

Your property and...

compensation or mitigation for the effects of our road proposals

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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.

The government has 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 how we seek to mitigate the effects of our road proposals on your 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 land surveys

Your property and blight

Your property and discretionary purchase

Your property and compulsory purchase

How to claim for the effects on your property of new or altered roads (Part I compensation)

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Compensation and mitigation for the adverse effects of our road proposals on your property

In designing new or improved highways, we are required to produce an environmental statement to assess the likely effects of the construction works and the road in use, such as noise, construction dust, vehicle emissions, etc. (“the adverse effects”) on neighbouring properties.

Parliament has provided us with a range of powers and duties to enable us to mitigate and compensate for the adverse effects, as follows:

1. We can acquire land to mitigate the adverse effects of constructing or improving a highway, by providing “environmental mitigation” (subsection 246(1) Highways Act 1980 and section 122 Planning Act 2008).
2. We can enter into “off-site planting agreements” to use land near highways for the planting and maintenance of trees, shrubs or plants to mitigate the effects of the new or improved highway on surrounding land (section 253 Highways Act 1980. This section also provides for other measures to be taken to mitigate the effects of the highway.)
3. We can provide “noise insulation” (or make a grant towards your costs in providing insulation) in the form of secondary glazing, supplementary ventilation and where appropriate, venetian blinds and double or insulated doors (in accordance with the Noise Insulation Regulations 1975 (“the Noise Insulation Regulations”).
4. We can make “noise payments” to compensate for the effect of noise from the construction or use of a new or improved highway to owners of movable homes (in accordance with the Highways Noise Payments and Movable Homes (England) Regulations 2000 (the “Noise Payments Regulations”).
5. We may pay your reasonable additional expenses to move into temporary suitable alternative residential accommodation, whilst the most disruptive of the construction works are being undertaken (section 28 Land Compensation Act 1973).
6. We can pay compensation (section 10 Compulsory Purchase Act 1965) for injurious affection caused by the construction or improvement of a new or improved highway.
7. We can exercise “off-line discretionary purchase” powers to acquire property the enjoyment of which is [predicted] to be seriously affected by the construction or use of the new road (subsections 246(2) and 246(2A) Highways Act 1980)
8. We can pay compensation (under Part I Land Compensation Act 1973) where property has been reduced in value by more than £50 by physical factors caused by the use of a new or altered road.

Each of these powers, and our duties in complying with them, is explained in further detail in this booklet.



1. Environmental mitigation

We have powers to acquire land by compulsion to carry out environmental mitigation works to mitigate the adverse effects which the construction, or use, of a new or improved highway will have on the surrounding land.

compulsory purchase then explains what you can claim compensation for if we need to acquire your land by compulsion; when you can claim compensation; and how we will negotiate and agree the amount with you.

Environmental mitigation works include (this is not an exhaustive list):

In constructing new or improved highways we are legally required to ensure that any construction activities are not prejudicial to health, nor are they a nuisance. Our contractors are required to implement a construction environmental management plan setting out mitigation measures (such as frequent wetting down to control dust).

- landscaping, such as planting trees, shrubs or plants to screen the new or improved highway from view
- building earth mounds or constructing noise barriers or air quality barriers to reduce the effects of the new or improved road in use
- erecting temporary fencing to screen noise and lighting from our construction compounds

Furthermore, local authorities have powers in section 80 Environmental Protection Act 1990 to serve a statutory nuisance notice on anyone responsible for causing a nuisance from matters such as dust or noise. The notice would require us to take necessary steps to restrict or prevent its reoccurrence. In adhering to these requirements, we will ensure that our construction activities do not become a nuisance and in the unlikely event that a breach occurs, we would remedy it immediately.

If we need to acquire your land (or part of it) to provide environmental mitigation, our booklet *Your property and our road proposals* explains the major steps that our schemes go through in obtaining compulsory acquisition powers, and how we will engage with you throughout the process to take your views into account. Our further booklet *Your property and*

2. Off-site planting agreements

An off-site planting agreement is a voluntary agreement with you to mitigate the adverse effects (eg noise) on your (or your neighbour's) land from the construction works, or the new or improved road in use, by planting and then maintaining trees, shrubs or plants on your land, or taking other mitigation measures.

In most cases, planting or other mitigation measures are undertaken by our landscape contractors. However, exceptionally and where the planting is likely to be minimal, we may agree that you can arrange it.

If you arrange the planting, after it has been undertaken we would reimburse your proper and reasonable costs, although we would be prepared to advance up to £1,000.

Where we identify that you (or your neighbour) would benefit from off-site planting to help mitigate the construction works or the new or improved road in use, we will contact you

to discuss how this may benefit you and what planting might be provided. If you were interested in proceeding, we would then agree a management plan with you. This would confirm:

- what planting we are prepared to provide
- details of the contractor appointed to carry out the planting
- how to contact us
- when the planting is expected to be undertaken
- the length of time that we will initially maintain, or replace if necessary, the planting to ensure its establishment (this is normally three years)
- that you would take over the maintenance (including any replacement) responsibilities on the expiry of our maintenance period. Immediately prior to this, we will arrange a site inspection with you to establish that everything is in order before responsibility is passed to you

Agreements normally run for 25 years on our major highway improvements. However, where the area to be planted is less than 100 square metres, this may be reduced to 10 years.

Under the terms of the agreement, you would retain ownership of the land, but its use would be restricted to the maintenance of the planting. This could include restrictions on the lopping or removal of the planting. The agreement would also provide for us (including our appointed representatives) to enter onto the land from time to time (at intervals of not less than five years) to inspect the planting and to confirm that you are meeting your maintenance obligations.

A local land charge would be registered over your land to protect our interest in the planting and to ensure that, if you sold the land during the maintenance period, your successor in title (ie your buyer) would be bound by the agreement. In view of this, we will need to see evidence that you own the land and you will be advised to consult a solicitor before signing the agreement.

Furthermore, the agreement would need to be signed before we can arrange the planting.

Where the planting will solely benefit your neighbours, we will pay:

- compensation in respect of any loss arising from your inability to use the planted land
- a commuted sum to cover your proper and reasonable costs in managing and maintaining the planting
- if you employ a solicitor, or other professional to advise you, their proper and reasonable fees (please see the fees section of this booklet for further information about how we may contribute towards the fees of your professional advisers)

However, we would not pay these amounts where the planting is solely for your benefit.

Where the planting will benefit both you and your neighbours, we will pay a proportionate share of these amounts.

3. Noise insulation

Where we propose to carry out highway improvement works, the Noise Insulation Regulations 1975 enable us (in the circumstances explained below) to carry out insulation work or to make a grant for you to carry out the work.

We will carry out a noise assessment to identify the residential properties that are predicted to be affected by noise levels at or above the “specified level” in the Noise Insulation Regulations, or are likely to be affected by excessive construction noise over long periods.

Where we are constructing a new road or adding an additional carriageway to an existing road, we will publish for public inspection details (a map or list) of the residential properties that are predicted to be affected by noise. If the property you occupy is identified, we will contact you directly to offer to carry out insulation work, or to make a grant.

Please note that if you rent your home, we will normally make the offer to you (rather than to your landlord). However, you should advise your landlord that you have received an offer.

Where we are altering an existing road by changing the location, width or level of the existing carriageway (this does not include resurfacing works), we are not obliged to provide noise insulation or a grant. However, if you believe your property meets the criteria below, you should contact us to discuss whether we may be able to offer insulation or a grant.

In accordance with the insulation specifications in Schedule 1 of the Noise Insulation Regulations, we will provide insulation in the form of secondary glazing, supplementary ventilation and, where appropriate, venetian blinds and double or insulated doors.



We will carry out a noise assessment to identify the residential properties that are predicted to be affected by noise

To qualify for insulation, or a grant for insulation, the following criteria must be met:

- The proposed highway improvement must be to:
 - construct a new road
 - add an additional carriageway to an existing road
 - to alter an existing highway
- Your property (the affected building) must be residential. Under the Noise Insulation Regulations, eligible buildings include dwellings and other residential properties, or parts of properties such as houses, flats, care homes, nursing homes or residential accommodation in educational establishments
- The affected building must be:
 - adjacent to the construction works (for insulation from construction noise)
 - within 300 metres of the new road, additional carriageway or altered highway (for insulation from noise from the road in use)

- The affected building must have been occupied:
 - during the construction works (for insulation from construction noise)
 - before the new road or additional carriageway was first open to public traffic (or the altered highway was re-opened following the alteration)
- An extension to a dwelling or an alteration (eg a loft conversion) will only be eligible for insulation if it was occupied before the opening of the new road, additional carriageway, or altered highway.
- For construction noise, the noise level must exceed 70dB(A) Leq over long periods of the day extending over a period of months (“the excessive construction noise over long periods”).
- For noise from the new road, additional carriageway or altered highway, the noise level must be predicted to increase by a minimum of 1dB(A) and be not less than 68dB(A) L10 (18 hour) (“the specified level”) within 15 years of the new or improved road opening to public traffic.
- In calculating the above noise levels, we will take into account any fencing or earth mounds we build as part of the scheme which would lessen the effects of noise.

- Insulation will only be installed on the façades of the eligible building that are predicted to be exposed to the excessive construction noise over long periods or noise to the specified level from the road in use and only if the façade has an eligible room, being a:
 - living room
 - dining room
 - study
 - bedroom
 - bedsit

Please note that properties that have been identified as being liable to be acquired compulsorily are not eligible for noise insulation.

Where buildings of unconventional construction (eg lightweight prefabricated houses), or those with eligible rooms in converted loft spaces, present technical difficulties meaning that the insulation specifications in Schedule 1 of the Noise Insulation Regulations may not be appropriate, we will consider how to achieve the same degree of noise reduction.

Please note that we are not obliged to carry

out (or make a grant) for work to remedy a defect (such as a rotting window sill) before installing secondary glazing. You will be required to repair any defects beforehand.

Also, if you have recently already installed secondary glazing, if the insulation you installed does not comply with the specification in Schedule 1 of the Noise Insulation Regulations (or is incomplete), we may offer you a grant for the further work required, or arrange for this to be undertaken by our contractor.

Once the insulation works have been completed, they become part of your property and it will be your (or your landlord’s) responsibility to maintain them.

Finally, please note that, to be effective, noise insulation requires the secondary glazing to be kept shut. This will restrict natural ventilation. Air circulation will be required to help prevent condensation from forming, and to keep the room comfortable in hot weather.

Also, to reduce any build-up of odours or toxic gasses (eg carbon monoxide from boilers) we cannot (for reasons of your safety) install noise insulation in a room with a flueless combustion appliance (eg an oil heater or gas cooker), unless it contains an openable window (ie a window on another façade that does not qualify for insulation, or one that will be left un-insulated).

The contractor (either our contractor or the person you appoint to carry out the works) will be able to provide you with information and guidance on the proper use of the insulation.

Action if your property is not assessed as qualifying for insulation

Where we are constructing a new road or adding an additional carriageway to an existing road and your residential property is not identified on the published map or list, you have a right to request that we review our calculations.

Where your request relates to construction noise, you must make it before the construction works are completed. Alternatively, where it relates to noise from the road in use, you must make it within six months of the date on which

the new road or additional carriageway was first open to public traffic (or the altered highway was re-opened following the alteration).

You should set out why you believe your property qualifies for insulation and request that we review our noise assessment. On receiving your request, we are obliged to reassess noise calculations and to make you an offer if the reassessment confirms that your property is predicted to be affected by the excessive construction noise over long periods or the specified level for noise from the road in use.

However, if the reassessment confirms that your property does not qualify, we will confirm the results of our reassessment and advise you of this.

Accepting an offer of insulation

You have six months within which to accept our offer.

However, if you rent your property and have not accepted our offer within three months, your landlord may accept it.

Alternatively, if our offer is not accepted within six months, and we have made it in relation

to the predicted noise from the improved highway in use, you will have a further opportunity to accept it within 12 months of the new road or additional carriageway opening to public traffic (or of the altered highway re-opening following the alteration).

In considering our offer you may decide to accept the insulation in just one, some, or all of the eligible rooms. You can also decide to accept the offer to carry out the installation in some rooms and receive a grant in respect of others.

If you are a tenant and are concerned that your tenancy agreement prohibits you from making alterations to the property without your landlord's consent, please note that under the Noise Insulation Regulations, we have authority to carry out the work without his/her consent and without breaching the terms of your tenancy.

If you accept our offer, our contractor will contact you to make arrangements for the insulation works to be undertaken at a mutually convenient time.

Accepting an offer of a grant

If you would rather make your own arrangements to install the insulation, you may request a grant.

We will pay a grant equivalent to the lesser of:

- the actual cost of providing secondary glazing for the qualifying windows and doors and ventilator systems of the eligible rooms on the qualifying façades or the works described in our offer letter (taking account of any discounts provided by the supplier)
- the reasonable cost of those works

This will include the cost of making good the existing fabric and decorations (not including curtains) affected by the carrying out of insulation work, including the adaptation of any existing pelmet and curtain track.

Please ensure that your contractor is aware that the installation needs to conform to the specifications in Schedule 1 of the Noise Insulation Regulations. We are happy to advise your contractor about the types of insulation that would comply with the Noise Insulation Regulations.

If you wish to request a grant, you should obtain a quotation from your chosen contractor and submit it to us for approval before appointing him/her to carry out the works. Please note that we may ask you to obtain more than one quotation. Your quotation should confirm:

- the name and address of your chosen contractor (unless you are intending to do the works yourself)
- the dimensions of each eligible window, external door and venetian blind to be fitted
- the number of rooms to be provided with approved ventilator systems and permanent vents including supply ducts and cowls or grilles
- if flued combustion appliances are present in an eligible room their output rating in kilowatts
- if you reside in a property of unconventional construction, please ensure that

the quotation clearly explains:

- how the proposed insulation works will differ from the insulation specifications in Schedule 1 of the Noise Insulation Regulations (“the non-specified work”)
- what level of noise insulation the works will achieve
- itemise the cost of each non-specified work
- the total estimated cost

Please note that if you:

- intend to undertake the works yourself, you will not be able to claim a grant towards your own labour costs
- have eligible rooms in a converted loft space, we will not carry out (or provide a grant to cover the cost of) additional works, such as insulating the roof structure

We aim to decide grant applications within three months of receiving the quotation. If your application is approved, you must complete the works within twelve months from the date we approved it.

You should ask your contractor to advise you of any changes to the approved quotation as the works progress and seek our further approval to any cost increases.

On completion of the works, we will arrange a convenient time to visit you to inspect the works. If we are satisfied that they conform to the specification in Schedule 1 of the Noise Insulation Regulations, we will arrange for the approved grant to be paid to you. Please note that you will be required to supply an invoice(s) as evidence of the costs you have paid to your contractor.

You will be responsible for managing your contractor and for paying his/her fees. Please note that:

- We do not make payments directly to contractors; it is your responsibility to pay him/her. If you request that we pay your contractor directly, we will politely decline, as to do so cuts across the commercial/professional relationship between you and your contractor.
- We have no authority over your contractor, or any responsibility for his/her conduct. That includes the terms of their contract or agreement with you, the content of their literature and how they ask you to pay their fees. We cannot and do not comment on the terms of contracts or agreements; this is a private matter between you and your contractor.



4. Noise payments for movable homes

Our noise assessment may also identify movable homes (caravans or houseboats) that may qualify for a noise payment under the Noise Payments Regulations.

Where our noise assessment identifies movable homes that may qualify for a noise payment, we will make a map or list available for public inspection. If your movable home is identified, we will contact you directly with information about making a claim.

If we have not contacted you but you believe your property may be eligible then you can contact us to request a claim form.

Under the Noise Payments Regulations, claims can be made for disturbance either from construction works or from traffic using the new or improved road. You cannot make a claim for both.

To qualify for a noise payment due to construction noise, the noise from the construction of a new or altered highway must have seriously adversely affected the enjoyment of your mobile home for a continuous period of six months. Serious effect is likely to exist where, having taken account of any measures undertaken to mitigate the level of construction noise, a noise level significantly in excess of 70dB(A) (12 hour Leq) (for practical purposes this may be taken as 73dB(A) or greater) is present on most days over a period of six months.

To qualify for a noise payment due to noise from traffic using the new or altered highway, the predicted noise level 15 years after the road opens to traffic must be not less than 68dB(A) L10(18-hour). In the case of an altered highway, a claim for a noise payment may be considered only if, following opening of the alteration, the noise level exceeds or is expected to exceed previous noise levels by at least 1dB(A) and to be not less than 68dB(A) L10 (18-hour).

For a claim to be successful you must satisfy the following conditions:

- Some part of your home has, throughout the relevant 'qualifying period' (see following bullet points), been located within 300 metres of our road project.
- If your home is a caravan, it has been lawfully stationed on a protected site within the meaning of subsection 1(2) Caravan Sites Act 1968.
- If your home is a houseboat, it has been lawfully moored or secured with any necessary consent of the navigation or other authority responsible for the water in which it is located and of any land to which it is moored.
- You are able to provide written evidence that you are in lawful occupation of the home in respect of which you are claiming.
- If you are claiming for construction noise, your occupation began one year before our works started and the enjoyment of your home has been seriously affected (see page 20) by that noise for six months following the start of construction. This is the 'qualifying period' for construction noise claims.

- If you are claiming for traffic noise (see page 20 regarding the level of noise that must exist or be predicted before a claim can be made), your occupation began prior to, and has continued for, a continuous period of three years from the date our road project first opened to traffic. This is the 'qualifying period' for traffic noise claims.
- Your claim is made within six years of the expiry of the 'qualifying period' for either a claim for construction or traffic noise.

If you make a successful claim, we will make you a noise payment of £1,650. Any noise payment made to you will not attract interest. Nor are we able to reimburse you for any professional costs that you may incur if you make a claim.

If you own the land on which your home is situated, you will not be able to claim compensation under the Noise Payments Regulations. However, you may be eligible to make a claim under Part I Land Compensation Act 1973 (see page 28 of this guide).

5. Reasonable additional expenses to move into temporary suitable alternative residential accommodation

If you live adjacent to the site of the construction works for a new or improved highway, and the physical effects of the works are causing such significant disruption and discomfort as to make your continued occupation of your home not reasonably practicable, we have a discretionary power to pay the reasonable additional expenses (the costs that exceed those you would have incurred if you had continued to occupy your home) to move into 'temporary suitable alternative residential accommodation' ('TSARA') during the period of those works.

TSARA will normally only be appropriate:

- for periods of up to 5 months
- where the occupier's additional expenses are likely to be less than the cost of noise insulation

However, this discretionary power does not extend to residential property:

- on unaltered highways that may be affected by an increase in construction works traffic, using it to access the construction site
- affected by reconstruction and maintenance works, where the original highway specifications, such as its location, width, level and load bearing capacity, remain unaltered

To be eligible to claim reasonable additional expenses to move into TSARA:

- the construction works for the new or improved highway must be adjacent to your home
- you must be an occupier of a residential property (such as a house, flat, care home, nursing home or residential accommodation in an educational establishment)

In considering whether the physical effects of the construction works are causing such significant disruption and discomfort as to make your continued occupation of your home not reasonably practicable, we will consider the effects arising from construction noise, air quality and vibration. We will also consider any other physical factor arising from the works which you state is making the occupation of your home not reasonably practicable. However, we will not have regard for factors such as visual impact (except artificial lighting from overnight works flooding directly into bedrooms) or loss of privacy.

- for construction noise:
 - the predicted (or actual) noise level during construction must exceed the relevant threshold in Annex 3 - Table of temporary re-housing noise trigger levels, for either:
 - a period of 10 or more days working in any consecutive 15 days
 - a total of 40 days or more in any 6 consecutive months.
 - the exceeded noise level must be experienced in an eligible room, being a living room or bedroom having a qualifying door or window (please see the Glossary for details)
 - where the nuisance is from construction noise resulting in noise levels well in excess of 70dB(A) Leq over long periods of the day extending over a period of months, we will normally consider providing noise insulation as an alternative to paying the reasonable additional expenses of TSARA

- for air quality, we will assess the effects in accordance with our published document *LA 105 – Air quality*, which provides a framework for assessing, mitigating and reporting the effects of our road schemes on air quality
- for vibration, we will assess the effects in accordance with our published document *LA 111 Noise and vibration*

For us to consider that the occupation of your home is not reasonably practicable, only one of these factors needs to be present at the required level and duration.

Where we identify that the physical effects of our construction mean that it is not reasonably practicable for you to remain there for a short period, we will contact you to offer to pay your reasonable additional expenses to move into TSARA.

Alternatively, if you feel that the physical effects of the construction works mean that it is not reasonably practicable for you to stay in your home, you should contact us. We will then assess the physical effects of the works on your property, and how long those works are expected to last.

Please note that we will only reimburse your reasonable additional expenses if we have agreed this with you before the expenses are incurred.

Where reimbursement is approved, we will confirm the period of TSARA that we will pay reasonable additional expenses for and what expenses we will pay. You will be required to provide evidence of the reasonable additional expenses to be incurred. We will typically reimburse your reasonable additional expenses of (this is not an exhaustive list):

- the cost of the TSARA
- removals (although, as the move will normally only be temporary, removals should not generally include items such as furniture, or the cost of maintaining gardens, etc. at the TSARA)

- storage and insurance of personal effects
- where appropriate the cost of pets to go into kennels, catteries, etc.
- costs of disconnection/connection of utilities
- additional costs in insuring the property vacated

Important: Whilst we have the power to make such payment, it is at our discretion and we are not obliged to do so.

Important: You must arrange your own TSARA, we cannot do this for you.

6. Section 10 claims

Section 10 Compulsory Purchase Act 1965 provides for a landowner to claim compensation for “injurious affection” caused by the execution of public works, such as the construction or improvement of a new trunk road or motorway.

Injurious affection occurs where the construction works interfere with your enjoyment of your land and for which, in the absence of any statutory authority authorising the works (eg a Development Consent Order or orders under the Highways Act 1980), you could bring a claim in law for nuisance. For example, the construction works may temporarily interfere with the access to your property.

Compensation is assessed by reference to the resulting diminution in value of your land. The rules governing claims for injurious affection are complex but are briefly stated below. You are advised to seek advice from your land agent (chartered surveyor) before making a claim.

1. Injurious affection must be the consequence of the lawful exercise of statutory powers, otherwise the remedy is action in the civil courts.
2. The injurious affection must arise from that which will give rise to a cause of action if done without the statutory authority for the relevant scheme of works.
3. The damage or injury for which compensation is claimed must be in respect of some loss of value of the land of the claimant.
4. The loss or damage to the claimant’s land must arise from the execution of the works and not from the authorised use of the lands compulsorily acquired following completion of the works.

Finally, claims under section 10 are only available where no land is being acquired from you for the construction or improvement of the highway. Where land is being acquired from you, claims for injurious affection are assessed as part of your compensation claim for the land acquisition.

Find out more

Please see our booklet *Your property and compulsory purchase* for further details about injurious affection where we acquire part of your land.

7. Off-line 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 such property, Parliament has given us the ability to do so using discretionary powers (in subsections 246(2) and 246(2A) Highways Act 1980):

You may apply to us to purchase your property under:

- Subsection 246(2A) - serious effect from the construction works or from the road in use. Applications can normally be made after a notification of development (a written notice and a map or plan identifying the land required for the highway) has been issued to the local planning authority. You can ask us whether we have issued a notification of development for the proposed road scheme.
- Subsection 246(2)(a) - serious effect from the construction works. Applications can be made during the construction period.
- Subsection 246(2)(b) - serious effect from the road in use. Applications can be made during the first year after the new or improved road has opened to traffic.

Find out more

Details of how we exercise our discretion to offer to purchase property under these powers can be found in our booklet *Your property and discretionary purchase*.

8. Part I compensation

Under Part I Land Compensation Act 1973 ('the Act'), compensation can be claimed by people who own and also occupy property that has been reduced in value by more than £50 by physical factors caused by the use of a new or altered road.

The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the property of any solid or liquid substance.

The cause of the physical factors must be the new or altered road in use. Compensation cannot be claimed for the effects of traffic further down the road where no alteration has taken place.

Under the provisions of the Act, a road is altered only when there is a change to the location, width or level of the carriageway or an additional carriageway is provided beside, above or below an existing one. Part I compensation is not payable when the carriageway has simply been resurfaced.



Find out more

More information about when and how to make a claim, and about how we will handle your claim, can be found in our publication *How to claim for the effects on your property of new or altered roads (Part I compensation)*.

Fees – Making a contribution towards your surveyor's, solicitor's or other professional adviser's fees

Where we may contribute towards your reasonable fees

We will contribute towards your reasonable fees for a land agent (chartered surveyor) to:

- attend meetings we have instigated to help you engage with us to develop our scheme proposals (including the reasonable preparation for meetings and dealing with actions arising)
- identify and consider potential scheme design changes (including alternatives), to deliver a scheme that best meets its objectives (eg, reduce congestion at a junction or deliver safety improvements) or delivers better value

- identify and reduce scheme impacts
- agree a statement of common ground or a position statement with you
- exchange information needed or beneficial for the scheme, reducing the risk of delays or extra work

This means that where we approach you to discuss the provision of environmental mitigation works (including the acquisition of your land to provide such works) or to seek your consent to enter into an off-site planting agreement that will benefit your neighbours, we will contribute towards reasonable fees.

In the case of off-site planting:

- where the planting will also benefit you, we will make a proportionate contribution towards reasonable fees (as explained in more detail in the off-site planting section of this booklet)
- we will contribute towards your solicitor's fees for advising you about the terms of the agreement and for arranging for it to be completed

We will only contribute towards reasonable fees, taking into account the skill and expertise required and the typical professional hourly rates.

We will require reasoned justification for the attendance of partners at meetings, etc and we would require you to submit that justification to us beforehand for prior agreement.

When you seek reimbursement for work undertaken, we will ask for a detailed record of: time spent; activities undertaken; and justification. As a public body, we cannot repay fees without a reasoned justification and we will look to our independent valuation (and conveyancing) advisers to help us make an assessment of the contribution we will make to your costs.

Where we will not contribute towards your fees

We are **not** willing to contribute towards your costs:

- if we are providing information and asking for your feedback (except in exceptional circumstances)
- for any meetings taking place between you and your land agent, which we have not instigated
- for any meeting with us, or other activity, where no part of your land is to be acquired (permanently or temporarily) for the scheme, or suffers no serious effect
- incurred from consultation activities where a response has not been requested from you

Additionally, we will not contribute towards your fees for a land agent to:

- appoint a contractor (where you chose to make your own arrangements to install noise insulation at your property and we are paying a grant; or to arrange your own off-site planting). This is because it is your choice to accept the offer of a grant, rather than have the insulation installed by our contractor; or to carry out the off-site planting yourself

- assist you in making a claim for a noise payment for your movable home
- agree your reasonable additional expenses where we have accepted that you can move into TSARA because the construction works will make your continued occupation of your home not reasonably practical for a short period. This is because claims are based on actual expenses reasonably incurred and so, it is not normally expected that you would need to employ a land agent (or a solicitor) to assist you in the settlement of your claim

Our booklets:

- *Your property and discretionary purchase* explains the limited situations in which we would contribute towards your land agent (and solicitors) reasonable expenses, where we exercise our discretion to make an offer to purchase your property.
- *How to claim for the effects on your property of new or altered roads (Part I compensation)* explains how to claim reimbursement of the reasonable fees of your agent.

Your responsibilities in appointing a professional adviser to represent you

Please note that we have no authority over your professional adviser, or any responsibility for his/her conduct. That includes the terms of their contract or agreement with you, the content of their literature, and how they ask you to pay their fees. We cannot and do not comment on the terms of contracts or agreements; this is a private matter between you and your adviser.

If you appoint a land agent who is a member of The Royal Institution of Chartered Surveyors ('RICS'), he/she should abide by its professional code of conduct and in particular the professional statement in respect of advising clients on compulsory purchase and statutory compensation.

<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>

Please note that if we have agreed to pay a contribution towards your professional adviser's fees, we will pay this to you. We do not make payments directly to your advisers; it is your responsibility to pay your adviser. If you request that we pay your adviser directly, we will politely decline, as to do so cuts across the commercial/professional relationship between you and your adviser.

However, if you appoint a solicitor to represent you, we may pay your compensation (including a contribution towards their fees) directly to them. Solicitors are regulated by the Solicitors Regulation Authority and are required to hold separate accounts for holding client monies and their fees, and to account to clients accordingly.

In certain circumstances, we may also pay for your time, or that of your employees, at an agreed rate if we deem it reasonable. However, our agreement to repay these costs must be sought before they are incurred. We will only accept one claim from you, regardless of whether your land is held in joint ownership. Again, we will require you to keep and provide a detailed record of hours spent, activities undertaken and justification for our approval and we may look to our independent valuation advisers to help us make an assessment of the contribution we are prepared to make.

Annex 1 – Glossary

This glossary is for use with (as appropriate):

- Noise insulation
- Claims for the reasonable additional expenses to move into temporary suitable alternative residential accommodation

Altered highway – a highway of which the location, width or level of the carriageway has been (or is to be) altered (otherwise than by resurfacing).

Additional carriageway – a carriageway constructed, or proposed to be constructed, beside, above, or below an existing carriageway.

Eligible building – a dwelling or other building used for residential purposes, which is not more than 300 metres from the nearest point of:

- the carriageway of a new highway
- an additional carriageway
- the altered carriageway

Eligible room – a living room or a bedroom, having a qualifying door or a qualifying window, in an eligible building.

Façade - a side of a building.

Insulation work - work carried out to insulate a building against noise and to provide for ventilation and solar control.

Qualifying door (or window) - an external door that opens directly into an eligible room (or a window in an eligible room) and which, in the case of:

- noise from the new road, additional carriageway or altered highway:
 - is likely to experience noise at the specified level
 - is an eligible façade that continues onto an adjoining building that is not eligible (because the noise levels fall below the specified level) but is in a position which, in our opinion, is physically comparable with that of a qualifying door or qualifying window in adjoining eligible building
- noise from the construction works; is or will, in our opinion, seriously affect the enjoyment of an eligible building adjacent to the construction works, for a substantial period (over 70dB(A) Leq over long periods of the day extending over a period of months)

Specified level - a noise level of 68dB(A) L10 (18-hour) at one metre in front of the most exposed of any windows and doors in a façade of a building caused or expected to be caused by traffic using or expected to use any highway.



Annex 2 - Noise measurement

dBA - 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

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

Annex 3 - Table of temporary re-housing noise trigger levels

	Time	Averaging time	Temporary re-housing trigger level LAeq, T(dB)
Monday to Friday	0700-0800	1 hour	80
	0800-1800	10 hours	85
	1800-1900	1 hour	80
	1900-2200	1 hour	75
	2200-0700	1 hour	65
Saturday	0700-0800	1 hour	80
	0800-1300	5 hours	85
	1300-1400	1 hour	80
	1400-2200	1 hour	75
	2200-0700	1 hour	65
Sunday and Bank Holidays	0700-2200	1 hour	75
	2200-0700	1 hour	65

Trigger levels are defined as 1 metre in front of the closest façade of an eligible room.

Data protection and you

Highways England will collect and process your data in relation to discussing any measures (set out in this booklet) to mitigate the adverse effects (if any) of our road proposals on your property. Highways England is permitted to do this in order to: carry out our statutory and public functions; enter into a contract with you; and/or meet any statutory requirements relating to compulsory purchase powers (where relevant).

We will not use your personal information for any purpose other than in this connection or to meet our statutory requirements. All information we hold will be maintained accurately and kept as up-to-date as possible.

Your data will be processed and retained by Highways England and our appointed contractors until the purpose for which it was collected is complete. In some cases, we may be required to share your information with the Planning Inspectorate. If you appoint an agent to represent you, 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.

Under the General Data Protection Regulation you have the following rights:

- Right of access to the data (Subject Access Request)
- Right for the rectification of errors
- Right to erasure of personal data – this is not an absolute right under the legislation
- Right to restrict processing or to object to processing
- Right to data portability

To exercise these rights, please contact our Data Protection Officer using the following contact details:

- ✉ DataProtectionAdvice@highwaysengland.co.uk
- ✉ Data Protection Officer
Highways England, Piccadilly Gate,
Store Street, Manchester M1 2WD

If, at any point, Highways England plans to process the personal data we hold for a purpose other than that for which it was originally collected, we will provide you with information about what that other purpose is and any relevant further information about the rights referred to above, including the right to object to that further processing.

You have the right to lodge a complaint with the supervisory authority, the Information Commissioner's Office.

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 our dealings with you. We are keen to improve the service we offer our customers wherever possible and provide redress where appropriate.

However, if you make a Part I compensation claim and you are unhappy with our offer of compensation this 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
- ☎ 0300 123 5000
- www www.highwaysengland.co.uk

Further information

The Ministry of Housing, Communities and Local Government (MHCLG) 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

The booklets are available on the MHCLG website.

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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Highways England creative job number BED21 0053

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

Highways England Company Limited registered in England and Wales number 09346363