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Compulsory Purchase and Compensation A Guide to Compensation for **Agricultural** Owners and Occupiers

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Foreword

Land & Property Services is an Executive Agency within the Northern Ireland Department of Finance and Personnel. It provides advice to Government Departments and other public bodies on the assessment of compensation following the exercise of compulsory purchase powers.

If you need to know whether your property is likely to be affected by a proposed scheme or what your rights are in connection with the proposal, you should contact the authority promoting the scheme.

This booklet is intended as a guide for owners and occupiers of **agricultural** property that is affected by compulsory acquisition schemes. The general principles set out in it will be followed by Land & Property Services valuers when assessing claims for compensation arising out of a compulsory acquisition scheme. Other booklets deal with the general principles which will be followed when assessing claims from the owners and occupiers of **business** and **residential** property.

The right to compensation may arise as a result of the compulsory acquisition of part or all of your land or a right over that land ("land" includes the buildings on it). You may also have a right to compensation if your land is adversely affected by the construction and use of development works in close proximity but where no land is actually acquired from you. Both situations are covered in this booklet.

Legislation in Northern Ireland gives many authorised bodies (referred to in this booklet as "acquiring authorities") the power to acquire land compulsorily where the landowner or occupier is not willing to sell by agreement, or where it is not practical for the effective planning of large schemes to acquire the land by agreement. In some cases, an acquiring authority may be able to satisfy their requirements by the creation of a new right over land rather than needing to seek full ownership. For example, in the case of major infrastructure projects it may be necessary to realign utilities and services over land that adjoins the project. The principles of compensation for the acquisition of new rights over land are the same as for the actual acquisition of land.

The law relating to compulsory purchase is complex. Of necessity, the information set out in this series of booklets is a simplification and cannot cover every circumstance that may arise. The information contained in this booklet is not intended to be a complete guide to the law and carries no legal force.

If your property is, or seems likely to be, affected in any of the ways described in this booklet, you should seek advice from a professionally qualified person such as a surveyor or solicitor, who can advise you on your rights and act on your behalf if appropriate. The acquiring authority may meet the reasonable professional fees incurred in preparing and negotiating your compensation claim. The Royal Institution of Chartered Surveyors operates a Compulsory Purchase Helpline which can be contacted on 0870 3331600. This helpline puts you in touch with experienced chartered surveyors in your local area who will provide up to 30 minutes of free advice.

1. Introduction

Use of Compulsory Purchase Powers

- 1.1 Many government departments and bodies with statutory powers possess compulsory purchase powers. These enable them to acquire land and rights over land for specific purposes set out in legislation. Land includes buildings on the land. Common purposes include the construction and alteration of roads, urban regeneration, housing redevelopment, industrial development and the provision of new educational and health facilities.
- 1.2 In Northern Ireland the process involves the making of a vesting order by the acquiring authority. The authority must publish a notice of its intention to make a vesting order in at least two papers which circulate in the locality of the proposed works. It must also write individually to those with an interest in the land which is affected. There is a period for objections and if any are received and not subsequently withdrawn the authority may decide to arrange a local inquiry. If the local inquiry is supportive of the proposals the authority may make the vesting order. When it does it must publish a notice stating that the vesting order has been made and name a place where a copy of the vesting order and a map can be inspected at all reasonable hours. If there is no challenge to its validity within one month, the vesting order becomes operative one month after notice of the making of the vesting order is published.
- 1.3 On the operative date, ownership of the vested land transfers to the acquiring authority. As soon as possible after the vesting order becomes operative, the acquiring authority must write to everyone, from whom land has been acquired, giving them notice that the vesting order has become operative and where a copy of it may be seen. It is usual practice by acquiring authorities to enclose a copy of the vesting order and a claim form for compensation with this letter.

The Compensation Code

- 1.4 The rights to compensation and methods and procedures for assessing the correct amount are derived from what is commonly referred to as the "Compensation Code". This is made up of Acts of Parliament, case law and established practice.
- 1.5 This booklet is aimed at lay people so avoids quoting extensive case law or legislation. However, the principal Statutes which are relevant are the Lands Tribunal and Compensation Act (NI) 1964, the Planning and Land Compensation Act (NI) 1971, the Land Acquisition and Compensation (NI) Order 1973, the Land Compensation (NI) Order 1982 and the Planning Blight (Compensation) (NI) Order 1981.

Terms Used in Compulsory Purchase

- 1.6 Wherever possible the use of jargon and technical language has also been avoided. However, there are a number of important terms which have a specific meaning in compulsory purchase matters. These are explained in Appendix 1 to this booklet.

Useful Contacts

- 1.7 There are a number of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase. A list of useful contact names, addresses and telephone numbers is set out in Appendix 2 to this booklet.

How to use this Booklet

- 1.8 The guidance contained in this booklet is divided into two principal sections: Compensation where land is taken and Compensation where no land is taken. It also includes a section on the Blight Notice procedure which is a process by which you may bring forward the acquisition of your property if it has become "blighted" as defined in planning law.
- 1.9 In order to gain a better understanding of the entire subject you should read the whole booklet at least once then return to the sections which are relevant to your circumstances.

2. Compensation When Land is Taken

General Principle

- 2.1 Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that you should be no worse off in financial terms after the acquisition than you were before. Likewise you should not be any better off.
- 2.2 Because the effects of the vesting order on the value of a property are ignored when assessing compensation it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the vesting order.

Valuation Date

- 2.3 The valuation date for the assessment of compensation is the date the title of the land vests in the acquiring authority when the general vesting declaration procedure is followed. In Northern Ireland this is the same for all land affected by the scheme and is known as the operative date of the vesting order.

Heads of Claim

- 2.4 Depending upon the particular circumstances in each case, compensation can be claimed under the following categories, which are referred to as “Heads of Claim”:
- **The Value of the Land Taken**
 - **Severance and Injurious Affection:** This means the depreciation in value of land you retain where part only of your land holding is acquired.
 - **Disturbance:** This Head of Claim is only available to occupiers of the property. It represents the costs incurred and losses sustained as a result of being disturbed from the occupation of the property.
 - **Fees:** The reasonable surveyor’s fees incurred in preparing and negotiating a compensation settlement together with reasonable solicitor’s fees for any conveyancing are normally paid by the acquiring authority.
- 2.5 A more detailed explanation of the basis of compensation under each of these heads of claim is set out below.

Compensation for Land Taken

- 2.6 When dealing with land for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, when dealing with unusual or specialised land for which there is no general market, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property.

- 2.7 It is extremely unlikely that circumstances giving rise to a claim for equivalent reinstatement will occur in the case of agricultural properties. Accordingly, this basis of compensation is not covered in this booklet. ***If you feel that your property which is being acquired is one for which there is no general market or demand you should seek professional advice.***

- 2.8 Compensation following the acquisition of land for which there is a general market or demand is considered below.

Disregard Compulsion

- 2.9 No addition to or reduction in the value of the land is made to reflect the fact that it is being compulsorily acquired. The acquisition of the land is assumed to be an open market transaction between willing parties.

Market Value

- 2.10 The value is based upon what the land might be expected to realise if sold in the open market by a willing seller.
- 2.11 In assessing the open market value of your land, you are assumed to be a willing seller. However, it is assumed that you would only be willing to sell at the best price which you could reasonably achieve in the open market.
- 2.12 This open market value may be based on the existing use of the property. However, it may reflect development value, “marriage value” and “ransom value” provided it can be demonstrated that these would have existed in the absence of the scheme which gives rise to the compulsory acquisition. An example of ransom value would be where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Planning Assumptions

- 2.13 When considering the potential development value of your property you may assume that permission would be granted for particular uses of the land. Broadly the planning permissions which may be assumed are as follows:
- Any existing permission on the property
 - Any permitted development which has not yet been implemented
 - Any development which would be in accordance with an allocation in a development plan
 - The development which the acquiring authority proposes for the land. (However, the valuation cannot take into account a specialist use which could only be undertaken by a body with statutory powers. This is known as “Special Suitability”).
- 2.14 It is important to note that whilst you can assume you would have obtained planning permission for the use of the acquiring authority’s scheme, you cannot assume that the scheme itself would take place. So, for example, if your property is being acquired as part of a major residential development you can assume that your property would have been granted a residential planning permission. However, you have to consider that in isolation. You cannot assume that all of the other parts of the acquiring authority’s scheme, such as the new roads, open space, community facilities, etc will occur.

Unlawful Use

2.15 Where there is a disagreement as to the planning permission to be assumed you may, in certain circumstances, seek a “Certificate of Alternative Development Value” from the local planning authority, which will confirm whether a particular use or list of uses would have been granted planning consent if there was no vesting order. The procedure for dealing with this is similar to that applied when submitting a planning application but there are a number of differences. *Ask your professional adviser about these.*

- 2.16 Any increase in the value of property which is attributable to a use of the property which is unlawful or detrimental to the health of the occupants of the premises or to public health, may not be taken into account.
- 2.17 A use which is unlawful is one which could be subject to planning enforcement proceedings. Therefore, if your property is used for a purpose which requires, but does not have, planning permission, no account can be taken of any increase in value attributable to that use if it could be terminated through enforcement proceedings. If, however, that use could not be subject to enforcement proceedings (for example, the use had been undertaken for such a length of time that a Certificate of Lawful Use would be granted) any increase in value attributable to that use may be taken into account.

Acquisition of Part Only

- 2.18 In addition to the value of the actual land acquired there may be other issues to consider if the acquiring authority only acquires a part of your land.

Severance and Injurious Affection

- 2.19 If you have a part only of your land or property acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain.
- 2.20 The compensation is for the depreciation in the value of the retained land and is referred to as “severance” and/or “injurious affection”.
- 2.21 The two elements of this head of claim should be considered in isolation.

Severance

- 2.22 Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it virtually useless and therefore less valuable.

Injurious Affection

- 2.23 Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road on the entire operation could be considerable.
- 2.24 It is the impact of the whole of the proposed scheme that is to be considered not just the effect on the area acquired from you. Compensation is claimable both for the construction of works and their subsequent use.
- 2.25 Therefore it can be seen that both severance and injurious affection can reduce the value of the retained land. Severance occurs when the land becomes separated whereas injurious affection occurs as a result of the construction and use of the acquiring authority’s scheme.
- 2.26 This can be demonstrated with a simple hypothetical example. You might own a block of farmland of 50 hectares, which gets split into two equal blocks of 20 hectares following the acquisition of 10 hectares for the construction of a new motorway. In these circumstances, you would receive compensation for the 10 hectares of the land taken based on its market value.
- 2.27 If you could demonstrate that there was a higher land value per hectare as a single block of 50 hectares and that accordingly the retained property has depreciated in value as a result of being severed from the part acquired an additional claim in respect of severance can be sustained.
- 2.28 Additional compensation for severance will arise if the resultant shape of the fields or access restrictions makes future farming operations difficult or impractical.
- 2.29 If it could also be demonstrated that the value of the retained land had depreciated as a result of being adjacent to a motorway, the compensation would also reflect this reduction in value under the heading of injurious affection.

“Before and After” Approach

- 2.30 If you only have a part of your property acquired, the claim for land taken, severance and injurious affection can all be dealt with together by adopting a “Before and After” approach. This is in line with the principle of equivalence which states that you should be in the same position after the acquisition as you were before, in monetary terms.

- 2.31 The way this works is to agree the value of the whole of the property in the “no scheme world” (this means disregarding the development that gave rise to the vesting order) prior to acquisition and to compare this with the value of what you are left with in the “scheme world” (this means taking that development into account) after the acquisition. The difference between the two (if any) should be payable as compensation.
- 2.32 The “Before and After” approach can also be used to take account of betterment which is considered below.

Betterment

- 2.33 In assessing compensation, the acquiring authority will have regard to any increase in value of land you retain that is adjacent to or adjoining the land acquired. This is generally referred to as “betterment”.
- 2.34 Betterment is in effect the opposite of injurious affection. There may be instances where the scheme of the acquiring authority may increase the value of your retained land.
- 2.35 An example of this would be where land is acquired for the construction of a new road and that new road enhances access to the remaining land thereby increasing its value. In such circumstances, the acquiring authority will seek to offset this increase in value against the totality of compensation that is payable in respect of the land acquired.
- 2.36 The acquiring authority should, of course, be able to explain their grounds for considering that their proposal has generated an increase in the value of your retained land.
- 2.37 Where betterment occurs it may sometimes be appropriate to adopt the “Before and After” approach referred to above. This will take into account the issues of land taken, severance, injurious affection and betterment.

2.38 In an extreme case you would receive no compensation because the enhancement in value of the retained land is equal to or greater than the compensation for the land acquired. The least compensation you can receive is nil. In no circumstances can the acquiring authority expect you to pay them.

Material Detriment

- 2.39 There is another course of action which you may be able to take if the authority has acquired only part of your agricultural property. It may be possible to advance a claim for “material detriment”, seeking to make the authority acquire the remainder of the property interest also. Such a claim must be made within 2 months of the operative date of the vesting order by serving notice on the acquiring authority.

2.40 If you have other adjoining land which can be combined with the severed area this remedy may not be available. You have to prove that the part of the holding that you retain is not reasonably capable of being farmed as a separate agricultural unit, either by itself or in conjunction with other land outside the unit that you occupy as a freehold owner or as a tenant for longer than a year. This can be a complicated matter which you should discuss with your professional adviser.

Disturbance Compensation

- 2.41 In addition to being compensated for the value of the land taken, injurious affection and severance you are also entitled to losses occasioned by being “disturbed” from your holding. The right to compensation for disturbance only applies if the compensation for the land taken is based on existing use value. This is considered further at paragraph 2.44.

2.42 In the case of agricultural land the future profitability of the farming business is in effect included within the value of the land. It is for this reason that, unlike non-agricultural businesses, no separate assessment of compensation is payable for extinguishment when compulsory acquisition occurs and relocation does not take place.

2.43 This does not, however, apply to temporary losses which arise as a result of “disturbance” arising from the works undertaken to implement the scheme for which compulsory acquisition has occurred. This may include matters such as extra time taken as a result of access difficulties caused by temporary road closures or diversions, loss of crops which would have been harvested on the land taken, the value of which has not been reflected in the price paid for the land, and loss on forced sale of stock, equipment and consumables. **The overriding rule is that anything which is not too remote and is a natural and reasonable consequence of the acquisition is to be compensated.**

No Disturbance When Land Value Reflects Development Potential

2.44 You are only entitled to compensation for disturbance where the compensation for land taken has been based upon the market value for its existing use. Where the land compensation is based upon the development value of the land there is no entitlement to disturbance compensation. There may remain the right to claim a farm loss payment.

2.50 This restriction only applies within a single claim. Where there are two or more claimants within one property (for example a landlord and a tenant), the actions of one claimant will not bind the other. So, for example, if the landlord of a property submits a claim based on the development value of his freehold interest in the property, this will not preclude the tenant being compensated for the value of his tenancy plus the disturbance compensation for having to move out of the property.

Farm Loss Payment

2.53 This is an additional amount that recognises and reflects the personal inconvenience and disruption caused by the acquisition. A number of criteria have to be fulfilled to qualify for the payment:

- You must own and occupy land which comprises or is included in an agricultural unit;
- You must be displaced from the whole of the land as a consequence of the acquisition;
- Within three years of being displaced, you must have begun to farm another agricultural unit elsewhere in the United Kingdom that you did not previously own or lease;
- You must claim the payment within a year of commencing farming on the new property.

2.54 No Farm Loss Payment is payable if the acquisition which led to your displacement was as a consequence of you having served a blight notice – see 2.84

Amount of Farm Loss Payment

2.55 The amount of any payment to which you may be entitled is based on average annual profits from agricultural use of the land before its compulsory acquisition. **Adjustments have to be made to the profits to calculate the amount of Farm Loss Payment. This process can be complex and you should discuss it with your professional advisor.**

2.56 If you are being displaced from your home as well as your farm, you may be entitled to a home loss payment. Further details on this are set out in the Booklet dealing with Compensation to Residential Owners and Occupiers.

Accommodation Works

2.57 Accommodation works comprise anything which is carried out or paid for by the acquiring authority, usually situated on your retained land, in order to reduce the claim for severance, injurious affection and/or disturbance.

- 2.58 Examples are fences, ditches, gates, cattle grids, holding pens, new water supplies and new bridge or underpass crossings. In the case of crossings, the acquiring authority frequently retains ownership of the infrastructure and is responsible for ongoing maintenance. As a result, such crossings are more correctly described as part of the scheme works.
- 2.59 There is no statutory right to have accommodation works provided for you but it is normal practice for acquiring authorities to suggest and discuss the provision of such works where it is cost effective because compensation otherwise payable is reduced as a result of the works.

Contractor Damage – Third Party Liability

- 2.60 This can be a particular difficulty affecting agricultural property. The general principle in law is that contractors working for the acquiring authority are responsible for damage they cause which is not a necessary and unavoidable consequence of the works. In such cases the contractor has a responsibility to pay compensation for losses incurred and additional costs sustained. **You are responsible for pursuing the contractor direct rather than going through the acquiring authority. Your professional adviser will be able to help you go about this.**
- 2.61 Typical examples are dust from the works blowing on to crops, damage to services in the holding causing temporary loss of supply and silt flowing into watercourses and ponds.

Advance Payment of Compensation

- 2.62 Following the coming into operation of the vesting order you may request the acquiring authority to make an advance payment on account of the compensation payable by them for the compulsory acquisition of any interest in the land. The advance payment request may be made before or after possession of the land has taken place. The authority is obliged to make the payment within three months of receipt of the request.
- 2.63 The level of advance payment is 90% of either:
- The agreed compensation, or
 - Where there is no agreement, the acquiring authority's estimate.
- 2.64 If the property is mortgaged the acquiring authority will reduce the advance payment by the amount of the outstanding mortgage sum. However, in some circumstances it may be possible to require the authority to make an advance payment direct to your mortgagee. There is no entitlement to an advance payment if the mortgage principal exceeds 90% of the sum which would otherwise be payable as an advance payment.
- 2.65 Interest on compensation is payable from the operative date of vesting until compensation is paid – see Section 6.

3. Compensation When No Land is Taken

- 3.1 The procedures outlined so far apply only when land (or new rights over land) is acquired. However, a right to compensation may also arise in limited circumstances when no land is taken but when statutory powers are exercised.
- 3.2 Compensation can be claimed for:
- A reduction in the value of your land caused by the **execution** (construction) of Public Works
 - A reduction in the value of your land caused by the subsequent **use** of Public Works
- 3.3 Greater detail on each is provided in the text which follows.

Reduction in Value Caused by the Execution of Works

- 3.4 Compensation is payable when a loss occurs because some right in property (as opposed to the actual property itself) is taken away or interfered with. The requirements are that the injury done must:
- be authorised by statutory power;
 - arise from that which would, if done without the statutory authority, have been actionable at law, for example as a nuisance;
 - arise from a physical interference with some right, public or private, which attaches to the land;
 - arise solely from the execution of the works and not as a result of their subsequent use.

Valuation Date

- 3.5 The relevant date for the assessment of compensation is the date at which the loss occurred. This is most likely to be the date of interference with the right in land.

Basis of Compensation

- 3.6 Were it not for the fact that the works giving rise to the loss are authorised by an Act of Parliament a claim for damages could be pursued.

- 3.7 You must be able to demonstrate that the loss is a natural and reasonable consequence of the execution of the works.** Compensation is based upon the reduction in value of the land that had benefited from the right which has been interfered with. **Business losses cannot be claimed unless they result in a reduction of the land value.**

Reduction in Value Caused by the Use of Public Works

- 3.8 This right to compensation is set out in Part II of the Land Acquisition and Compensation (NI) Order 1973. It is commonly referred to as a “Part II claim”. It applies to certain “public works” i.e. a highway, an aerodrome and other works provided under statutory powers. In addition to new works the provisions cover substantial alterations and changes of use to existing works but not intensification of a use (unless alterations are also carried out).

The Relevant Date

- 3.9 In order to be able to submit a claim you must own a qualifying interest in the land before the relevant date.

- 3.10 If the public works in question is a highway, the relevant date is the date on which it was first open to public traffic. With regard to any other public works it is the date on which they were first used after completion.

Qualifying Interest

- 3.11 In the case of an agricultural property you must have an owner’s interest in the land and be an owner-occupier of the land. An owner’s interest means either a freehold or a tenancy for a term of years which at the date of notice of claim has not less than three years unexpired. To qualify as an owner-occupier you must occupy the whole of the unit.

Valuation Date

- 3.12 Compensation is assessed, based upon prices current on the first claim day which is 12 months after use of the public works first commenced. Interest is payable from the date the claim is submitted until payment.

Basis of Compensation

- 3.13 Compensation is based upon the depreciation in the value of the land due to the “physical factors” caused by the use of the public works.
- 3.14 The seven specific physical factors are:
- Noise
 - Vibration
 - Smell
 - Fumes
 - Smoke
 - Artificial light
 - Discharge onto the land of any solid or liquid substance.
- 3.15 Any depreciation in value attributable to reasons other than these seven specific factors is not compensatable. For example, the loss of a view is not compensatable.
- 3.16 The important distinction between this and a claim for the execution of works (described in paragraph 3.4) is that it is the use of the works that must cause the depreciation. For example, if a motorway is constructed in close proximity to a farmhouse, any claim under Part II must relate to the depreciation in value caused by the noise and other physical factors associated with the traffic using the road and not to the physical existence of the highway.
- 3.17 If you sell your property before the first claim day (see paragraph 3.12) you must make a claim between exchanging contracts and completing or you will lose your rights to compensation.

4. Compensation for Adverse Effects of Development

- 4.1 In addition to decreasing the value of land, some development works may cause inconvenience and discomfort to people living in the area. An obvious example is the development of a new motorway.
- 4.2 Although financial compensation can be paid for the reduction in value of your property if the requirements of the Compensation Code are fulfilled, this will not remove the source of the discomfort. Acquiring authorities have therefore been given certain discretionary powers to take action which will help to mitigate the adverse impact which the existence or use of the proposed works will have on the surroundings of the works.
- 4.3 Such measures can include acquiring more land than that required for the actual development in order to carry out earth-moulding and other landscaping works.
- 4.4 Acquiring authorities may also agree to pay your expenses if it is necessary for you to move out of your home temporarily during the construction works. The amount to which you would be entitled is the amount by which your expenses in the temporary accommodation exceed what your expenses would have been had you remained in occupation of your original home. **The agreement of the authority must be received before any expense is incurred.**

5. Fees

- 5.1 The acquiring authority will usually pay the reasonable surveyor’s fees which you incur for negotiating claims. Before employing a surveyor it is wise to ensure that you both agree a reasonable basis for calculating fees. **The acquiring authority should be able to advise you on the payment of fees and should be consulted if there is any doubt.**
- 5.2 Legal fees for conveyancing are also payable, and likewise a reasonable basis for their calculation should be agreed.

- 5.3 Normally only one surveying and legal fee is payable. If you decide to change your surveyor or solicitor after they have been instructed you may be liable for any costs or expenses they have incurred before they were replaced.

6. Interest

- 6.1 Simple interest on the compensation due is payable from the operative date of the vesting order until the compensation is paid. The rate of interest is prescribed in legislation and is 0.5% per annum below the base rate quoted each day by the major banks.
- 6.2 If a claim is made for compensation which arises as a result of nearby public development, but no land is actually acquired, interest is payable on any sum due from the date you submit your claim to the date of payment.

7. Rent

- 7.1 As legal ownership is deemed to pass to the acquiring authority on the operative date of the vesting order there could be a liability on the claimant to pay rent for any period of occupation after this date until the authority actually takes possession. The charging of rent in these circumstances is at the discretion of the acquiring authority and if this is proposed the amount will be agreed with you or your advisor. Payment can be made at agreed periods, weekly or monthly, or the accumulated amount can be deducted from your compensation.

8. Blight

- 8.1 If an agricultural unit, including a farmhouse, is “blighted” you may be able to serve a blight notice to compel an authority to acquire the property.
- 8.2 The blight notice procedure is a process by which you may bring forward the acquisition of your property if it has become “blighted” as defined in planning law.
- 8.3 Where the value of a property has been reduced by certain categories of planning or other development proposals, anyone with a qualifying interest, may be entitled to serve a “blight notice” on the body responsible for this, requiring them to buy the property at its untainted value. In short, the threatened or prospective compulsory purchase is brought forward thereby removing the uncertainty which might otherwise make the property unmarketable save at a significantly reduced price.
- 8.4 The guidance in this booklet is concerned with the procedures for compulsory purchase rather than the broader subject of public development. Accordingly, the consideration of the procedures relating to blight notices is restricted to the circumstances where blight arises as a result of the inclusion of a property in a vesting order.
- 8.5 It should be recognised that inclusion within a vesting order is only one of many circumstances in which a blight notice may be served. A full list of the circumstances in which a blight notice may be served is set out in Article 3(1) (a-l) of the Planning Blight (Compensation) (NI) Order 1981. Only the ones relating to compulsory purchase are considered in this booklet, but there may be opportunities to serve a blight notice earlier under one of the other categories of blight.

Qualifying Interests

- 8.6 In order to qualify to serve a blight notice, you must be one of the following:
- A resident owner-occupier of a private dwelling;
 - An owner-occupier of any business property where the annual value for rating purposes does not exceed £19,685 (based on the 2003 Valuation List);
 - An owner-occupier of an agricultural unit with at least six months occupation of the whole or part;
 - Certain mortgagees and personal representatives.

- 8.7 An owner-occupier is defined as a freeholder or lessee with at least three years unexpired term who has occupied for at least six months when the blight notice is served. If the property is vacant when the blight notice is served, they must have been in occupation for six months ending not more than one year before the date of service of the blight notice.
- 8.8 An investment property owner is not entitled to serve a blight notice. **If you are concerned about blight arising from other circumstances you should ask your professional advisor.**

Content and Service of Blight Notice

- 8.9 A blight notice must be in writing and must state the interest in the land (for example freehold or leasehold) and the statutory ground for serving a blight notice. The correct form of a blight notice is set out in the Planning Blight Regulations (Northern Ireland) 1989.

Acquiring Authority's Response to a Blight Notice

- 8.10 The acquiring authority has two months to accept or reject the blight notice. If it does not reject it in this time the notice automatically takes effect. If accepted or takes effect following expiry of the two months, a statutory deemed contract to purchase is created on that date which becomes the valuation date. The amount to be paid under that deemed contract is assessed in the same way as if the interest had been compulsorily acquired on that date.
- 8.11 If the acquiring authority does not wish to purchase the property under the blight provisions they may serve a counter notice within the two month period objecting on one or more of the following grounds:
- No part of the land is in a relevant category of blight;
 - The acquiring authority does not propose to acquire any of the land;
 - The acquiring authority only proposes to acquire part;
 - On the date of the notice, the claimant is ineligible;
 - The interest of the claimant does not qualify;
 - No real endeavours have been made to sell the property at a reasonable price.

- 8.12 If you do not agree with the acquiring authority's counter notice, you may refer the matter to the Lands Tribunal within a period of two months and it will determine the matter.

- 8.13 If you are successful and your blight notice is accepted, the principles of valuation and assessment of compensation are identical to those which apply had the land been compulsorily acquired.
- 8.14 Compensation following acceptance of a blight notice does not extend to abortive marketing costs incurred prior to service of the notice or to the costs of preparing and serving the blight notice.

Appendix 1 – Terms Used In Compulsory Purchase

Set out below is a list of terms and definitions commonly referred to when dealing with compulsory purchase matters.

Compensation Code: A collective term for the principles, derived from Acts of Parliament and case law, relating to compensation for compulsory acquisition.

Goodwill: The price which a purchaser of a business is prepared to pay, above the value of the premises and stock, for the probability that customers will continue to resort to the old place of business, or continue to deal with the firm of the same name: it is the benefit or advantage which a business has in its connection with its customers.

Investment Property: Generally, any property purchased with the primary intention of retaining it and enjoying the total return, i.e. income and/or capital growth, over the life of the interest acquired.

Land: Land includes buildings and structures. Existing interests and rights in land, such as freehold or leasehold together with any existing rights can be compulsorily acquired either as a whole or in part.

Lands Tribunal: A tribunal for Northern Ireland set up under the Lands Tribunal and Compensation Act (NI) 1964 and proceeding in accordance with rules made by the Lord Chancellor. Its jurisdiction, amongst others, includes adjudication on disputed compensation for the compulsory acquisition of land. The tribunal comprises the President (who is usually a judge) and a member who is qualified in valuation.

Marriage Value: Latent value which is or would be released by the merger of two or more interests in land. For example, two adjoining parcels may be worth more as one property than the aggregate of their separate values. Similarly, two interests in the same property (such as the freehold and the leasehold) may have a greater value when merged than the sum of their individual values.

Mitigation of Loss: The duty of a claimant seeking compensation to take any reasonable steps open to him to reduce or avoid loss. For example, a claimant could mitigate loss by seeking a number of quotes from reputable contractors and instructing the cheapest.

New Rights: Compulsory purchase can be used by most acquiring authorities to create and acquire new rights over land. An example would be the creation of a right of way or a right of support.

Public Development: A new or altered highway, aerodrome or other public works.

Ransom Value: The ability to obtain a high price for a small area which is key to the site being developed. For example, where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Tenancy at Will: A tenancy for no fixed term which continues so long as the landlord and tenant are willing that it should do so; it is an equitable interest and is created either by agreement or implication of law. Such an interest can be terminated by either party at short notice.

Tenancy on Sufferance: In cases where there is no statutory protection, a tenancy created by implication of law when the tenant has remained in possession on expiry of his term and the landlord has not challenged the tenants continued possession.

Vesting Order Procedure: A legal procedure used in connection with compulsory purchase whereby an acquiring authority is able to obtain possession and ownership of the land. This is a statutory procedure for the speedy acquisition of land and normal conveyancing practice does not have to be adopted.

Appendix 2 – Useful Contacts

Set out below is a list of contact details of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase.

Law Society of Northern Ireland

40 Linenhall Street
Belfast
BT2 8BA
Tel: 028 9023 1614
Web Site: www.lawsoc-ni.org

Citizens Advice Bureau Northern Ireland

You should check your local telephone directory or call directory enquiries to find out details of your local branch office. Details of local offices can also be obtained from the web site below.
Web Site: www.citizensadvice.co.uk

Royal Institution of Chartered Surveyors (RICS)

Northern Ireland Branch
9-11 Corporation Square
Belfast
BT1 3AJ
Tel: 028 9032 2877
Web Site: www.rics.org/ni

Northern Ireland Housing Executive (NIHE)

The Housing Centre
2 Adelaide Street
Belfast
BT2 6PB
Tel: 028 9024 0588
Web Site: www.nihe.gov.uk

DOE Planning Service

Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN
Tel: 028 9041 6700
Web Site: www.planningni.gov.uk

Ulster Farmers Union (UFU)

475 Antrim Road
Belfast
BT15 3DA
Tel: 028 9037 0222
Web Site: www.ufuni.org.uk