Your property and compulsory purchase
1. Introduction

The Highways Agency is an executive agency of the Department for Transport. We look after England’s motorways and national roads, the roads we all use between major cities and which are important to our economy. We maintain, operate and improve this strategic road network to help traffic flow more smoothly and provide drivers with information they need to plan reliable journeys.

2. Why road schemes are needed

Roads support our daily life and are vital to our economy. Since 2010, the government has steadily invested in road schemes that tackle congestion and improve safety on our motorways and major all-purpose trunk roads. Delivering these benefits to road users as quickly as possible is essential and we want to accelerate the pace we work at through a programme of investment designed to improve journeys, tackle congestion and maintain safety.

3. Your property and compulsory purchase booklet

This booklet gives an outline of how the compulsory purchase procedures would affect your property (land) and will:

- Answer some of your questions about the compulsory purchase of your land for a highway improvement;
- Provide you with information about the compensation you can claim;
- Explain how we will handle your claim;
- Provide you with details about how to request an advance payment of your compensation.

You may also be interested to know that the Department of Communities and Local Government (DCLG), who oversee the legislation relating to compulsory purchase, has produced a series of compulsory purchase and compensation booklets for members of the public (further information on following pages).
4. Compulsory Purchase

Parliament has given power to a number of bodies to purchase property using powers of compulsion to allow them to carry out infrastructure developments that are in the public interest.

5. When will I be able to claim compensation?

Once a Development Consent Order (DCO) is granted, and beyond its six week challenge period (please see our booklet Your property and our road proposals), the Highways Agency, on behalf of the Secretary of State, has to serve a notice to treat (that is, negotiate) on everyone with an interest in, or the power to sell or release the land required for a highway improvement. The notice:

- Provides details of the land to be compulsorily purchased
- Requires you to confirm details of your interest in the land (ie whether you are a freeholder, leaseholder, tenant, etc)
- States that we are willing to treat (negotiate) with you to agree the compensation payable to you
- Starts the process of agreeing the compensation payable to you

The service of a notice to treat does not transfer your land to the Secretary of State. This will only happen after compensation has been agreed with you and the legal documentation (deed or transfer) conveying the land has been completed.

6. When will my land be taken for the highway improvement works?

We may need to enter and take possession of the land being compulsorily purchased, to use it to construct or improve the highway, before we have completed its purchase. If so, we will serve a notice to enter. We will normally discuss our needs with you before serving the notice, and we will give you as much warning as possible (usually more than the 14 days required by law). We may serve the notice to enter with, or after, the notice to treat. A notice to enter does not transfer your land to the Secretary of State.

7. Does a notice to treat or a notice to enter affect my rights?

These notices do not prevent you from selling your land to another person, before the Secretary of State completes its purchase but it may affect the compensation payable to you, as the new owner may become entitled to claim part (or all) of the compensation offered. We advise you to consult a solicitor on how to protect your rights before selling any part of your land.
8. What compensation can I claim?

Compensation will normally be assessed taking into account the value of your land on the date of our entry.

There is extensive legislation and court judgements that set out what compensation can be claimed for the compulsory purchase of land. It is not possible to explain this in detail in this booklet but the information that follows broadly explains what you may be able to claim. Further information is available in the DCLG’s compulsory purchase and compensation booklets. Your surveyor will also be able to advise you further and confirm what you may include in your claim.

If you are the freeholder, leaseholder or tenant of the compulsory purchase land, you will be able to claim compensation under the following headings. If you hold any other interest, you may still be able to claim compensation for being required to leave your property.

A Market value
You can claim compensation for the market value of the land we compulsorily purchase from you. Market value is the amount that your property might be expected to realise if sold on the open market by a willing seller to a willing purchaser, ignoring the highway improvement.

B Disturbance
Disturbance is compensation for your costs and losses as a result of you being required to leave your property. Your surveyor will be able to provide further advice on what you can and cannot claim as disturbance.

C Severance
Where you retain land after the compulsory purchase, it will have been separated from the land purchased and may also be divided into separate parts by the highway improvement. Severance is compensation for the loss in value of your retained land, resulting from its separation or division into separate parts, where your overall land holding had additional value.

D Injurious affection
Injurious affection is compensation for the loss in value, caused by the highway construction works or the use of the improved highway, to any land that you retain after the compulsory purchase. Therefore, no further compensation will be payable to you, or any subsequent owner of the retained land, under Part I of the Land Compensation Act 1973 (as amended) after the road has been opened to public traffic.

E Home loss payments
A home loss payment is made in recognition of the personal distress and inconvenience caused by us requiring you to leave your home. It is only paid to people with certain interests or rights in the property. The government sets a maximum amount that can be paid out and it is reviewed from time to time.

F Basic and occupier’s loss payments
You might be entitled to claim a basic loss payment and, if you occupied the land, an occupier’s loss payment. Please note that you may only claim these if you are not entitled to claim a home loss payment.
A basic loss payment is made in recognition of the upset and inconvenience suffered by you as a result of your property being compulsorily purchased. It is only paid to people with certain interests or rights in the property. The government sets a maximum amount that can be paid out and it is reviewed from time to time.

An occupier’s loss payment is made in recognition of the upset and inconvenience caused if you are required to leave your property. To be eligible you must have been in occupation of the land as a freeholder, leaseholder or tenant for not less than one year ending on the date we take entry. The government sets a maximum amount that can be paid out and it is reviewed from time to time:

G Compensation for the maintenance of a private means of access

Sometimes, the land we buy for a road scheme stops a landowner from being able to get in and out of his property. In such cases, the Secretary of State has to provide an alternative means of access. If that access is a private means of access, that is it is not a public road, it will be your responsibility to maintain. If your neighbours also use it to gain access to their land, you will be jointly responsible for its maintenance.

You can claim compensation for the cost of maintaining a private means of access, where this exceeds the costs you previously paid before the road scheme for maintaining access to your land.

9. If I am not the freeholder, leaseholder or tenant of the land, what can I claim for being required to leave my property as a result of compulsory purchase

If you do not hold an interest in land that qualifies you for compensation, (see page 4 section 8) you may be entitled to a disturbance payment if you incur removal expenses, or suffer a loss by reason of disturbance to your business as a consequence of being required to leave your property. Again, your surveyor will be able to advise you about what you can and cannot claim.

10. Will my surveyor’s and other professional fees be payable by the Highways Agency?

If you employ a chartered surveyor, estate agent or other valuer to prepare and negotiate your compensation claim, we may pay their reasonable fees.

We will also pay your solicitor’s reasonable fees for conveying your land to the Secretary of State. However, if you employ a solicitor to prepare and negotiate your claim, we would not expect to pay solicitor’s hourly rates for this work.

If you employ other professionals (eg an accountant) to assist you with your claim, we might pay their reasonable fees.
11. What happens after I have made my claim?

We will consider your claim as soon as we receive it and instruct our independent valuer to open compensation negotiations with you.

At the same time, if you are the freeholder or leaseholder of the compulsory purchase land the Secretary of State is acquiring (or requires rights over to construct and maintain the highway) we will instruct our conveyancing solicitors. They will start the process of formally transferring the land (or acquiring the rights). They will contact your solicitors for proof of your ownership. Once you have proved this, they will draw up the legal documents needed to transfer the land to the Secretary of State (or to acquire the rights) and agree it with your solicitor.

However, it will not always be necessary for us to instruct our conveyancing solicitors. We will not need to do this if you are the tenant of the compulsory purchase land, or if the Secretary of State only requires a temporary licence over your land (for example for working space to construct the highway). Instead, once you have agreed the amount of compensation with our valuer, we will ask you for proof of your interest in the land. We will then prepare an agreement for you to sign. This will act as a receipt for the payment of compensation.

12. When will you compensate me for the compulsory purchase of my land?

We will pay your compensation when the deed (or agreement) completing the purchase of your land is signed and dated.

However, it will probably be necessary for us to enter onto your land to carry out the highway improvement works before the purchase is completed. On taking entry, you are entitled to ask for an advance payment of compensation, home loss, basic loss and occupier’s loss.

13. How do I request an advance payment?

Please use the claim in answer to a notice to treat (that will be sent with the notice to treat) to say that you would like to request an advance payment.

14. How large will the advance payment be?

This will depend on whether your land is mortgaged.

If it is not mortgaged, you may receive up to 90 per cent of the compensation (market value, disturbance, severance and injurious affection) that has been agreed with you, or if this has not been agreed with you, up to 90 per cent of our valuer’s estimate of the compensation payable.

If your land is mortgaged, your advance payment will be reduced by the amount required by your mortgage lender to release the mortgage.
If you have more than one mortgage, it will be reduced by the amount required to release all of the mortgages. However, with your and your mortgage lender’s consent, we can pay the amount they require (up to 90 per cent of the agreed or estimated compensation) into your mortgage account, to release or reduce your mortgage.

Where only part of your land is compulsorily purchased, 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 from your mortgage without payment. Please note that this is your mortgage lender’s decision – not ours.

The advance payment may also include:

- Up to 90 per cent of your agreed or estimated surveyor’s fees.
- 90 per cent of any basic loss payment or occupier’s loss payment you are entitled to
- 100 percent of any home loss payment you are entitled to
- 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 amount of the agreed or estimated compensation and surveyor’s fees (excluding any VAT or home loss payment), from the date of entry until the date of payment. Please note that in accordance with treasury rules, our rate of interest is reviewed quarterly and adjusted to half a percent below the Bank of England base rate.

15. How long will it take to process my request for an advance payment?

We will start to process your request as soon as we receive it, providing you have completed all the necessary documents. We have a duty to make the advance payment within three months of receiving your request (or within three months of taking entry, if you make a request before we enter onto your land).

If we have not agreed the amount of compensation payable to you, we will ask our independent valuer to provide us with an estimate. If your land is mortgaged, we will contact your lender and calculate the amount that can be advanced to you and your lender. We will then prepare a receipt for you to sign to accept the advance payment. Once this has been signed and witnessed, we will then make the advance payment to you.

16. Will my advance payment be affected if my compensation has not been agreed?

No, if you accept an advance payment it will not affect your negotiations or the final settlement of compensation. Please note that if the final amount of compensation agreed is higher than the estimate made at the time of an advance payment, then we will make up the balance. Conversely, if it is lower, then you will be required to reimburse us the difference.
17. What can I do if there is a dispute about my claim?

We hope we will reach an agreement with you about your claim, but if we are unable to, you may refer your claim to the Upper Tribunal (Lands Chamber), a court of law appointed to deal with compensation disputes. The tribunal will make the final decision on your claim but you should be aware that it has power to award costs to either party, so it is wise to take professional advice before referring your claim.

You have six years, from the date of entry, to agree compensation or to ask the court to decide the amount of compensation that is due to you. If you wish to refer your claim to the tribunal, you will need to notify the registrar of the Upper Tribunal (Lands Chamber), 45 Bedford Square, London WC1B 3DN.

Please note that our valuer has no authority to extend the time in which you can refer your claim to the Tribunal.

18. Our commitment to be open and fair

We are open, honest and fair in dealings and publish all relevant information unless it is exempt from publication under the Data Protection Act. We will not use your personal information for any purpose other than to process your claim for compensation.

All information we hold will be maintained accurately and kept as up-to-date as possible. It will be accessible only to those in the Agency with a need to see and process it and will be destroyed when that purpose is complete.

If you appoint a surveyor to negotiate your claim, we will take that as agreement to share your information, other than bank or building society account details, with your surveyor unless instructed otherwise.

You may request a copy of the personal records we hold about you in connection with your claim. Requests must be made in writing to the Data Protection Officer, Piccadilly Gate, Store Street, Manchester M1 2WD. We will respond to your request within 40 days.

We are also bound by the Freedom of Information Act 2000, which aims to make information held by public authorities more accessible to the public and allows you to request a wide variety of data.

Following a request for information, we will write to let you know whether we hold the information requested and, if we do, send that information to you. We are not required though to send information where one or more of the exemptions apply. For example, another person’s personal details would be protected under the Data Protection Act and therefore we would not pass this information on.

To find out more please look at the Freedom of Information section of our website.
19. Complaints procedures

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. We are keen to hear about these and to improve the service we offer our customers wherever possible and provide redress where appropriate.

For further information about the complaints procedures, please see our leaflet Putting Things Right, which can be downloaded free of charge from our website www.highways.gov.uk. Alternatively, printed copies may be obtained by calling our information line on 0300 123 5000 or by emailing us at ha_info@highways.gsi.gov.uk

20. Further information

As well as the Highways Agency booklets already mentioned, the Department for Communities and Local Government (DCLG) publishes a series of more technical booklets that you may find useful.

They are:

- 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

These booklets can be downloaded free of charge from our website at www.highways.gov.uk. Our website also contains general information about us and if you have any questions, you can always call our information line on 0300 123 5000 or email us at ha_info@highways.gsi.gov.uk

For information about roads in Scotland or Wales, please contact:

The Scottish Executive
Scottish Development Department
National Roads Directorate
Victoria Quay
Edinburgh
EH6 6QQ
0131 556 8400

or:

The National Assembly for Wales
Transport and Highways Directorate
Crown Buildings
Cathays Park
Cardiff
CF1 3NQ
029 20 825111
If you need help using this or any other Highways Agency information, please call 0300 123 5000 and we will assist you.