



CROSSRAIL INFORMATION PAPER

C2 – OPERATION OF THE NATIONAL COMPENSATION CODE

This paper sets out the main provisions of the national compensation code.

It will be of particular relevance to those whose land is subject to compulsory purchase under the Bill and those in the vicinity of the proposed Crossrail works.

Examples of illustrative land compensation claims, using five common situations, are set out in Annex A to the paper.

This is not intended to replace or alter the text of the paper itself or any commitments contained in it, and it is important that you read the paper in order to have a full understanding of the subject. If you have any queries about this paper or about how the national compensation code might apply to you, please contact either your regular Petition Negotiator at CLRL or the Crossrail helpdesk, who will be able to direct your query to the relevant person at CLRL. The helpdesk can be reached at:

Crossrail
FREEPOST
NAT6945
London
SW1H 0BR

Email: helpdesk@crossrail.co.uk

Telephone: 0845 602 3813

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1. Nature and Purposes of the National Compensation Code

- 1.1 The national compensation code is not a single document, but comprises a collection of various enactments, now consisting primarily of the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004), and supplemented by a number of decided cases on the effect of these provisions and their predecessors¹.
- 1.2 Aspects of the law of compulsory purchase have recently been reviewed by the Government, and in consequence of that review, the changes to the compensation code and compulsory purchase procedures set out in Part 8 of the Planning and Compulsory Purchase Act 2004 have been enacted². The Law Commission also reported on compulsory purchase compensation in December 2003 (Law Comm. 286) (Cm. 6071) as part of its comprehensive proposals for a code of compulsory purchase compensation and procedure.
- 1.3 The code applies to compulsory acquisition of land by compulsory purchase order made or confirmed by Ministers under the Acquisition of Land Act 1981. Such orders may be made for such projects as road schemes, housing schemes, development and regeneration schemes, the provision of utility plant and services, the provision of hospitals and the provision of schools. The code is also applied to compulsory purchases for proposals authorized by local or hybrid Act (the most recent hybrid Act being the Channel Tunnel Rail Link Act 1996) and also, by virtue of the Transport and Works (Model Clauses for Railways and Tramways) Order 1992, to compulsory purchase under orders made under sections 1 and 3 of the Transport and Works Act 1992.
- 1.4 Paragraph 2 of Part 2 of Schedule 6 and paragraph 3 of Schedule 11 to the Crossrail Bill (the Bill) adopt this approach, by respectively applying Part I of the Compulsory Purchase Act 1965 as if the Bill were a compulsory purchase order under the Acquisition of Land Act 1981 and applying the provisions relating to injurious affection in section 6 of the Railways Clauses Consolidation Act 1845. Relevant provisions of the Land Compensation Acts 1961 and 1973 automatically apply to the assessment of compensation without any necessity for their explicit application by the Bill³. The Bill does not seek to alter the principal ingredients of the compensation code in applying the code to Crossrail. The Government is satisfied that in general the compensation code is appropriate for application to the Crossrail project.
- 1.5 The purpose of the compensation code is to provide a uniform code for the payment of fair compensation for land to a landowner whose land is compulsorily

¹ See the account in Appendix C to the Law Commission Report "Towards a Compulsory Purchase Code – (1) Compensation: Final Report" (Law Comm 286) (December 2003) available on www.lawcom.gov.uk/lc_reports.htm.

² Part 8 of the Planning and Compulsory Purchase Act 2004 was brought into force on 31 October 2004.

³ Section 1 of the Land Compensation Act 1961 and section 6 of the Compulsory Purchase Act 1965.

purchased for public works. The compensation payable is determined by reference to the open market value of the land acquired, supplemented where appropriate by (a) payments in respect of disturbance, (b) compensation for loss of value of land retained by the dispossessed landowner due to it being severed or otherwise harmfully affected as a result of the compulsory purchase and (c) certain additional top-up payments claimable by a person who owns or occupies land subject to compulsory purchase irrespective of any particular loss; together with compensation in certain cases for interference with other legal and related rights. The code also gives landowners whose land is not acquired but is nevertheless devalued by the construction or operation of public works the right to claim land compensation. This is set out in more detail below.

2. Cases Where Land is Acquired From the Claimant

2.1 Where land is taken from a claimant, the claimant is entitled to payment based upon the open market value of the land taken from him, that value being determined as at the relevant valuation date⁴. Open market value is assessed subject to a number of valuation assumptions, the principal of which are (a) that the land is for sale in what is known as ‘the no-scheme world’, that is to say, ignoring the fact that the land may be used or is required for the particular purposes of the scheme to which the compulsory purchase relates; and (b) ignoring the fact that the purchase is compulsory and instead assuming a willing seller and a willing purchaser⁵.

2.2 In valuing the land certain assumptions are also made about the likelihood of alternative uses being permitted and carried out on the land (in other words, the development potential of the land is taken into account)⁶. In exceptional cases, where there is no general market for the use of the land in question, compensation can be assessed by reference to the cost of equivalent reinstatement on another site⁷.

2.3 The valuation date is the date on which the compensation is agreed or determined by the Lands Tribunal, or if earlier, the date on which possession is taken by the acquiring authority⁸. If the acquiring authority takes possession in advance of completion of the purchase, it is obliged to pay interest at a statutorily prescribed rate to the seller on the assessed or agreed purchase price from the date of entry. In addition, if possession is taken before completion, the claimant is entitled to ask for an advanced payment of 90 per cent of the acquiring authority’s estimate of compensation due⁹.

⁴ Sections 5 (Rule 2) & 5A of the Land Compensation Act 1961.

⁵ Sections 5 to 9 of the Land Compensation Act 1961, and see also *Pointe Gourde Quarrying and Transport Co v The Sub-Intendent of Crown Lands* [1947] AC 565 and *Waters v Welsh Development Agency* [2004] 1 WLR 1304.

⁶ Sections 14-16 of the Land Compensation Act 1961.

⁷ Section 5 (Rule 5) of the Land Compensation Act 1961.

⁸ Section 5A of the Land Compensation Act 1961 (inserted by section 103 of the Planning and Compulsory Purchase Act 2004).

⁹ Section 52 of the Land Compensation Act 1973.

- 2.4 Where a landowner is in occupation and therefore physically dispossessed by the acquiring authority, the landowner is also entitled to a payment in respect of disturbance¹⁰. Such payments will cover, for example, the reasonable cost of finding alternative premises and of removal, including relevant professional fees, and losses arising from damage to goodwill. To qualify, the losses must result from and be a reasonably foreseeable consequence of the dispossession¹¹.
- 2.5 Where part only of a person's land is acquired (that is, the owner retains part of the land) the owner may be entitled to a payment¹² in respect of injurious affection (for example, if the presence of, or the activities carried out in respect of, the scheme for which the purchase is made devalues the land the person retains¹³); and for severance, if the value of the land taken and the land retained is less when assessed separately than the value of the whole as a single unit (for example, because the taking of part renders the remainder less developable).
- 2.6 The rules for compensation mentioned above are based on the principle of equivalence or fair compensation; that is, a person from whom land has been compulsory purchased is put so far as practicable in the same position in money terms after purchase that the person would be in if there were no project calling for compulsory purchase. They therefore represent losses suffered¹⁴.
- 2.7 However in addition the compensation code makes provision for certain additional payments in recognition of the inconvenience to a person of being subject to compulsory purchase, which do not require any particular loss to be demonstrated in order to be claimed. If a dwelling is acquired, the occupier may be entitled to a home loss payment¹⁵, being 10 per cent of the value of the interest acquired subject to a maximum and minimum. In other cases, a "basic loss payment" may be payable¹⁶, representing 7.5 per cent of the value of the interest subject to a maximum, and if the claimant is in occupation, the claimant may be entitled to an additional occupier's loss payment¹⁷ of 2.5 per cent of the value of the interest (subject to adjustment depending on the value of the land and buildings on it).

3. Cases Where No Land is Acquired From the Claimant

- 3.1 Where no land is acquired from a claimant, compensation is payable in a case where the execution or presence (rather than operation) of the public works interferes with the landowner's enjoyment of or diminishes the value of his land, either permanently or temporarily, in a manner for which he could sue the promoters, had they not the immunity conferred by their statutory authority to

¹⁰ Section 5 (Rule 6) of the Land Compensation Act 1961.

¹¹ See *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111.

¹² Section 7 of the Compulsory Purchase Act 1965.

¹³ See in particular section 44 of the Land Compensation Act 1973.

¹⁴ See *Director of Buildings and Land v Shun Fung Ironworks Ltd* [1995] 2 AC 111 at 125 and *Waters v Welsh Development Agency* [2004] 1 WLR 1304 at 1306, paragraph 1.

¹⁵ Sections 29 to 33 of the Land Compensation Act 1973.

¹⁶ Section 33A of the Land Compensation Act 1973.

¹⁷ Sections 33B and 33C of the Land Compensation Act 1973.

carry out the public works¹⁸. For example, the performance of the public works may interfere with and obstruct the claimant's access to his land over a private right of way, such interference or obstruction giving rise to an action for nuisance in the absence of the promoters' statutory powers to carry out the public works. Compensation is assessed by reference to any loss of value of the claimant's interest in land caused by the interference with his private right.

3.2 In addition, compensation can be payable if land is devalued by virtue of noise, vibration and certain other physical factors arising from the operation of the works for which the compulsory purchase was authorised. However, claims for such compensation can only be made following the expiration of twelve months from the opening of the works¹⁹.

3.3 No compensation is payable to those in respect of whom no land is taken for loss of profits as such²⁰. For example, a petrol station owner or other local businesses in a town are not entitled to compensation for loss of business if the Highways Agency were to construct a bypass around the town.

4. Compensation Where Land Taken Temporarily

4.1 Schedule 5 to the Bill confers powers to occupy certain land temporarily. Where land is occupied temporarily under these powers, the Bill provides for compensation to be paid to any owner or occupier for the loss arising.

5. Advance Blight Purchases

5.1 In relation to the land within the Bill limits, which has been safeguarded for planning purposes, residential owner-occupiers and certain businesses can require a purchase of their interest in advance of the Bill being enacted²¹.

5.2 The Crossrail project also has a discretionary purchase scheme in cases of hardship where the interest concerned is not covered by the statutory blight purchase scheme (for further information see Information Paper C8, Purchase of Property in Cases of Hardship).

6. Disputes

6.1 In the event of a dispute as to entitlement to compensation, or as to its amount, the dispute is determined by the Lands Tribunal²². Claims for compensation are subject to a time bar and application to the Tribunal must be made within a six-

¹⁸ Section 10 of the Compulsory Purchase Act 1965, as explained in *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243 and *Wildtree Hotels Ltd v Harrow London Borough Council* [2001] 2 AC 1.

¹⁹ Part 1 of the Land Compensation Act 1973. See also the Information Paper C3, "Advance Claims Under Part I of the Land Compensation Act 1973".

²⁰ Loss of profits may feature indirectly in the calculation of compensation, where the loss of profits causes a loss in the value of the land on which the business is conducted and results from an interference with some legal or similar right: see *Argyle Motors (Birkenhead) Ltd v Birkenhead Corporation* [1974] 1 All ER 201.

²¹ Chapter 2 of Part 6 of the Town and Country Planning Act 1990, and paragraph 6 of Schedule 13 to that Act.

²² See www.landtribunal.gov.uk.

year limitation period beginning on the date when the right to compensation arises²³.

7. Indemnity

7.1 Petitioners against hybrid Bills sometimes suggest that the Secretary of State be required to give an indemnity in respect of the carrying out of the Bill works. Such an indemnity would be inappropriate, and in any case gives no greater comfort than properly formulated compensation arrangements.

7.2 It will be possible to make claims for damages in respect of any negligent exercise of the statutory powers sought in the Bill. Compensation in respect of non-negligent construction of the works is provided for in the national compensation code. The national compensation code does not include an indemnity and to do so would put those affected by the works for Crossrail in a better position than others similarly affected by other public works such as the construction of new roads.

²³ *Hillingdon LBC v. ARC Ltd.* [1999] Ch. 139.

ILLUSTRATIVE CLAIMS FOR LAND COMPENSATION**ANNEX A**

This paper should be read in conjunction with Information Paper C2, Operation of the National Compensation Code.

Example 1: residential, commercial and other categories of property situated above running tunnels and other underground structures

1. The Promoter will compulsorily purchase the subsoil i.e. land beneath the surface, required for the purpose of constructing and operating the railway through the central and other underground sections of the line.
2. Both the freehold and leasehold owner of a property which includes subsoil can claim the following items, the amount of which is determined by reference to the date on which the Promoter takes possession of the subsoil (the valuation date):
 - the open market value of their underground land.
 - the amount of any reduction in the open market value of their property resulting from the construction or operation of the railway (e.g. due to noise and vibration). The assessment of the amount payable will include any reduction in the development value of the property in question as a result of the construction or operation of the railway.
3. The cost of repairing any damage caused to the property by the Crossrail works is also recoverable.
4. The Promoter expects that, as a rule, the open market value of underground land compulsorily purchased for the running tunnels and other underground structures will not be significant. The Promoter expects that his procedures for the assessment, control and remediation of the effects of ground settlement will avoid any significant physical damage to property due to the construction and operation of the underground railway. The Promoter expects that the construction and operation of the railway in accordance with his proposed design criteria, engineering methods and maintenance commitments will avoid any significant reduction in the value of property situated above the running tunnels and other underground structures.

Example 2: commercial property compulsorily purchased for surface works

5. The Promoter will compulsorily purchase commercial land and buildings required for surface structures (station structures/ventilation and access shafts) and for worksites.
 6. Both the freehold and leasehold owner of such a property can claim the open market value of their property which is compulsorily purchased for the railway.
- Also, the business occupier of such property can claim a number of additional items as “disturbance compensation”. Typically, these are likely to include the following:

- the reasonable costs and expense involved in relocating his business (removal expenses, legal and other professional costs and fees, personal or staff time spent managing relocation, bank interest and charges on a bridging loan, costs of adapting the new premises to the particular requirements of the claimant's business).
- temporary loss of profits due to the disruption of relocating to alternative premises (e.g. loss of profits from lost contracts).
- permanent loss of profit (goodwill) to the business due to the move to alternative premises (e.g. move to alternative premises leading to loss of established customers/need to re-establish the business).
- other trade or business losses caused by displacement to alternative premises (e.g. forced sale of stock, loss of value of stock, administrative expenses, reprinting stationary).

7. Where the claimant establishes that his business cannot reasonably be relocated from its current premises, he is entitled to be compensated for the total extinguishment of the business, the amount payable being the value of his business as a going concern.

8. In a case where part only of the landowner's property is compulsorily purchased for the railway, the landowner may also claim the amount of any reduction in the open market value of the retained part of his property which results from the construction, existence and operation of the railway.

9. For example, one effect of severing the landowner's property may be that the open market value of each part (i.e. the land compulsorily purchased for the railway and the land which the owner retains) is found to be less than the open market value of his land as a single unit. He is entitled to receive the difference as land compensation over and above the open market value of that part of his land which is compulsorily purchased.

10. Moreover, the effect of the construction and operation of the railway may be to devalue the land which the landowner retains (e.g. due to the effects of noise, dust, obstruction or degradation of his access to the highway). He is entitled to receive compensation for that loss too.

11. The Promoter expects that these compensation rules will in practice result in the freehold and leasehold owner of property in this category receiving fair compensation for losses which he suffers due to the construction and operation of the railway. The construction and operation of the railway in accordance with the requirements of the Bill, other applicable statutory and regulatory controls and the Promoter's proposed regime for the control of environmental and other impacts (including the Code of Construction Practice) is expected to reduce claims for loss of value to retained land to a residual level.

Example 3: adjacent property whose access is obstructed by Crossrail

12. It will be necessary during the construction phase to obstruct access to a number of properties adjacent to worksites along the route of the railway.

13. The freehold or leasehold owner of a property whose private access to the highway is obstructed by the construction of the railway may claim compensation for the resulting loss of value to his land.

14. The freehold or leasehold owner who gains access to his property over a public highway which is itself obstructed by the construction of the railway may claim compensation in some circumstances. Essentially such an owner must show that the public highway provides him with a right to access his property as well as the public right of passage; and that the obstruction directly affects his access to and enjoyment of his property and so reduces its value.

15. In each case, where that loss of value is limited to a temporary period, it is likely to be measured by reference to the corresponding reduction in the rental value of the property affected for that period.

16. The Promoter will seek as far as possible to avoid or to control and mitigate interference with access to property during the construction phase. Details of proposed arrangements for achieving this objective have been explained in evidence to the Committee in response to petitioners.

Example 4: adjacent property which suffers disturbance during the construction phase

17. Construction of the railway in accordance with the requirements of the Bill, other applicable statutory and regulatory controls and the Promoter's proposed regime for the control of environmental and other impacts (including the Construction Code) is expected to reduce, mitigate and control disturbance to occupiers of adjacent properties during the construction of the railway.

18. The owners and occupiers of such properties are not entitled to compensation for disturbance which they experience during the construction phase, provided that the works are carried out with reasonable care. In practice, this means that, provided that the construction of the railway is undertaken in accordance with the statutory and other controls mentioned above, the owners and occupiers of such properties will have no right to recover compensation for any residual disturbance which they may experience (such as from noise and vibration during construction).

19. The position is different in a case where the owner of a neighbouring property suffers actual physical damage to his property as a result of the construction works (for example, cracking in the fabric of his house due to vibration from piling operations). In that case, the cost of repair and any residual loss of value to the property would be recoverable.

20. Also, compensation (in the form of damages at common law) would be recoverable in a case where the land owner or occupier could show that the construction works had been carried out without reasonable care and, as a result, he

had sustained disturbance which would otherwise have been avoided. An example would be a failure to maintain dust controls at a worksite which led to a significant cleaning bill for adjacent buildings. In that case, the landowners would be able to claim their cleaning bills.

21. Neither example 3 nor 4 will be entitled to compensation for loss of profits which are caused by the construction of the works.

Example 5: adjacent dwellings whose owners claim disturbance from the operation of Crossrail on its surface sections

22. Operation of Crossrail in accordance with the Bill and other applicable statutory and regulatory controls is expected to avoid or to minimise any depreciation in the value of residential property adjacent to overground sections of the railway.

23. The owner of such property may claim compensation once a period of one year has elapsed from the date on which Crossrail comes into operation, if he is able to show that the effect of noise and vibration from the running of the railway has been to depreciate his property from the value that it would have enjoyed in the absence of Crossrail. The compensation payable is limited to corresponding difference in value of the property in question.

Other Matters

24. In all these cases, the claimant is entitled to recover his reasonable professional fees.

25. In a case where the claimant and the Promoter are unable to agree the amount of the compensation to be paid, the matter may be referred to the Lands Tribunal for determination. The award of the Lands Tribunal is final, subject only to an appeal to the Court of Appeal limited to a point of law.