

HIGH SPEED TWO PHASE 2a INFORMATION PAPER

C15: GUIDE TO COMPENSATION FOR SHORT TERM RESIDENTIAL TENANTS

This paper outlines the land compensation payable to short term residential tenants under the Compensation Code.

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:

by email: 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 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 authorisation 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 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 information paper provides guidance on the land compensation payable to short term residential tenants, whose tenancies are brought to an end as a result of the Secretary of State's exercise of compulsory purchase powers given by the Bill.

3. General Approach

- 3.1. The guidance given in this information paper explains and applies the principles set out in the Compensation Code. The principal purpose of the Compensation Code is to provide for the payment of fair compensation to a property owner or occupier whose land is compulsorily purchased for public works. The Bill grants compulsory purchase powers to the Secretary of State for the purposes of the Proposed Scheme.
- 3.2. More information on the Compensation Code can be found in Information Paper C8: Compensation code for Compulsory Purchase.
- 3.3. The application of the Compensation Code to a particular case depends on the individual circumstances. In the case of a short term residential tenancy, these include the type of tenancy under consideration and the terms of the tenancy agreement itself.
- 3.4. Both the type of short term residential tenancy and the terms of the tenancy agreement may affect the compensation payable to the tenant under the Compensation Code.
- 3.5. As explained in Section 4 of Information Paper C8, compensation for compulsory purchase can be claimed under a number of categories, known as 'Heads of Claim'. These include the market value of the property that is compulsorily purchased, disturbance costs and expenses incurred in moving home and home loss payments. An outline of the 'Heads of claim' that are likely to apply to short term residential tenancies is provided below.
- 3.6. A question and answer section has been included at Appendix A.

4. Market Value of the Tenancy

- 4.1. To make a claim for compensation under this head of claim, the tenant must be able to show that the tenancy would have a value if offered for sale on the open market. In order to do so, the tenant will need to show that the terms of the tenancy agreement permit the sale (or "assignment") of the tenancy to a third party.
- 4.2. Ordinarily, a tenant who occupies a dwelling on a short term residential tenancy (such as an assured shorthold tenancy) will be unable to do this, since the terms of such a tenancy normally prohibit the tenant from selling (or "assigning") the tenancy to another person. Because of that prohibition, the tenancy will not have a market value as it cannot lawfully be sold.

- 4.3. If the terms of the tenancy do not prohibit the tenant from offering it for sale, and the tenant is able to show that the tenancy would have a value if put on the market, the tenant may be entitled to compensation under this head of claim.
- 4.4. For these reasons, the elements of compensation which are more commonly payable in relation to short term residential tenancies are the disturbance payments and home loss payments described below.

5. Disturbance

- 5.1. Short term residential tenants are normally entitled to the reimbursement of reasonable costs and expenses which arise as a direct consequence of being required to give up their tenancy and move to a new home, following compulsory acquisition of the property in which they are living. It is important to note that compensation is not normally payable for the costs of moving to a new home if the tenancy has come to an end without the need for compulsory purchase (for example, because the tenancy has simply expired, or has been brought to an end by the service of a notice by the landlord).
- 5.2. The amount of compensation for disturbance will normally be equivalent to the costs and expenses that the tenant has reasonably incurred in giving up the tenancy and moving to a new home.
- 5.3. Reasonable costs and expenses may include removal expenses, disconnection and reconnection of services (such as telephone and electricity) and agent's fees.
- 5.4. A claim for payment of disturbance costs needs to be supported by evidence. It is the tenant's responsibility to keep appropriate records of costs and expenses incurred and losses sustained (such as bills and invoices) as these will be required as part of any claim submitted.
- 5.5. Claimants should be aware of the general duty to "mitigate loss". This means that claimants claiming compensation should take appropriate steps to keep their losses to the reasonable minimum. For example, a tenant may need to employ a removals firm to assist with moving properties. If so, the tenant should obtain quotes from three reputable firms. Assuming all three provide the same service, the tenant should accept the cheapest quote.

6. Home Loss Payment

- 6.1. Short term residential tenants who are required to leave their homes because of the Proposed Scheme may be entitled to a home loss payment, in addition to any other compensation due under the Compensation Code.
- 6.2. To qualify for a home loss payment, the tenant must have occupied the premises under the tenancy as his or her main residence for a period of not less than 12 months, ending with the day the tenant has to move out.
- 6.3. The amount payable under a home loss payment is set out in regulations. The value of home loss payments are reviewed (and where necessary adjusted)

annually by the Government, for example, in order to make inflationary adjustments. Since 1 October 2020, the home loss payment is set at a minimum of £6,500. Only a single home loss payment may apply to each tenancy. If there are two or more eligible occupiers residing within a dwelling, the home loss payment is shared equally between them.

- 6.4. Normally, tenants who are eligible for a home loss payment and occupy their homes under a short term tenancy are likely to receive the minimum payment.

7. When can I Claim Compensation?

- 7.1. You will receive a statutory notice normally giving three months' notice of the date when HS2 Ltd intend to take possession of your property. The statutory notice will not be issued until the Bill has received Royal Assent.
- 7.2. You will then need to lodge a written claim for compensation, accompanied by evidence supporting your claim. The claim must be lodged within six years of the date you were required to move from your property.
- 7.3. The level of evidence required will depend on the elements of compensation that are being applied for (such as disturbance or home loss payments). See also paragraph 8.2 below.

8. Independent Advice

- 8.1. It is important that all 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.
- 8.2. Tenants are strongly advised to ensure that where fees and costs are to be incurred for which they may wish to claim compensation, they set out the instructions (including the fee level and basis of costs themselves) in writing and agree them with the Secretary of State/HS2 Ltd in advance wherever possible. HS2 Ltd recommends that claimants, or their appointed agents/representatives, seek to agree the scope and amount of fees and costs prior to entering into any commitment to incur them. This information paper should be read alongside Information Paper C9: Recovery of Costs by Property Owners.

Their contact details are:

Royal Institution of Chartered Surveyors
12 Great George Street (Parliament Square)
London
SW1P 3AD
United Kingdom

Tel: 0870 333 1600
contactrics@rics.org

Appendix A

Questions and Answers – The Compensation Code as it applies to short term residential tenants and occupiers

1. **Q: I have been renting a property that is required for the project. I have a tenancy agreement with my landlord. Do I qualify for compensation?**

A: Yes, you are likely to be entitled to disturbance costs if you are required to move due to the compulsory purchase of the property for the Proposed Scheme. If you have lived in the property as your home for at least 12 months you are likely also to be entitled to a home loss payment.

1. Disturbance costs are the costs incurred as a direct consequence of having to relocate from your property due to compulsory purchase. The amount of compensation is normally equivalent to the expense that you have reasonably incurred, in moving out of the property prior to the end of your tenancy. Reasonable expenses may include the costs of moving, such as removal expenses, disconnection and reconnection of services (such as telephone and electricity).
2. If you have occupied the property as your main residence for longer than 12 months, have a tenancy or lease, and are required to move a result of the compulsory purchase of the property for the Proposed Scheme, you are likely to be entitled to both disturbance costs and a home loss payment. Currently, the minimum home loss payment is set at £6,500.
3. To be eligible for compensation, your move from the property must be as a result of the compulsory purchase and not done on a voluntary basis. For example, if you leave the property to downsize or the tenancy expires prior to the date it is required for the Proposed Scheme, you are unlikely to be entitled to recover disturbance costs or a home loss payment.
4. If your tenancy agreement allows you to sell your tenancy to a third party, you will be able to claim for the market value (if any) of the tenancy. Please see Section 4 of this Information Paper.

- 2. Q: I am required to move out of my property because of the compulsory purchase of the property for the Proposed Scheme. I have been searching for an alternative property in my area but cannot find anything suitable. Is any assistance available to help me with re-housing?**

A: Yes, the Compensation Code provides a duty to re-house if no suitable accommodation is available on reasonable terms.

1. Where no suitable alternative accommodation is available on reasonable terms, the local housing authority normally has a duty to re-house you, provided you were living in the property when the compulsory purchase notice was published. You should contact your local Council Housing Department.
2. If you live in a council owned building, you should contact your landlord to see what options may be available in your area.

- 3. Q: I live in a worker's cottage provided by my employer and am required to move out for the HS2 Phase 2a project. Am I entitled to compensation?**

A: Yes, you are likely to be entitled to a disturbance payment or a home loss payment, or both.

1. Agricultural accommodation or a worker's cottage provided by your employer, can be subject to a number of different types of tenancy or occupancy. Each of these arrangements will result in different rights to the property. Your rights as an agricultural occupier will depend on when your tenancy began.
2. Depending on the terms, the compensation rights for agricultural tenants or licensees may include both disturbance costs and a home loss payment.
3. It is recommended you contact your employer or landlord to discuss your individual living arrangements and what options may be available to you, including possible rehousing.

- 4. Q: I live in a mobile home that is due to be purchased by HS2. Does living in a mobile home affect my ability to claim compensation?**

A: You may qualify for compensation depending on your circumstances.

1. You are likely to qualify for a disturbance payment if the relocation of your caravan is required as a direct result of the scheme.

2. You are also likely to be entitled to a home-loss payment if you have lived in a caravan on the same permanent site for a minimum period of one year and no suitable alternative site for stationing your caravan is available on reasonable terms.

5. Q: I occupy a houseboat on a permanent mooring and am required to move for the project, am I entitled to compensation?

A: You may be entitled to disturbance costs under section 37 of the Land Compensation Act 1973.

1. If you occupy a houseboat that you do not own, you will typically have a licence agreement with the owner of the houseboat. A licence agreement can normally be terminated at short notice by either party.
2. The terms of your licence agreement will affect your ability to claim any further compensation.
3. For further guidance on disturbance claims please see section 5 of this Information Paper.
4. You will not be eligible to receive a home loss payment.

6. Q: I live in a residential property with my landlord and the property is required for the project. Will I be entitled to any compensation?

A: If you are living in the same property as a landlord and share the living spaces (e.g kitchen, bathroom), you are a lodger. You may be entitled to a claim for disturbance.

1. As a lodger, you occupy the property on a licence as opposed to a tenancy. A license can typically be terminated at short notice by either party. Depending on the term of agreement, you may be entitled to a disturbance payment.
2. If you occupy the same property as your landlord, but have a tenancy of a self-contained flat, you should refer to Q&A 1 above.

7. Q: I am over 18 and live with my parents whose house is required for the project. I have no formal agreement with my parents. Do I have any entitlement to compensation?

A: If you are living with your parents or relatives, you are likely to be an 'excluded occupier' and have similar rights to a lodger in question 6 above. If you do have an

agreement, depending on the terms, you may be entitled to a disturbance payment.

1. Please refer to Section 5 of this Information Paper.

8. **Q: I have heard that HS2 can be asked to purchase the property I live in before it is needed for the railway?**

A: This request is made using what is known as the “blight notice” procedure. A short term residential tenant is not eligible to serve a blight notice. Further information about blight notices is provided in Information Paper C4: Safeguarding and Statutory Blight.

9. **Q: I have seen that HS2 have introduced several Non-Statutory Property Schemes. As a tenant, am I eligible?**

A: The Non-Statutory Property Schemes do not normally apply to short term residential tenancies. The Secretary of State is willing to consider special cases on their own individual merits. If you believe your circumstances are such that special assistance is appropriate, please contact the HS2 helpdesk:

HS2 helpdesk

HS2enquiries@hs2.org.uk

Telephone: 0808 1434 434

Minicom: 0808 1456 472

24-hour service

10. **Q. I rent my home from HS2 Ltd under a Crown Tenancy. What compensation am I entitled to if HS2 need to take the property back in order to construct the HS2 project?**

A. When granting a Crown Tenancy, HS2 Ltd will be mindful of when a property is likely to be required for construction in setting the length of the lease. Therefore, such tenancies are likely to be drafted so that that the tenancy can be brought to an end before the property is required for construction. This means that the need for tenants to relocate from the property will be due to the natural expiry of the tenancy and HS2 Ltd would not expect to pay compensation under the Compensation Code in such circumstances.