



Land &
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Compulsory Purchase and Compensation A Guide to Compensation for **Residential** 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 **residential** 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 **agricultural** 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 by acquiring 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 residential 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 had been 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.

Mortgages

- 2.18 It is common for dwellings to be subject to a mortgage. Both mortgagees and mortgagors have an interest in land for which there is an entitlement to compensation. You remain liable for making any mortgage repayments from the operative date of vesting until the mortgage is redeemed. These sums are not compensatable.

Compensation to Mortgagee (Lender)

- 2.19 When compensation is settled the outstanding loan from the mortgagee (usually a bank or a building society) is paid off and the mortgage is redeemed.
- 2.20 There may be circumstances where the outstanding loan on the mortgage exceeds the value of the property. This may arise, for example, where arrears have built up or where there is “negative equity” as a result of falling values.
- 2.21 In these circumstances the value of the property being acquired is agreed between the acquiring authority, the lender and the borrower. If the value of the property is less than the outstanding debt on the mortgage there will be no compensation payable to the borrower.
- 2.22 The mortgagee will, firstly, receive payment of the principal sum outstanding including any arrears and interest due and, secondly, will retain the right to recover the outstanding sum and any interest due thereon from the borrower.

Compensation to Mortgagor (Borrower)

- 2.23 The mortgagor will receive compensation for the value of the property being acquired less the sum outstanding on the mortgage which is paid to the mortgagee.
- 2.24 Where the outstanding loan on the mortgage exceeds the value of the property there is no compensation to the mortgagor in respect of the property. The acquiring authority will pay the value of the property to the lender. The borrower will still be liable to the lender for the amount of any outstanding sum plus interest due thereon. The borrower may still have an entitlement to other heads of compensation such as a home-loss payment.
- 2.25 There is also an entitlement to compensation if losses occur as a result of having to take out a new mortgage. This falls within the compensation for disturbance and is considered below in the section on disturbance.

Acquisition of Part Only

- 2.26 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

- 2.27 If you have a part only of your land acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain.
- 2.28 The compensation is for the depreciation in value of the retained land and is referred to as “severance” and/or “injurious affection”.

2.29 The two elements of this head of claim should be considered in isolation.

Severance

2.30 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 road is built across the garden of a house it may make the house less desirable, and consequently less valuable, because the garden added to the value of the house.

Injurious Affection

2.31 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. In the case of the above example, if the garden which was acquired became a road the loss of amenity due to noise, fumes, vibration, loss of view, etc resulting from the use of the road may reduce the value of the property further.

2.32 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.

2.33 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.

“Before and After” Approach

2.34 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.

2.35 The way this works is to agree the value of the whole of the property in the no scheme world (i.e. 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 (i.e. taking that development into account) after the acquisition. The difference between the two (if any) should be payable as compensation.

2.36 The “Before and After” approach can also be used to take account of betterment which is considered below.

Betterment

2.37 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”.

2.38 Betterment is the opposite of injurious affection. There may be instances where the scheme of the acquiring authority may increase the value of your retained land.

2.39 An example of this would be if you owned a house, of which a small part of the garden was acquired for the construction of a new road and that new road enhances access to the house thereby increasing its value. In such circumstances, the acquiring authority will seek to offset this increase in value against the compensation that is payable in respect of the land acquired.

2.40 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.

2.41 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.

2.42 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

2.43 There is another course of action which you may be able to take if the authority has acquired only part of your 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 6 weeks of the operative date of the vesting order.

2.44 Where part only of your property (such as some or all of your garden) has been acquired you may require the authority to acquire the whole where the part retained will be less useful or less valuable in some **significant** degree. In the case of a dispute the issue will be determined by reference to the Lands Tribunal. **This can be a complicated matter which you should discuss with your professional adviser.**

Disturbance Compensation

2.45 In addition to being compensated for the value of the land taken and severance and injurious affection you are also entitled to the losses occasioned by being “disturbed” from land or premises. 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 2.61

2.46 For the most part the right to disturbance compensation is restricted to occupiers.

2.47 If you have to sell or move out of your property you are entitled to the costs and expenses reasonably incurred in vacating that property. The claim can include the costs of acquiring a replacement property (but not the cost of the property) and the costs of moving in to the property.

2.48 Subject to the comments on “Re-housing” at paragraph 2.71, there is no obligation on an acquiring authority to provide alternative premises. However, most will help you to identify possibilities available on the market. Accordingly, you should contact the acquiring authority and local estate agents at an early stage to register property search requirements.

2.49 Examples of items which can be claimed are set out below:

- removal expenses;
- legal fees arising from the acquisition of a replacement property;
- stamp duty arising from the acquisition of a replacement property;
- surveyors fees arising from the acquisition of a replacement property;
- survey fee and costs in connection with the transfer of an existing mortgage or raising a new one;
- special adaptations of the replacement premises similar to those in the acquired property but not included in the compensation for land taken;
- altering soft furnishings and moveable fittings and fixtures to fit your new home;
- disconnection and reconnection of services - telephone, electricity, etc;
- forwarding of post (for a reasonable period);
- incidental costs of acquiring replacement property;
- if a tenant is displaced from rented accommodation as a result of a
 - compulsory purchase the acquiring authority may agree to pay the
 - reasonable expenses incurred (other than the price of the property) of buying a
 - reasonably comparable dwelling, provided it is bought within a year of the
 - displacement.

2.50 This is not an exhaustive list. The onus is on the claimant to justify his or her claim. Therefore it is up to you to prove that you should be compensated rather than expect the acquiring authority to come up with anything. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the acquisition of your property. You should keep all relevant documentary evidence such as receipts, invoices and fee quotes. You should also keep a record of the amount of time you have spent on matters relating to the compulsory purchase of your property.

2.51 Some examples of items that cannot be claimed for:-

- cost of a replacement property
- rent of temporary accommodation
- losses not actually incurred
- cost of bridging finance
- costs of alterations to the alternative property that increase its market value
- costs of re-investing one's compensation

Mortgages

2.52 Losses may occur as a result of having to transfer a mortgage. Provided the losses flow as a direct and reasonable consequence of the acquisition you will be entitled to compensation.

2.53 There may be circumstances where you have a mortgage which is fixed at a favourable rate and you have to take a new mortgage at a higher rate which will be more expensive. Where this occurs compensation is paid based on the difference between the net amount it would cost to repay the outstanding sum on the mortgage at the old rate and how much it would cost at the new rate.

2.54 The general principle in assessing disturbance compensation is that the claimant is deemed to act reasonably and to mitigate their loss. Each item of a claim will be considered on its merits and should be recoverable if it is a natural, direct and reasonable consequence of being disturbed.

Other Costs

2.55 The acquiring authority will pay other unavoidable costs arising from moving home. For example, if you owned the property which is acquired you will be entitled to claim for the legal costs of conveyance you incur when acquiring a new property. These costs will be paid up to the amount that would be payable if the purchase price of your new property was not more than the market value of your old one. Above this level the acquiring authority may refuse on the grounds that you are benefiting from the fact that you are ending up with a better property than you started with. This is because you are said to have received "value for money". The authority may exercise some discretion here.

2.56 Likewise an acquiring authority has discretion if a displaced tenant whose interest is for a year or yearly decides to buy a house or flat rather than take out a new lease. **If this occurs the authority may agree to pay the reasonable expenses incurred in purchasing a reasonably comparable dwelling provided it is bought within 12 months of displacement.**

No Disturbance When Land Value Reflects Development Potential

2.57 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.

2.58 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 from being compensated for the existing use value of his leasehold interest plus the disturbance compensation for having to move out of the property.

Home-Loss Payment

2.59 If you are actually living in the property you may be entitled to a home-loss payment in addition to any other compensation due. The home-loss payment is an additional sum to reflect and recognise the distress and discomfort of being compelled to move out of your home. A number of criteria need to be fulfilled to qualify for payment and these are summarised and explained more fully in the following text.

Occupation of the Property

2.60 To qualify for a home-loss payment:

- You must have lived in the dwelling, or a substantial part of it, as your only or main residence, for a period of not less than one year ending with the day you have to move out; and,
- Your interest or right to occupy the property was freehold, leasehold, statutory tenancy, a right to occupy under the terms of your employment or under a licence where secured tenancy or introductory tenancy provisions apply.

2.61 If you occupy a caravan you may qualify for a home-loss payment if you have lived in a caravan on the same permanent site for a minimum period of one year and no suitable alternative site for stationing your caravan is available on reasonable terms.

Amount of Home-Loss Payment

2.62 If you are the owner of a freehold or a lease with at least three years unexpired you are entitled to 10% of the market value of your interest, subject to a maximum payment of £45,000 and a minimum payment of £4,500. Any other claimant is entitled to a flat rate of £4,500.

2.63 Where two or more people are entitled to make a claim for a home-loss payment in respect of the same interest (such as a husband and wife who are joint owner-occupiers or joint tenants who share the same home) the payment is divided equally between claimants.

2.64 The claim for a home-loss payment must be submitted within six years of the date you have to move out and must be in writing.

2.65 The acquiring authority must make the payment on or before the latest of:

- the date of displacement; or
- three months from the date of the claim; or
- the date on which the market value of the interest (upon which the payment is based) was agreed or determined.

Accommodation Works

2.66 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. Examples are walls, fences and the re-grading of driveways.

2.67 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.

Re-housing

2.68 Where no suitable alternative accommodation is available on reasonable terms the Northern Ireland Housing Executive has a duty to re-house a resident whose dwelling has been compulsorily acquired regardless of which public authority was responsible for the acquisition.

2.69 In order to qualify you must have been in residence from the date the notice of intention to make a Vesting Order was published.

- 2.70 There is no entitlement to re-housing for a trespasser, a person permitted to reside pending demolition, or a claimant who brings about the acquisition by serving a blight notice. See under 'Blight' starting at paragraph 2.82 below.
- 2.71 If you are genuinely made homeless but you do not qualify for re-housing you should contact your local Northern Ireland Housing Executive office immediately as they may still be able to help.
- 2.72 If you are re-housed this will not affect the amount of compensation which the acquiring authority pays and an authority must not seek to make a reduction to reflect re-housing.
- 2.73 The compensation payable to a landlord will not be affected if his tenants are re-housed by the acquiring authority or the Northern Ireland Housing Executive. Provided they are re-housed after the landlord receives his notice of intention to vest, compensation will continue to be assessed at market value subject to the occupational tenancies.
- 2.74 The right to re-housing does not only apply to houses and flats but also extends to permanent caravan sites.** The qualifying conditions are the same as for other dwellings except that there is no right to be re-housed if there is a suitable alternative site for stationing the caravan available on reasonable terms

Disabled Persons

- 2.75 If the home of a disabled person has been adapted to meet his or her special needs, the compensation to the occupier or the landlord may reflect the cost of providing or modifying a similar dwelling.
- 2.76 There may be circumstances where a disabled person is a tenant in a dwelling which is acquired and the landlord is not prepared to provide another dwelling which is suitable for occupation by a disabled person. **If this occurs and there is no other suitable alternative accommodation available on reasonable terms, the Northern Ireland Housing Executive may re-house the disabled tenant and make alterations to the dwelling they provide as necessary.**

Occupiers with No Compensateable Interest in Land

- 2.77 There is a limited right of compensation if you were in lawful occupation of land at the time the vesting order was made, but you have no "compensateable" interest in the land. This may include tenants at will, licensees and tenants holding over. Each of these amount to occupation of land or buildings by some form of agreement with the owner which is less than a formal lease and, in most cases, they may be terminated at short notice by either party.
- 2.78 Trespassers and squatters do not have any rights to compensation.
- 2.79 Compensation should reflect disturbance items such as removal costs. Regard is had to the amount of time the land occupied would have been likely to have remained available for occupation. There is also a discretionary power to make payments to people who do not qualify.

Advance Payment of Compensation

- 2.80 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.
- 2.81 The level of advance payment is 90% of either:
- the agreed compensation, or
 - where there is no agreement, the acquiring authority's estimate.

- 2.82 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 then 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.
- 2.83 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.

Reduction in Value Caused by the Execution of Works

- 3.5 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. For example, this could be a right of way. 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

- 3.6 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

- 3.7 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.
- 3.8 **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 which had benefited from the right which has been interfered with.

Reduction in Value Caused by the Use of Public Works

- 3.9 This right to compensation is set out in Part II of the Land Acquisition and Compensation (NI) Order 1973. This 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).
- 3.10 In order to be able to submit a claim you must own a qualifying interest in the land before the relevant date.

The Relevant Date

- 3.11 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

- 3.12 A qualifying interest is a freehold or a tenancy in a dwelling house or flat with at least three years unexpired at the date of notice of claim.

Valuation Date

- 3.13 Compensation is 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

- 3.14 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.
- 3.15 The seven specified physical factors are:
- Noise
 - Vibration
 - Smell
 - Fumes
 - Smoke
 - Artificial light
 - Discharge onto the land of any solid or liquid substance.
- 3.16 Any depreciation in value which is attributable to reasons other than these seven specific factors is not compensable. For example, the loss of a view is not compensable.
- 3.17 The important distinction between this and a claim for the execution of works (described in paragraph 3.5) is that it is the use of the works which must cause the depreciation. For example, if a motorway is constructed in close proximity to a house, 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.
- 3.18 If you sell your property before the first claim day (see paragraph 3.13) you must make a claim between exchanging contracts and completion or you will lose your rights to compensation.

4. Compensation for the Adverse Effects of Development

- 4.1 In addition to decreasing the value of land, 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, simple 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 your residential property is "blighted" you may be able to serve a blight notice to compel the 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;
 - 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. Its jurisdiction 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

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