tribunal (Lands Chamber) has discretion as to whether to allow a claim on this basis

Disturbance payments

39. 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.

40. 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.

41. 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.

42. 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 56.

43. 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. Usually, on the grounds of mitigating your loss, you will be expected to try and 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.

44. 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, it may be legitimate to say that the correct basis of compensation is extinguishment as no prudent business owner would incur the costs of relocating the business if these far exceeded the end value of the business. However, each particular case

must be treated on its merits and you should seek professional advice on business valuation issues.

45. There is no obligation on an acquiring authority to provide alternative premises. However, acquiring authorities may assist claimants to identify potential relocation properties available on the market. Accordingly, you should contact the acquiring authority and local property agents at an early stage to register property search requirements.

46. 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 could 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 prudent therefore, to establish the position before accepting such an offer.

47. Examples of items which can be claimed depending on your circumstances are set out below.

Relocation

48. 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 land.

49. 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.

50. Although not an exhaustive list, 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 property
- 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

Extinguishment

51. 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

Relocation or extinguishment?

52. 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.

53. However, in certain circumstances you may be statutorily entitled to choose compensation based on extinguishment if you wished. The criteria to be fulfilled are:

- on the date that possession of the business is given up, you are:
 - a) the sole proprietor of the business or it is run jointly by you and your spouse and you are aged 60 or over
 - b) a partner in the business and all the partners are aged 60 or over
 - c) a shareholder in the business and each majority shareholder is aged 60 or over and each minority shareholder is either aged 60 or over or is the spouse of a shareholder who is 60 or over
- on that date the land is or forms part of a property with an annual (rateable) value not exceeding a 'prescribed amount' (£36,000 in England excluding Greater London and £44,200 in Greater London in the 2017 Valuation List and in Wales £36,000) (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)
- 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

54. In all disturbance cases, whether on the basis of a relocation or a total extinguishment, 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

55. 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

56. 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.

Loss payments

57. A loss payment is an additional amount paid to eligible claimants to reflect and recognise the inconvenience and disruption caused by compulsory acquisition. If you are displaced from your residence as a result of compulsory purchase, you may be entitled to a home loss payment (see Guide 4 (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-owners-and-occupiers>)). If you are not entitled to receive a home loss payment, you may nevertheless be entitled to a loss payment depending on the nature of your land ownership. Loss payments for non-residential owners and occupiers include the basic loss payment and an occupier's loss payment. A number of criteria have to be fulfilled to qualify for the payments.

Basic loss payment

58. 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 Upper Tribunal (Lands Chamber) determined the amount of compensation

Occupier's loss payment

59. 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

60. The basic loss payment is 7.5% of the value of the interest in land concerned, subject to a ceiling of £75,000. This is set out in section 33A of the Land Compensation Act 1973.

61. 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 section 33C of the Land Compensation Act 1973. The methodology for calculating these amounts is complex and you will need to seek professional advice.

62. The amounts of these loss payments may be reviewed from time to time and your professional adviser will be able to confirm the current amounts.

Severance and injurious affection

63. 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.

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

65. 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 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.

66. 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. 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.

67. This can be demonstrated with a simple hypothetical example. You might own a business unit of say 1,000 square metres which was split into 2 equal bays of 500 square metres and 1 of those bays gets acquired for the construction of a new relief road.

68. If you could demonstrate that there was greater demand for, and value in, units of 1,000 square metres than 500 square metres 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.

69. If it could also be demonstrated that the value of the retained land had depreciated as a result of being adjacent to a relief road the compensation would also reflect this reduction in value under the heading of injurious affection.

Betterment

70. 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'.

71. 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.

72. An example of this would be if you owned 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.

73. 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.

74. 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

75. 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 short term leasehold interests and occupiers with no compensatable interest in land

Short term leasehold interests

76. 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.

77. 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 Guide 1: Compulsory purchase procedure (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure>).

78. 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 right or likelihood of renewal which the tenant may have.

79. 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.

80. Short term tenants are entitled to compensation for being disturbed in their occupation of the land. 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 or likelihood of renewal, which the tenant may have.

81. 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 compensatable interest in land

82. There is a limited right of compensation to a displaced person who was in lawful occupation of land but has no 'compensatable' interest in the land. This 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.

83. Compensation may reflect relocation costs and any loss of goodwill. The amount of time the land occupied would have been likely to have remained available for the purposes of the business and the availability of other land suitable for that purpose are taken into account.

84. The rights to compensation on the basis of statutory extinguishment to a business owner over the age of 60 also apply. These are set out at [paragraph 53](#).

85. 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 81](#).

Advance payments

86. At any time after a CPO has been confirmed (see [Guide 1](#) (<https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-1-procedure>)), 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 of receipt of any further information which was requested

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

87. 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

88. 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.

89. 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 acquiring authority to make an advance payment direct to your lender.

90. 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

91. 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.

92. 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)
- the subsequent use of public works (Part 1 claim)

Reduction in value caused by the execution of works

93. 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

94. 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

95. 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

96. 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).

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

98. 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

99. 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

100. In the case of business premises, a qualifying interest is one which has an annual (rateable) value not exceeding a prescribed amount which is £36,000 in England excluding Greater London and £44,200 in Greater London in the 2017 Valuation List and in Wales, £36,000. These prescribed

amounts may change – your professional adviser will be able to confirm the amounts which will apply in your particular case.

Valuation date

101. Compensation is based upon prices current on the first claim day, which is 12 months after the relevant date (see paragraph 99). Interest is payable from the date the claim is submitted until payment.

Basis of compensation

102. 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.

103. The 7 physical factors are:

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

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

105. The important distinction between this and a claim for the execution of works (described at [paragraph 93](#)) 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 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.

106. If you sell your property in the 12 months between the relevant date and the first claim day (see [paragraph 101](#)) you must make a claim between exchanging contracts and completion or you will lose your right to compensation.

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.

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.

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.

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 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.

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