

HIGH SPEED TWO PHASE 2a 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 (West Midlands-Crewe) Bill which is now enacted. It was finalised at Royal Assent and no further changes will be made.

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:

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08081 456 472 (minicom)

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C8: COMPENSATION CODE FOR COMPULSORY PURCHASE

1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in phases: Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. Phase 2b will extend the route to Manchester, Leeds and beyond. The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In July 2017, the Government introduced a hybrid Bill¹ to Parliament to seek powers for the construction and operation of Phase 2a of HS2 (the Proposed Scheme). The Proposed Scheme is a railway starting at Fradley at its southern end. At the northern end it connects with the West Coast Main Line (WCML) south of Crewe to allow HS2 services to join the WCML and call at Crewe Station. North of this junction with the WCML, the Proposed Scheme continues to a tunnel portal south of Crewe.
- 1.4. The work to produce the Bill includes 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)², which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.5. 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'. The nominated undertaker will be bound by the obligations contained in the Bill and the policies established in the EMRs. There may be more than one nominated undertaker.
- 1.6. 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.

¹ The High Speed Rail (West Midlands – Crewe) Bill, hereafter 'the Bill'.

² For more information on the EMRs, please see Information Paper E1: Control of Environmental Impacts.

2. Overview

- 2.1. This 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. The Compensation Code is applied by the Bill to compulsory purchase of land required for the Proposed Scheme.
- 3.3. 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, he is entitled also to compensation for any depreciation in the value of his 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 his or her home is entitled to receive a home loss payment valued at 10% of the value of his or her property, subject to a lower limit of £6,500 and an upper limit of £65,000; and

- 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. Further details about the fees are contained in Information Paper C9: Recovery of Costs by Property Owners.

5. Advance payments

- 5.1. Once the Secretary of State has taken possession (or in some cases earlier) of land subject to compulsory purchase for the Proposed Scheme, an advance payment on account of compensation due for the acquisition of the land must be made if requested by the landowner. 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. Requests for advance payments to be made after Royal Assent but before they are legally due would be considered on a discretionary basis.

6. Compensation where no land is taken

- 6.1. Section 10 of the Compulsory Purchase Act 1965 provides 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.
- 6.2. "Injurious affection" is a technical term. Broadly speaking, it means an interference with a landowner's enjoyment of his or her 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.
- 6.3. Section 10 of the Compulsory Purchase Act 1965 does 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.
- 6.4. Part 1 of the Land Compensation Act 1973 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.

7. Duty to mitigate loss

- 7.1. 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".

8. Disputes

- 8.1. 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.
- 8.2. Alternatively, the parties may agree to alternative dispute resolution. 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 considers that ADR is unsuitable then it will provide an explanation.
- 8.3. 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.
- 8.4. 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.

9. Independent advice

- 9.1. It is important that claimants obtain the right professional advice from practitioners experienced in compulsory purchase and compensation. The Royal Institution of Chartered Surveyors operates a customer helpline that can put people in touch with suitably experienced firms in their area and offer up to 30 minutes free consultancy. Their contact details are:

Royal Institution of Chartered Surveyors
12 Great George Street (Parliament Square)
London
SW1P 3AD
Tel: 024 7686 8555
contactrics@rics.org

- 9.2. The Central Association of Agricultural Valuers may also be able to assist owners in rural areas. 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

10. More information

- 10.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2
- 10.2. More detail on the proposed route for HS2 can be found at:
<https://www.gov.uk/check-hs2-route>
- 10.3. For further information on the Compensation Code see the series of compulsory purchase guidance booklets at:
<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>
- 10.4. The Royal Institution of Chartered Surveyors has published a consumer guide on compulsory purchase and compensation at:
<https://www.ricsfirms.com/media/1183/rics-consumer-guide-compulsory-purchase.pdf>

The Royal Institution of Chartered Surveyors has also published a practice statement for surveyors advising in respect of compulsory purchase and statutory compensation at: <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>