

Circular letter on Compulsory Purchase: Rates of Interest After Entry

The Chief Executive

County and District Councils
Unitary Authorities (in England)
County and County Borough Councils (in Wales)
Urban Development Corporations
London Borough Councils
Land Authority for Wales
Commission for the New Towns
Council for the Isles of Scilly

The Town Clerk, City of London

The National Park Officer

The National Park Authorities in England and Wales

The Chief Executive, Broads Authority

12 March 1997

Dear Sir or Madam

Compulsory Acquisition of Land Acquisition of Land (Rate of Interest After Entry) Regulations 1995 (SI 1995 No 2262)

1. The Annex to this circular letter provides general advice on the payment of interest on compensation at the prescribed rate, which is a rate prescribed by Regulations made by the Treasury. It expands and replaces advice given in DOE Circular 16/95 (WO 56/95), which is withdrawn.
2. The advice in the Annex may apply where a public authority or other body is required to pay statutory compensation which is subject to interest at the prescribed rate, eg after entry on land under compulsory purchase powers.
3. Section 80 of the Planning and Compensation Act 1991 (interest on compensation and payments on account) also applies to payment of compensation and interest at the prescribed rate in respect of certain provisions mentioned in that section and in Schedule 18 to the Act. Further advice on section 80 and on other relevant provisions in the 1991 Act is contained in DOE Circular 15/91 (WO 50/91) 'Planning and Compensation Act 1991: Land Compensation and Compulsory Purchase'.
4. Acquiring authorities and others who are responsible for calculating interest payable on compensation, or who may regularly need to be aware of changes in interest rates, should make suitable arrangements, eg by subscribing to an appropriate financial periodical or other publication, to ensure that they have

the necessary information to enable them to calculate interest that may be payable on compensation over any given period.

5. Details of base rates on a reference day are published in economic journals such as the Financial Times. These should enable authorities or other interested persons to establish the standard base rate, and so calculate the payable rate, in most cases without the need for confirmation by the Department or the Welsh Office, as appropriate, or by the Treasury. Practitioners will also be aware of the useful Table showing rates of interest after entry which have applied since 1 May 1947, and which is contained in volume 2 of The Encyclopedia of Compulsory Purchase and Compensation, published by Sweet & Maxwell.

Confirmation of rate

6. Authorities or claimants should consult their own advisers but where, having taken their own advice, they are still unsure of the position, the Department or the Welsh Office, as appropriate, may be able to assist by confirming the correct payable rate for any given period. However, it is not the function of the Department or the Welsh Office to provide these details.

7. Further copies of this circular letter and, if necessary, confirmation of the payable rate, may be obtained:

- in England, from the Department of the Environment, Planning Directorate (PD4), Zone 4/F2, Eland House, Bressenden Place, London SW1E 5DU. Telephone 0171 890 3922;
- in Wales, from the Welsh Office, Roads and Administration Division 2, Highways, Cathay's Park, Cardiff CF1 3NQ. Telephone 01222 826 358.

8. General questions about the substance of the Regulations or the manner in which the rate is prescribed should be addressed to HM Treasury, Room 102/1, Parliament Street, London SW1P 3AG. Telephone 0171 270 4764.

Withdrawal of Circular

9. DOE Circular 16/95 (WO 56/95) is hereby withdrawn.

Yours faithfully



M R ASH, *Assistant Secretary* D G LAMBERT, *Legal Adviser*
Department of the Environment Welsh Office

Annex

1. In this Annex -

'the 1961 Act' means the Land Compensation Act 1961;
'the 1965 Act' means the Compulsory Purchase Act 1965;
'the 1981 Act' means the Acquisition of Land Act 1981;
'the Vesting Act' means the Compulsory Purchase (Vesting Declarations) Act 1981;
'the Regulations' means the Acquisition of Land (Rate of Interest After Entry) Regulations 1995 (SI 1995 No 2262); and
'the prescribed rate' means any rate prescribed by regulations made under section 32 of the 1961 Act.

Notice of entry

2. Normally, an acquiring authority serve notice to treat under section 5 of the Compulsory Purchase Act 1965, and notice of entry under section 11 of that Act. An acquiring authority may enter and take possession of land not less than 14 days after serving notice of entry. In practice, both notices are often served on the same date, the presumption being that notice to treat is deemed to have been served first. Section 11 states that compensation shall carry interest, at the rate prescribed under section 32 of the Land Compensation Act 1961, until the compensation is paid or is paid into court, in accordance with the 1965 Act.

3. If, instead of serving notice to treat and notice of entry, an authority decide to execute a general vesting declaration under Part II of the Compulsory Purchase (Vesting Declarations) Act 1981, interest is payable from the date when the declaration takes effect. The effect of the declaration is as if the authority had executed a deed polled had vested the land in itself. Section 10 of the Vesting Act provides that the authority shall be liable to pay compensation and interest as if they had taken possession under section 11 of the 1965 Act.

Section 32, Land Compensation Act 1961

4. Section 32 of the 1961 Act does not, of itself, confer a right to receive interest on a payment or payments of compensation. Rather that section is the power under which Treasury may make Regulations to prescribe the rate of interest that is payable on unpaid compensation. Any prescribed rate of interest applies in place of the rate of 5% as described in section 85 of the Lands Clauses Consolidation Act 1845 (entry without consent of owner). Section 85 specifies that compensation is payable 'in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum' (5%).

5. Interest is not compounded, as neither section 32 nor Regulations made under it confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. In general, a court's power to make an award of compound interest is limited to its awards against a trustee or other person with fiduciary duties who was personally accountable and who had made improper profit from a plaintiff's money.

6. The prescribed rate also applies, according to the context, where other compensation is outstanding, eg, by virtue of section 18 of the Land Compensation Act 1973 (compensation for injurious affection under Part I of that Act).

Payment into court

7. Where compensation, plus any interest at the prescribed rate, is paid into court, for example in circumstances described in section 9 of the Compulsory Purchase Act 1965 (refusal to convey, failure to make title etc) the court will give a direction as to payment of any further interest. Any further interest payable will not necessarily be calculated as compound, only what is ordered or available.

8. Where a local authority have paid money into court they may, by virtue of section 29 of the Local Government (Miscellaneous Provisions) Act 1976, apply to the High Court for the money to be repaid if it is unclaimed after 12 years. A person who then believes that he or she should have received some or all of the compensation must apply to the High Court and, if the court so directs, the authority will pay the claimant what the court considers a 'just sum'. This means that a claimant will not necessarily receive all of the compensation or interest that may have accrued before the money was paid into court, nor any further interest or other assets attributable to the money after it was so paid.

The Regulations

9. Each prescribed rate of interest applies for the relevant period after entry, during which compensation is unpaid, or until the date when it is paid into court. Over a period of years there have been a number of changes to the rate, with each rate prescribed by new Regulations, made by the Treasury, and announced by DOE/WO Circular.

10. Since 31 December 1995, however, the rate has been set according to the Acquisition of Land (Rate of Interest After Entry) Regulations 1995 (SI 1995 No 2262). This instrument does not prescribe a specific rate. Instead it includes a formula according to which a 'payable rate' is set automatically on a 'reference day' at 0.5% below 'the standard rate'. The standard rate is the base rate quoted by 'the reference banks' at the close of business on the 'reference day' immediately preceding the date on which the authority enter and take possession.

11. If the authority enter on a reference day, the standard rate to be used is the rate that will apply at end of that reference day. Since the standard rate may change on any subsequent reference day, the payable rate may also change, and each payable rate applies for the relevant period until the compensation is paid or paid into court. The meaning of 'reference day' is discussed in paragraph 14 and previous reference days are shown in Part II of the Table following that paragraph.

12. A fuller explanation of 'the reference banks' is given in regulation 2(5) of the Regulations but they are, in general terms, the seven largest institutions

which are authorised by the Bank of England under the Banking Act 1987 and are incorporated in and carrying on a deposit-taking business in the United Kingdom, and which quote a base rate in sterling effective on a reference day.

13. The Regulations make provision for different reference banks quoting different base rates on a reference day. If this happens, the base rates quoted by the seven reference banks must be ranked in descending order and the fourth in that sequence used to obtain the standard rate, and the payable rate is 0.5% less than the standard rate. If any reference bank quotes more than one base rate on a reference day, the base rate that must be used for the purposes of establishing the standard rate is the last base rate quoted on that day.

Reference day

14. The reference days are defined by the Regulations as 31 March, 30 June, 30 September and 31 December. But if the relevant reference day is not a business day, for example because it is a weekend or a public holiday, the payable rate set on the previous reference day will continue to apply and the new payable rate, if any, will be set according to the standard rate effective on the next business day. If the standard rate effective on a reference day is the same as on the previous reference day, the payable rate will not change. A payable rate always takes effect on a reference day. See Part II of the Table overleaf.