



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

C8: COMPENSATION CODE FOR COMPULSORY PURCHASE

This paper describes the compensation code for compulsory purchase, and the context for considering compulsory purchase of land undertaken in the public interest.

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 Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

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 reached at:

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Two Snowhill, Snow Hill Queensway
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by email: HS2enquiries@hs2.org.uk

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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 two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 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 November 2013, HS2 Ltd deposited a hybrid Bill¹ with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 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 project have been reached.

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

2. Nature and purpose

- 2.1. 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.
- 2.2. The code is applied by the Bill to compulsory purchase of land required for the Proposed Scheme.
- 2.3. The principle purpose of the compensation code is to provide for the payment of fair compensation to an owner whose land is compulsorily purchased for public works.

3. Compensation where land is taken

- 3.1. 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 “no scheme”;
 - Severance and Injurious Affection- this means the depreciation in the value of land retained where part only of the claimants land holding is acquired;
 - Disturbance- this represents the costs and losses incurred as a result of being disturbed from the occupation of the 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 More Information below for further detailed advice;
 - Loss Payments- these are additional set payments depending on the nature of the interest being acquired. For example the home loss payment for a residential owner occupier, 10% up to the maximum value of £53,000; 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.

4. Advance payments

- 4.1 Once the Secretary of State has taken possession of land subject to compulsory purchase for the Proposed Scheme, the landowner may request an advance payment on account of compensation due for the acquisition of the land. In terms of calculating the amount of payment, this would be either 90% of the acquiring authority'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.

5. Compensation where no land is taken

- 5.1. By virtue of section 10 of the Compulsory Purchase Act 1965, where no land or interest in land is acquired from a claimant, compensation is payable in a case where the construction (rather than operation) of the public works interferes with the landowner's enjoyment of or diminishes the value of his land, either permanently or temporarily, in a manner for which he could sue the promoters, had they not the immunity conferred by their statutory authority to carry out the public works.
- 5.2. Compensation is assessed by reference to any diminution of value of the claimant's interest in land caused by the interference with his private right.
- 5.3. Compensation is also available in respect of properties which are depreciated in value due to 'physical factors' resulting from the use of public works (i.e. the operational stage of the development) pursuant to Part 1 of the Land Compensation Act 1973. 'Physical factors' for the purposes of Part 1 compensation are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance. Claims for Part 1 compensation can only be made once the scheme has been in operation for 12 months, and compensation is assessed by reference to the diminution in value of the property.

6. Duty to mitigate loss

- 6.1. There is a general duty on all claimants to mitigate their loss and their compensation claim. Claims for any amounts that could reasonably have been avoided or that are not genuinely related to the case, will be rejected. If the claimant achieves any "betterment" from the acquisition (for example acquiring new equipment in place of old, or any enhancement in value of retained land as a result of the HS2 scheme) then the claim will be reduced to reflect such matters.

7. Disputes

- 7.1. In the event that a compensation claim cannot be settled by negotiation between the parties and their respective agents and advisors, (this is unlikely in the vast majority of cases) the parties may refer the case for consideration by alternative dispute resolution. Alternatively, it may be referred to the Upper Tribunal Land Chamber for independent determination.

- 7.2. This will not hold up the acquiring authority taking possession of land under the compulsory purchase processes.
- 7.3. Claims are subject to a time bar and any application to the Upper Tribunal must be made within a 6 year limitation period beginning on the date when the right to compensation arises.

8. Independent advice

- 8.1. 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
United Kingdom
Tel: 0870 333 1600
contactrics@rics.org

- 8.2. The Central Association of Agricultural Valuers may also be able to assist owners in rural areas. The contact details for Central Association of Agricultural Valuers are:

Market Chambers
35 Market Place
Coleford
Gloucestershire
GL16 8AA
Tel: 01594 832979
enquire@caav.org.uk

9. More information

- 9.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2
- 9.2. More detail on the proposed route for HS2 can be found at:
<http://www.dft.gov.uk/topics/high-speed-rail/line-of-route>
- 9.3. 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>

- 9.4. The Royal Institute of Chartered Surveyors has also published a consumer guide on compulsory purchase and compensation at:

<http://www.rics.org/Global/RICS-Compulsory-Purchase-Guide.pdf>