

HS2

High Speed Rail (Crewe – Manchester)

Land Compensation

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Outline of Presentation

- Introduction
- Executive Summary
- Land Acquisition Powers and Policy
- Statutory Compensation – the ‘Compensation Code’
- Generalised Blight – the HS2 non statutory property package

Executive Summary

Compensation Code

Mix of legislation and case law

Equivalence

Compensation seeks to put the claimant back in the position they were insofar as money can

Consistency

Compensation Code ensures consistency and fairness across the HS2 route

Dispute Resolution

Alternative Dispute Resolution or the Upper Tribunal (Lands Chamber)

Land Acquisition Powers and Policy

High Speed Rail (Crewe – Manchester) Bill

Seeks powers to acquire land and construct Phase 2B works

Identifies land to be acquired within limits

Incorporates existing law on compulsory purchase processes

Incorporates existing law on assessment of land compensation

HS2 Land Acquisition Policy

Information Paper C3: Land Acquisition Policy:

- The Bill generally includes full land acquisition powers for Phase 2b (Crewe – Manchester) purposes.
- The exercise of these powers will operate on the basis that the Secretary of State will acquire no greater amount of land than appears to him to be reasonably required following detailed design.
- It is likely that detailed design will not be completed at the time that possession is required and that this may mean that more land is acquired than is finally used for Phase 2b (Crewe – Manchester) purposes.
- The Land Disposal Policy will apply to surplus land, and that land may be offered back to the original owner.
- The Bill also confers power to take possession of and use temporarily all the land which the Secretary of State can acquire compulsorily (Schedule 15).
- Compensation is payable for compulsory acquisition of land and for losses resulting from the exercise of temporary possession powers.

HS2

Phase 2b Western Leg Information Paper C3: Land acquisition policy

This paper outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (Crewe - Manchester) Bill. Content will be maintained and updated as considered appropriate during the passage of the Bill.

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)

or by post: High Speed Two (HS2) Limited
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Birmingham
B4 6GA

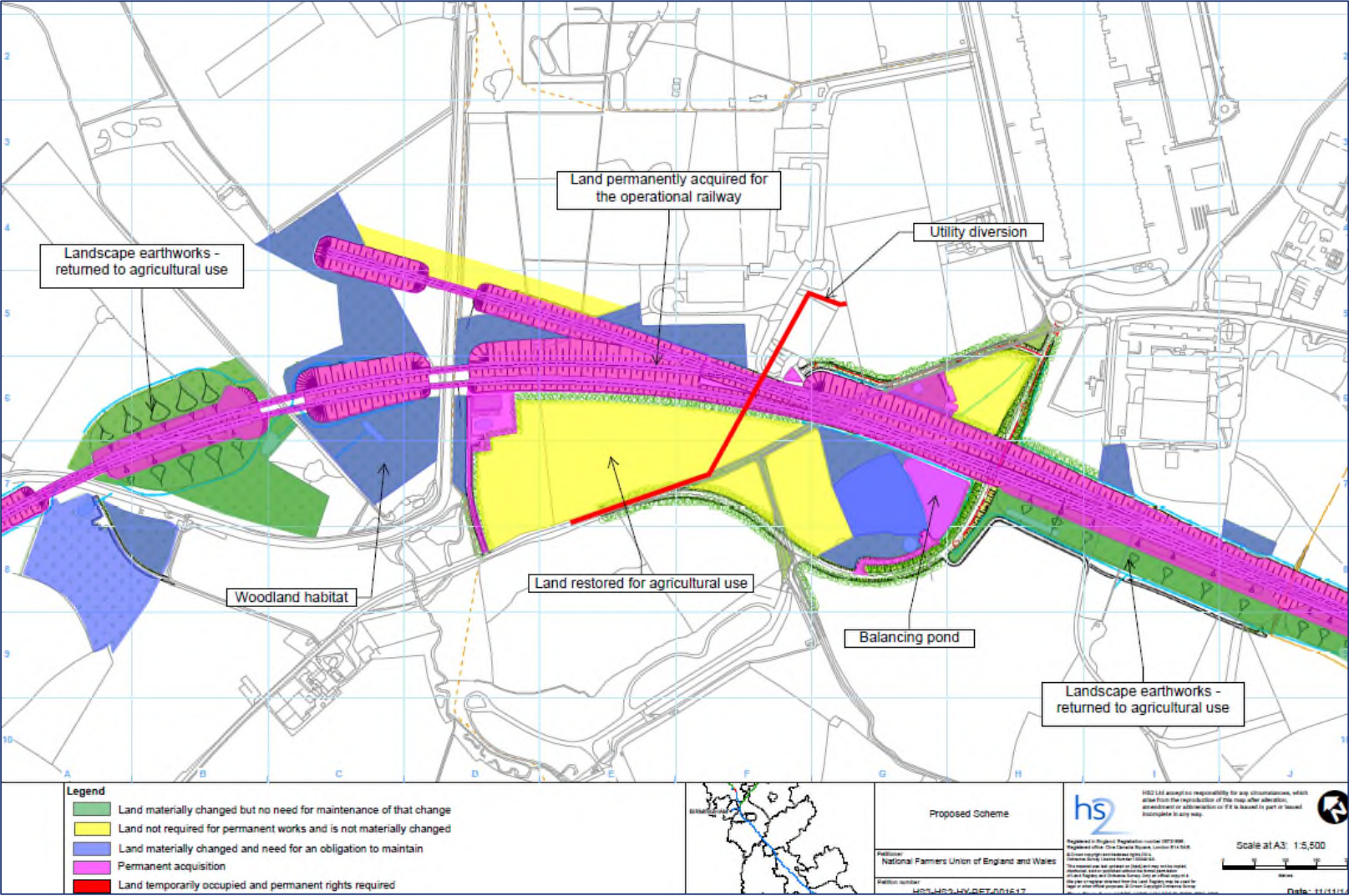
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Temporary Possession and Use

- The Secretary of State has stated that he will normally be willing to take land required for worksites temporarily, if the landowner so wishes and it is practicable and economic for the Secretary of State to do so: Information Paper C3 Para 4.2.
- Factors which the Secretary of State may consider include:
 - Length of time for which the land is required
 - Comparative overall cost of temporary use and permanent acquisition
 - Safeguards required to secure maintenance of mitigation measures (eg earthworks, planting) and future access to railway infrastructure (eg balancing ponds)
 - The landowner's willingness to agree compensation for temporary possession
- A number of scenarios identified as to when the nominated undertaker might exercise powers of temporary possession and use: see HS2 'Guide for Farmers and Growers' and Information Paper C2.

HS2 Land Acquisition

An illustration



HS2 Land Disposal Policy

Information Paper C6: Disposal of Surplus Land

- Land acquired under compulsory purchase that is not permanently required for Phase 2b (Crewe – Manchester) purposes may be offered back to the former owner to purchase at its open market value.
- This policy does not ordinarily apply where the land has materially changed in character by reason of the works carried out for the Proposed Scheme.
- There are a number of stated exceptions to this policy, such as:
 - Sites of such a nature or so small or isolated that their sale would not be commercially worthwhile;
 - Agricultural land that has been severed which is no longer capable of farming economically;
 - Where it makes sense to pool land with adjoining ownerships in a joint disposal; or
 - Where the former landowner is not prepared to comply with any undertaking given by the Secretary of State, in relation to that land.
- Where land is in long term agricultural use and is likely to return to agricultural use upon disposal, the Secretary of State has agreed not to treat that land as materially changed.

Agricultural Land Principles

Updated Phase 2b Guide for Farmers and Growers issued November 2022:

- Communication and Engagement
- Minimising loss of Grade 1, 2 and 3a agricultural land as far as reasonably practicable
- Accommodate reasonable proposals to modify detailed design
- Relocation of farm buildings and facilities
- Accommodation works
- Access
- Fencing
- Land Restoration

HS2

**High Speed Two
Phase 2b**

Guide for Farmers and Growers

November 2022

Access for Surveys

To help complete the design of the railway, it is necessary to gain access to land for surveys. These could be ecological, building or ground investigation surveys.

- Powers of entry to survey land are contained in the Bill, in Schedule 2 and 15, but are only available following enactment of the Bill.
- Prior to Royal Assent, HS2 Ltd seeks to negotiate with landowners access for survey by agreement. These provide for payment to the landowner in return for granting access.
- When it is not possible to negotiate access for a survey, the Promoter is able to use powers under the Housing and Planning Act 2016 to enter land for the purposes of survey.
- Compensation is payable for any damage which may result from exercising powers.

Statutory Compensation: The Compensation Code

Compensation under the Statutory Compensation Code

Compensation
for land acquired

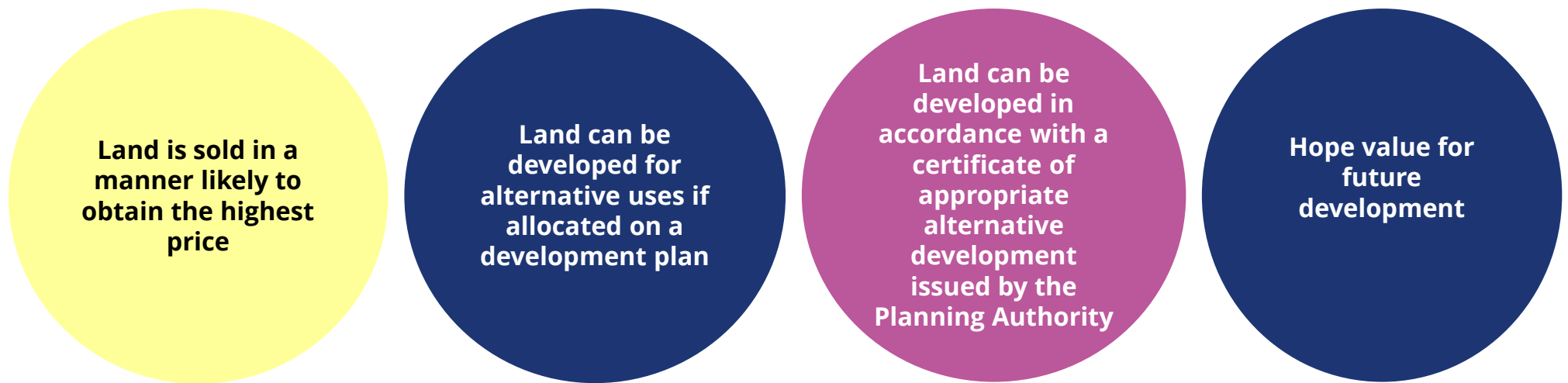
Disturbance
compensation

Compensation
where part of a
property is
acquired

Compensation
where no land is
acquired

Valuation Rules and Assumptions

Rule 2 – Compensation is assessed by reference to the open market value of the land acquired on the assumption that the Proposed Scheme has been cancelled, ignoring any increase or decrease in value resulting from the Bill scheme.



Land is sold in a manner likely to obtain the highest price

Land can be developed for alternative uses if allocated on a development plan

Land can be developed in accordance with a certificate of appropriate alternative development issued by the Planning Authority

Hope value for future development

Rule 5 – The exception to the rule is where land is devoted to a purpose for which there is no general demand or market, where compensation may be assessed on the basis of the reasonable costs of equivalent reinstatement.

Land Acquired in Part – Severance and Injurious Affection

Value of part of land
acquired – as
outlined
previously

Depreciation to
retained land from
severed connection
or from the impact of
HS2 payable in
addition to market
value

Works to accommodate
existing activities on
affected land:

- Provision of
alternative access
- Provision of stock
proof fencing, field
drainage
- Mitigation works

Owner can compel the
Promoter to acquire:

- Isolated land less
than 0.5 acres
- Isolated land where
cost of linkage
exceeds land value
- Severed land
economically
unviable to farm

Land Acquired in Part - Material Detriment

- If part only of a property cannot be acquired without:
 - material detriment to a house, building or factory
 - seriously affecting the amenity of a park or garden
 - the land or building being less useful or valuable to a significant degreethe Promoter can be required to purchase the whole property and pay statutory compensation.
- Does not apply where subsoil only acquired

Disturbance Compensation

- Personal costs or losses incurred by the owner/occupier as a result of compulsory acquisition and dispossession (i.e. losses not directly based on the value of land)
- Direct and reasonable consequence arising from compulsory acquisition
- Costs incurred in acquiring alternative premises are usually included – such as fees and Stamp Duty
- The value of the property being acquired is not payable - value for money
- Party dispossessed must act in a reasonable manner and mitigate losses

Disturbance Compensation: Examples of Heads of Claim

Loss of crops
on
agricultural
land

Cost of
seeking
suitable
alternative
premises

Costs of
specially
adapting
alternative
premises

Temporary
and
permanent
loss of profits

Costs of
providing
new
stationery

Close down of
business if
relocation
not possible

Redundancy
and other
costs on close
down

Stamp Duty
on new
premises

Reasonable
legal and
surveying
fees

Statutory Loss Payments – England

with effect from 1st October 2022

Home Loss Payment

- 10% of market value: up to a maximum of £78,000 and a minimum of £7,800.
- Lawful residential occupier entitled to payment on displacement.

Basic Loss Payment

- 7.5% of market value up to a maximum of £75,000.

Occupier's Loss Payment

- 2.5% of market value up to a maximum of £25,000.
- or for agricultural land and other land, higher of:
 - 2.5% of market value
 - the land amount, or
 - the building amount

Statutory Loss Payments - Scotland

Home Loss Payment

- Scotland - £15,000 maximum, £1,500 minimum.
- Lawful residential occupier entitled to payment on displacement.

Farm Loss

- Equal to the average annual profit assessed over a period of three years depending on the length of occupation.

Land Compensation – Date of Assessment of Claim, Advanced Payments and Interest

- Statutory Interest – at the prescribed rate is payable on compensation from the date of vesting or entry to date of payment.
- Advanced payments of compensation – 90% of agreed compensation (or in the absence of agreement, of the Promoter's estimate) payable within 2 months of receipt of a full claim or of a notice of exercise of compulsory purchase powers.
- Date of valuation and the date claims arise – date of vesting (land transfer) or date of entry onto land.

Entitlement to Land Compensation

- Owners and occupiers of land or rights that are compulsorily acquired under the powers of the Bill are entitled to claim land compensation.
- Compensation for tenants displaced by compulsory acquisition includes:
 - Disturbance costs – usually reasonable removal costs.
 - Home Loss payment - 10% of the open market value of the tenancy with a minimum of £7,800 (England) / £1,500 (Scotland) provided the tenant has occupied the property under a legal agreement for 1 year prior to displacement.
 - The open market value (if any) of the tenancy agreement.
- See Information Paper C15: Compensation for short term residential tenants.

Statutory Land Compensation – Disputes

- Alternative Dispute Resolution (if agreed between landowner and the Promoter). This may include:
 - Mediation
 - Early Neutral Evaluation
 - Expert Determination
 - Small claims less than £10,000 can be referred to the HS2 Residents Commissioner
- Determination by the Upper Tribunal (Lands Chamber) or the Lands Tribunal for Scotland
- See Information Paper C8: Compensation Code for Compulsory Purchase and the published 'Alternative Dispute Resolution Guidance for compulsory purchase claims'

Blight Notices – England

- Applies to land safeguarded for the Proposed Scheme.
- Qualifying owners may serve a blight notice requiring the Secretary of State to purchase property in advance.
- Qualifying owners -
 - Residential owner occupier with a freehold or with 3 years lease unexpired at valuation date
 - Business owner occupied with a freehold or 3 years lease unexpired at valuation date with rateable value less than £36,000
 - Owner occupier of an agricultural unit
- The Secretary of State may accept the blight notice or may serve a counter notice declining to purchase the land, on certain stated grounds.
- The owner may object to the counter notice before the Upper Tribunal (Lands Chamber).
- If the notice is accepted or confirmed, land compensation is assessed in accordance with Compensation Code.
- Similar provisions apply in Scotland.

Land Compensation - no land taken

Losses resulting from construction

- Compensation is payable under section 10 of the Compulsory Purchase Act 1965 where the execution of the works, under the Bill when enacted, interferes with a landowner's private rights and results in diminution in the value of the land.
- Compensation is not payable for personal or trade loss, or for disturbance arising from the proper performance of the works.
- Examples include:
 - Interference with a private right of way
 - Interference with a right to light

Land Compensation – no land taken

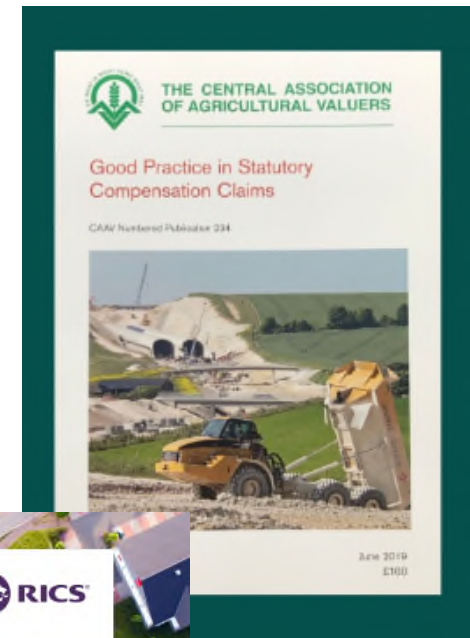
Losses arising from operation of the railway

- Qualifying interest
 - Residential or business owner occupier or with 3 years lease unexpired at valuation date
 - Business owner with rateable value less than £36,000
 - Owner occupier of an agricultural unit
- Valuation Date – 12 months after public works opened
- Compensation – any depreciation due to physical factors including noise, vibration, smell, fumes, artificial light
- Mitigation – noise barriers, embankments, screening, double glazing

Guidance

Various professional bodies, such as the Compulsory Purchase Association (CPA), Central Association of Agricultural Valuers (CAAV) and The Royal Institution of Chartered Surveyors (RICS) and the Department for Levelling Up, Housing and Communities publish guidance on aspects of the compulsory purchase process and claiming compensation.

These are a useful resource in addition to the HS2 Information Papers for parties affected by compulsory purchase.



HS2 Non Statutory Property Schemes



HS2 Non Statutory Property Package

**Express
Purchase**

**Voluntary
Purchase /
Cash Offer
(within Rural
Support Zone)**

Need to Sell

**Atypical
Property /
Special
Circumstances**

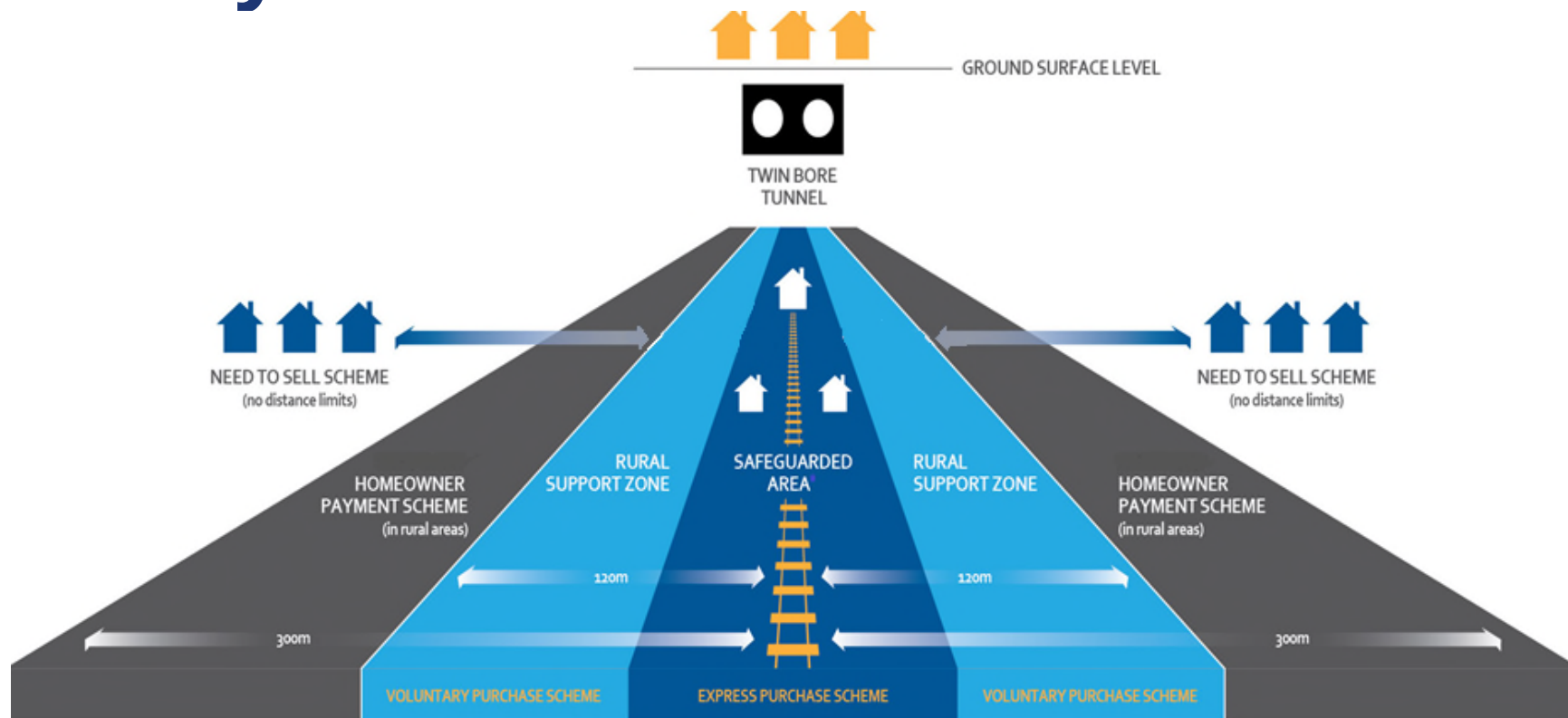
Rent Back

**Homeowner
Payments**

**Streamlined
Residential
Blight
(SRB)**

**Crop Loss
Expedited
Payment
(CLEP)**

HS2 Non Statutory Property Package – Summary



Please note: All distances are taken from the centre line of the railway.

Express Purchase

- Express Purchase simplifies the statutory blight notice scheme. When an owner occupier who qualifies for statutory blight and owns a property in the surface safeguarded area serves a blight notice, the Promoter may choose to accept the notice:
 - Regardless of whether the property is needed to build the railway, as long as the property is fully within the safeguarded area; and
 - Without asking the owners to show efforts that they have made reasonable endeavours to sell.
- Where part of a residential property is in safeguarding, Express Purchase will apply if:
 - Part of the house itself is in safeguarding; or
 - If 25% of the property (including the house, garden and land) is in safeguarding.

Rural Support Zone

- People who live in and own their home, or work in and own small business premises, in the Rural Support Zone between 60 and 120m of the centre line of the railway can sell their property to the Secretary of State or receive a cash offer should they decide not to sell.
- The property needs to have been owned prior to the announcement of the railway (28/01/2013) and needs to have been occupied for 6 months.
- Where the application is accepted, the Secretary of State will purchase the property at the unblighted value (no disturbance or home loss payment).
- The cash offer is 10% of the value of the property (subject to a minimum of £30,000 and a maximum of £100,000).
- If the property is worth less than £250,000 and the applicant wants to take the cash offer, a streamlined valuation is available, which makes the application process quicker.

Need to Sell Scheme

- No geographical boundary outside of the Rural Support Zone.
- Five 'criteria':
 - Property ownership – eligibility as for statutory blight
 - No fixed location of property but substantially affected by HS2
 - Efforts to sell made without success or at a price significantly lower than the unblighted property value
 - No prior knowledge of HS2 (i.e. property purchased prior to the announcement of the railway (28/01/2013))
 - Compelling reason to sell
- Applications are assessed by independent panel (with recommendation to the Secretary of State).
- Where the application is accepted, the Secretary of State will purchase the property at the unblighted value (no disturbance or home loss payment).

Atypical Properties or Special Circumstances

- Decided by the Secretary of State for Transport
- On a case by case basis
- May be appropriate to supplement non-statutory property schemes

Rent Back

- All homes purchased by the Promoter can be considered for rent back to former owners provided:
 - The property complies with relevant standards for residential occupation
 - The costs in so doing would be at a reasonable level
- Appropriate tenancies offered depending on circumstances

HS2 Non Statutory Property Package – Mechanism for Assessment of Unblighted Value

Property owner
and HS2 Ltd each
choose a
registered valuer

Two valuations
carried out

If valuations
within 10%, the
average figure is
taken

If valuations
more than 10%
apart the
applicant may
request a third
valuation from a
registered
valuer*

*The figure is taken
from the average of
the two closest
valuations.

Homeowner Payments

- Intended to allow home owners in rural areas an early share in the benefits of the Scheme
- Outside safeguarding and voluntary purchase zone up to 300 metres from the centre line of the railway (other than where line in bored tunnel):
 - 120-180 metres - £24,000
 - 180-240 metres - £16,000
 - 240-300 metres - £8,000
- Applies to eligible owners with no prior knowledge of the project
- Will be implemented following Royal Assent to the Bill

Crop Loss Expedited Payment (CLEP) and Streamlined Residential Blight (SRB)

- Crop Loss Expedited Payment (CLEP) aims to compensate early for crops lost as a result of temporary possession
- CLEP uses standardised gross margin for common crops and negates the need for a complex claim
- Streamlined Residential Blight (SRB) further simplifies blight and express purchase and provides a faster settlement in most cases
- SRB allows:
 - The value to be determined using non-statutory basis; and
 - A fixed disturbance at £7,000