



Your property  
and discretionary  
purchase

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# Highways England

At Highways England, we maintain, operate and improve England's motorways and major A-roads, the roads we all use between major cities and which are vital to our economy.

In 2014, the government tasked us with delivering their road investment strategy. This is a programme of investment which aims to improve journeys, tackle congestion, support the economy and maintain safety.

## Introduction

This guide will provide you with information about the circumstances in which we may offer to purchase property either in advance of requirements for a road scheme or where the construction works or the road in use will seriously affect your enjoyment of the property.

More information about the process we follow to deliver our larger road schemes and other types of compensation that may be available can be found in the following publications:

*Your property and our road proposals*

*Your property and blight*

*Your property and compulsory purchase*

*Your property and Part I compensation*

Your property and discretionary purchase

### For more information

@ [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk)

☎ 0300 123 5000

www [www.highways.gov.uk](http://www.highways.gov.uk)

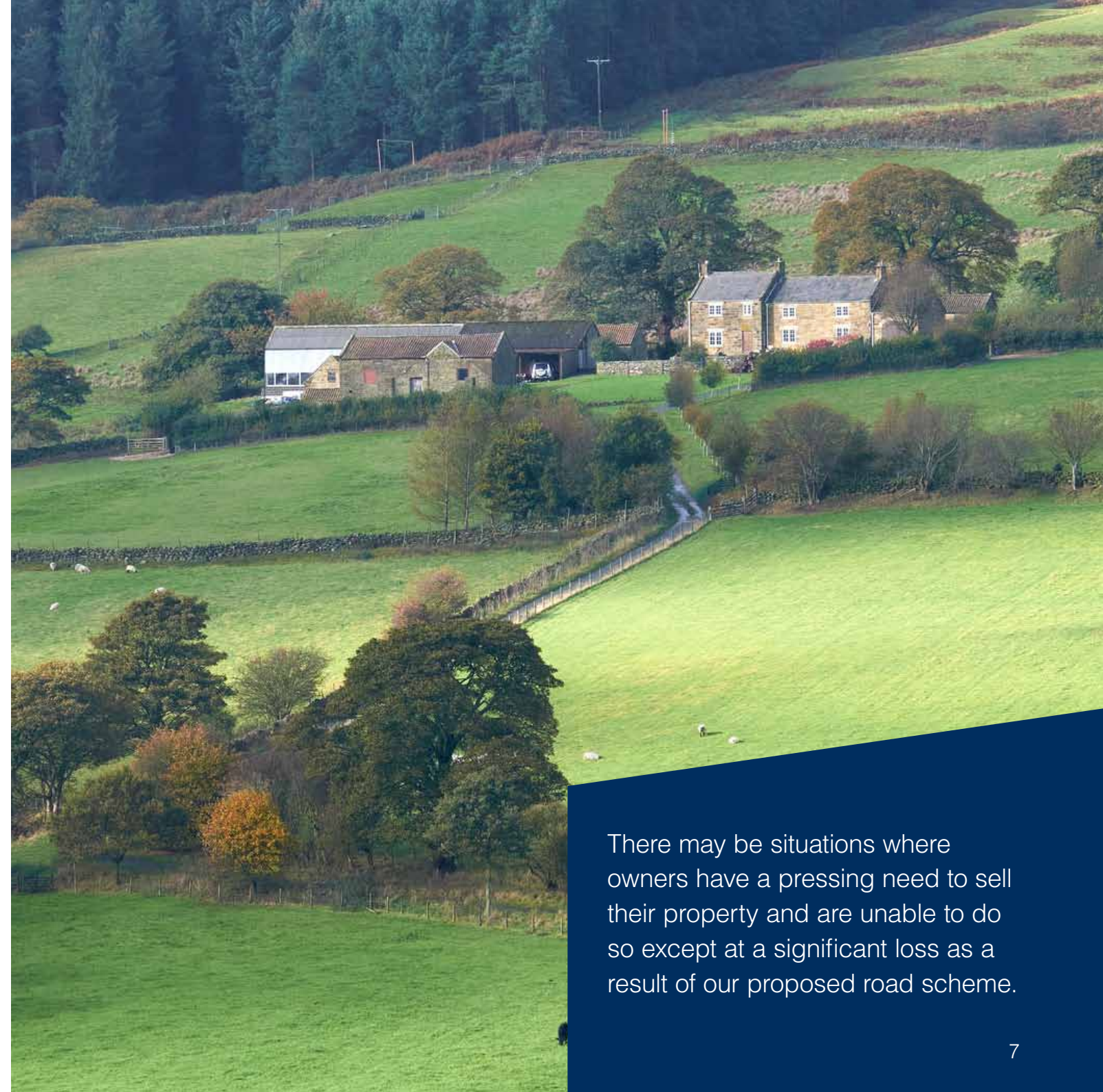
## Discretionary purchase

There may be situations where owners have a pressing need to sell their property and are unable to do so except at a significant loss as a result of our proposed road scheme. While we are under no obligation to purchase these properties, Parliament has given us the ability to purchase properties using discretionary powers in the following sections of the Highways Act 1980.

- Section 248 applications can be made for properties on the line of one of our proposed route options (on-line property). After the preferred route has been announced, landowners who may not meet the eligibility criteria (see page 8) can also ask us to buy land under this section. There may also be situations where the planning inspector recommends we investigate an alternative route suggested by a third party. Property owners on that alternative route can also apply under this legislation.

- Section 246 applications can normally be made once the preferred route is announced for properties not on the line of the preferred route (off-line property) but the enjoyment of which is seriously affected.
- Section 246(2A) serious effect from the construction works or from the road in use. Applications can normally be made after the preferred route has been announced.
- Section 246(2)(a) serious effect from the construction works. Applications can be made during the construction period.
- Section 246(2)(b) serious effect from the road in use. Applications can be made during the first year after it has opened to traffic.

This booklet explains the way in which we will consider applications. However, we only exercise our discretion in exceptional circumstances.



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## Qualifying interest

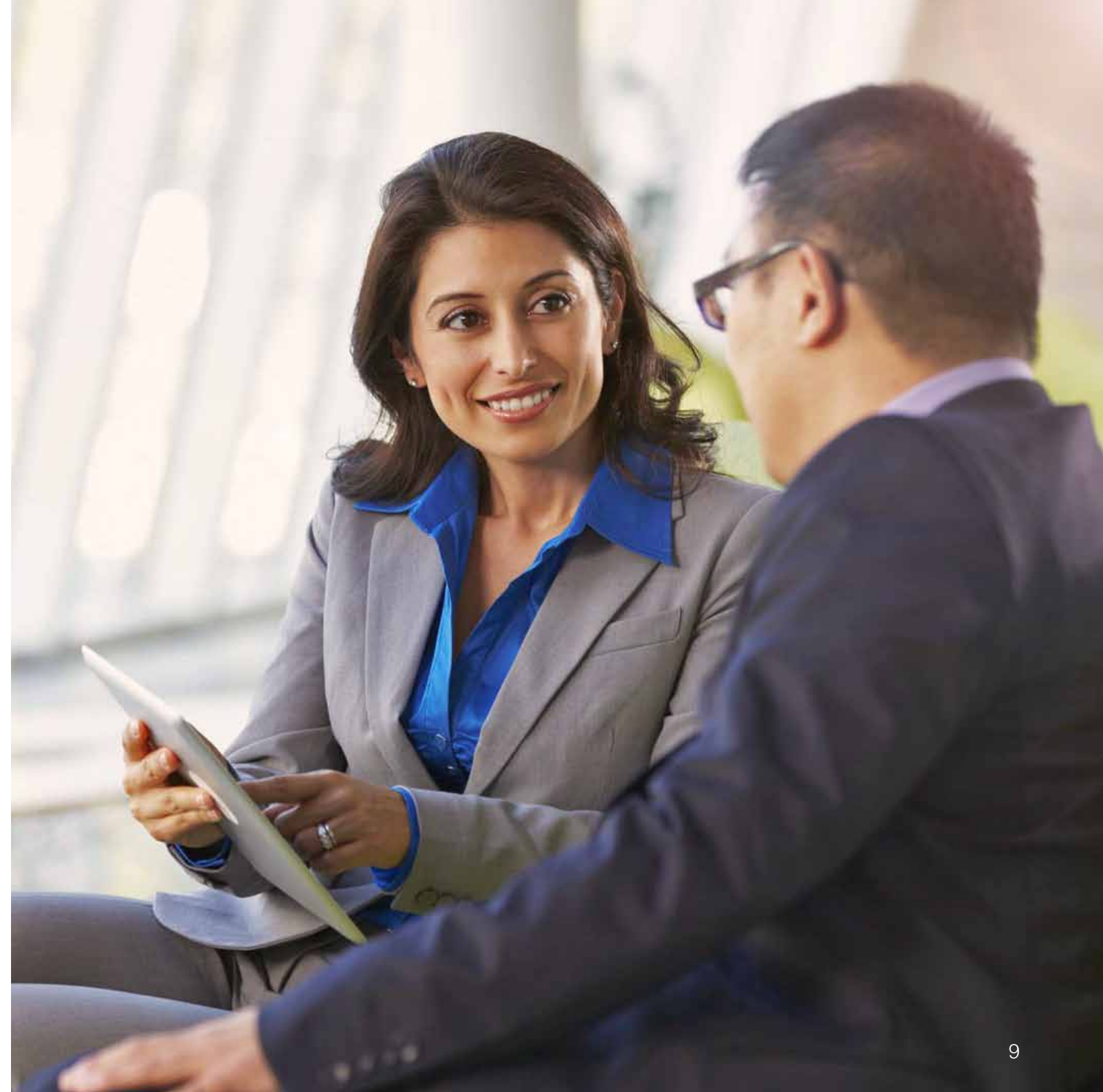
Discretionary purchase applications under sections 246(2)(a), 246(2)(b), 246(2A) and 248 in advance of the preferred route announcement (or on the line of an alternative route suggested by a third party which the planning inspector recommends we investigate) can be made by freeholders and leaseholders provided the lease has at least three years remaining. To be eligible you must have a qualifying interest in the land as one of the following:

- A residential owner-occupier of a private dwelling.
- An owner-occupier of business premises with a rateable net annual value not currently exceeding £36,000 per year.
- An owner-occupier of an agricultural unit or part of an agricultural unit.
- A personal representative of a deceased person who, at the date of his or her death, would have been able to apply.
- A mortgage lender who has the right to sell the property and who can give immediate possession.

Applications can be made for homes, business premises or agricultural units provided you have occupied the property for at least six months. If you move out of a property without applying for discretionary purchase, you can still apply within 12 months as long as you lived there for at least 6 months and the property has been unoccupied since you moved.

**Important:** If you have let your property, or if you are a tenant, then you would not have a qualifying interest and you would not normally be able to make an application for discretionary purchase.

However, discretionary purchase applications under section 248 on the line of the preferred route as announced do not need to satisfy the qualifying interest.



## Reasonable efforts to sell the property

For us to consider an application for discretionary purchase you must have made a reasonable effort to sell your property at a realistic price. The property should have been marketed with an estate agent or placed in the local or national press at least twice.

The property must be marketed for at least 13 weeks. You would need to show that you have not received any offers within 15% of the unaffected market value or, if you have received an offer, that it has been withdrawn due to our scheme.

**Important:** You will need to submit evidence of your efforts to sell, and any offers received, with your application for discretionary purchase.

## Requesting and submitting an application for discretionary purchase

Let us know the section of the Highways Act 1980 under which you are applying for discretionary purchase so that we send you the correct form. If you are unsure we can advise you.

### Request an application form

@ info@highwaysengland.co.uk

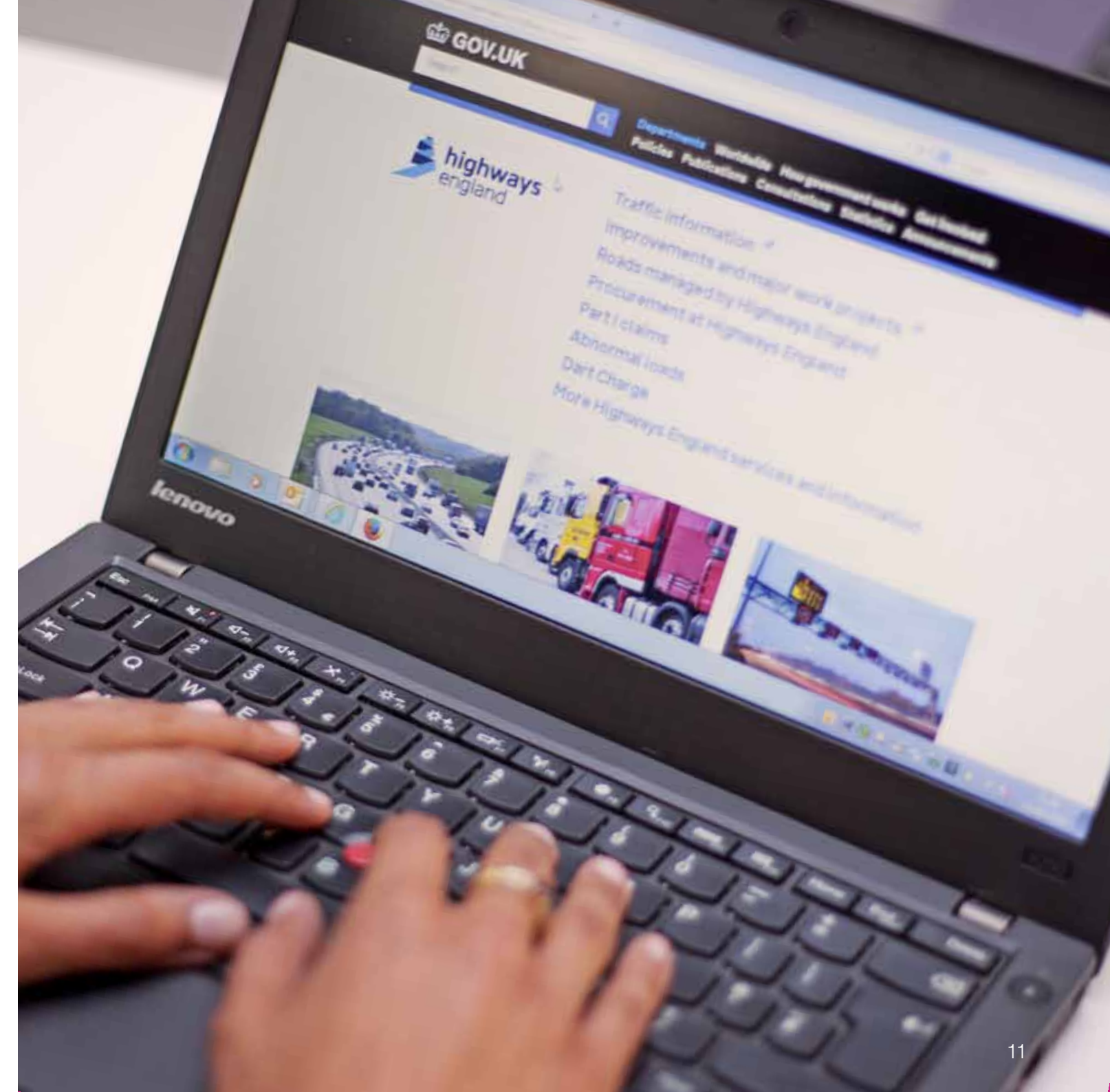
☎ 0300 123 5000

Your completed application and supporting information must be submitted to the Highways England office dealing with the specific scheme.

### Our office addresses are listed on our website:

www www.highways.gov.uk

We will confirm receipt of your discretionary purchase application.





## How we assess your claim

When we receive your application for discretionary purchase we will:

- Check that you have a qualifying interest in the property.
- Ask our valuer to confirm whether you have made reasonable efforts to sell your property at a realistic price.

If your application is made under section 246 (off-line property) due to the effects of the construction, the effects of the road being in use, or both, we will consider if your enjoyment of the property has been affected. This will be assessed based on:

- Diminution in value: this is the amount by which the value of your property has been reduced by the road scheme. We will ask our independent contracted valuer to assess whether your property has reduced in value. However, you can also submit any valuation advice you have received. As a guide, we would not consider reduction in value of less than 15% to have seriously affected your enjoyment of your property.
- Noise from the construction works, or when the road is in use: we will take into account any fencing or earth mounds we build as part of the scheme which would lessen the effects of noise.

We consider noise to seriously affect your enjoyment of the property when:

- For applications under sections 246(2A) or 246(2)(a) the predicted noise from construction, over at least three months, is well in excess of 70 dBA (12 hour Leq) for a substantial period of the day or it is considered that the property will be eligible for noise insulation.
- For applications under sections 246(2A) or 246(2)(b) the predicted noise from the road in use rises by 1 dBA to a level of 68 dBA (18 hour L10) during the first year after opening.

[See Page 18 of this booklet for a short explanation of noise levels.](#)

- Aggravation of a medical condition caused by physical effects: if you, or a dependant living with you, have a medical condition which is likely to be severely aggravated by the physical effects from either the construction of the road or its use, we will consider the effects of the scheme on that condition. Physical effects include dust, noise and pollution. The medical conditions that may be relevant include respiratory conditions and tinnitus. Stress and anxiety are not normally included. Applications based on a medical condition should include a statement from your GP or specialist.

- Other factors (for example visual impact or artificial lighting) may also cause serious effect. If you consider that the enjoyment of the property is seriously affected by other factors, please provide details in your application.

Unless we consider that the effects of the scheme will severely aggravate an existing medical condition, we will not normally purchase a property under discretionary powers without being satisfied that your enjoyment of it will be seriously affected by two of the following factors:

- A reduction in its value.
- The effects of noise during construction or from the road in the first year after opening.
- Another factor stated in your application (e.g. visual impact).

If you made your application under section 248 (on-line property), or if you made it under section 246 (off-line property) and your enjoyment of the property is predicted to be seriously affected, we will then decide whether to exercise our discretion to offer to purchase it. In reaching this decision we will:

- Decide if you had foreknowledge. For example if there was enough information available about our road scheme before you purchased the property to tell you that your enjoyment of the property would be affected.
- Assess whether you have a pressing need to sell your property and will suffer hardship as a result of being unable to sell, except at a significantly reduced price.



## Foreknowledge

We will not normally agree to purchase a property affected by our road scheme if information showing its impact was published before you purchased the property. In this situation we believe that you could have expected that the scheme would affect your enjoyment of the property.

Foreknowledge is waived where compulsory acquisition powers have come into force in relation to the property, for example where the development consent order has been granted or the compulsory purchase order has been confirmed.

## Pressing need to sell and hardship

We must be satisfied that you have pressing reasons for selling and that severe hardship would result if you were unable to do so. In most cases the reasons for selling must be unrelated to the road scheme. As a guide, at least one of the following situations would be regarded as a pressing reason to sell:

- Domestic – there is a need to move to a larger or different house to accommodate a growing family.
- Employment – a need to relocate to take a new job outside a reasonable commuting distance.
- Financial – there are external financial pressures, such as dividing assets following a divorce, releasing capital for a business, or to avoid threatened repossession.
- Medical condition unrelated to the road scheme – where the applicant, or a dependant living in the affected property, has developed a medical condition making the property unsuitable. Examples would include a severe disability making it difficult to use stairs, loss of mobility due to arthritis or a requirement to go into sheltered accommodation or a long-term nursing home due to infirmity or ill health.
- Winding up the estate of a deceased person.
- A disposal by a mortgage lender in possession.

However this criterion may be waived where:

- An application is made on the grounds that the construction works or the road in use will severely aggravate an existing medical condition.
- Compulsory acquisition powers have come into force in relation to the property, for example where the development consent order has been granted or the compulsory purchase order is confirmed.

We aim to decide applications within 3 months of receipt, providing they are fully completed. However, some applications may take longer; we will let you know if this is the case.

We will write to you and let you know the outcome of your application.

If we agree to buy your property due to a medical condition that would be aggravated by the construction or use of the road, we would not normally proceed with the purchase of the property earlier than 9 months before the start of construction or the road opening.

**Important:** We would normally consider the winding up of a deceased person's estate or disposal by a mortgage lender as sufficient reason for immediate sale.





## Compensation for successful applications

We will offer to buy your property at its unaffected market value, not the reduced value as a result of our scheme. Our independent professional valuer will negotiate and agree the value of the property with you.

When selling to us under discretionary purchase you normally pay your own surveyor's costs, legal fees and moving expenses. However, where your application is made under

- Section 246 (off-line property) on the grounds that you, or a dependant living with you has a medical condition that will be severely aggravated by the physical effects of the scheme
- Section 248 (on-line property) on the grounds that your property is on the line of the preferred route that has been announced

we pay your surveyor's costs, legal fees and a disturbance payment.

If your property is on the line of the preferred route and you apply for discretionary purchase because you do not have a qualifying interest in the property and cannot apply for statutory blight, you may qualify for a home loss, basic loss or occupier's loss payment. More information about statutory blight compensation can be found in our guide 'Your property and blight'.

**Important:** If we accept your application and offer to buy your property, our offer will only be open for 1 month. The offer will also be subject to agreement on price and exchange of contracts within 6 months of the date of the offer. If you do not meet these timescales the offer to purchase may be withdrawn.

## Referring a compensation dispute to the Upper Tribunal

We would like to reach a compensation agreement with you and will work with you throughout the process. However, there may be cases where we cannot agree. In this situation we would not object if you wished to refer your claim to the Lands Chamber of the Upper Tribunal. The Upper Tribunal is the court of law appointed to deal with these types of disputes.

To refer your case to the Upper Tribunal, you need to submit an application in writing to:

**Upper Tribunal (Lands Chamber)**  
**5th Floor**  
**7 Rolls Buildings**  
**Fetter Lane**  
**London**  
**EC4A 1NL**

**Important:** The Upper Tribunal can award costs to either party so it is important that you seek professional advice before referring your claim.



## Noise measurement

### dB(A)

The unit used for the measurement of sound within the frequency range of the human ear. dB is short for decibel.

### L10 (18 hour)

This is the average of the hourly L10 noise between 0600 and 2400 hours on a normal working day. L10 is the noise level exceeded for one tenth of one hour (six minutes).

### Leq

The sound level, which, if maintained continuously, would give the equivalent amount of noise energy as the varying levels would over the same period.



## Typical noise levels

<b>0 dBA</b>	Threshold of hearing
<b>35 dBA</b>	Quiet bedroom
<b>40 dBA</b>	Library
<b>50 dBA</b>	Ordinary conversation
<b>60 dBA</b>	Office environment
<b>62.5 dBA</b>	Communication starts becoming difficult
<b>70 dBA</b>	Passenger car (60 km/h at 7 metres distance)
<b>81 dBA</b>	Modern twin-engine jet
<b>83 dBA</b>	Heavy diesel lorry (40 km/h at 7 metres distance)
<b>90 dBA</b>	Hazard to hearing from continuous exposure
<b>95 dBA</b>	Pneumatic drill (unsilenced) at 7 metres
<b>120 dBA</b>	Threshold of pain

## Our commitment to be open and fair

We are open, honest and fair and publish all relevant information unless it is exempt from publication under the Data Protection Act.

We will not use your personal information for any purpose other than to process your claim for compensation. All information we hold will be maintained accurately and kept as up-to-date as possible. It will only be accessible to those in Highways England with a need to see and process it. It will be destroyed when that purpose is complete.

However, if you appoint a surveyor to negotiate your claim, we will take that as agreement to share your information, other than your bank or building society details, with them, unless you instruct us not to do so.

You may request a copy of the personal records we hold about you in connection with your claim. Requests must be made in writing to the address below and we will respond to your request within 40 days.

**Data Protection Officer**  
**Highways England**  
**Piccadilly Gate**  
**Store Street**  
**Manchester**  
**M1 2WD**

Following a request for information, we will write to let you know whether we hold the information requested and, if we do, send that information to you. We are not required to send information where one or more of the exemptions apply. For example, another person's personal details would be protected under the Data Protection Act and therefore we would not pass this information on.

To find out more please look at the freedom of information section of our website:


 [www.highways.gov.uk](http://www.highways.gov.uk)

## Complaints procedure

Our aim is to provide the best possible service at all times but there may be circumstances in which you wish to make a complaint about the handling of your claim. We are keen to improve the service we offer our customers wherever possible and provide redress where appropriate. However, if you are unhappy with any offer of compensation then that falls outside the remit of our complaints procedure and you can ask the Upper Tribunal (Lands Chamber) to determine your claim.

More information about the complaints procedure can be found at

 [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk)

 0300 123 5000

 [www.highways.gov.uk](http://www.highways.gov.uk)

## Further information

The Department for Communities and Local Government (DCLG) publishes the following series of technical booklets that you may find useful.

Booklet 1: Compulsory purchase procedure

Booklet 2: Compensation to business owners and occupiers

Booklet 3: Compensation to agricultural owners and occupiers

Booklet 4: Compensation to residential owners and occupiers

Booklet 5: Mitigation works

Please note we are unable to provide copies of the above booklets. The booklets are available on the DCLG website.

**[www.gov.uk/government/collections/compulsory-purchase-system-guidance](http://www.gov.uk/government/collections/compulsory-purchase-system-guidance)**





If you need help accessing this or any other Highways England information, please call **0300 123 5000** and we will help you.

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If you have any enquiries about this publication email [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk) or call **0300 123 5000\***. Please quote the Highways England publications code **PR267/16**

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