

## Compensation Code for Compulsory Purchase

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

# 1 Introduction

- 1.1.1 High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. The Western Leg of Phase 2b comprises an extension of the network to Manchester and a connection to the West Coast Main Line at Golborne, and is referred to as the Western Leg hybrid Bill. The Eastern Leg of Phase 2b currently comprises an extension of the network from the West Midlands through the East Midlands to Leeds.
- 1.1.2 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.
- 1.1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act (2017). In July 2017, the Government introduced a hybrid Bill to Parliament to seek powers for the construction and operation of Phase 2a.
- 1.1.1 In February 2020, the Government announced its intention to draw up an Integrated Rail Plan. This will recommend a way forward on scoping, phasing and sequencing the delivery of HS2 Phase 2b, Northern Powerhouse Rail, Midlands Rail Hub and other proposed rail investments across the north. At the same time, the Government asked HS2 Ltd to prepare the Western Leg hybrid Bill, provided it does not prejudice any recommendations or decisions that will be taken in this plan, which will be published by the end of the year.
- 1.1.2 It is intended to deposit a Western Leg hybrid Bill seeking powers to construct and operate this phase in Parliament in early 2022 or sooner if possible (the Proposed Scheme). The work to produce the Bill will include an Environmental Impact Assessment (EIA), the results of which will then be reported in an Environmental Statement (ES). The ES would be submitted alongside the Bill when it is introduced to Parliament. As was the case with Phase One and Phase 2a, when the Bill is introduced to Parliament the Secretary of State will also publish draft Environmental Minimum Requirements (EMRs). The EMRs will set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.1.3 A series of information papers were produced for the Phase One and Phase 2a hybrid Bills, explaining the commitments made in those Bills and EMRs. It is the Secretary of State's intention to follow a similar process for the Western Leg Bill. These information papers will be used to provide information about the Proposed Scheme itself, the powers contained in the Bill and how decisions on

the Proposed Scheme have been reached. It is currently proposed that these information papers for the Western Leg of Phase 2b will be published at the time the Bill is introduced in Parliament.

- 1.1.4 The Secretary of State for Transport will be ‘the Promoter’ of the Western Leg Bill. The Promoter will also eventually appoint a body responsible for delivering the Proposed Scheme under the powers to be granted by the Bill. This body will be known as the ‘nominated undertaker’. There may well be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the Western Leg EMRs and any commitments provided in the Western Leg information papers.
- 1.1.5 These Western Leg factsheets have been produced to provide information on the emerging proposals for measures to manage the design process for the Proposed Scheme and to control impacts which may arise from the construction and operation of the Proposed Scheme. These measures may then be applied to the Western Leg as commitments made through the eventual Bill, EMRs or information papers.

## **2 Overview**

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

## **3 Nature and purpose**

- 3.1 The ‘Compensation Code’ is a collective term for the law relating to compensation for compulsory acquisition originating from Acts of Parliament and case law. Its general purpose is to provide fair compensation for a person whose land has been compulsorily taken. See the documents referenced under Section 10 below for further detailed information.

## **4 Compensation where land is taken**

- 4.1 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, where the valuation assumes that the Proposed Scheme does not exist;
- Severance and Injurious Affection- where part only of the claimant's land holding is compulsorily acquired, he is entitled also to compensation for any depreciation in the value of his retained land that results from the construction and operation of the Proposed Scheme;
- Disturbance- this represents the costs and losses incurred by the claimant as a result of being displaced from occupation of his or her 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 Section 10 below for further detailed information;
- Statutory Loss Payments- these are additional set payments to which the claimant is entitled under sections 29 and 33A-C of the Land Compensation Act 1973 in England or, in Scotland, section 27 of the Land Compensation (Scotland) Act 1973, depending on the nature of his or her interest. For example, a residential owner occupier displaced from his or her home is entitled to receive a home loss payment valued at 10% of the value of his or her property, in England from October 1 2020 onwards this is subject to a lower limit of £6,500 and an upper limit of £65,000, with different lower and upper limits applying in Scotland; 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.

## 5 Advance payments

- 5.1 Once the Secretary of State has taken possession (or in some cases earlier) of land subject to compulsory purchase for the Proposed Scheme, an advance payment on account of compensation due for the acquisition of the land must be made if requested by the landowner. In terms of calculating the amount of payment, this would be either 90% of the Promoter'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. Requests for advance payments to be made after Royal Assent but before they are legally due would be considered on a discretionary basis.

## 6 Compensation where no land is taken

- 6.1 Section 10 of the Compulsory Purchase Act 1965 in England, or in Scotland section 6 of the Railway Clauses Consolidation (Scotland) Act 1845, provides the basis for a landowner to claim compensation for injurious affection caused by the execution of public works, such as the Proposed Scheme. Compensation is assessed by reference to the resulting diminution in value of the claimant's land.
- 6.2 "Injurious affection" is a technical term. Broadly speaking, it means an interference with a landowner's enjoyment of his or her land for which, in the absence of the statutory authority conferred by the Bill, the landowner could bring a claim in the law of nuisance against the Promoter. A typical example is a case in which the Bill authorises the Promoter to execute works that interfere (permanently or temporarily) with a landowner's use and enjoyment of a private right of access onto his property.
- 6.3 Section 10 of the Compulsory Purchase Act 1965 in England, or in Scotland section 6 of the Railway Clauses Consolidation (Scotland) Act 1845, does not provide the basis for a claim for compensation for disruption and inconvenience experienced by neighbouring landowners and occupiers during the construction of the Proposed Scheme. The Promoter and a nominated undertaker are under a legal duty to ensure that construction of the Proposed Scheme is carried out by their contractors and sub-contractors with reasonable care and skill. Provided that duty is fulfilled, the Promoter and a nominated undertaker are entitled to exercise the works powers under the Bill without any obligation to pay compensation for the execution of the works, other than in the circumstances outlined in paragraphs 6.1 and 6.2 above.
- 6.4 Part 1 of the Land Compensation Act 1973, or in Scotland Part 1 of the Land Compensation (Scotland) Act 1973, provides the basis for a qualifying landowner to claim compensation for the depreciation in the value of his or her land due to a physical factor or factors resulting from the operation of the Proposed Scheme. i.e. after the railway has been brought into use. "Physical factors" are defined as "noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land of any solid or liquid substance". Claims for Part 1 compensation can be made once the Proposed Scheme has been in operation for a period of 12 months. Compensation is assessed by reference to the resulting diminution in value of the claimant's land.

## 7 Duty to mitigate loss

- 7.1 There is a general duty on all claimants for compensation to take reasonable steps to mitigate their losses. The Promoter will resist a claim insofar as it seeks compensation for losses that could reasonably have been avoided or that are not reasonably incurred as a result of compulsory purchase of the claimant's land for the Proposed Scheme. In certain circumstances (for example, in a case where the value of the claimant's retained land is enhanced by the presence of the Proposed Scheme), the amount of compensation payable to the claimant may be reduced to reflect "betterment".

## 8 Disputes

- 8.1 The Promoter anticipates that the majority of claims for compensation will be resolved by agreement, following negotiations between the parties and their respective agents and advisers. In the event that a compensation claim cannot be settled by agreement, the dispute may be referred by either party to the Upper Tribunal (Lands Chamber) or in Scotland the Lands Tribunal for Scotland, for resolution. In such a case, the Upper Tribunal (Lands Chamber) or Lands Tribunal for Scotland will determine the amount of compensation payable to the claimant.
- 8.2 Alternatively, the parties may agree to alternative dispute resolution (ADR). If you consider that this may be of interest then please discuss this with your case manager who will be able to explain the type and form of ADR suitable for your specific case. If HS2 considers that ADR is unsuitable then it will provide an explanation.
- 8.3 The existence of an outstanding dispute between the parties over the amount of compensation payable to the claimant will not delay the Promoter taking possession of the claimant's land under the compulsory purchase procedures
- 8.4 Claims for compensation are subject to a statutory time bar (known as a "limitation period"). Any claim referring a land compensation claim to the Upper Tribunal (Lands Chamber) or in Scotland the Lands Tribunal for Scotland, must be made within six years of the date upon which the claimant's right to claim compensation arises.

## 9 Independent Advice

- 9.1 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  
Tel: 024 7686 8555  
[contactrics@rics.org](mailto:contactrics@rics.org)

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

**The Central Association of Agricultural Valuers**

Harts Barn Farmhouse  
Monmouth Road  
Longhope  
GL17 0QD  
Tel: 01594 810701  
[enquire@caav.org.uk](mailto:enquire@caav.org.uk)

- 9.3 In Scotland, the Scottish Agricultural Arbiters and Valuers Association, which is affiliated to the CAAV may also be able to assist owners in rural areas. Their contact details are:

**Scottish Agricultural Arbiters and Valuers Association**

Cothill  
Duns, Berwickshire  
TD10 6YW

- 9.4 The Central Association of Agricultural Valuers also offers a "Find a CAAV Member" tool to see a list of members in their area.

## 10 More information

- 10.1 Further factsheets and details on the Proposed Scheme can be found at [www.hs2.org.uk/phase2b](http://www.hs2.org.uk/phase2b)
- 10.2 The Royal Institution of Chartered Surveyors has published a consumer guide on compulsory purchase and compensation at: <https://www.ricsfirms.com/residential/legal-issues/compulsory-purchase/rics-consumer-guide-compulsory-purchase>.
- 10.3 The Royal Institution of Chartered Surveyors published a Professional Statement in April 2017 that is mandatory for chartered for surveyors advising in respect of compulsory purchase and statutory compensation. A copy can be found at: <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](#)