



Compulsory Purchase and Compensation

Compensation to Agricultural Owners and Occupiers



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Office of the
Deputy Prime Minister

Creating sustainable communities

Compulsory Purchase and Compensation

Compensation to Agricultural Owners and Occupiers

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Office of the Deputy Prime Minister: London



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Foreword

This is booklet 3 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 Compensation to Business Owners and Occupiers

Booklet 3 This Booklet

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 agricultural 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, in the case of major infrastructure projects it may be necessary to realign utilities and services over land that adjoins the project. 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. The information contained in 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 acquiring authority may meet the reasonable professional fees incurred in preparing and negotiating your compensation claim.

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. You should note that different rules apply depending on whether you are a freehold owner or an agricultural tenant.
 - 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.

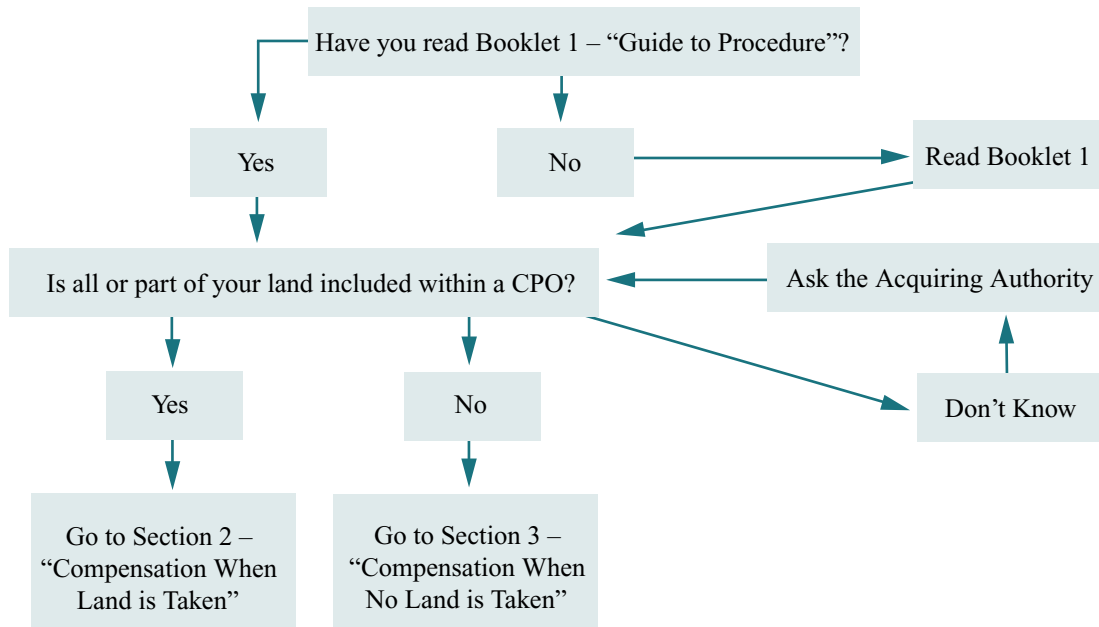
Useful Contacts

- 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 and Injurious Affection**

This means the depreciation in 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 2.51), this Head of Claim is only available to occupiers of the property. It represents the costs incurred and losses sustained 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.

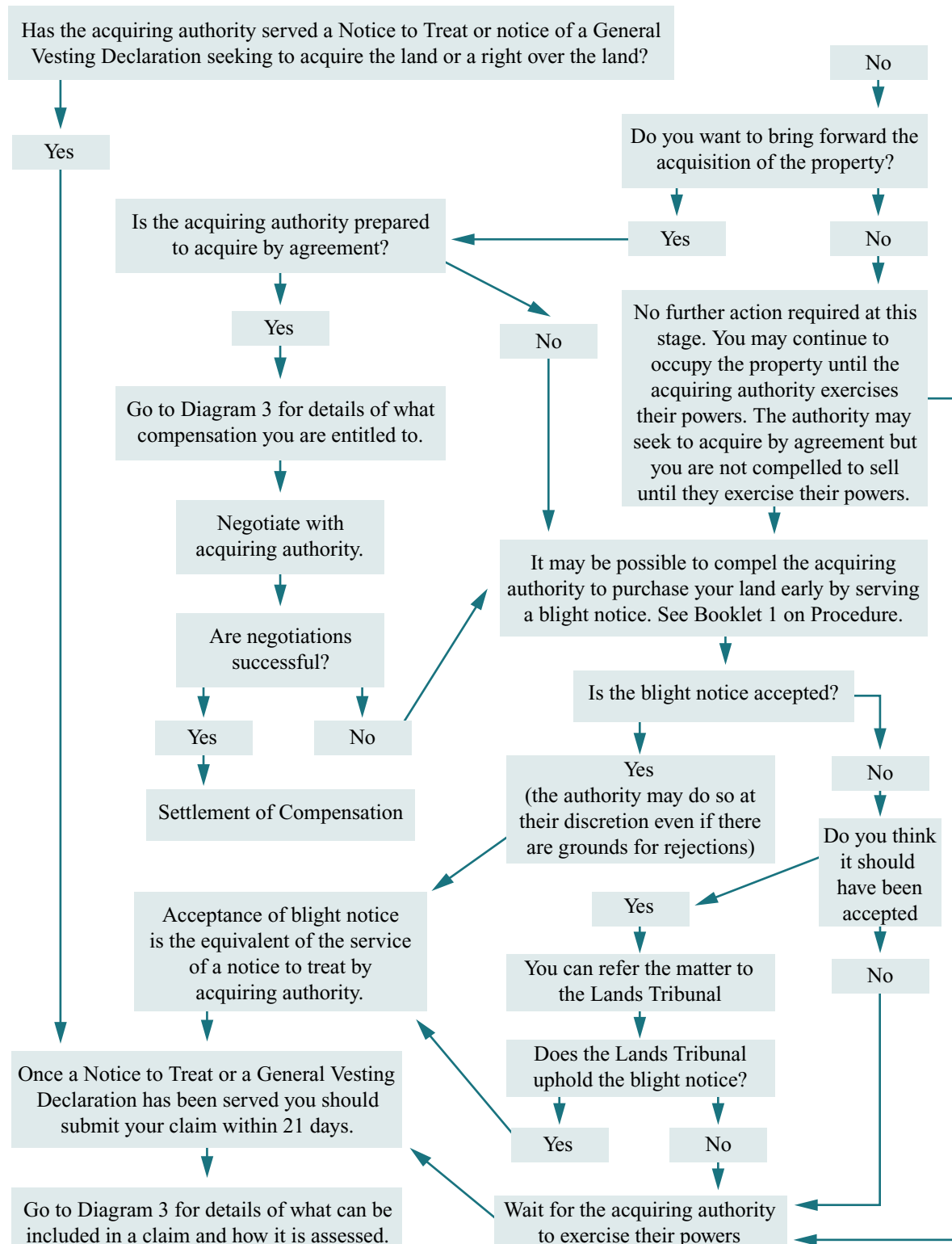
- 2.5 A more detailed explanation of the basis of compensation under each of these heads of claim is set out below.



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

Diagram 2

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, when dealing with unusual or 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.
- 2.8 It is extremely unlikely that circumstances giving rise to a claim for equivalent reinstatement will occur in the case of agricultural properties. Accordingly, this basis of compensation is not covered in this booklet. **If you feel that your property which is being acquired is one for which there is no general market or demand you should seek professional advice.**
- 2.9 Compensation following the acquisition of land for which there is a general market or demand is considered below.

Disregard Compulsion

- 2.10 No addition to or reduction in 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

- 2.11 The value is based upon what the land might be expected to realise if sold in the open market by a willing seller.
- 2.12 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.
- 2.13 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

- 2.14 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”).
- 2.15 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.
- 2.16 **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

- 2.17 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, may not be taken into account.
- 2.18 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 may be taken into account.

Compensation Where Additional Development Permitted After Acquisition

- 2.19 **In certain circumstances there is limited opportunity to make a claim for additional compensation after your land has been acquired.**
- 2.20 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).

2.21 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 the section about planning assumptions at paragraph 2.14). The provisions also apply to planning permission granted in respect of any larger area of land which includes within it the land compulsorily acquired.

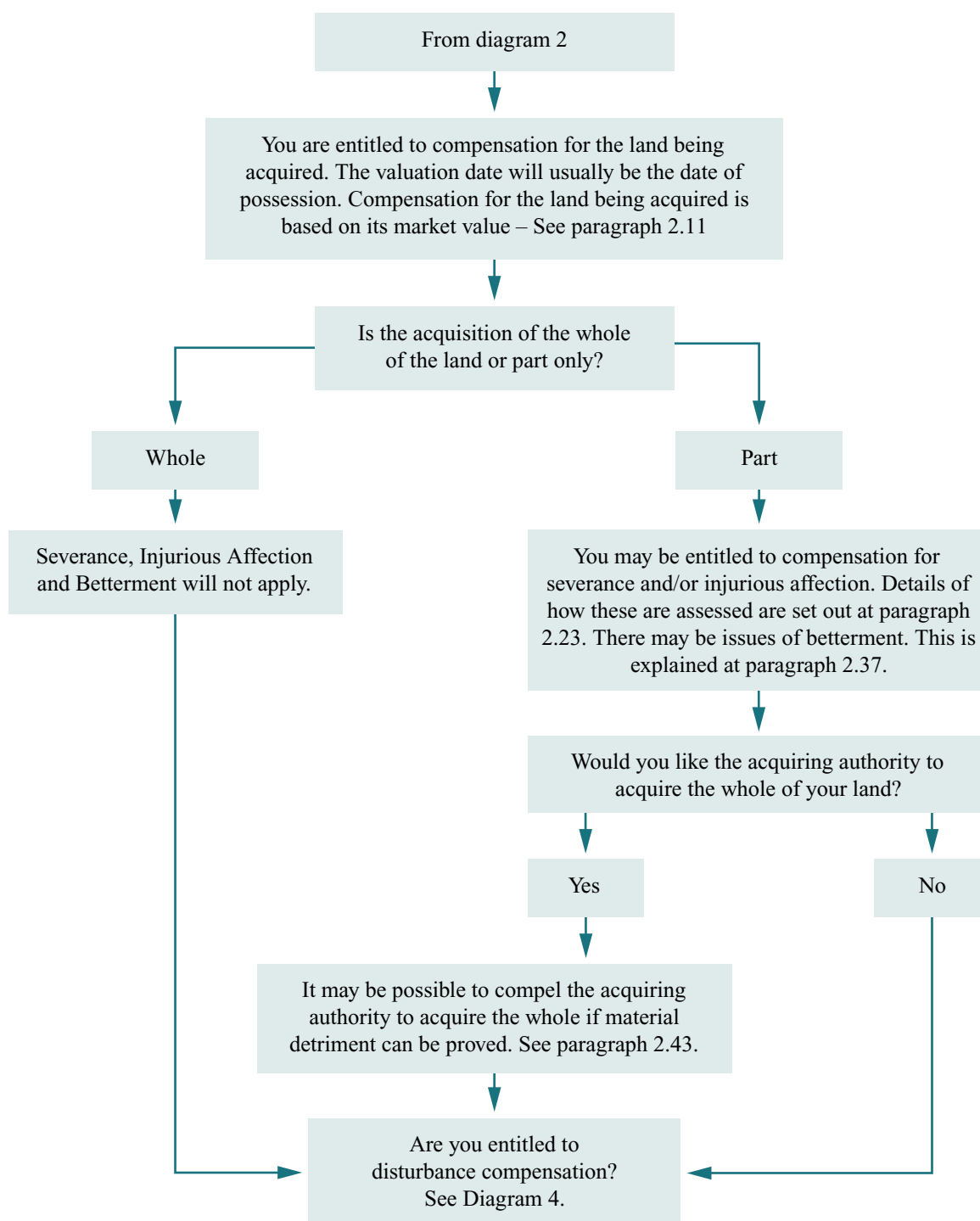
Acquisition of Part Only

2.22 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 and Injurious Affection

2.23 If you have a part only of your land or property acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain.

- 2.24 The compensation is for the depreciation in the value of the retained land and is referred to as “severance” and/or “injurious affection”.
- 2.25 The two elements of this head of claim should be considered in isolation.

Severance

- 2.26 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 field it may no longer be possible to have access by vehicle to part of the field, rendering it virtually useless and therefore less valuable.

Injurious Affection

- 2.27 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 a farm holding may be acquired for a new road, the impact of the use of the road on the entire operation could be considerable.
- 2.28 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.
- 2.29 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.
- 2.30 This can be demonstrated with a simple hypothetical example. You might own a block of farmland of 50 hectares, which gets split into two equal blocks of 20 hectares following the acquisition of 10 hectares for the construction of a new railway. In these circumstances, you would receive compensation for the 10 hectares of the land taken based on its market value.
- 2.31 If you could demonstrate that there was a higher land value per hectare as a single block of 50 hectares and that accordingly the retained property has depreciated in value as a result of being severed from the part acquired an additional claim in respect of severance can be sustained.
- 2.32 Additional compensation for severance will arise if the resultant shape of the fields or access restrictions make future farming operations difficult or impractical.
- 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 in effect 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 where land 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 totality of 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 and the land acquisition would have a serious effect on the rest of your holding. **Following receipt of notice to treat from the acquiring authority you may within two months serve a counter notice claiming that all your other land is not reasonably capable of being farmed and requiring the authority to purchase that other land.** You do not have this same right if your tenancy is for a year or less or from year to year. The authority can accept the counter notice or, if they do not, the issue can be referred to the Lands Tribunal for decision. **Tenants for a year, or from year to year, who are served with notice of entry, have similar ability to require the authority to take more of their holding.**
- 2.44 Notice can be served on the authority to purchase any severed areas that are less than 0.2 hectares (half an acre), although if you have other adjoining land which can be combined with the severed area this remedy is not available. **You have to prove that the part of the holding that you retain is not capable of being farmed as a separate agricultural unit, either by itself or with other land outside the unit that you occupy as a freehold owner or as a tenant. This can be a complicated matter which you should discuss with your professional adviser.**

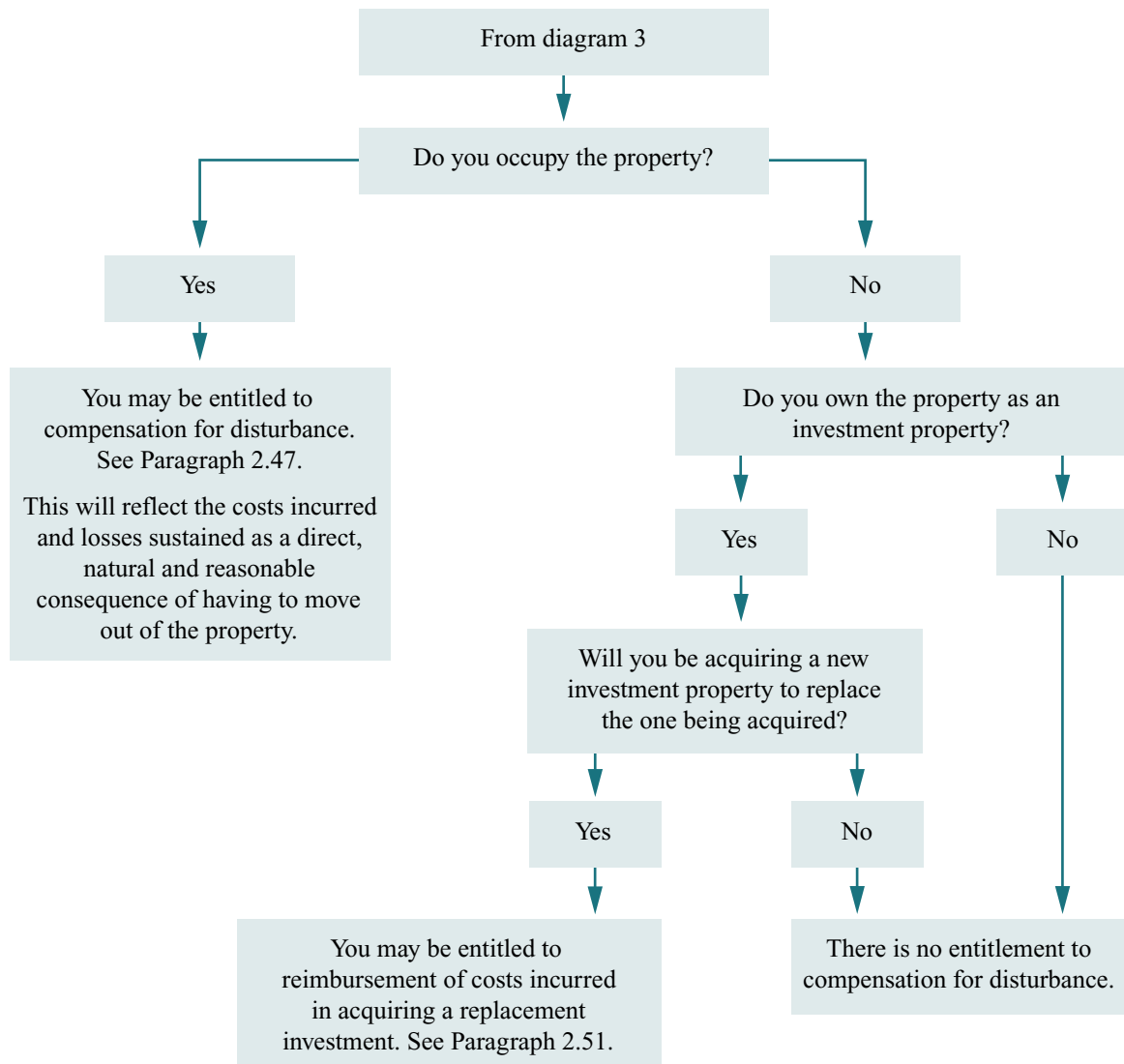
Disturbance Compensation

- 2.45 In addition to being compensated for the value of the land taken, injurious affection and severance you are also entitled to losses occasioned by being “disturbed” from your holding. 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 2.49.
- 2.46 The general principles of disturbance are summarised in Diagram 4.



Diagram 4

CLAIM FOR DISTURBANCE



2.47 In the case of agricultural land the future profitability of the farming business, is in effect, included within the value of the land. It is for this reason that, unlike non-agricultural businesses, no separate assessment of compensation is payable for extinguishment when compulsory acquisition occurs and relocation does not take place.

2.48 This does not, however, apply to temporary losses which arise as a result of "disturbance" arising from the works undertaken to implement the scheme for which compulsory acquisition has occurred. This may include matters such as extra time taken as a result of access difficulties caused by temporary road closures or diversions, loss of crops which would have been harvested on the land taken, the value of which has not been reflected in the price paid for the land, and loss on forced sale of stock, equipment and consumables. **The overriding rule is that anything which is not too remote and is a natural and reasonable consequence of the acquisition is to be compensated.**

No Disturbance When Land Value Reflects Development Potential

- 2.49 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. There may remain the right to claim a farm loss payment.
- 2.50 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 value of his tenancy plus the disturbance compensation for having to move out of the property.

Disturbance to Investment Owners

- 2.51 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 one year of the date of entry, an interest in other land in the United Kingdom.
- 2.52 **In all disturbance cases 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.**

Loss Payment

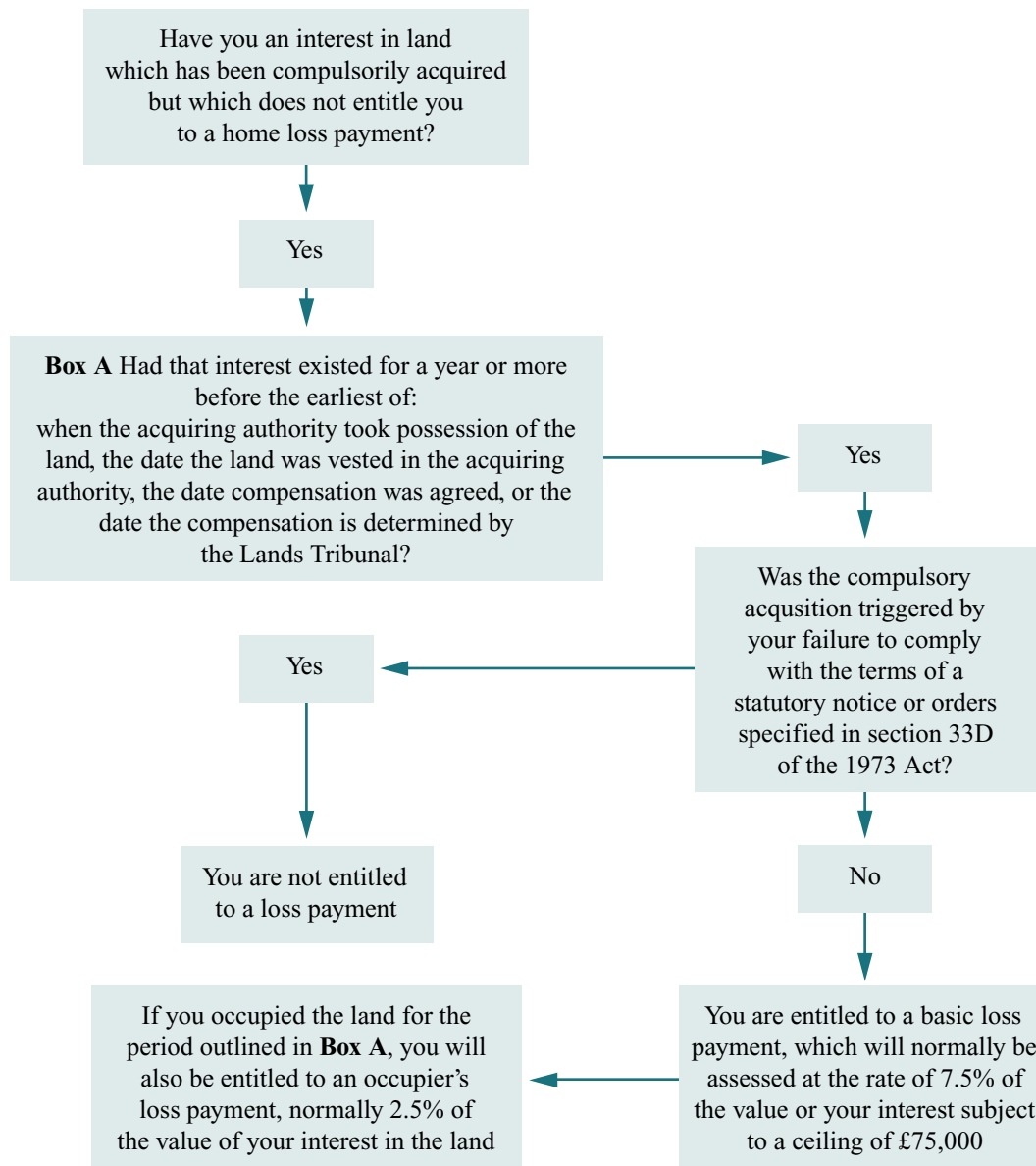
- 2.53 For orders made after 31 October 2004¹ if you have a freehold or leasehold interest in the land but are not entitled to receive a home-loss payment, you may be entitled to a loss payment in addition to any other compensation due. This is an additional amount to reflect and recognise the inconvenience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

¹ the commencement date of Part 8 of the Planning and Compulsory Purchase Act 2004



Diagram 5

LOSS PAYMENTS



Basic loss payment

2.54 To qualify for a basic loss payment:

- you must have an interest in the land (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.

Occupiers' loss payment

2.55 In addition to a basic loss payment you will qualify for an occupier's loss payment if you occupied the land for the period referred to in paragraph 2.54 above.

Amount of Loss Payment

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

2.57 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.

2.58 If you are being displaced from your home as well as your farm, you may be entitled to a home loss payment. Further details on this are set out in Booklet 4 "Compensation to Residential Owners".

Acquisition of Land from an Agricultural Tenant

2.59 The basis of compensation is different if you are a tenant. If your tenancy was created or was succeeded to before September 1995, it is likely that you have a yearly tenancy. However, under the Agricultural Holdings legislation, you have security of tenure and cannot usually be dispossessed from the holding unless you are either served by an effective notice to quit by your landlord or an agreement has been reached to quit the holding.

2.60 If your tenancy was entered into on or after 1st September 1995 you may have a Farm Business Tenancy (FBT). Under the Agricultural Tenancies Act, agricultural tenants no longer have security of tenure when they "hold over" at the end of their tenancy. Compensation will be affected by the actual terms of the tenancy agreement.



- 2.61 The procedure for taking possession is different from that which is applied to freeholds or tenancies of greater than a year. This is dealt with in greater detail in Booklet 1 “Compulsory Purchase Procedure”, but there is no requirement for the acquiring authority to serve a notice to treat provided one has been served in respect of some interest in the land, for example the landlords interest. Provided this is the case the acquiring authority may take possession of your interest following a 14 days minimum notice of entry.
- 2.62 Alternatively, the acquiring authority may acquire a superior interest in the land, such as the freehold, and then serve notice to quit in accordance with the terms of the tenancy agreement.

Assessment of Compensation for Tenants Interests

- 2.63 Compensation is payable under Section 20 of the Compulsory Purchase Act 1965 if you have no greater interest than as tenant for a year or from year to year. If you are such a tenant and you have been served with a notice to quit, you can choose to be compensated under Section 20 provided:
- You give up possession of your holding, or part of it, to the acquiring authority on/or before the expiry of the notice to quit.
 - You give notice in writing to the acquiring authority at any time before giving up possession of the tenancy that you wish to be compensated under the Section 20 basis.
- 2.64 The principles for the assessment of compensation are similar to those for greater interests. There are two bases to dispossess tenants – the notice to quit basis and the notice of entry (Section 20) basis and accordingly these have slight variations in how the compensation is calculated. **Your professional adviser will be able to tell you which basis will be more advantageous.**

Notice to Quit Basis of Compensation

- 2.65 The Notice to Quit basis of compensation is calculated as if the landlord had served a notice to quit at the end of the tenancy. The Heads of Claim are as follows:
- Severance (see paragraph 2.26) is allowed for in a possible reduction in the rent payable for the retained holding. Landlords will receive compensation for the loss in rental value. Any reduction will be the subject of negotiation between landlord and tenant.
 - Disturbance to the tenant is limited to a minimum of one and a maximum of two years rent, but the claimant must be able to prove his losses.
 - Any just allowance by an incoming tenant, known as “tenant right” (see paragraph 2.71).
 - Four years rent payable as additional compensation to help the claimant reorganise his affairs. This is known as the “rent reorganisation payment”.

Notice of Entry Basis of Compensation

2.66 The notice of entry (Section 20) basis of compensation is as follows:

- Value of the unexpired interest the value of the tenancy less the rent reorganisation payment.
- Any severance or injurious affection to the holding (see paragraph 2.23)
- Disturbance losses, including surveyors and legal fees (see paragraph 2.45)
- Any just allowance by an incoming tenant (see paragraph 2.71)
- Rent reorganisation payment (see paragraph 2.72)
- Any other items of claim such as a home loss payment (see Booklet 4) if eligible.

Value of Tenants Interest

2.67 Although you may only have a yearly tenancy you have security of tenure of your holding for your lifetime. This may have a value, but it may vary according to your age, whether you have a relative who is able to qualify in a succession of the tenancy, and what improvements you have carried out during your tenancy. This sum is reduced by the additional compensation of four years rent (rent reorganisation payment) as set out in paragraph 2.72. **Your professional adviser will be able to help you arrive at this figure.**

Severance and Injurious Affection

2.68 As with other interests in land, there is a right to compensation to reflect the reduction in value of any retained land where part only of your interest is acquired.

2.69 This right exists even if the land retained is held under a different tenancy from the land acquired.

Disturbance Payment

2.70 Tenants of Section 20 Interests (see paragraph 2.63) are entitled to compensation for being disturbed in their occupation of the property. The principles are the same as for disturbance compensation for interests of greater than a year. 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 to renewal which the tenant may have.

Allowance by Incoming Tenant

2.71 Normally an incoming tenant would pay a sum to an outgoing tenant for the value of, for example, live and dead stock, value of growing crops, tenants improvements, unexhausted fertiliser values etc. This is known as tenant right. **This sum is dependent on the actual farming situation on the holding and your professional adviser will help you to assess this value.**



The Rent Reorganisation Payment

- 2.72 This payment represents an additional payment of four times the rent of the land acquired, apportioned if only part of the holding is taken, to help you reorganise your affairs.

Licences

- 2.73 Under the Agricultural Tenancies Act, you may occupy under the equivalent of a former Licence of your holding. This will be the situation if you do not have “exclusive possession” of the tenanted land. Perhaps your landlord retains the right to come onto the land to carry out research or other agricultural operations.

- 2.74 **Such agreements are not compensatable interests generally but there may be some compensation for disturbance and owners of this type of interest are advised to ask their professional adviser to determine what compensation they may be eligible for.**

Accommodation Works

- 2.75 Accommodation works comprise anything which is carried out or paid for by the acquiring authority, usually situated on your retained land, in order to reduce the claim for severance, injurious affection and/or disturbance.
- 2.76 Examples are fences, ditches, gates, cattle grids, holding pens, new water supplies and new bridge or underpass crossings. In the case of crossings, the acquiring authority frequently retains ownership of the infrastructure and is responsible for ongoing maintenance. As a result, such crossings are more correctly described as part of the scheme works.
- 2.77 There is no statutory right to have accommodation works provided for you but it is normal practice for acquiring authorities to suggest and discuss the provision of such works where it is cost effective because compensation otherwise payable is reduced as a result of the works.

Contractor Damage – Third Party Liability

- 2.78 This can be a particular difficulty affecting agricultural property. The general principle in law is that contractors working for the acquiring authority are responsible for damage they cause which is not a necessary and unavoidable consequence of the works. In such cases the contractor has a responsibility to pay compensation for losses incurred and additional costs sustained. **You are responsible for pursuing the contractor direct rather than going through the acquiring authority. Your professional adviser will be able to help you go about this.**
- 2.79 Typical examples are dust from the works blowing on to crops, damage to services in the holdings causing temporary loss of supply and silt flowing into watercourses and ponds.

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 on to 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.
- 2.83 There are also provisions for the payment of interest from the date of entry.

Blight

- 2.84 **If an agricultural unit, including a farmhouse, is “blighted” you may be able to serve a blight notice to compel an authority to acquire the property.**
- 2.85 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 when 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.

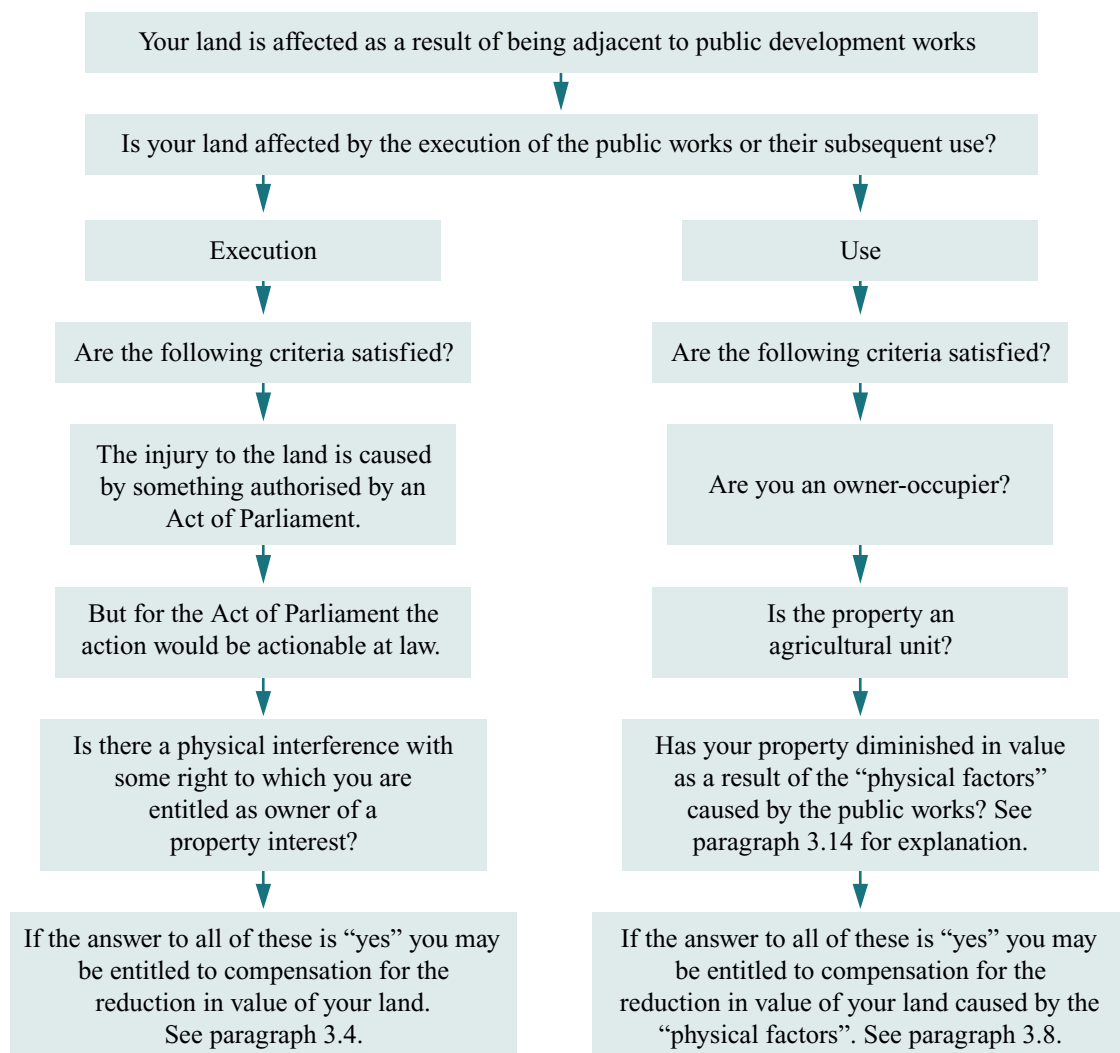
3.2 Compensation can be claimed for:

- A reduction in the value of your land caused by the **Execution** (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 below. 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 that 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 an agricultural property you must have an owners interest in the land and be an owner-occupier of the land. An owners interest means either a freehold or a tenancy for a term of years which at the date of notice of claim has not less than three years unexpired. To qualify as an owner-occupier you must occupy the whole of the unit.

Valuation Date

- 3.12 Compensation is assessed, 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 specific 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 attributable to reasons other than these seven specific factors is not compensable. For example, the loss of a view is not compensable.
- 3.16 The important distinction between this and a claim for the execution of works (described in paragraph 3.4) is that it is the use of the works that must cause the depreciation. For example, if a motorway is constructed in close proximity to a farmhouse, 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 completing 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, some 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 agricultural owners and occupiers it is only relevant for those agricultural premises which include elements of residential accommodation.**
- 4.4 In addition to their duty to undertake sound-proofing 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 enters and takes possession of land before agreeing compensation, simple interest, at a prescribed rate, is payable 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

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.



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 Inquiries procedure.

Rent Reorganisation Payment

This applies to compensation following the acquisition of land from an agricultural tenant. It represents an additional payment of four times the rent of the land acquired, apportioned if only part of the holding is taken, to help the claimant reorganise his or her affairs.

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

Sets out the authority's reasons for seeking to acquire the land, and will accompany the CPO.

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.

Tenancy at Will

A tenancy for no fixed term which continues so long as the landlord and tenant are willing that it should do so; it is an equitable interest and is created either by agreement or implication of law. Such an interest can be terminated by either party at short notice.

Tenancy on Sufferance

In cases where there is no statutory protection, a tenancy created by implication of law when the tenant has remained in possession on expiry of his term and the landlord has not challenged the tenants continued possession.



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

Town and Country Planning Association (TCPA)

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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