

Your property and compulsory acquisition

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National Highways

At National Highways, 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 the process we follow to acquire land and property needed for our schemes using compulsory powers and the compensation that may be available to people with an interest in that land or property.

More information about the process we follow to deliver our larger road schemes and the other types of compensation is available 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 compensation or mitigation

for the effects of our road proposals

Your property and Part I compensation

These booklets are updated from time to time to ensure they are correct. The latest versions are always published on our website. Please check the website to ensure you are reading the latest version.

For more information

@ info@nationalhighways.co.uk

☎ 0300 123 5000

www www.nationalhighways.co.uk

Compulsory acquisition

Parliament has given us the ability to acquire land so that we can carry out infrastructure developments that are in the public interest. For our larger road schemes, the ability to acquire land and property by compulsion is included in each scheme's development consent order. Our smaller schemes do not require a development consent order but we still have the power to make a compulsory purchase order.

The Secretary of State for Transport authorises our development consent and compulsory purchase orders. Once an order has been authorised it is subject to a six-week challenge period.

We will send notices to all those who have an interest in land that we are acquiring through the exercise of compulsory powers of acquisition. This will confirm the plot(s) of land to be acquired; enable us to enter onto and take possession (and in certain circumstances, ownership) of the land; and invite you to make a claim for compensation. There are various processes we can use when taking possession and ownership of the land:

- **A general vesting declaration** transfers ownership of the land to us. We will serve notice that we have made a general vesting declaration on all affected landowners. This allows us to take possession and ownership of the land after the time period stated in the notice (which must not be less than three months). We will pay compensation

once we have agreed the amount and you have signed a receipt accepting the payment in full and final settlement of all claims.

- **A notice to treat and notice of entry** does not transfer ownership of the land to us; you will be required to convey (ie transfer) the land to us after compensation has been finalised. When using this method we serve a notice to treat confirming that we will compulsorily purchase the land. This will be accompanied or followed by a notice of entry which will state the date we intend to take possession of the land.

Generally, we use the general vesting declaration process so that we take possession and ownership of the land at the same time. However, in some circumstances, we may serve a notice to treat and notice of entry. We will discuss our plans with you and give you as much warning as possible.

You can sell land that we are acquiring, or acquiring rights over, until the date the ownership transfers to us. However, the amount someone is willing to pay for the land could be reduced by the threat of compulsory acquisition and the compensation you may be eligible to receive from us may be affected. We recommend seeking professional advice before selling land that we are acquiring or we are acquiring rights over.

Parliament has given us the ability to acquire land so that we can carry out infrastructure developments that are in the public interest.

Compensation for freeholders, leaseholders and tenants (compensatable interests)

Freeholders, leaseholders and tenants can claim a number of types of compensation when their land or property is being compulsorily acquired as part of a road scheme. Listed below are the sorts of compensation that may be available depending on your rights or interest in the affected land and property.

- The market value of the land. This is the value of the land ignoring the effect of the scheme.
- Disturbance compensation is paid for the costs incurred by having to leave the property.
- If you retain land after the compulsory acquisition, you may claim compensation if the value of that land is reduced by its separation from the acquired land, or its division into separate parts.
- Injurious affection compensation is paid where the construction or use of the improved road has reduced the value of your remaining land.
- A home loss payment or an occupier's loss payment could be paid if you have occupied the land as a freeholder, leaseholder or tenant for at least one year on the date we enter onto and take possession of your land.

You may also be entitled to a basic loss payment. The government sets the minimum and maximum amount of these payments.

- There is compensation available if the compulsory acquisition affects your benefit from a restrictive covenant or right of way and, as a result, the value of your land has been reduced.
- If access to your property is closed as a result of our scheme, we will provide an alternative means of access for you. If the alternative access is a private means of access (rather than a public highway), you will be responsible, or jointly responsible, if the access is shared with your neighbours, for maintaining the alternative route. If the maintenance costs of the new access exceed the costs of maintaining the old one, you may be able to claim the difference.
- We will also repay reasonable fees for your chartered surveyor, estate agent or other valuer to prepare and negotiate your compensation claim. If your accountant assists you with your claim we will consider repaying these fees. We repay reasonable fees for your solicitor to provide proof of ownership of your rights or interest in the land and if required, to transfer this to us. However, we will not repay your solicitors' hourly rate if they negotiate your compensation claim.

Disturbance payments for people without compensatable interests

If you do not hold an interest that qualifies you for compensation, you may be entitled to a disturbance payment if you incur expenses, or suffer a loss due to being disturbed, as a consequence of having to leave the property.

Important: the compulsory acquisition compensation legislation and case law is complex. We recommend that you seek independent advice.

Freeholders, leaseholders and tenants can claim a number of types of compensation when their land or property is being compulsorily acquired as part of a road scheme.



How we process your compensation claim

When we receive your claim we will ask our independent valuer to begin compensation negotiations with you. We may also instruct our solicitors to check that you own the land; they would normally contact your solicitor to ask for proof of ownership.

If your land is subject to a general vesting declaration then, once you have agreed compensation with our valuer, we will prepare a receipt for you to sign to accept the compensation and release any mortgage that you may have had against the land. We will pay the compensation after you have signed the receipt to accept the amount in full and final settlement of all claims.

If we have served a notice to treat, our conveyancing solicitors will draw up the legal document needed to either transfer the land to us or grant us rights over the land. We will pay compensation after we have agreed the amount with you and the transfer of ownership or grant of rights has been completed.

If you are a tenant, or if we only require a temporary licence over your land, we will ask you for proof of ownership in the land. Once you have agreed compensation with our valuer, we will prepare an agreement for you to sign to accept the amount in full and final settlement of all claims.

You may be eligible to apply for advance payments of compensation.





Applying for advance payments

Once we have made a general vesting declaration (see page 6) or served a notice of entry, freeholders, leaseholders and tenants can apply to us for an advance payment before their compensation has been finalised.

Applications must be submitted in writing and provide all the required information. To help with this we will send you the following forms when we serve notice:

- Claim for compensation for the acquisition or the occupation of land
- Solicitor's report on title
- Bank details form.

Advance payments are normally made within two months of us receiving the fully completed application. If an application is received before the general vesting declaration is made or notice of entry served, the two-month processing time will start from that date.

Applications must be submitted in writing and provide all the required information.

Advance payment calculation

Up to 90% of the compensation that we have agreed with you, or if this has not been agreed, 90% of our compensation estimate, may be advanced.

If the land is mortgaged, your advance payment will be reduced by the amount required by your mortgage lender to release the mortgage. If you and your mortgage lender agree, we can pay some or all of the advance payment directly to your mortgage lender either to reduce or pay off your mortgage.

Where only part of your land is compulsorily acquired, your mortgage lender may decide that they require part of the mortgage to be repaid before releasing that land from your mortgage. Alternatively, they may decide that you will retain sufficient land to cover the outstanding mortgage and release the land we are acquiring from your mortgage without payment. This is your mortgage lender's decision.

The advance payment may also include:

- up to 90% of any surveyor's fees (this can be an estimated amount)
- 90% of any basic loss payment or occupier's loss payment
- 100% of any home loss payment

- your solicitor's reasonable fees for work in connection with your advance payment
- VAT where you are unable to recover this from HM Revenue and Customs
- interest on the agreed or estimated compensation and surveyor's fees. Interest is calculated from the vesting date or date of entry depending on the type of notice we sent you. We do not pay interest on VAT or the home loss payment. Government sets the rate of interest at 0.5% below the Bank of England base rate.

In situations where we are unable to agree the amount of compensation with you, we will ask our independent valuer to provide us with an estimate. If land is mortgaged we will contact your lender to calculate the amount that can be advanced to you and your lender.

Accepting an advance payment will not affect your negotiations or the final payment of compensation. In situations where the final amount of compensation agreed is higher than the estimate paid, we will pay you the difference. However, if the amount paid in advance is higher than the final settlement you will have to pay back the difference.





Referring compensation disputes to the Upper Tribunal

We will work with you and your professional advisers to agree the amount of compensation payable. However, there may be cases where we cannot agree. In this situation, you can 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.

Claims must be referred to the Tribunal within six years of the vesting date (where we have served notice of making a general vesting declaration) or the date of entry (where we have served a notice of entry).

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

When the Upper Tribunal receives an application, all parties are encouraged to attend mediation meetings before the tribunal hearing. A neutral third party oversees the meeting and will encourage all involved to reach an agreement on the disputed points. It may not be possible to reach agreement on all the issues but settling some points can save time and reduce costs of the hearing. The Tribunal will make the final decision on your claim.

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

Data protection and you

National Highways will collect and process your data in relation to your property claim. National Highways 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 acquisition powers (where relevant).

We will not use your personal information for any purpose other than to process your property claim 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 National Highways 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 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.

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@nationalhighways.co.uk

 Data Protection Officer
National Highways, Piccadilly Gate,
Store Street, Manchester, M1 2WD

If, at any point, National Highways 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 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 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@nationalhighways.co.uk

 0300 123 5000

 www.nationalhighways.co.uk

Further information

The government 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 government website:

www.gov.uk/government/collections/compulsory-purchase-system-guidance

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

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