

# Land Compensation

## *Your Rights Explained*



2

Your Home and Nuisance  
from Public Development



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



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<p>In this booklet, ‘public development’ means development undertaken by a public authority or by another body acting in accordance with statutory powers; and such development ‘comes into use’ when</p>	
<ul style="list-style-type: none"><li>- a new highway is first opened to public traffic</li><li>- an improved highway is first opened to public traffic after completion of the alterations</li><li>- other public development is first used</li></ul>	

- other public development is first used after alterations
- the use of the land is changed.

Copies of this booklet may be obtained from the Welsh Assembly Government, Transport Directorate, Cathays Park, Cardiff CF10 3NQ.

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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 Compensation 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 residential owners and occupiers whose homes are affected by nuisance from 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 people want to ask.

**If you are 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 solicitor or surveyor who would be able to advise you on the rights that you may have and could also act on your behalf with the authority concerned. If compensation becomes payable, the reasonable professional fees incurred in preparing and negotiating your claim will normally be repaid by the authority.**

This booklet also applies to owners and occupiers of residential accommodation on farms and in business or other premises which are affected by nearby public development.

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

Other booklets in this series :

- Booklet 1 - *Your home and compulsory purchase*
- Booklet 3 - *Your business and public development*
- Booklet 4 - *The farmer and public development*
- Booklet 5 - *Insulation against traffic noise*

# Part 1: The Design Stage

## *Design measures to avoid nuisance*

### **1. What can the authority in charge of the development do to avoid nuisance to homes nearby ?**

Under powers given to them in the Highways Act 1980, the authority in charge of a road are able to buy enough land to enable them to fit the road better into its surroundings. Authorities in charge of other sorts of public projects also have powers, under the Land Compensation Act 1973, to enable them to reduce the effects of their development.

### **2. What does that mean in practice if, for example, a new road is being built ?**

It means that the authority can buy some extra land alongside the road and carry out work on it to shield surrounding areas from the noise and other effects of the construction and use of the road.

### **3. What sort of work ?**

The authority could put up noise barriers or erect and grass over screening mounds of earth or provide other landscape treatment such as tree planting, etc.

### **4. And if that is not sufficient to stop the nuisance ?**

Then you may be helped in one or more of the ways described in the rest of this booklet.



# Part 2: The Construction Stage

## *Temporary accommodation*

### **5. The non-stop noise and vibration are so bad while work is going on outside my home that I want to take my family away. Can I get help with the expense?**

Possibly. If temporary disturbance caused by construction works is exceptionally bad, the responsible public authority may be willing to make some payment towards the reasonable expenses you incur by moving to suitable temporary accommodation elsewhere for the whole or part of the time disturbance is going on.

### **6. What do I have to do to qualify ?**

Your home must be next to the site where the development is being carried out, and it must be so badly affected that it is not reasonably practicable for you to continue to live there for the time being.

### **7. When do I have to apply ?**

Before you commit yourself to moving temporarily. The authority are not allowed to make any payment to you unless you have reached an agreement with them before you incur any expenses.

### **8. How much will I get ?**

You cannot be paid more than the difference between the reasonable expenses that you incur by moving temporarily and what you would have spent if you had stayed in your home.

## *Selling your home because of actual or likely effects of construction*

### **9. What happens if I want to sell my home and I can get only a reduced price because of the construction work ?**

If you sell your home privately and the buyer moves in before the development comes into use, he/she may be eligible to claim compensation for depreciation caused by the use of the



development (see the section entitled 'Compensation for injurious affection under Part 1 of the Land Compensation Act 1973'). This means that he/she may be willing to give you a better price for your home than he/she would otherwise have done.

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

If you are a resident owner-occupier (i.e. you are a freeholder or a leaseholder whose lease has more than three years to run and have been living in the house for at least six months), and if the authority agree that prolonged construction nuisance is exceptionally bad, they may be willing to buy your home from you.

**11. 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 a discretionary purchase by the authority on the grounds of construction nuisance must be signed before the development comes into use (eg before a new road is opened to public traffic after completion of construction). However, they are unlikely to agree to buy until the effects of the construction work are known.

**12. I cannot sell my house because public construction work will be taking place near my home. Can the authority help ?**

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

**13. 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 home had been needed to make way for the development itself. (Booklet 1 in this series, *Your home and compulsory purchase*, explains when blight notices can be served.)

**14. I have heard about home loss payments. Do I get one ?**

No. You will not get a home loss payment, as this is payable only where the authority need your home and oblige you to move. (If your home stands to be compulsorily purchased, you should ask for Booklet 1 in this series, *Your home and compulsory purchase.*)

***Discretionary insulation against construction noise***

**15. Can I get insulation against construction noise ?**

You may be able to if the noise is coming from roadworks. Where a new road is being built or a new carriageway added, the highway authority can sometimes predict the traffic noise which will arise when the completed road comes into use. In these cases they may identify the eligible dwellings early and offer to install insulation before the start of construction. The ventilation unit which they will provide with the secondary glazing includes an air filter, so dust is also reduced.

In certain other cases the level of noise expected from traffic using the road may not be high enough to justify insulation, but it may be offered because of construction noise. In that case you normally have a maximum of two months in which to accept the offer.

**16. Where can I find out more about insulation ?**

Booklet 5 in this series, *Insulation against traffic noise*, provides general information, but normally the highway authority will tell you if you are eligible. You can find out about insulation against aircraft noise from the authority responsible for the aerodrome.

# Part 3: The Development in Use

## *Your rights to insulation against traffic noise*

### **17. How will I know if I have a right to insulation against traffic noise ?**

A highway authority who propose to build a new road or to add a carriageway to an existing road have a duty to produce a map, or a list showing all the dwellings which will be subjected to traffic noise at or above a specified level after that road has been opened or reopened to public traffic, and to offer insulation to each occupier or to his immediate landlord or licensor within six months of the opening or re-opening of the road to public traffic. (They may offer it before then - see the section about discretionary insulation against construction noise.)

### **18. Where can I see the map or the list ?**

On public display at places which will include the office of the highway authority responsible.

### **19. What is the specified level of noise ?**

It is known as 68dB(A) L10(18 hour). This is somewhat technical, but L10 is the noise level exceeded for one-tenth of an hour and L10(18 hours) is the mean of the 18 L10s between 0600 and 2400 hours on a normal working day.

### **20. How long do I have to accept the offer ?**

You have 6 months to accept the offer of traffic noise insulation once it has been offered. However, if you decide not to accept at this point, but change your mind when the road has opened to public traffic, you may apply under the appeal procedures which are described in paragraph 24.

### **21. In which rooms can I have insulation ?**

All bedrooms and living rooms which have windows or external doors affected by noise at or above the specified level.

## **22. Will I have to pay part of the cost ?**

The highway authority will install insulation up to the standard which has been approved by Parliament without cost to you. Alternatively, if you wish to have the work carried out they will pay you a grant up to the reasonable cost of doing so. Reasonable cost limits are laid down. If you want to have extra work done you will have to pay the extra cost.

## **23. Where can I get details of the approved standard of insulation ?**

Brief details are given in Booklet 5 in this series, *Insulation against traffic noise* - but if you want the full specification to have your own installation carried out you should get a copy of the Regulations (S.I. 1975 No.1763).

## **24. What can I do if my house is not shown on the map or the list ?**

If you think that the noise from traffic on the new or improved road is or will be not less than the specified level and your house is not shown on the map or the list, you can appeal to the highway authority within six months of the date of depositing the map or list for public inspection (or within 12 months from the date when the road is first opened or re-opened to public traffic). If they turn down your appeal they have to give their reasons.

## **25. Do I have a right to insulation if the road has been altered but has not had a new carriageway added ?**

If the road has been widened or straightened or raised or lowered and the noise level rises to or above the specified level, the authority can offer you insulation but you cannot claim it as of right.

## **26. I am a tenant. Can I get insulation ?**

Yes, but you must notify your landlord of the offer and in replying to the authority let them know what he/she says.

## **Compensation for Injurious Affection under Part I of the Land Compensation Act 1973**

### **27. What is 'injurious affection' ?**

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

### **28. What are the circumstances under which I can claim injurious affection compensation ?**

The depreciation has to be more than £50, 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, alterations to the location, width or level of any length of carriageway and the provision of additional carriageways, 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 the extension of strengthening 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 public's 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.

### **29. What are the physical factors ?**

Noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to your land 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, however, the physical factors may include those caused by aircraft arriving or departing, even where the aircraft are not within the boundaries of the aerodrome.

**30. I can see if 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 an additional 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.

**31. And how can I find out whether public development other than roadworks qualify 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.

**32 Part of my garden is being taken for public development. Shall I be able to get some more injurious affection compensation when the development is finished and in use?**

No. Your compensation for the loss of part of your garden will take into account the effect of the use of the development on

the value of the rest of your home. Injurious affection compensation under Part I of the Land Compensation Act 1973 is usually only for people from whom no land is taken.

### **33. Who can claim injurious affection compensation ?**

Basically you may claim if you are the owner of your house or flat (ie you are the freeholder or the leaseholder whose lease has three or more years to run) and you are living in it. If, as the owner, you are entitled to occupy the property (ie you haven't let it to someone else), then you must be occupying it yourself when you make your claim. But if you have let the property, you may still be entitled to claim.

In any event, you must have become the owner before the public development came into use and you must be the owner on the date you make your claim. (See paragraph 44, if you have contracted to sell your home before claiming.)

### **34. My father died before he put in a claim and left the house to me. Can I claim ?**

You may be able to claim if you inherited a house 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.

### **35. I am a leaseholder and I have given notice that I want to acquire the freehold under the Leasehold Reform Act 1967. Can I claim ?**

In certain circumstances you can. For example, if you gave notice of your wish to have the freehold before the development comes into use, you can make a claim even though your lease has less than three years to run when you make your claim or you have acquired the freehold or obtained an extended lease since the coming into use.

### **36. What can I claim for ?**

Depreciation of more than £50 in the market value of your interest in your home on the valuation date, which is 12 months after the development comes into use. If compensation becomes payable, reasonable valuation or legal fees incurred by you in the preparation and negotiation of your

claim will also be paid. Simple interest will be payable by the authority from the date of your claim or the first claim day (see paragraphs 40 and 41), whichever is later, until the compensation is paid.

### **37. Will the market value of my house or flat on the valuation date be compared with its value before the development was there ?**

No. 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 home (taking into account the benefit of any insulation to which you would be entitled and of other remedial works carried out - see paragraph 39) is less than it would have been if the 'physical factors', ie the noise, etc, coming from the new or altered development had not occurred.

### **38. And what are the things I cannot claim for ?**

You cannot claim for loss of a view, for personal inconvenience or for the effect of the intensified use of an unaltered public development. Also a house or flat must be valued as a house or flat ignoring any extra value it may have for a different purpose such as offices or for redevelopment.

### **39. Can my compensation be reduced for any reason ?**

If you have a right to insulation or if the responsible authority have undertaken to provide insulation or pay a 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 your property is increased by the authority's development, this will be taken into account and set off against the claim.



#### **40. When should I claim ?**

Normally, on or after the first claim day, which is 12 months after the development comes into use (but see the next section for special cases). You should make your claim within six years of the first claim day because after this time the Limitation Acts take effect and you no longer have a right to recover compensation.

#### **41. What happens if I have to move before I can claim ?**

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

#### **42. How is the amount of compensation decided, and what happens if there is a dispute about it ?**

The amount is usually agreed by negotiation between the parties concerned. But if agreement cannot be reached, the case can be referred to the Lands Tribunal, an independent, expert body appointed to deal with such disputes. 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.)

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

The authority has no statutory obligation to make such payments.

### ***Selling your home during the year after public development comes into use***

#### *Private sales*

#### **44. Can I claim for injurious affection compensation if I sell my home or grant a lease ?**

Only if you contract to sell or (if the property is not a dwelling) to grant a lease during the first 12 months after the development comes into use.

Normally claims cannot be made until 12 months after the development comes into use, but if you want to sell during that time you can serve a notice of claim on the authority. You must do that *after* exchanging contracts to sell and *before* completing the sale or granting the lease.

**45. Whilst waiting for a buyer for my house, I want to move to another dwelling. Can I still make a claim ?**

Unless you are in occupation of the house as your residence or it is let on the date you make your claim, you will not qualify and your claim will be ineffective.

**46. How will my compensation be assessed ?**

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

**47. But the house may have been altered by the buyer by then – will this affect my compensation ?**

No. The condition of your house 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 house in connection with your claim.

*Sales to the authority*

**48. The noise and general nuisance from the new development is so bad that I feel I cannot continue to live in my present home - can the authority help ?**

If you are an owner-occupier (ie you own the freehold or a lease with three or more years to run and you are in occupation of the property) and if the authority agree that the use of the development is seriously affecting your enjoyment of your home, they may agree to buy it from you.

**49. 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.

**50. I cannot sell my home because of the prospect of a road or other public development near my home. Can the authority help ?**

If the authority are of the opinion that the enjoyment of your home 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 it from you.

**51. 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 home had been needed to make way for the development itself. (Booklet 1 in this series, *Your home and compulsory purchase*, explains when blight notices can be served.)

**52. Do I get a home loss payment ?**

No. As the authority does not need your home and you are not obliged to move, you will not get a home loss payment.