

Land Compensation

Your Rights Explained



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The Farmer and
Public Development



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

The Farmer and Public Development

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*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

- 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 the land is changed.

Further copies of this booklet may be obtained from the Welsh Assembly Government, Transport Wales, 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 tenants and owners of agricultural land who are affected by public development of one kind or another. Provisions relating to compensation and other entitlements in respect of agricultural land required for or affected by such development vary according to the nature of the interest or interests in the land concerned. The law on this, particularly in relation to tenanted agricultural land, is highly complex. This booklet is by no means a complete guide to the law and has no legal force, but it does provide answers to some of the most usual questions that people want to ask. It is divided into four parts - Part 1 for agricultural tenants, Part 2 for owner-occupiers, Part 3 for owner-occupiers and tenants taking up farming elsewhere, and Part 4 for non-occupying owners.

If your farm is affected by public development and you think you may be entitled to claim compensation from the authority responsible, you are strongly recommended to seek help from a professionally qualified person such as a surveyor or a solicitor, who will be able to advise you 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 3 - *Your business and public development*
- Booklet 5 - *Insulation against traffic noise*

The information in Booklets 1, 2 and 5 applies equally to living accommodation on agricultural land, including agricultural workers' cottages.

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Part 1: Tenant Farmers

Compensation for compulsory purchase for yearly tenants

1. I am a yearly agricultural tenant, and I am being dispossessed by an acquiring authority. What compensation will I get?

There is no simple answer to this question, but basically you can claim compensation for:

- a) the value of the unexpired term of your tenancy,
- b) any just allowance which would otherwise have been made by an incoming tenant (i.e. what is generally known as 'tenant right' matters such as the value of work done, unexhausted manures, and other tenant's improvements);
- c) any loss or injury you sustain e.g. removal expenses and losses on forced sale of stock.

Your compensation will take into account whatever prospect you had, were it not for the acquiring authority's proposal, of maintaining your tenancy and remaining in occupation to continue farming. However, to avoid duplication, this is subject to a deduction of the payment of four times the annual rent of the land taken, to which you are separately entitled under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968, as amended by the Agricultural Holdings Act 1986.

2. Should I get someone to act for me?

Yes. The assessment of compensation can be difficult - to apply the basis explained in paragraph 1 above is in practice rather complicated - and you are recommended to ask a professionally qualified person such as a surveyor or solicitor to advise you and to act on your behalf. Their fee will normally be repaid 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).

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4. Only part of my holding is being taken. Does this mean I have any additional rights or entitlements?

Yes. If you remain in occupation of the remainder of the holding, you can also claim compensation for any damage done to you in your tenancy by severing the holding or otherwise injuriously affecting it. This compensation also covers damage due to severance from any other land of which you are the tenant or the owner.

Alternatively, if you wish to give up the remainder of the holding, you may be able to require the authority to take it. In order to do so, however, you will have to prove that the part of the holding not required by the authority is not capable of being farmed as a separate agricultural unit, either by itself, or with other land in the same agricultural unit or other land outside the unit which you occupy as freehold owner or under a lease having an unexpired term of more than one year. If you intend to follow this course, you would be well advised to seek professional help. The authority may dispute your claim that the remaining land is incapable of being farmed. If they accept your claim, your position over the surrender of the part required and the part not required - either to your landlord or to the authority, or part to one and part to the other - and your rights to compensation in respect of the parts will be determined according to the circumstances of surrender.

5. The authority have started to acquire my holding from my landlord and I have received a notice to quit. What do I get?

You can choose to be compensated by the acquiring authority under compulsory purchase legislation (i.e. on the basis outlined in paragraph 1) instead of under the Agricultural Holdings legislation, provided that:

- a) you give up possession to the authority on or before the notice has expired; and
- b) the authority have completed the purchase of the landlord's interest by the time the notice to quit expires; and
- c) the notice is valid either because the land is required for a non-agricultural use for which planning permission has been granted, or because the Agricultural Land Tribunal has consented to its operation for the purpose of such use.

If the authority take possession from you before the notice to quit has expired, your compensation will be dealt with as explained in paragraphs 1 to 4 above and not under the Agricultural Holdings legislation.

Your surveyor or solicitor will be able to advise you whether you are likely to benefit from making this choice, and if you do decide to make it then the acquiring authority must be notified in writing of your decision.

6. If I am served with a notice to quit in respect of only part of my holding, can I extend the notice to require possession to be taken of the remainder as well?

Yes. There are two quite separate ways of doing this. The first way is that, within 28 days of the notice to quit being given, you simply notify whoever served it that you accept the notice as one relating to the entire holding. If you do this you will be compensated under the Agricultural Holdings legislation and you will not be able to exercise the option explained in paragraph 5 above.

The second way is to choose to be compensated under compulsory purchase legislation, and then to seek to require the authority to purchase the rest of your holding as well (see paragraphs 4 and 5 above).

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7. The authority are buying the whole or part of my farm, and I intend to carry on farming elsewhere. Am I entitled to any other payment?

You may be eligible for a farm loss payment (see Part 3 for details).

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

Where your land 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 you incurred between service of the notice to treat and its subsequent abandonment.

Compensation for compulsory purchase for other types of agricultural tenants

9. I am a tenant but I am told that I am not a yearly tenant and that I do not enjoy security of tenure under the Agricultural Holdings Act. What do I get?

Assuming this is correct, you have a right, if you are displaced before the end of your term, to be compensated on the lines in paragraph 1 as appropriate.

If you are displaced after the end of your term, you have no right to any payment, but the displacing authority can, at their discretion, make a payment towards your removal expenses and any losses you may sustain as a result of the compulsory displacement.

Tenants who live on their holdings

10. I live on my holding and I am being displaced from my home as well as from the land. What can I get?

You may be entitled to a home loss payment irrespective of any compensation rights you may have. For details of this and other rights you may have, you should see Booklet 1 in this series, *Your home and compulsory purchase*.

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Part 2: Owner-occupiers

Compensation for compulsory purchase

11. What are my rights to compensation?

Any land compulsorily acquired from you will be paid for by the acquiring authority on the basis of the market value of your interest in the land - that is, the amount which you might have got for it if the authority were not proposing to buy and you were selling it privately. In addition, the authority are obliged to pay your proper legal costs of conveyance of the property that they are buying. You can also claim disturbance compensation to cover reasonable expenses or losses which you necessarily suffer or incur as a direct result of the compulsory purchase unless the market value of your interest is greater (e.g. because the land has potential building value - see paragraph 13) than the agricultural value and disturbance compensation added together.

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

12. What expenses are considered reasonable?

The expenses normally covered by the compensation settlement include removal expenses, cost of alterations to equipment, etc, to fit a new farm, loss on forced sale of live or dead stock, and notifying change of address to suppliers and customers. You may also be able to claim incidental expenses incurred in securing an alternative farm, such as advertising and travelling, the legal costs such as would be appropriate upon acquiring a comparable interest in a farm like the one you are vacating. Other expenses may be accepted as reasonable and you would be wise to consult your surveyor or solicitor before embarking upon any expense or preparing a claim.

13. And what kinds are not normally allowed?

Any which could have been avoided by acting reasonably and prudently, and those which give you value for money. An example of the first kind is losses due to disposing of stock without getting a proper price; the second arises where, for example, old equipment which you removed from the farm is replaced with new modern equipment to make farming operations more efficient.

14. 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 repaid by the acquiring authority.

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15. What if I do not agree with the authority's valuation because I feel that my land is worth more because it could be developed?

You may apply to the local authority in whose area the land is situated for a Certificate of Appropriate Alternative Development under section 17 of the Land Compensation Act 1961. This may be done even if the local authority itself is the acquiring authority, or if the land has been acquired by agreement as an alternative to the use of compulsory powers. In making such an application, you claim that if your land were not being acquired compulsorily, planning permission would have been given for some specified forms of development.

If the certificate issued by the local authority does not coincide with your claim and you are aggrieved, you may appeal to the National Assembly for Wales, under section 18 of the 1961 Act and they will determine the matter.

In issuing a certificate, the local authority or the National Assembly for Wales will have regard to the terms of the development plan at the date of entry on to the land by the acquiring authority, and any other relevant considerations, but the purposes for which the land is being acquired and any alternative development which would involve public acquisition of the land must be ignored.

16. Can I be compensated for my expenses in applying for or appealing against a section 17 certificate?

Yes. Your compensation will take account of any reasonable expenses which you have incurred in applying for the certificate and, if you appealed to the National Assembly for Wales, the expenses which you incurred in doing this.

17. What happens if we cannot reach agreement?

The case can be referred to the Lands Tribunal, an independent expert body appointed to deal with such disputes (see paragraph 3). It is wise to take professional advice first. The Tribunal has the power to award costs to either party.

18. Only part of my farm is being taken but this affects the rest of my farm. Can I claim anything for this?

Yes. If you keep the residue of your land you can claim in addition to compensation for the land taken, compensation for any depreciation in the value of your interest in the residue due to the loss of the land being acquired. You can also claim compensation for any reduction in the value of your interest in the residue caused by the presence and use of the works in the scheme for which the land taken is required. However, if the value of land contiguous or adjacent to the land taken is increased, this may be taken into account and set off against your compensation for the land taken.

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19. Can I make the authority take the rest of the land?

You may be able to make the authority buy the remainder of the land which you own in the agricultural unit affected. But in order to do so you will have to serve a counter-notice to prove that the remaining land which you own in the affected unit is not capable of being farmed as a separate agricultural unit, either by itself, or with other land in the same agricultural unit or other land outside the unit which you occupy as freehold owner or under a lease having an unexpired term of more than one year. You would be well advised to seek professional help if you intend to follow this course.

If the authority agree to buy your interest in the remainder of the land in the affected unit, your compensation in respect of the residual land will be assessed on the basis of its agricultural value; you will not be entitled to any additional value which it may have for non-agricultural use. This rule does not apply to the part of your land which the authority need and which was the subject of the notice to treat which they served. If you cannot agree with the acquiring authority on the compensation to be paid for your interest in the residual land, either you or the authority may refer the question of compensation to the Lands Tribunal for a decision (see paragraph 3). You can withdraw your counter-notice at any time up to six weeks after the Lands Tribunal has determined the compensation.

20. When will I get my compensation?

Compensation is normally 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 the amount of 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 land to the date on which your compensation is finally agreed or awarded to you.

21. How do I get advance payment?

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

22. When do I get it?

The request can be made at any time and the authority must be provided with all the necessary information (see paragraph 21 above). 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.

23. Can I get any further advances before I receive any 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.

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24. 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 the unpaid balance of 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.

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

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

Additional payments

26. I live on my farm and I am being displaced from my home as well as from my land. What can I get?

You may be entitled to a home loss payment. For details of this and other rights you may have, you should see Booklet 1 in this series, *Your home and compulsory purchase*.

27. The authority are buying the whole or part of my farm, and I intend to carry on farming elsewhere. Am I entitled to any other payment?

You may be eligible to claim a farm loss payment (see Part 3 for details).

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

Where your land 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 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 you incurred between service of the notice to treat and its subsequent abandonment.

Blight Notices

29. 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.

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30. What is a blight notice?

If you are an owner-occupier of agricultural land and have tried to sell the land on the open market, but cannot find a buyer except at a substantially reduced price because of an authority's proposals you may, in certain circumstances, serve a blight notice which requires the authority to buy in advance.

31. What are these circumstances?

Broadly speaking, if there has been a formal indication that a public authority may need to buy the whole or part of 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 which has been published, in a published highway order or scheme or by 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 professional adviser should be able to tell you about this.

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

You must at the time of serving the notice own the freehold of your land 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 land has remained unoccupied ever since.

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

The notice must be served on the authority who propose to buy your land at a future date. If only part of your land is affected by the authority's proposals but you want the authority to take also the unaffected part and can prove that this is not reasonably capable of being farmed, either by itself or in conjunction with other land in the agricultural unit or other land outside the unit which you occupy as freehold owner or under a lease having an unexpired term of more than one year, then you can claim accordingly and require the authority to take the unaffected land so long as you do this in the blight notice. Schedule 2 to the Town and Country Planning General Regulations 1992 (Statutory Instrument 1992/1492, available from The Stationery Office) shows the form the notice should take.

34. What happens then?

The authority may serve on you a counter-notice objecting to the purchase of the property. They can do this on several grounds. For example, if they need only part of your property a counter-notice can say so. Or they may say it has no intention of acquiring any part of the property. Or they may say that your claim that you cannot farm the unaffected land is not justified. 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).

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35. And if the authority don't serve a counter-notice?

If they don't serve a counter-notice within two months or if the Lands Tribunal rejects the counter-notice, the blight notice automatically takes effect. The authority are then obliged to buy the part of your property which is affected and also the unaffected part if you claimed in the blight notice that this was not reasonably capable of being farmed as mentioned in paragraph 33 above and required the authority to take it. In a straightforward case the authority might accept the blight notice and open negotiations without waiting for the two months to expire.

36. How much compensation will I get?

Compensation is paid on the same basis as for compulsory purchase, as well as a farm loss payment (see Part 3) or a home loss payment (see paragraph 26), where applicable. It can include compensation for disturbance where the expense you are put to is a direct result of the acquisition, but not the fee for serving the blight notice.

Selling by agreement

37. 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 get the same as if the powers had been used. You will not be entitled to a farm loss payment or a home loss payment, but the authority have discretion to make payments in lieu of these if they choose. The authority can also at their discretion make a payment in advance of completion where it is justified. If agreement as to the purchase price cannot be reached, or if they don't offer to pay all you would get for compulsory acquisition, then you don't have to sell.

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

Then the purchase price is entirely a matter for you or your professional adviser to negotiate with the authority, but you cannot be given a farm loss payment or a home loss payment.

39. Can I appeal if we cannot reach agreement on price?

If you and the authority together agree to refer the matter to it, 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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Use of public development - compensation for injurious affection under Part 1 of the Land Compensation Act 1973

40. What is 'injurious affection'?

It is a phrase used to describe depreciation in the value of property caused by public development. Part I of the Land Compensation Act 1973 enables owners of affected property to claim compensation for such depreciation where none of your land has been acquired for the development.

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

The depreciation has to be more than £50 (see paragraph 48), and has to be caused by noise or other effects - called the 'physical factors' - arising from the use of certain new or altered 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 the extension or 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 right of action for nuisance at common law.

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

42. 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 their source 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 where the aircraft are not within the boundaries of the aerodrome.

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43. 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 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 development has been carried out.

44. And how can I find out whether public development other than roadworks 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.

45. Part of my land is being taken for a road. 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 land will take into account the effect of the use of the development on the value of the rest of your land.

Who can claim?

46. Who can claim injurious affection compensation?

You can claim if you are the owner-occupier of land in an agricultural unit on the date you make your claim, but you must have acquired your interest in it before the start of use of the development. 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 the whole of the land.

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

You may be able to claim if you inherited the land 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.

48. What can I claim for?

Depreciation of more than £50 in the market value of your interest in your land 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 for the preparation and negotiation of your claim will also be paid. Simple interest will be payable from the date of your claim or the first claim day (see paragraph 53), whichever is later, until the compensation is paid.

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49. 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 they agree to your request.

50. 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 land 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 51 below).

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

You cannot claim for loss of a view, for personal inconvenience, for lost profits or for the effect of the increased use of existing public development. Also, the land must be valued at its existing use value ignoring any extra value it may have for development for a different purpose. Any building or improvement or extension of a building on the land first occupied and any change in the use of the land made after the development comes into use has to be left out of account.

52. Can my compensation be reduced for any reason?

If you have a right to noise insulation (e.g. to your farmhouse), 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 remedial works such as noise barriers or such works are in progress, the benefit will be taken into account. Also, if the value of the land or other contiguous or adjacent land or property which you own is increased by the public development to which your claim relates, this will be taken into account and set off against the claim.

53. When should I claim?

Normally, on or after the first claim day, which is one year after the public development comes into use (but see the next section of this booklet for special cases). You should make your claim within six 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.

54. What happens if I leave the land 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).

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

Private sales

56. Can I claim for injurious affection if I sell my land or grant a tenancy?

Only if you contract to sell or to grant a tenancy during the first 12 months after the development comes into use. Normally, claims cannot be made until one year after the coming into use, but if you want to sell or grant a tenancy during that 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 tenancy.

57. How will my compensation be assessed?

In the same way as if you had not sold your land, or granted the tenancy, 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 land is not subject to a contract for sale or for the grant of a tenancy.

58. But will it affect my compensation if the buyer has altered the land by then?

No. The condition of your land 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 land in connection with your claim (but see paragraphs 51 and 52).

Sales to the authority

59. The noise and general nuisance from the new development is so bad that I feel I cannot continue farming 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 whole of the agricultural unit for a period of at least 6 months) and if the authority agree that the use of the development is affecting your farm to a serious extent, they may be prepared to buy it.

60. 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.

61. I cannot sell my land because of the prospect of public development nearby. Can the authority help?

If the authority are of the opinion that the enjoyment of your land or your farmhouse will be seriously affected by the development under construction or in use, they may, depending on individual circumstances, be willing to buy your property from you.

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62. 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 land had been needed for the development itself (see the section on blight for an explanation of when blight notices can be served).

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Part 3: Owner-occupiers and tenants who take up farming elsewhere following compulsory purchase

Loss payments (under compulsory purchase orders made after 31 October 2004)

63. 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 land and an occupier's loss payment payable on top of that if you are also the occupier of the land.

64. Who is entitled to one?

To qualify for a basic loss payment you must have held a freehold interest in the land 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.

65. 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.

If you are being displaced from your home as well as your farm, you may be entitled to a home loss payment. If so, the value of your dwelling will be excluded from the calculation of your basic loss payment. Further details on home loss payments are set out in Booklet 1 - *Your Home and Compulsory Purchase*.

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Part 4: Non-occupying owners of agricultural land

Compensation for compulsory purchase

66. What are my rights to compensation on compulsory purchase?

There is no simple answer to this question, but basically any land compulsorily acquired from you will be paid for by the acquiring authority on the basis of the market value of your interest in the land - that is the amount which you might have got for it if the authority were not proposing to buy it and you were selling it privately. Where the land acquired is occupied by an agricultural tenant, this will normally affect the market value of your interest, and the extent to which it will do so will frequently depend largely on the degree of security of tenure enjoyed by the tenant. Your compensation will reflect what prospects, if any, you would have had of gaining possession if an authority had not intended to purchase and develop the land. If you feel that your land is worth more because it could be developed, you may be able to apply for a Certificate of Appropriate Alternative Development under section 17 of the Land Compensation Act 1961 (see paragraphs 15 and 16).

In certain circumstances you may become entitled to a further payment of compensation if, within 10 years after the acquisition of your land, a planning decision is made which, if it had been made before your land was purchased, would have meant that your land had a higher market value.

67. If I serve notice to quit on my tenant before the authority acquire my interest in the land, will this affect my compensation?

Here again there is no simple answer. However, if at the date the acquiring authority take possession the notice to quit is incontestable only on grounds which depend upon the acquiring authority's proposal, your compensation will be assessed on the basis that you had not and could not have served such a notice; and, if, before your interest is purchased, the tenant quits as a result of a notice that is incontestable only on such grounds, your compensation will be assessed on the basis that he had not done so. Any liability on you under the Agricultural Holdings legislation to pay compensation to your tenant will nevertheless remain.

On the other hand, any notice to quit served, or your ability to serve one, can be taken into account in assessing your compensation if it would be incontestable on grounds that do not depend on the acquiring authority's proposal.

68. Should I get someone to act for me?

Yes. The assessment of compensation can be difficult - to apply the basis explained in paragraphs 66 and 67 above is in practice rather complicated - and you are recommended to ask a professionally qualified person such as a surveyor or solicitor to advise you and to act on your behalf. Their fee will normally be repaid by the acquiring authority.

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69. 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 (see paragraph 3). It is wise to take professional advice first. The Tribunal has the power to award costs to either party.

70. Only part of my land is being taken and this affects the rest of the farm. Can I claim anything for this?

Yes. If you keep the residue of your land you can claim, in addition to compensation for the land taken, compensation for any depreciation in the value of your interest in the residue due to the loss of the land being acquired. You can also claim compensation for any reduction in the value of your interest in the residue caused by the presence and use of the works in the scheme for which the land taken is required. However, if the value of your interests in the land contiguous or adjacent to the land taken is increased, this may be taken into account and set off against your compensation for the land taken.

71. Can I make the authority take the rest of the land?

After notice to treat has been served in respect of the part they want, you may be able to serve a counter-notice on them to make them buy the remainder of the land which you own in the agricultural unit affected. But in order to be successful you will have to prove that the remaining land which you own in the affected unit is not capable of being farmed as a separate agricultural unit, or with other land outside the unit which you occupy as freehold owner or under a lease having an unexpired term of more than one year. You would be well advised to seek professional help if you intend to follow this course.

If the authority do agree to buy your interest in the remainder of the land in the affected unit, your compensation for that land will be assessed on the basis of the market value of your interest for its existing use – i.e. agricultural value subject to any tenancy. You will not be entitled to any additional value in your interest which may be attributable to the prospect of development. This rule does not apply to the part of your land which the authority need and which was the subject of the notice to treat which they served. If you cannot agree with the acquiring authority on the compensation to be paid for your interest in the residual land, either you or the authority may refer the question of compensation to the Lands Tribunal for a decision (see paragraph 3). You can withdraw your counter-notice at any time up to 6 weeks after the Lands Tribunal has determined the compensation.

72. My tenant is seeking to surrender his interest in the residual part of his agricultural holding to the acquiring authority, but I wish to retain my interest in the residual land. What is my position?

If your tenant succeeds in giving up the residual part of his holding to the acquiring authority, the authority on taking possession must surrender to you possession of the land not covered by their notice to treat, and you must accept it. Any rights and liabilities of the tenant for such matters as dilapidations, improvements and tenant right, arising on or out of the termination of the tenancy, become rights and liabilities of the acquiring authority, but you cannot take any action against the authority or your former tenant simply because the tenant has given up his tenancy of the remainder of the land, or because the acquiring authority have taken possession of it. If the value of the remainder is increased by the fact that it comes to you with the benefit of vacant possession, the amount of the increase will be deducted from the compensation paid to you for the acquisition of your interest in the land covered by the notice to treat.

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73. When will I get my compensation?

Compensation is normally paid when the conveyance or assignment takes place. But if the authority take possession of your property before that you will have a right to an advance of 90 per cent of the authority's estimate of the compensation payable or, if you have agreed the amount of compensation, 90 per cent of that amount, less the amount of 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 land to the date on which your compensation is finally agreed or awarded to you. For details about how and when you can get advance payments, see paragraphs 20 to 25, in Part 2 of this booklet.

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

Where your land is included in a compulsory purchase order, the authority normally have 3 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 3 years for the date of service of the notice to treat. If the authority fail to take such steps within the 3 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 you incurred between service of the notice to treat and its subsequent abandonment.