



# Phase 2b Western Leg Information Paper

## C8: Compensation code for compulsory purchase

This paper outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (Crewe - Manchester) Bill. Content will be maintained and updated as considered appropriate during the passage of the Bill.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

**The Helpdesk can be contacted:**

**by email:** [HS2enquiries@hs2.org.uk](mailto:HS2enquiries@hs2.org.uk)

**by phone (24hrs):** 08081 434 434  
08081 456 472 (minicom)

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2 Snowhill, Queensway  
Birmingham  
B4 6GA

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## 1 Introduction

- 1.1 High Speed Two (HS2) is the Government's scheme for a new, high speed north-south railway, which is being taken forward in a number of phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route from the West Midlands to Crewe. The Phase 2b Western Leg will connect Crewe to Manchester. As set out in the Integrated Rail Plan, published in November 2021, HS2 East is proposed to deliver a new high speed line from the West Midlands to East Midlands Parkway.
- 1.2 HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works under the terms of a Development Agreement entered into with the Secretary of State for Transport.
- 1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017 and Phase 2a by the High Speed Rail (West Midlands – Crewe) Act 2021.
- 1.4 In January 2022, the Government introduced a hybrid Bill to Parliament (hereafter referred to as 'the Bill'), to seek powers for the construction and operation of the Phase 2b Western Leg (the Proposed Scheme), which is called the High Speed Rail (Crewe – Manchester) Bill. The Proposed Scheme comprises the Phase 2b Western Leg from Crewe to Manchester and several off-route works. It also facilitates the delivery of Northern Powerhouse Rail by providing the Crewe Northern Connection and junctions and other infrastructure to be used in future schemes.
- 1.5 The work to produce the Bill includes an Equalities Impact Assessment and an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed

Scheme. For more information on the EMRs please see Information Paper E1: Control of environmental impacts.

1.6 The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. There may be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the EMRs and any commitments provided in the information papers.

1.7 These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the Proposed Scheme have been reached.

## **2 Overview**

2.1 This information paper outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme.

## **3 Nature and purpose**

3.1 The Compensation Code is not a single document but a collective term used for the principles set out in Acts of Parliament, principally the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Land Compensation Act 1973, the Planning & Compulsory Purchase Act 1991 and the Planning & Compulsory Purchase Act 2004. This is supplemented by case law, relating to compensation for compulsory acquisition. This is a complex area of law and valuation practice and prospective claimants for compensation may well find it helpful to seek professional advice.

- 3.2 In Scotland the principal Acts in which the compensation code is set out are the Lands Clauses Acts (i.e. the Lands Clauses Consolidation (Scotland) Act 1845 and subsequent Acts amending this Act), the Land Compensation (Scotland ) Act 1963 and the Land Compensation (Scotland) Act 1973.
- 3.3 The Compensation Code is applied by the Bill to compulsory purchase of land required for the Proposed Scheme.
- 3.4 The principal purpose of the Compensation Code is to provide for the payment of fair compensation to a landowner whose land is compulsorily purchased for public works.

## **4 Compensation where land is taken**

- 4.1 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 Open Market Value of Land Taken, assuming that the Proposed Scheme does not exist;
  - Severance and Injurious Affection - where part only of the claimant's land holding is compulsorily acquired, they are entitled also to compensation for any depreciation in the value of their retained land that results from the construction and operation of the Proposed Scheme;
  - Disturbance - this represents the costs and losses incurred by the claimant as a result of being displaced from occupation of his or her property. This head of claim is generally only available to occupiers of property, but it may also apply to the rights of an investment owner to recover incidental costs in particular circumstances. See the documents referenced under Section 10 below for further detailed information;
  - Statutory Loss Payments - these are additional set payments to which the claimant is entitled under sections 29 and 33A-C of the Land

Compensation Act 1973, depending on the nature of his or her interest. For example, a residential owner occupier displaced from their home is entitled to receive a home loss payment valued at 10% of the value of their property, subject to a lower limit of £7,100 and an upper limit of £71,000. In Scotland Statutory Loss Payments are covered by sections 27, 30 and 31 of the Land Compensation (Scotland) Act 1973; and

- Fees - the reasonable surveyors fees incurred in preparing and negotiating a compensation settlement together with solicitors reasonable fees for any conveyancing are normally paid by the acquiring authority. Further details about the fees are contained in Information Paper C9: Recovery of costs by property owners.

## 5 Advance payments

- 5.1 The owner of land subject to compulsory purchase for the Proposed Scheme, may request an advance payment on account of compensation due for the acquisition of the land after the acquisition has been authorised. The Secretary of State must make such payment if requested either before the end of the day on which notice of entry is given or a general vesting declaration is executed or, if later, before the end of two months from the date of the request for advanced payment.
- 5.2 In terms of calculating the amount of payment, this would be either 90% of the Promoter's estimate of the compensation due or, if the amount of compensation has been agreed, 90% of that figure. If the advance payment is later found to have exceeded the amount of compensation due, the excess must be repaid. In Scotland, requests for advanced payments will be dealt with in accordance with the Land Compensation (Scotland) Act 1973.
- 5.3 Claims for advance payment should be in writing, set out the nature of the interest held in land and be full evidenced and justified. If insufficient information has been included, then HS2 Ltd can request additional information within 28 days of receiving the request. All applications for

advanced payments need to be made in writing on a claim form with all the relevant property ownership and other relevant details for consideration by HS2. Further information can be found within the Department for Levelling Up, Housing and Communities and Scottish Government guidance, details of which are set out in the references.

## **6 Prompt payment of compensation**

6.1 The Promoter will, in line with wider government policies, require the nominated undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of land.

## **7 Compensation where no land is taken**

7.1 Section 10 of the Compulsory Purchase Act 1965 ( and in Scotland, section 6 of the Railways Clauses Consolidation (Scotland) Act 1845) provide the basis for a landowner to claim compensation for injurious affection caused by the execution of public works, such as the Proposed Scheme. Compensation is assessed by reference to the resulting diminution in value of the claimant's land.

7.2 "Injurious affection" is a technical term. Broadly speaking, it means an interference with a landowner's enjoyment of their land for which, in the absence of the statutory authority conferred by the Bill, the landowner could bring a claim in the law of nuisance against the Promoter. A typical example is a case in which the Bill authorises the Promoter to execute works that interfere (permanently or temporarily) with a landowner's use and enjoyment of a private right of access onto his property.

7.3 Section 10 of the Compulsory Purchase Act 1965 (and section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 do not provide the basis for a claim for compensation for disruption and inconvenience experienced by neighbouring landowners and occupiers during the construction of the Proposed Scheme. The Promoter and a nominated undertaker are under a legal duty to ensure that construction of the

Proposed Scheme is carried out by their contractors and sub-contractors with reasonable care and skill. Provided that duty is fulfilled, the Promoter and a nominated undertaker are entitled to exercise the works powers under the Bill without any obligation to pay compensation for the execution of the works, other than in the circumstances outlined in paragraphs 6.1 and 6.2 above.

- 7.4 Part 1 of the Land Compensation Act 1973 (and Part 1 of the Land Compensation (Scotland) Act 1973 in Scotland) provides the basis for a qualifying landowner to claim compensation for the depreciation in the value of his or her land due to a physical factor or factors resulting from the operation of the Proposed Scheme. i.e. after the railway has been brought into use. "Physical factors" are defined as "noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land of any solid or liquid substance". Claims for Part 1 compensation can be made once the Proposed Scheme has been in operation for a period of 12 months. Compensation is assessed by reference to the resulting diminution in value of the claimant's land.

## **8 Duty to mitigate loss**

- 8.1 There is a general duty on all claimants for compensation to take reasonable steps to mitigate their losses. The Promoter will resist a claim insofar as it seeks compensation for losses that could reasonably have been avoided or that are not reasonably incurred as a result of compulsory purchase of the claimant's land for the Proposed Scheme. In certain circumstances (for example, in a case where the value of the claimant's retained land is enhanced by the presence of the Proposed Scheme), the amount of compensation payable to the claimant may be reduced to reflect "betterment".

## **9 Disputes**

- 9.1 The Promoter anticipates that the majority of claims for compensation will be resolved by agreement, following negotiations between the parties and their respective agents and advisers. In the event that a

compensation claim cannot be settled by agreement, the dispute may be referred by either party to the Upper Tribunal (Lands Chamber) for resolution. In such a case, the Upper Tribunal (Lands Chamber) will determine the amount of compensation payable to the claimant. In Scotland the tribunal is the Lands Tribunal for Scotland.

9.2 Alternatively, the parties may agree to alternative dispute resolution (ADR). ADR can be a faster and cheaper way of resolving a case than taking it to Court or Tribunal for a resolution.

9.3 ADR can take many different forms and can be used to:

- help the parties negotiate to reach a mutually acceptable compromise;
- involve and independent expert to determine a fair amount of compensation;
- help the parties resolve some elements of the claim to reduce time and expense at the Upper Tribunal (Lands Chamber)/Land Tribunal for Scotland; and
- make both sides bring forward information or arguments needed to resolve the claim before a tribunal case is required.

9.4 There are a number of different forms of ADR used to resolve disputed matters. There are three forms which are most likely to be appropriate in relation to disputes in connection with compensation. Additional detail on each type of ADR is included in the guidance booklet (a link to which can be found in the references section at the end of this paper), and can be summarised as:

- Early Neutral Evaluation - An independent person or panel is appointed by those in dispute to provide a reasoned, written Opinion setting out its view of the likely outcome of the case after hearing all parties' evidence. The Opinion is not a judgement nor a decision but can be used by the parties on which to base further negotiations;
- Mediation - A structured negotiation in which a trained mediator works with the parties to help them agree a mutually acceptable solution.



Mediation can take place face to face or the mediator can go between the parties, individually identifying issues and possible solutions; and

- Independent Expert Determination - The expert considers the material or evidence put forward by the parties to the dispute, either orally or in writing, and makes a determination based on that evidence. The expert's determination or award is binding on the parties.

9.5 In addition to these forms of ADR, the Secretary of State has developed a further form of ADR for small value disturbance disputes. For qualifying cases, parties affected can refer their case to the Residents' Commissioner if their land or property is being acquired and there is a dispute over the amount of disturbance compensation of no more than £10,000. A link to further guidance can be found in the references section at the end of this paper.

9.6 If you consider that this may be of interest then please discuss this with your case manager who will be able to explain the type and form of ADR suitable for your specific case. If HS2 Ltd considers that ADR is unsuitable then it will provide an explanation.

9.7 The existence of an outstanding dispute between the parties over the amount of compensation payable to the claimant will not delay the Promoter taking possession of the claimant's land under the compulsory purchase procedures.

9.8 Claims for compensation are subject to a statutory time bar (known as a "limitation period"). Any claim referring a land compensation claim to the Upper Tribunal (Lands Chamber) must be made within 6 years of the date upon which the claimant's right to claim compensation arises.

## **10 CPA Protocol**

10.1 The Compulsory Purchase Association has developed a UK wide Protocol that seeks to ensure that, before a reference to the Upper Tribunal is made, the claimant and the compensating authority have:

- exchanged sufficient information to understand each other's positions;

- discussed each other's positions thoroughly and constructively;
- sought to narrow the issues that the Tribunal would have to determine if a Reference were made; and
- considered the use of alternative dispute resolution to avoid a Reference being made or to determine at least some of the issues which the Tribunal would otherwise have to determine.

10.2 The Secretary of State will follow the Protocol where appropriate as it represents 'best practice' encourages those affected by compulsory purchase to do so as well.

10.3 A link to the CPA Protocol can be found in the references section at the end of this paper.

## 11 Independent advice

11.1 It is important that claimants obtain the right professional advice from practitioners experienced in compulsory purchase and compensation. Further information can be found in Information Paper C9: Recovery of costs by property owners.

11.2 The Royal Institution of Chartered Surveyors (RICS) operates a customer helpline scheme that can put people in touch with suitably experienced firms. Claimants who own land and property required for HS2 can contact one of the RICS regulated firms, some of whom may be able to offer up to 30 minutes free consultancy. A link to this scheme can be found in the references section at the end of this paper.

11.3 The RICS general contact details are:

**Royal Institution of Chartered Surveyors**

12 Great George Street (Parliament Square)

London

SW1P 3AD

Tel: 024 7686 8555

[contactrics@rics.org](mailto:contactrics@rics.org)

Lines are open 8.30 to 17.30 (GMT) Monday to Friday

11.4 The RICS has also established a landing page on their website containing useful information for parties affected by compulsory purchase. A link to this can be found in the references section at the end of this paper.

11.5 The Central Association of Agricultural Valuers (CAAV) may also be able to assist owners in rural areas in England. Their contact details are:

**The Central Association of Agricultural Valuers**

Harts Barn Farmhouse

Monmouth Road

Longhope

GL17 0QD

Tel: 01594 810701

[enquire@caav.org.uk](mailto:enquire@caav.org.uk)

11.6 The Scottish Agricultural Arbiters and Valuers Association (SAAVA) which is affiliated to the CAAV may also be able to assist in relation to land in Scotland. Their contact details are:

**The Scottish Agricultural Arbiters and Valuers Association (SAAVA)**

Cothill

Duns

Berwickshire

TD10 6YW

## 12 More information

12.1 More detail on the Bill and related documents can be found at [www.gov.uk/hs2-phase2b-crewe-manchester](http://www.gov.uk/hs2-phase2b-crewe-manchester).

## References

Compulsory purchase process and the Crichton Down Rules:

<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichton-down-rules-guidance>

RICS guide to compulsory purchase

<https://www.ricsfirms.com/media/1183/rics-consumer-guide-compulsory-purchase.pdf>

RICS Compulsory Purchase Standards and Guidance

<https://www.rics.org/uk/upholding-professional-standards/sector-standards/land/compulsory-purchase/>

RICS Customer Helpline Scheme

<https://www.ricsfirms.com/helplines>

Surveyors advising in respect of compulsory purchase and statutory compensation

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/land/surveyors-advising-in-respect-of-compulsory-purchase-and-statutory-compensation-1st-edition-rics.pdf>

Alternative dispute resolution for compulsory purchase claims

<https://www.hs2.org.uk/documents/alternative-dispute-resolution-for-compulsory-purchase-claims/>

Faster Evaluation of Small Value Disturbance Disputes

[https://assets.hs2.org.uk/wp-content/uploads/2021/09/CS1612\\_Faster-Evaluation-of-Small-Value-Disturbance-Disputes\\_WEB.pdf](https://assets.hs2.org.uk/wp-content/uploads/2021/09/CS1612_Faster-Evaluation-of-Small-Value-Disturbance-Disputes_WEB.pdf)

Land Compensation Claims Protocol

<http://compulsorypurchaseassociation.org/land-compensation-claims-protocol.html>

Compulsory purchase process and the Crichton Down Rules

<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichton-down-rules-guidance>

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Scottish Government Guidance on the compulsory purchase process in Scotland

<https://www.gov.scot/publications/compulsory-purchase-scotland-guide-property-owners-occupiers/>