

Land Compensation

Your Rights Explained



3

Your Business and
Public Development



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Your Business and Public Development

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*In this booklet, 'public development' means development undertaken by a public authority or another body acting in accordance with statutory powers; and such development 'comes into use' when

- a new highway is first opened to public traffic - an improved highway is first opened to public traffic after completion of the alterations
- other public development is first used
- other public development is first used after alterations
- the use of land is changed

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FOREWORD

The land compensation code makes provision for those who suffer as a result of development undertaken for the benefit of the community. The code is principally laid down in the Land Compensations Acts of 1961 and 1973, the Compulsory Purchase Act 1965 and the Planning and Compensation Act 1991.

This booklet provides up-to-date information for owners and occupiers of property used for business purposes which is affected by public development of one kind or another. It is not a complete guide to the law and has no legal force, but it does provide answers to some of the more usual questions that owners and occupiers of business property want to ask when it is compulsorily purchased or when it is affected by nuisance from public development.

If your property is affected by public development in any of the ways described in this booklet, you are strongly recommended to seek help from a professionally qualified person such as a surveyor or solicitor who would be able to advise you on the rights that you may have and could also act on your behalf. If compensation becomes payable the reasonable professional fees incurred in preparing and negotiating your claim will normally be repaid by the authority.

If you want to find out more about a particular scheme, your local council should be able to help.

Other booklets in this series are:

Booklet 1 - *Your home and compulsory purchase*

Booklet 2 - *Your home and nuisance from public development*

Booklet 4 - *The farmer and public development*

Booklet 5 - *Insulation against traffic noise*

The information in booklets 1 and 2 applies equally to living accommodation in business premises such as a flat over a shop or a caretaker's house.

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Part 1: Where the whole of your property is wanted

Compensation for compulsory purchase

1. How much compensation will I get?

Save in very exceptional circumstances, the acquiring authority are obliged to pay you the open market value of your interest in your property - that is, the amount which you might have got for it if the authority had not proposed to carry out the development and you had sold it privately. The figure is usually agreed in negotiation between the parties concerned.

In certain circumstances you may become entitled to a further payment of compensation if, within ten years after the acquisition of your property, a planning decision is made which, if it had been made before your property had been acquired would have meant that your property had a higher market value.

2. Should I get someone to act for me?

Yes. The valuation of property can be very complicated and you are recommended to ask a professionally qualified person such as a surveyor or solicitor to advise you and act on your behalf. Their fee will normally be re-paid by the acquiring authority.

3. What happens if I cannot reach agreement with the authority on the amount of compensation?

The case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes. Under the Limitation Act 1980 you have six years from the date that the authority takes possession of your land to refer a disputed claim to the Lands Tribunal. It is wise to take professional advice first. The Tribunal has the power to award costs to either party. (It may be possible - at the discretion of the Tribunal and if all the parties are willing - for the case to be determined on the basis of written representations rather than a hearing.)

4. What about losses caused to my business and all my other expenses?

You are entitled to compensation for reasonable expenses or losses which you have had to incur as a direct result of the compulsory purchase, including net losses unavoidably caused to trade or business. If it is possible for you to reduce your losses by reinstating the business elsewhere, it will be assumed in assessing disturbance compensation that you will do so, even if in practice you do not; but see also paragraphs 18 to 23. The authority are also obliged to pay your proper legal costs of conveyance of the property that they are buying.

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5. What kind of expenses are generally allowed?

Such as you might reasonably be expected to incur or suffer if similar circumstances arose and the financial responsibility fell upon yourself. Examples are:

- a) removal expenses, cost of alterations to equipment, furnishings and fittings to new premises, loss on stock (on forced sale or depreciation in course of removal - whichever would be the less), notifying change of address to customers, post office charges for redirecting mail and for reconnecting telephones; and
- b) incidental expenses incurred in securing alternative premises such as for advertising and travelling, and legal costs such as would be appropriate upon acquiring a comparable interest in premises like those you are vacating. In some circumstances there might be an entitlement to compensation for overlapping costs of maintaining two sets of premises during the removal period. Other items may be allowed, but this is a complex subject and you would be wise to consult a professional adviser before embarking upon any expense or preparing your claim.

6. And what kinds are not usually allowed?

Any which could have been avoided by acting reasonably and prudently, and those which give you value for money. Examples of the first kind are losses due to disposing of stock without getting a proper price and being involved in two removals where only one was reasonably necessary. The second arises where, for example, the old fixtures and fittings which you have removed from the premises are replaced with new modern ones to make the shop look more attractive.

7. I am a tenant, not an owner, and find my tenancy isn't worth anything on the open market. What do I get?

You can still be paid for your expenses in moving and for loss of trade or business due to compulsory acquisition or dispossession. If you need help in preparing and negotiating your claim, the fee of a surveyor or solicitor will normally be repaid by the acquiring authority.

8. When will I get my compensation?

If you have a freehold or a lease and this is bought from you, the compensation is paid when the conveyance or assignment takes place. But if the authority take possession of your property before that, you have a right to an advance payment of 90 per cent of the authority's estimate of the compensation payable (including compensation for disturbance where this is already known or can be estimated) or, if you have agreed the amount of compensation, 90 per cent of that amount, less any mortgage debt. The authority are also obliged to pay you simple interest on any unpaid compensation from the time they take possession of your property to the date on which your compensation is finally agreed or awarded to you.

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9. How do I get the advance payment?

A request should be made in writing to the authority giving particulars of your interest in the property which is being acquired by them. They have the right to ask you for all the information needed to estimate the amount of advance payment.

10. When do I get it?

The request can be made at any time and the authority must be provided with all the necessary information to allow an estimate of compensation to be made. If that is done more than three months before the date when the authority take possession, payment must be made on that date. Otherwise payment must be made within three months after you have made the request and given the authority the information they need.

11. Can I get any further advances before I receive my compensation?

Yes. If an advance has been made to you based on the authority's estimate of compensation, and it later appears to the authority that their estimate was too low, you are entitled to ask for a further advance of the balance of the amount of the advance payment calculated as at the time of your request. If the total amount paid to you in advance exceeds the compensation finally agreed or awarded to you, you will have to repay the excess to the authority.

12. Can I receive advances of interest on outstanding compensation as well?

Yes. You are entitled to receive any interest which has accrued on the compensation due to you, whenever you receive an advance payment. If, one year after you received the initial advance, the amount of interest on any unpaid balance of the compensation due to you is calculated to be more than £1,000, the authority must pay you the interest and, until the compensation is finally agreed or awarded, continue to pay you such interest as it accrues at yearly intervals.

13. If I am a tenant not an owner, can I ask for an advance of my disturbance compensation?

The authority have discretion to make payments on account of your compensation and of any interest due to you, if you request them to do so.

14. What if I need the money before the authority have taken possession of my property?

The authority may be willing to make an advance payment before taking possession if you need the money to secure new premises, but you cannot claim this as of right.

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15. What happens if the authority decide not to go ahead with the purchase of my property?

Where your property is included in a compulsory purchase order, the authority normally have three years in which to exercise their compulsory purchase powers by serving a notice to treat on you. The authority must also take certain positive steps towards assessing the compensation due to you, within a period of three years from the date of service of the notice to treat. If the authority fail to take such steps within the three years during which the notice to treat is valid (or, if you have agreed with them on a longer period, within that period), the notice to treat will cease to have effect. In such circumstances, you would be entitled to compensation from the authority for any loss or expenses incurred between service of the notice to treat and its subsequent abandonment.

Loss payment

For Compulsory Purchase Orders published in draft on or after 31 October 2004, if you have a freehold interest or an interest as a tenant in land which is being acquired compulsorily, and you are not entitled to receive a home-loss payment, you may be entitled to receive a loss payment in addition to any other compensation due.

15A What is it?

A loss payment is a payment made in recognition of the inconvenience and disruption caused by the acquisition. It is split into the basic loss payment related to the value of your interest in the property and an occupier's loss payment payable on top of that if you are also the occupier of the property.

15B Who is entitled to one?

To qualify for a basic loss payment you must have held a freehold interest or tenancy for at least a year before whichever is the earliest of:

- the date the authority took possession;
- the date the land vested in the authority under a general vesting declaration;
- the date compensation was agreed; or
- the date the Lands Tribunal determined the amount of compensation.

15C How much will I get?

The basic loss payment is 7.5% of the value of your interest in the land concerned, subject to a maximum of £75,000.

You will also qualify for an occupier's loss payment if you satisfy the conditions for the basic loss payment and you also occupied the land for the period referred to above.

The occupier's loss payment is whichever is the greatest of 2.5% of the value of your interest or the "land amount" or "buildings amount" as defined in sections 33B and 33C of the Land Compensation Act 1973, subject to a maximum of £25,000. The method for calculating these amounts is complex, and you will need to seek professional advice.

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Compensation when business is not reinstated

16. Will the local authority find alternative premises for me?

They have been asked to do their best to help you, but there is no obligation upon them to provide alternative premises. You are expected to do your best to help yourself and to keep your losses to a minimum.

17. What happens if I cannot find new premises anywhere?

If no premises are available in which you could reasonably carry on your business, your compensation may be based on the loss you will sustain by the total extinguishment of your business, i.e. having regard to the value that it would have had as a going concern if the authority had not needed the land.

18. I am over 60 and I cannot face the prospect of starting all over again somewhere else.

If you are 60 or over and your interest in the whole of your business premises is compulsorily purchased from you, you can require your compensation to be based on the total extinguishment of your business.

19. How do I qualify?

You have to be 60 or over on the date you give up possession to the authority, the premises must have a rateable value of £34,800 or less, you must not have sold the goodwill of the whole of the business, and you must give certain undertakings to the authority.

20. What are these undertakings ?

- a) That you will not sell the goodwill of your business or any part of the goodwill which you have retained; and
- b) that you will not engage in or have an interest in any similar trade or business within the area and time laid down by the authority.

21. What happens if I make an undertaking and then break it?

The authority can recover from you the difference between the compensation paid and the amount that would have been payable if you had reinstated your business elsewhere.

22. I have a partner in my business. Can we get compensation on extinguishment of business basis under these provisions?

Yes, if both of you are 60 or over and both of you give the necessary undertakings.

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23. My business is run as a company. Can I get compensation on extinguishment of business basis under these provisions?

Yes, if on the date of dispossession each major shareholder is 60 or over and each minority shareholder is either 60 or over or is the spouse of a shareholder of 60 or over, and the company and all the shareholders give the necessary undertakings. (A minority shareholder for this purpose is a person entitled to less than 50 per cent of the shares of the company.)

Loss of trade

24. I have been losing trade because the council, in carrying out the redevelopment scheme for which my shop is being taken, are demolishing all the houses on the land first. Will this affect my compensation?

When your compensation is assessed, the effect of the redevelopment scheme on your takings will be ignored. So provided you have kept your business going, your compensation should not be affected by the decline in trade.

25. I thought I had to run my business down to make it easier to give possession to the council.

No. This could be a mistake as it might reduce your compensation, because only losses caused by the acquisition will be relevant to compensation. It would also be as well to take professional advice as to what you should do in these circumstances.

26. I have a shop near a slum clearance area and I am losing trade because all the houses are being demolished. The council say that they don't want to buy my shop. What can I do?

Provided that you run a retail shop, the council may be able to make a payment to you if your trade is affected by a decrease in the population of the adjoining area because of slum clearance, but they will not be likely to do this if your trade is likely to recover when the houses are rebuilt.

Business run from an unfit house

27. I run a business from my house which has been included in a clearance areas as it is unfit for habitation. Does this affect the compensation I get?

No, your compensation would be assessed in the normal way (see paragraph 1).

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28. I am running a business from my house and although it is being bought , it has been found to be unfit and the authority are considering serving either a closing order or a demolition order. Will I get compensation if they do so?

A closing order on your house would mean it can no longer be lived in. A demolition order would mean that the house has to be demolished within a specific period. In both of these cases occupants would have to move out, although the owner will retain the site and may be entitled to compensation. Generally speaking, the compensation payable would be equivalent to the depreciation in the market value of your property due to the making of the closing or demolition order. The making of such orders may not always cause the value of someone's property to fall and may, on occasions, even cause the value to rise. When this happens, no compensation will be paid. Occupiers may, however, still be entitled to a payment to cover the reasonable expenses in moving (see paragraph 5) or a home loss payment (see booklet 1 in this series, Your home and compulsory purchase).

29. My house, from which I run a business, has been made fit and the authority have lifted the closing order. Do I have to repay any compensation?

Yes, if the authority lift the closing order, wholly or in part, you may have to pay back some or all of the compensation that you received, provided that at the time the order was lifted you had the same interest in the property as you did when the closing order was made. Similarly, you may have to repay some or all of the compensation if the authority decide to lift a demolition order which had been made on your house.

30. I had run my business from my house until it became the subject of a closing order. The authority have now decided that it should be demolished and they have served a demolition order instead. Will I get more compensation?

You will be entitled to compensation if the existence of the demolition order causes the value of your interest in the property to fall, and this would be assessed in the same way as the original closing order (see paragraph 27). However, the amount of compensation you receive would be reduced by the amount of compensation, if any, received by you or a previous owner in respect of the closing order.

Blight Notices

31. What is blight?

It is a word generally used to describe the situation where it is not possible to obtain the normal price for a property because an authority with compulsory purchase powers may buy it at some future date and so people are less likely to want to buy it.

32. What is a blight notice?

If you are an owner-occupier of premises with a rateable value not over £34,800 and have tried to sell your property in the open market but cannot find a buyer except at a reduced

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price because of an authority's proposals, you may, in certain circumstances, serve a blight notice which requires the authority to buy in advance.

33. What are these circumstances?

Broadly speaking, if there has been a formal indication that a public authority may need to buy your property in order to carry out development of some kind, such as a new or widened road. The indication may be given in a number of ways - in a proposed development plan or amendment to a development plan, which has been published, in a published highway order or scheme, by the declaration of a clearance area under the Housing Acts, the publication of a notice of a compulsory purchase order or a draft order designating the site of a new town. This is not an exhaustive list; the full range of situations in which blight notices may be served is set out in Schedule 13 to the Town and Country Planning Act 1990. Your legal adviser should be able to tell you about this.

34. How do I qualify to serve a blight notice?

You must at the time of serving the notice own the freehold of your property or a lease with an unexpired term of at least three years and you must have occupied the whole or a good part of it for at least six months up to the date of service. However, if you gave up occupation not more than a year before serving the notice, you may still qualify if you had then been in occupation for a period of six months and the property has remained unoccupied ever since.

35. How do I set about serving a blight notice?

The notice must be served on the authority who propose to buy your property at a future date. Schedule 2 to the Town and Country Planning General Regulations 1992 (Statutory Instrument 1992/1492, available from The Stationery Office / www.tso.co.uk) shows the form the notice should take.

36. What happens then?

The authority may serve on you a counter-notice of objection. They can do so on several grounds. For example, if they need only part of your property, a counter-notice can say so. Or they may say they have no intention of acquiring any part of the property. Or they may give other reasons. If you object to a counter-notice, you can refer the matter to the Lands Tribunal for a decision (see paragraph 3).

37. And if they don't serve a counter-notice?

If the authority don't serve a counter-notice within two months, or if the Lands Tribunal reject the counter-notice, the blight notice automatically takes effect. The authority are then obliged to buy your property. In a straightforward case the authority might accept the blight notice and open negotiations without waiting for the two months to expire.

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Selling by agreement

38. What do I get if I sell to the authority by agreement?

If the authority have got compulsory powers but have not used them, you should be paid the same amount as if they had been used.

39. And what if the authority have no compulsory powers?

Then the purchase price is entirely a matter for you and your professional adviser to negotiate with the authority.

40. What happens if I can't agree the price with the authority?

If you and the authority together agree to refer the matter to them, the Lands Tribunal may be willing to settle the figure (see paragraph 3) but you should consult your professional adviser before committing yourself to this.

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Part 2: Where only part of your property is wanted

Extension of purchase to the whole of your property

41. If the authority take part of my property to widen the road, working conditions will become intolerable - what can I do?

In certain cases you may be able to make the authority buy the whole of your property and not just the part. It will depend very much on the circumstances of your particular case whether you can do this or not. You are strongly recommended to consult a surveyor or solicitor at an early stage.

42. In what circumstances could I hope to make the authority take the whole of my property?

Broadly speaking, where they can be persuaded that, having regard to the detrimental effect of what is proposed, it would be unreasonable to expect you to continue your business in the part you would be left with. For this purpose, consideration has to be given to how much of your property you will be able to retain, the effect of the whole of the works that the authority propose to carry out (including any to make conditions more tolerable) and the use to be made of them.

43. And if we cannot agree?

Both you and the authority have the right to refer the matter to the Lands Tribunal for a decision as to whether the part or the whole should be taken (see paragraph 3).

Compensation where only part of your property is wanted

44. If I cannot get the authority to buy the whole of my property or, if I want to stay, what compensation do I get?

You will get compensation for the market value of your interest in the property taken. You may also have a right to compensation for loss due to severance, i.e. if the value of the property or if the trade is reduced by taking part of it away. In certain cases you may be entitled to compensation for 'injurious affection', i.e. any reduction in the value of the rest of your property caused by the presence and use of the new public development (this may, for example, apply where the land is being bought to build a road).

In certain circumstances you may become entitled to a further payment of compensation (including compensation for severance and injurious affection) if, within ten years after the acquisition of your property, a planning decision is made which, if it had been made before your property were purchased, would have meant that your property had a higher market value.

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45. Can I get an advance payment of compensation?

If the authority take possession of the part they want before the sale is completed, you are entitled to an advance payment (see paragraphs 8 to 14, for details)

46. If the authority need to demolish part of my boundary - for instance, my wall or fence - will they replace it?

Your legal right is to cash compensation only but the authority will normally offer to carry out 'accommodation works', e.g. providing new access or a new fence, wall or gate in the new boundary of your property for you, with your agreement. In that case your compensation will take into account any benefits of such works.

47. What happens if the authority decide not to go ahead with the purchase of my property?

See paragraph 15.

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Part 3: The construction stage

Selling your property during the construction stage

48. What happens if I want to sell my business premises and I can get only a reduced price because of the construction work?

If you sell your premises privately and the buyer moves in before the development comes into use, he may be eligible to claim compensation for depreciation in the value of the premises caused by the use of the development. This means that he may be willing to give you a better price for the premises than he would otherwise have done.

49. The noise and dirt from the construction are so bad that I cannot bear to remain in my premises. Can the authority help?

If you are an owner-occupier (i.e. if you own the freehold or a lease with three or more years unexpired and have been in occupation for at least six months) and if the authority agree that prolonged construction nuisance is bad enough, they may be prepared to buy your premises from you.

50. When should I approach the authority?

As soon as you think your situation is going to be bad enough to justify it. The contract for discretionary purchase by the authority on the grounds of construction nuisance must be signed before the road is first opened to public traffic or the works first come into use. However, they are unlikely to buy until the effects of the construction works are known.

51. I cannot sell my business premises because public construction work will be taking place nearby. Can the authority help?

If the authority are of the opinion that your premises will be seriously affected by the construction work, they may, depending on individual circumstances, be willing to buy it from you.

52. How soon can they do that?

From the same time at which you would have been able to serve a blight notice on them if your premises had been needed to make way for the development itself. (See the section on blight, paragraphs 31 to 37, for an explanation of when blight notices can be served).

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Part 4: The development in use

Compensation for injurious affection under Part 1 of the Land Compensation Act 1973

53. What is 'injurious affection'?

It is a phrase used to describe depreciation in the value of land or an interest in land caused by public development. You may be able to claim compensation for injurious affection under Part I of the Land Compensation Act 1973 where no part of your property is required for the development.

54. What are the circumstances under which I can claim compensation?

The depreciation has to be more than £50 (see paragraph 61), and has to be caused by noise or other effects (called the 'physical factors') arising from the use of certain public development, namely:

Roads: all new public roads and alterations to the location, width or level of any length of carriageway including double decking. (Resurfacing does not qualify.)

Aerodromes (including municipal and privately owned aerodromes): new aerodromes and, at existing aerodromes:

- a. the construction of a new runway, the major realignment of an existing runway; or
- b. a substantial addition to or alteration of a taxiway or apron.

Some *other public development* but only if the Acts of Parliament under which they are operated take away the right of action for nuisance at common law.

Changes of use of land comprising public development which gives rise to any of the physical factors.

55. What are the 'physical factors'?

Noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to your property of any solid or liquid substance. These must arise from the use of the development (not its construction) and the source of the physical factors must be on or in the new or altered public development. For example, if a road is widened, the noise, etc, must arise from the traffic travelling along the widened stretch of road. You cannot get compensation for the effects of increased traffic further down the road where no improvement has taken place. In the case of aerodromes the physical factors may include those caused by aircraft arriving or departing, even when the aircraft are not within the boundaries of the aerodrome.

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56. I can see roadworks have been carried out, but how can I find out if an aerodrome runway has been altered?

Public authorities have a duty to keep records and provide information about any public development which may give rise to claims for injurious affection compensation. As a safeguard in the case of aerodromes, the National Assembly for Wales can be asked to certify in doubtful cases whether qualifying work has been carried out.

57. And how can I find out whether other public development qualifies or not?

Generally speaking, the common law gives a right of action for nuisance where there has been unlawful interference with a person's use or enjoyment of property or an interest in property. But in certain cases, an authority carrying out development may enjoy statutory immunity against such actions. Where this is the case, you may be entitled to claim injurious affection compensation. But if the authority do not have such immunity, your remedy would be to bring an action for nuisance. So it is very important to seek legal advice to find out whether the responsible authority have statutory immunity or not.

58. Part of my property is being taken for a road. Shall I be able to get some more injurious affection compensation when the roadworks are finished and in use?

Your compensation for the loss of part of your property will take into account the effect of the use of the roadworks on the value of the rest of your premises. Injurious affection compensation under Part I of the Land Compensation Act 1973 is usually only for people from whom no land is taken.

59. Who can claim injurious affection compensation?

You can claim if you are the owner-occupier of business premises with a rateable value of not more than £34,800 on the date you make your claim, but you must have acquired your interest in it before the public development came into use. You must own the freehold or a lease with three years or more to run on the date you make your claim and you also have to occupy all or a good part of the premises.

60. My father died before he put in a claim and left the property to me. Can I claim?

You may be able to claim if you inherited the property from someone who would have been in a position to claim if he had lived long enough, but you should ask a solicitor about this.

61. What can I claim for?

Depreciation of the market value of your interest in your property on the valuation date, which is 12 months after the development came into use. (The amount of depreciation must, however, be more than £50 for you to be entitled to any compensation.) If compensation becomes payable, reasonable valuation or legal fees incurred by you for the preparation and negotiation of your claim will also be paid. Simple interest will be payable

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from the date of your claim or the beginning of the claim period, whichever is later, until the compensation is paid.

62. How is the depreciation of the market value of my property assessed?

The basis of compensation is the difference in value resulting from any new 'physical factors' (or any increase in existing 'physical factors') arising from the use of the development. So the question is whether and by how much on the valuation date the market value of your interest in your premises is less than it would have been if the 'physical factors', i.e. the noise, etc coming from the new or altered development, had not occurred. (See also paragraph 64 below).

63. And what are the things I cannot claim for?

You cannot claim for loss of a view, for personal inconvenience, for trade loss or for the effect of the intensified use of an unaltered public development. Also, the premises must be valued for the purpose for which they are being used, ignoring any extra value they may have for use for a different purpose or for redevelopment, and any building, extension or improvement first occupied, or change in the use of the property, after the development comes into use has to be left out of account.

64. Can my compensation be reduced for any reason?

If you have a right to insulation for any living accommodation in the premises or if the responsible authority have undertaken to provide insulation or pay grant in respect of its provision, the benefit will be taken into account and it will be assumed for the purpose of valuation that it has been installed. Similarly where the authority have carried out other remedial works such as noise barriers or such works are in progress, the benefit will be taken into account. Also, if the value of this or other contiguous or adjacent property which you own is increased by the authority's development, this will be taken into account and set off against the claim.

65. When should I claim?

Normally, on or after the first claim day, which is one year after the development comes into use (but see the paragraphs 69 to 76, for special cases). You should make your claim within 6 years of the first claim day because after this time the Limitation Act takes effect and you no longer have a right to recover compensation.

66. What happens if I leave the premises before I can claim?

If you move out during the year after the development comes into use, you can register a claim before selling (see next section below).

67. What happens if there is a dispute over the amount of compensation?

The case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes (see paragraph 3).

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68. Can I get any of the injurious affection compensation in advance, before it is settled?

The authority have discretion to make payments on account of your compensation and of any interest due to you, if you request them to do so.

Selling your property during the year after public development comes into use.

Private sales

69. Can I claim for injurious affection if I sell my property or grant a lease?

Only if you contract to sell or to lease during the first 12 months after the development comes into use. Normally claims cannot be made until after the 12-month period, but if you want to sell or grant a lease during the year you can serve a notice of claim on the authority. You must do this after exchanging contracts and before completing the sale or granting the lease.

70. While waiting for a buyer for my property I want to move to other premises. Can I still make a claim?

Unless you are the owner-occupier of the land on the date you make your claim, you will not qualify and your claim will be ineffective.

71. How will my compensation be assessed?

In the same way as if you had not sold your premises, i.e. by reference to values prevailing on the valuation date, which is 12 months after the development comes into use, but assuming that the premises are not subject to a contract for sale.

72. But the property may have been altered by the buyer by then - will this affect my compensation?

No. The condition of your property will be assumed to be as it was on the date you served notice of claim, and the buyer has to allow the authority to survey and value the property in connection with your claim (but see paragraphs 62 and 63).

Sales to the authority

73. The noise and general nuisance from the new development is so bad that I feel I cannot continue to run my business here - can the authority help?

If you are an owner-occupier (i.e. you own the freehold or a lease with 3 or more years to run and you have occupied the premises - or a good part of them - for a period of at least

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6 months) and if the authority agree that the use of the development is seriously affecting your enjoyment of your premises, they may be prepared to buy them from you.

74. When should I approach the authority?

As soon as you think that your situation is going to be bad enough to justify the authority buying it. The contract for a purchase on the grounds of nuisance from new or altered public development must be signed within one year after the development comes into use.

75. I cannot sell my premises because of the prospect of a road or other public development nearby. Can the authority help?

If the authority are of the opinion that your premises will be seriously affected by the road or other development once it has come into use, they may, depending on individual circumstances, be willing to buy them from you.

76. How soon can they do that?

From the same time at which you would have been able to serve a blight notice on them if your premises had been needed to make way for the development itself. (See the section on blight, paragraphs 31 to 37, for an explanation of when blight notices can be served).

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*In this booklet, 'public development' means development undertaken by a public authority or another body acting in accordance with statutory powers; and such development 'comes into use' when

- a new highway is first opened to public traffic - an improved highway is first opened to public traffic after completion of the alterations
- other public development is first used
- other public development is first used after alterations
- the use of land is changed

Copies of this booklet may be obtained from the Welsh Assembly Government,
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FOREWORD

The land compensation code makes provision for those who suffer as a result of development undertaken for the benefit of the community. The code is principally laid down in the Land Compensations Acts of 1961 and 1973, the Compulsory Purchase Act 1965 and the Planning and Compensation Act 1991.

This booklet provides up-to-date information for owners and occupiers of property used for business purposes which is affected by public development of one kind or another. It is not a complete guide to the law and has no legal force, but it does provide answers to some of the more usual questions that owners and occupiers of business property want to ask when it is compulsorily purchased or when it is affected by nuisance from public development.

If your property is affected by public development in any of the ways described in this booklet, you are strongly recommended to seek help from a professionally qualified person such as a surveyor or solicitor who would be able to advise you on the rights that you may have and could also act on your behalf. If compensation becomes payable the reasonable professional fees incurred in preparing and negotiating your claim will normally be repaid by the authority.

If you want to find out more about a particular scheme, your local council should be able to help.

Other booklets in this series are:

Booklet 1 - *Your home and compulsory purchase*

Booklet 2 - *Your home and nuisance from public development*

Booklet 4 - *The farmer and public development*

Booklet 5 - *Insulation against traffic noise*

The information in booklets 1 and 2 applies equally to living accommodation in business premises such as a flat over a shop or a caretaker's house.

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Part 1: Where the whole of your property is wanted

Compensation for compulsory purchase

1. How much compensation will I get?

Save in very exceptional circumstances, the acquiring authority are obliged to pay you the open market value of your interest in your property - that is, the amount which you might have got for it if the authority had not proposed to carry out the development and you had sold it privately. The figure is usually agreed in negotiation between the parties concerned.

In certain circumstances you may become entitled to a further payment of compensation if, within ten years after the acquisition of your property, a planning decision is made which, if it had been made before your property had been acquired would have meant that your property had a higher market value.

2. Should I get someone to act for me?

Yes. The valuation of property can be very complicated and you are recommended to ask a professionally qualified person such as a surveyor or solicitor to advise you and act on your behalf. Their fee will normally be re-paid by the acquiring authority.

3. What happens if I cannot reach agreement with the authority on the amount of compensation?

The case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes. Under the Limitation Act 1980 you have six years from the date that the authority takes possession of your land to refer a disputed claim to the Lands Tribunal. It is wise to take professional advice first. The Tribunal has the power to award costs to either party. (It may be possible - at the discretion of the Tribunal and if all the parties are willing - for the case to be determined on the basis of written representations rather than a hearing.)

4. What about losses caused to my business and all my other expenses?

You are entitled to compensation for reasonable expenses or losses which you have had to incur as a direct result of the compulsory purchase, including net losses unavoidably caused to trade or business. If it is possible for you to reduce your losses by reinstating the business elsewhere, it will be assumed in assessing disturbance compensation that you will do so, even if in practice you do not; but see also paragraphs 18 to 23. The authority are also obliged to pay your proper legal costs of conveyance of the property that they are buying.

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5. What kind of expenses are generally allowed?

Such as you might reasonably be expected to incur or suffer if similar circumstances arose and the financial responsibility fell upon yourself. Examples are:

- a) removal expenses, cost of alterations to equipment, furnishings and fittings to new premises, loss on stock (on forced sale or depreciation in course of removal - whichever would be the less), notifying change of address to customers, post office charges for redirecting mail and for reconnecting telephones; and
- b) incidental expenses incurred in securing alternative premises such as for advertising and travelling, and legal costs such as would be appropriate upon acquiring a comparable interest in premises like those you are vacating. In some circumstances there might be an entitlement to compensation for overlapping costs of maintaining two sets of premises during the removal period. Other items may be allowed, but this is a complex subject and you would be wise to consult a professional adviser before embarking upon any expense or preparing your claim.

6. And what kinds are not usually allowed?

Any which could have been avoided by acting reasonably and prudently, and those which give you value for money. Examples of the first kind are losses due to disposing of stock without getting a proper price and being involved in two removals where only one was reasonably necessary. The second arises where, for example, the old fixtures and fittings which you have removed from the premises are replaced with new modern ones to make the shop look more attractive.

7. I am a tenant, not an owner, and find my tenancy isn't worth anything on the open market. What do I get?

You can still be paid for your expenses in moving and for loss of trade or business due to compulsory acquisition or dispossession. If you need help in preparing and negotiating your claim, the fee of a surveyor or solicitor will normally be repaid by the acquiring authority.

8. When will I get my compensation?

If you have a freehold or a lease and this is bought from you, the compensation is paid when the conveyance or assignment takes place. But if the authority take possession of your property before that, you have a right to an advance payment of 90 per cent of the authority's estimate of the compensation payable (including compensation for disturbance where this is already known or can be estimated) or, if you have agreed the amount of compensation, 90 per cent of that amount, less any mortgage debt. The authority are also obliged to pay you simple interest on any unpaid compensation from the time they take possession of your property to the date on which your compensation is finally agreed or awarded to you.

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9. How do I get the advance payment?

A request should be made in writing to the authority giving particulars of your interest in the property which is being acquired by them. They have the right to ask you for all the information needed to estimate the amount of advance payment.

10. When do I get it?

The request can be made at any time and the authority must be provided with all the necessary information to allow an estimate of compensation to be made. If that is done more than three months before the date when the authority take possession, payment must be made on that date. Otherwise payment must be made within three months after you have made the request and given the authority the information they need.

11. Can I get any further advances before I receive my compensation?

Yes. If an advance has been made to you based on the authority's estimate of compensation, and it later appears to the authority that their estimate was too low, you are entitled to ask for a further advance of the balance of the amount of the advance payment calculated as at the time of your request. If the total amount paid to you in advance exceeds the compensation finally agreed or awarded to you, you will have to repay the excess to the authority.

12. Can I receive advances of interest on outstanding compensation as well?

Yes. You are entitled to receive any interest which has accrued on the compensation due to you, whenever you receive an advance payment. If, one year after you received the initial advance, the amount of interest on any unpaid balance of the compensation due to you is calculated to be more than £1,000, the authority must pay you the interest and, until the compensation is finally agreed or awarded, continue to pay you such interest as it accrues at yearly intervals.

13. If I am a tenant not an owner, can I ask for an advance of my disturbance compensation?

The authority have discretion to make payments on account of your compensation and of any interest due to you, if you request them to do so.

14. What if I need the money before the authority have taken possession of my property?

The authority may be willing to make an advance payment before taking possession if you need the money to secure new premises, but you cannot claim this as of right.

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15. What happens if the authority decide not to go ahead with the purchase of my property?

Where your property is included in a compulsory purchase order, the authority normally have three years in which to exercise their compulsory purchase powers by serving a notice to treat on you. The authority must also take certain positive steps towards assessing the compensation due to you, within a period of three years from the date of service of the notice to treat. If the authority fail to take such steps within the three years during which the notice to treat is valid (or, if you have agreed with them on a longer period, within that period), the notice to treat will cease to have effect. In such circumstances, you would be entitled to compensation from the authority for any loss or expenses incurred between service of the notice to treat and its subsequent abandonment.

Loss payment

For Compulsory Purchase Orders published in draft on or after 31 October 2004, if you have a freehold interest or an interest as a tenant in land which is being acquired compulsorily, and you are not entitled to receive a home-loss payment, you may be entitled to receive a loss payment in addition to any other compensation due.

15A What is it?

A loss payment is a payment made in recognition of the inconvenience and disruption caused by the acquisition. It is split into the basic loss payment related to the value of your interest in the property and an occupier's loss payment payable on top of that if you are also the occupier of the property.

15B Who is entitled to one?

To qualify for a basic loss payment you must have held a freehold interest or tenancy for at least a year before whichever is the earliest of:

- the date the authority took possession;
- the date the land vested in the authority under a general vesting declaration;
- the date compensation was agreed; or
- the date the Lands Tribunal determined the amount of compensation.

15C How much will I get?

The basic loss payment is 7.5% of the value of your interest in the land concerned, subject to a maximum of £75,000.

You will also qualify for an occupier's loss payment if you satisfy the conditions for the basic loss payment and you also occupied the land for the period referred to above.

The occupier's loss payment is whichever is the greatest of 2.5% of the value of your interest or the "land amount" or "buildings amount" as defined in sections 33B and 33C of the Land Compensation Act 1973, subject to a maximum of £25,000. The method for calculating these amounts is complex, and you will need to seek professional advice.

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Compensation when business is not reinstated

16. Will the local authority find alternative premises for me?

They have been asked to do their best to help you, but there is no obligation upon them to provide alternative premises. You are expected to do your best to help yourself and to keep your losses to a minimum.

17. What happens if I cannot find new premises anywhere?

If no premises are available in which you could reasonably carry on your business, your compensation may be based on the loss you will sustain by the total extinguishment of your business, i.e. having regard to the value that it would have had as a going concern if the authority had not needed the land.

18. I am over 60 and I cannot face the prospect of starting all over again somewhere else.

If you are 60 or over and your interest in the whole of your business premises is compulsorily purchased from you, you can require your compensation to be based on the total extinguishment of your business.

19. How do I qualify?

You have to be 60 or over on the date you give up possession to the authority, the premises must have a rateable value of £34,800 or less, you must not have sold the goodwill of the whole of the business, and you must give certain undertakings to the authority.

20. What are these undertakings ?

- a) That you will not sell the goodwill of your business or any part of the goodwill which you have retained; and
- b) that you will not engage in or have an interest in any similar trade or business within the area and time laid down by the authority.

21. What happens if I make an undertaking and then break it?

The authority can recover from you the difference between the compensation paid and the amount that would have been payable if you had reinstated your business elsewhere.

22. I have a partner in my business. Can we get compensation on extinguishment of business basis under these provisions?

Yes, if both of you are 60 or over and both of you give the necessary undertakings.

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23. My business is run as a company. Can I get compensation on extinguishment of business basis under these provisions?

Yes, if on the date of dispossession each major shareholder is 60 or over and each minority shareholder is either 60 or over or is the spouse of a shareholder of 60 or over, and the company and all the shareholders give the necessary undertakings. (A minority shareholder for this purpose is a person entitled to less than 50 per cent of the shares of the company.)

Loss of trade

24. I have been losing trade because the council, in carrying out the redevelopment scheme for which my shop is being taken, are demolishing all the houses on the land first. Will this affect my compensation?

When your compensation is assessed, the effect of the redevelopment scheme on your takings will be ignored. So provided you have kept your business going, your compensation should not be affected by the decline in trade.

25. I thought I had to run my business down to make it easier to give possession to the council.

No. This could be a mistake as it might reduce your compensation, because only losses caused by the acquisition will be relevant to compensation. It would also be as well to take professional advice as to what you should do in these circumstances.

26. I have a shop near a slum clearance area and I am losing trade because all the houses are being demolished. The council say that they don't want to buy my shop. What can I do?

Provided that you run a retail shop, the council may be able to make a payment to you if your trade is affected by a decrease in the population of the adjoining area because of slum clearance, but they will not be likely to do this if your trade is likely to recover when the houses are rebuilt.

Business run from an unfit house

27. I run a business from my house which has been included in a clearance areas as it is unfit for habitation. Does this affect the compensation I get?

No, your compensation would be assessed in the normal way (see paragraph 1).

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28. I am running a business from my house and although it is being bought , it has been found to be unfit and the authority are considering serving either a closing order or a demolition order. Will I get compensation if they do so?

A closing order on your house would mean it can no longer be lived in. A demolition order would mean that the house has to be demolished within a specific period. In both of these cases occupants would have to move out, although the owner will retain the site and may be entitled to compensation. Generally speaking, the compensation payable would be equivalent to the depreciation in the market value of your property due to the making of the closing or demolition order. The making of such orders may not always cause the value of someone's property to fall and may, on occasions, even cause the value to rise. When this happens, no compensation will be paid. Occupiers may, however, still be entitled to a payment to cover the reasonable expenses in moving (see paragraph 5) or a home loss payment (see booklet 1 in this series, Your home and compulsory purchase).

29. My house, from which I run a business, has been made fit and the authority have lifted the closing order. Do I have to repay any compensation?

Yes, if the authority lift the closing order, wholly or in part, you may have to pay back some or all of the compensation that you received, provided that at the time the order was lifted you had the same interest in the property as you did when the closing order was made. Similarly, you may have to repay some or all of the compensation if the authority decide to lift a demolition order which had been made on your house.

30. I had run my business from my house until it became the subject of a closing order. The authority have now decided that it should be demolished and they have served a demolition order instead. Will I get more compensation?

You will be entitled to compensation if the existence of the demolition order causes the value of your interest in the property to fall, and this would be assessed in the same way as the original closing order (see paragraph 27). However, the amount of compensation you receive would be reduced by the amount of compensation, if any, received by you or a previous owner in respect of the closing order.

Blight Notices

31. What is blight?

It is a word generally used to describe the situation where it is not possible to obtain the normal price for a property because an authority with compulsory purchase powers may buy it at some future date and so people are less likely to want to buy it.

32. What is a blight notice?

If you are an owner-occupier of premises with a rateable value not over £34,800 and have tried to sell your property in the open market but cannot find a buyer except at a reduced

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price because of an authority's proposals, you may, in certain circumstances, serve a blight notice which requires the authority to buy in advance.

33. What are these circumstances?

Broadly speaking, if there has been a formal indication that a public authority may need to buy your property in order to carry out development of some kind, such as a new or widened road. The indication may be given in a number of ways - in a proposed development plan or amendment to a development plan, which has been published, in a published highway order or scheme, by the declaration of a clearance area under the Housing Acts, the publication of a notice of a compulsory purchase order or a draft order designating the site of a new town. This is not an exhaustive list; the full range of situations in which blight notices may be served is set out in Schedule 13 to the Town and Country Planning Act 1990. Your legal adviser should be able to tell you about this.

34. How do I qualify to serve a blight notice?

You must at the time of serving the notice own the freehold of your property or a lease with an unexpired term of at least three years and you must have occupied the whole or a good part of it for at least six months up to the date of service. However, if you gave up occupation not more than a year before serving the notice, you may still qualify if you had then been in occupation for a period of six months and the property has remained unoccupied ever since.

35. How do I set about serving a blight notice?

The notice must be served on the authority who propose to buy your property at a future date. Schedule 2 to the Town and Country Planning General Regulations 1992 (Statutory Instrument 1992/1492, available from The Stationery Office / www.tso.co.uk) shows the form the notice should take.

36. What happens then?

The authority may serve on you a counter-notice of objection. They can do so on several grounds. For example, if they need only part of your property, a counter-notice can say so. Or they may say they have no intention of acquiring any part of the property. Or they may give other reasons. If you object to a counter-notice, you can refer the matter to the Lands Tribunal for a decision (see paragraph 3).

37. And if they don't serve a counter-notice?

If the authority don't serve a counter-notice within two months, or if the Lands Tribunal reject the counter-notice, the blight notice automatically takes effect. The authority are then obliged to buy your property. In a straightforward case the authority might accept the blight notice and open negotiations without waiting for the two months to expire.

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Selling by agreement

38. What do I get if I sell to the authority by agreement?

If the authority have got compulsory powers but have not used them, you should be paid the same amount as if they had been used.

39. And what if the authority have no compulsory powers?

Then the purchase price is entirely a matter for you and your professional adviser to negotiate with the authority.

40. What happens if I can't agree the price with the authority?

If you and the authority together agree to refer the matter to them, the Lands Tribunal may be willing to settle the figure (see paragraph 3) but you should consult your professional adviser before committing yourself to this.

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Part 2: Where only part of your property is wanted

Extension of purchase to the whole of your property

41. If the authority take part of my property to widen the road, working conditions will become intolerable - what can I do?

In certain cases you may be able to make the authority buy the whole of your property and not just the part. It will depend very much on the circumstances of your particular case whether you can do this or not. You are strongly recommended to consult a surveyor or solicitor at an early stage.

42. In what circumstances could I hope to make the authority take the whole of my property?

Broadly speaking, where they can be persuaded that, having regard to the detrimental effect of what is proposed, it would be unreasonable to expect you to continue your business in the part you would be left with. For this purpose, consideration has to be given to how much of your property you will be able to retain, the effect of the whole of the works that the authority propose to carry out (including any to make conditions more tolerable) and the use to be made of them.

43. And if we cannot agree?

Both you and the authority have the right to refer the matter to the Lands Tribunal for a decision as to whether the part or the whole should be taken (see paragraph 3).

Compensation where only part of your property is wanted

44. If I cannot get the authority to buy the whole of my property or, if I want to stay, what compensation do I get?

You will get compensation for the market value of your interest in the property taken. You may also have a right to compensation for loss due to severance, i.e. if the value of the property or if the trade is reduced by taking part of it away. In certain cases you may be entitled to compensation for 'injurious affection', i.e. any reduction in the value of the rest of your property caused by the presence and use of the new public development (this may, for example, apply where the land is being bought to build a road).

In certain circumstances you may become entitled to a further payment of compensation (including compensation for severance and injurious affection) if, within ten years after the acquisition of your property, a planning decision is made which, if it had been made before your property were purchased, would have meant that your property had a higher market value.

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45. Can I get an advance payment of compensation?

If the authority take possession of the part they want before the sale is completed, you are entitled to an advance payment (see paragraphs 8 to 14, for details)

46. If the authority need to demolish part of my boundary - for instance, my wall or fence - will they replace it?

Your legal right is to cash compensation only but the authority will normally offer to carry out 'accommodation works', e.g. providing new access or a new fence, wall or gate in the new boundary of your property for you, with your agreement. In that case your compensation will take into account any benefits of such works.

47. What happens if the authority decide not to go ahead with the purchase of my property?

See paragraph 15.

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Part 3: The construction stage

Selling your property during the construction stage

48. What happens if I want to sell my business premises and I can get only a reduced price because of the construction work?

If you sell your premises privately and the buyer moves in before the development comes into use, he may be eligible to claim compensation for depreciation in the value of the premises caused by the use of the development. This means that he may be willing to give you a better price for the premises than he would otherwise have done.

49. The noise and dirt from the construction are so bad that I cannot bear to remain in my premises. Can the authority help?

If you are an owner-occupier (i.e. if you own the freehold or a lease with three or more years unexpired and have been in occupation for at least six months) and if the authority agree that prolonged construction nuisance is bad enough, they may be prepared to buy your premises from you.

50. When should I approach the authority?

As soon as you think your situation is going to be bad enough to justify it. The contract for discretionary purchase by the authority on the grounds of construction nuisance must be signed before the road is first opened to public traffic or the works first come into use. However, they are unlikely to buy until the effects of the construction works are known.

51. I cannot sell my business premises because public construction work will be taking place nearby. Can the authority help?

If the authority are of the opinion that your premises will be seriously affected by the construction work, they may, depending on individual circumstances, be willing to buy it from you.

52. How soon can they do that?

From the same time at which you would have been able to serve a blight notice on them if your premises had been needed to make way for the development itself. (See the section on blight, paragraphs 31 to 37, for an explanation of when blight notices can be served).

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Part 4: The development in use

Compensation for injurious affection under Part 1 of the Land Compensation Act 1973

53. What is 'injurious affection'?

It is a phrase used to describe depreciation in the value of land or an interest in land caused by public development. You may be able to claim compensation for injurious affection under Part I of the Land Compensation Act 1973 where no part of your property is required for the development.

54. What are the circumstances under which I can claim compensation?

The depreciation has to be more than £50 (see paragraph 61), and has to be caused by noise or other effects (called the 'physical factors') arising from the use of certain public development, namely:

Roads: all new public roads and alterations to the location, width or level of any length of carriageway including double decking. (Resurfacing does not qualify.)

Aerodromes (including municipal and privately owned aerodromes): new aerodromes and, at existing aerodromes:

- a. the construction of a new runway, the major realignment of an existing runway; or
- b. a substantial addition to or alteration of a taxiway or apron.

Some *other public development* but only if the Acts of Parliament under which they are operated take away the right of action for nuisance at common law.

Changes of use of land comprising public development which gives rise to any of the physical factors.

55. What are the 'physical factors'?

Noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to your property of any solid or liquid substance. These must arise from the use of the development (not its construction) and the source of the physical factors must be on or in the new or altered public development. For example, if a road is widened, the noise, etc, must arise from the traffic travelling along the widened stretch of road. You cannot get compensation for the effects of increased traffic further down the road where no improvement has taken place. In the case of aerodromes the physical factors may include those caused by aircraft arriving or departing, even when the aircraft are not within the boundaries of the aerodrome.

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56. I can see roadworks have been carried out, but how can I find out if an aerodrome runway has been altered?

Public authorities have a duty to keep records and provide information about any public development which may give rise to claims for injurious affection compensation. As a safeguard in the case of aerodromes, the National Assembly for Wales can be asked to certify in doubtful cases whether qualifying work has been carried out.

57. And how can I find out whether other public development qualifies or not?

Generally speaking, the common law gives a right of action for nuisance where there has been unlawful interference with a person's use or enjoyment of property or an interest in property. But in certain cases, an authority carrying out development may enjoy statutory immunity against such actions. Where this is the case, you may be entitled to claim injurious affection compensation. But if the authority do not have such immunity, your remedy would be to bring an action for nuisance. So it is very important to seek legal advice to find out whether the responsible authority have statutory immunity or not.

58. Part of my property is being taken for a road. Shall I be able to get some more injurious affection compensation when the roadworks are finished and in use?

Your compensation for the loss of part of your property will take into account the effect of the use of the roadworks on the value of the rest of your premises. Injurious affection compensation under Part I of the Land Compensation Act 1973 is usually only for people from whom no land is taken.

59. Who can claim injurious affection compensation?

You can claim if you are the owner-occupier of business premises with a rateable value of not more than £34,800 on the date you make your claim, but you must have acquired your interest in it before the public development came into use. You must own the freehold or a lease with three years or more to run on the date you make your claim and you also have to occupy all or a good part of the premises.

60. My father died before he put in a claim and left the property to me. Can I claim?

You may be able to claim if you inherited the property from someone who would have been in a position to claim if he had lived long enough, but you should ask a solicitor about this.

61. What can I claim for?

Depreciation of the market value of your interest in your property on the valuation date, which is 12 months after the development came into use. (The amount of depreciation must, however, be more than £50 for you to be entitled to any compensation.) If compensation becomes payable, reasonable valuation or legal fees incurred by you for the preparation and negotiation of your claim will also be paid. Simple interest will be payable

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from the date of your claim or the beginning of the claim period, whichever is later, until the compensation is paid.

62. How is the depreciation of the market value of my property assessed?

The basis of compensation is the difference in value resulting from any new 'physical factors' (or any increase in existing 'physical factors') arising from the use of the development. So the question is whether and by how much on the valuation date the market value of your interest in your premises is less than it would have been if the 'physical factors', i.e. the noise, etc coming from the new or altered development, had not occurred. (See also paragraph 64 below).

63. And what are the things I cannot claim for?

You cannot claim for loss of a view, for personal inconvenience, for trade loss or for the effect of the intensified use of an unaltered public development. Also, the premises must be valued for the purpose for which they are being used, ignoring any extra value they may have for use for a different purpose or for redevelopment, and any building, extension or improvement first occupied, or change in the use of the property, after the development comes into use has to be left out of account.

64. Can my compensation be reduced for any reason?

If you have a right to insulation for any living accommodation in the premises or if the responsible authority have undertaken to provide insulation or pay grant in respect of its provision, the benefit will be taken into account and it will be assumed for the purpose of valuation that it has been installed. Similarly where the authority have carried out other remedial works such as noise barriers or such works are in progress, the benefit will be taken into account. Also, if the value of this or other contiguous or adjacent property which you own is increased by the authority's development, this will be taken into account and set off against the claim.

65. When should I claim?

Normally, on or after the first claim day, which is one year after the development comes into use (but see the paragraphs 69 to 76, for special cases). You should make your claim within 6 years of the first claim day because after this time the Limitation Act takes effect and you no longer have a right to recover compensation.

66. What happens if I leave the premises before I can claim?

If you move out during the year after the development comes into use, you can register a claim before selling (see next section below).

67. What happens if there is a dispute over the amount of compensation?

The case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes (see paragraph 3).

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68. Can I get any of the injurious affection compensation in advance, before it is settled?

The authority have discretion to make payments on account of your compensation and of any interest due to you, if you request them to do so.

Selling your property during the year after public development comes into use.

Private sales

69. Can I claim for injurious affection if I sell my property or grant a lease?

Only if you contract to sell or to lease during the first 12 months after the development comes into use. Normally claims cannot be made until after the 12-month period, but if you want to sell or grant a lease during the year you can serve a notice of claim on the authority. You must do this after exchanging contracts and before completing the sale or granting the lease.

70. While waiting for a buyer for my property I want to move to other premises. Can I still make a claim?

Unless you are the owner-occupier of the land on the date you make your claim, you will not qualify and your claim will be ineffective.

71. How will my compensation be assessed?

In the same way as if you had not sold your premises, i.e. by reference to values prevailing on the valuation date, which is 12 months after the development comes into use, but assuming that the premises are not subject to a contract for sale.

72. But the property may have been altered by the buyer by then - will this affect my compensation?

No. The condition of your property will be assumed to be as it was on the date you served notice of claim, and the buyer has to allow the authority to survey and value the property in connection with your claim (but see paragraphs 62 and 63).

Sales to the authority

73. The noise and general nuisance from the new development is so bad that I feel I cannot continue to run my business here - can the authority help?

If you are an owner-occupier (i.e. you own the freehold or a lease with 3 or more years to run and you have occupied the premises - or a good part of them - for a period of at least

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6 months) and if the authority agree that the use of the development is seriously affecting your enjoyment of your premises, they may be prepared to buy them from you.

74. When should I approach the authority?

As soon as you think that your situation is going to be bad enough to justify the authority buying it. The contract for a purchase on the grounds of nuisance from new or altered public development must be signed within one year after the development comes into use.

75. I cannot sell my premises because of the prospect of a road or other public development nearby. Can the authority help?

If the authority are of the opinion that your premises will be seriously affected by the road or other development once it has come into use, they may, depending on individual circumstances, be willing to buy them from you.

76. How soon can they do that?

From the same time at which you would have been able to serve a blight notice on them if your premises had been needed to make way for the development itself. (See the section on blight, paragraphs 31 to 37, for an explanation of when blight notices can be served).