

ROAD PROJECTS



GUIDANCE ON THE COMPULSORY PURCHASE PROCESS AND COMPENSATION

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COMPULSORY PURCHASE
PROCESS AND COMPENSATION

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SECTION I INTRODUCTION

I.1 Transport Scotland

Transport Scotland is the national transport agency for Scotland and is accountable to Scottish Ministers. The agency is responsible for driving delivery of the Ministers capital investment programme of transport improvements which includes constructing new trunk roads or motorways or enhancing existing ones. The service of planning, design development, land acquisition, procurement and the construction and completion of a new or improved road is provided by the agency's Trunk Roads: Infrastructure and Professional Services Directorate on behalf of Scottish Ministers.

Scottish Ministers

The Scottish Ministers are the roads authority for all trunk roads and motorways in Scotland. This guide provides information and advice about statutory procedures that they follow for the compulsory purchase process and compensation for property purchase.

The guidance has been prepared for people who have property, farms or businesses which are directly affected by a road project scheme.

- 1.2 Trunk road and motorway projects are taken forward by the Scottish Ministers who are responsible for promoting the statutory procedures under relevant legislation and are the acquiring authority. Transport Scotland deals with day to day matters on behalf of the Scottish Ministers.
- 1.3 The law and procedure relating to compulsory purchase and compensation is complex. Of necessity the information set out in this brochure is a simplification and cannot cover every circumstance that may arise. The information contained in this brochure is not intended to be a complete guide to the law and carries no legal force. However, it should provide an understanding of the compulsory purchase procedure and the principles to be applied in assessing compensation.
- 1.4 This guidance should not be regarded as a substitute for professional advice. If any interest you have in a property, farm or business is affected by the scheme, the Scottish Ministers recommend that you seek advice from a professionally qualified person such as a surveyor or solicitor. They can advise you on the rights that you have and act on your behalf if appropriate. Whilst the Scottish Ministers will not meet the costs of you obtaining general professional advice, the Scottish Ministers will meet the fees of a professionally qualified person you appoint to negotiate the amount of compensation you will receive for the compulsory purchase of your property in line with a set scale.

If you are in any doubt as to whether your professional costs will be met you should contact Transport Scotland in the first instance – see page 15.
- 1.5 The Scottish Ministers normally appoint technical specialists to assist in the design and development of a scheme. The Scottish Ministers also appoint specialist support to handle the assessment of compensation – the Valuation Office, an agency of HM Revenue and Customs. The Valuation Office will use its expertise and experience to assess compensation for the compulsory purchase taking into account all statutory and common law provisions and report to the Scottish Ministers. The Valuation Office works to its own charter and for further information on the work of the Valuation Office visit www.voa.gov.uk.
- 1.6 Further information on matters in this brochure is available from Transport Scotland – see page 15.

SECTION 2 COMPULSORY PURCHASE PROCESS

Outline of procedure

- 2.1 Where the Scottish Ministers have proposals to construct a new road or improve an existing road, they commission design and development work, including environmental impact assessments to bring the proposals to reality. When this initial design and development work has been completed to the level necessary to enable the Scottish Ministers to determine the proposed line of the road, the Scottish Ministers are in a position to identify the extent of the property required for the scheme.
- 2.2 Where the Scottish Ministers intend to purchase property on a compulsory basis, they publish a draft Compulsory Purchase Order (CPO). The CPO identifies the land and rights over land (which for simplicity are referred to in this guidance as “property”) required for the scheme by reference to a schedule and a map. The owners and occupiers are identified as accurately as possible and their details are included in the schedule. Each owner and occupier listed in the schedule, together with certain other parties as required by statute, will be served with the relevant notices under the statutory procedure along with explanatory literature.

- 2.3 The Scottish Ministers advertise the publication of the draft CPO in the press. Information on the scheme will be available at www.transportscotland.gsi.gov.uk and depending on the scale of the project may be provided from a project website or at a public exhibition.
- 2.4 The assessment of compensation is covered in Section 3 – page 9.

Individual notices

- 2.5 The Scottish Ministers must serve notice on certain parties specified by statute, including every owner and tenant (except for tenants for a month or less) of any property included in the CPO, stating the effect of the CPO. If the name or address of the party, e.g. an owner of a piece of property, is not known and there is no person on the property to whom the notice may be delivered, notices are posted on the property.
- 2.6 The content of both the press notice and the individual notices is very similar, and each will:
- state that a CPO has been prepared;
 - specify the time within which objections to the CPO can be made;
 - specify the manner in which objections to the CPO may be made; and
 - say where in the locality the CPO and map may be inspected.

Objections

- 2.7 This guidance is about the CPO procedure and compensation issues. Other statutory orders which may be published, and any Environmental Statement published, follow their own statutory procedures which are set out fully in the notices accompanying their publication.
- 2.8 Anyone who wishes to object to the CPO must do so in writing to the Scottish Ministers at the contact address given, and by the date specified in the press and individual notices that the CPO has been prepared. This objection period is normally, and cannot be less than, 21 days and runs from the date of service of those press and individual notices.
- 2.9 There is no specific format for an objection to the CPO other than it must be in writing.
- 2.10 Following the period for objections the Scottish Ministers will then consider all written objections received. The Scottish Ministers can only disregard an objection if it relates solely to matters of compensation.
- 2.11 The Scottish Ministers, through their technical specialists, will contact objectors with a view to resolving their objection if possible.

2.12 If this process does not result in all objections being withdrawn or otherwise resolved it is normal for those objections to be considered at a Public Local Inquiry (PLI) arranged by the Scottish Ministers.

Public Local Enquiry (PLI)

2.13 The PLI is held before a Reporter appointed by the Scottish Ministers. The Reporter determines how the inquiry is to proceed. Generally he or she will try to keep proceedings informal whilst ensuring that all parties are able to have their say in an organised and orderly manner to ensure that the case for and against the compulsory purchase of property is fully tested.

2.14 The Reporter will visit the site before, during or after the close of the PLI. Objectors are entitled to attend and the arrangements for the visit will be announced. However, the Reporter will not discuss the merits of the case on the visit.

2.15 The costs incurred by people in attending or being represented at the PLI are generally only met by the Scottish Ministers where their property is included in the CPO, they object, and as a result of their objection their property is removed or partly removed from the CPO. Where only part of their property is removed from the CPO, only part of their costs is normally met.

2.16 After the close of the inquiry, the Reporter will produce a report for the Scottish Ministers setting out his or her conclusions and putting forward recommendations.

Decision

2.17 After considering the Reporter's recommendations, the Scottish Ministers will decide whether or not to proceed with the compulsory purchase.

2.18 The Scottish Ministers may make a decision which is contrary to the Reporter's recommendations.

2.19 When the Scottish Ministers have reached their decision, they will inform the objectors and any other person who appeared at the inquiry and asked to be notified. The decision letter will set out the reasons for the decision. Any party can request a copy of the Reporter's report.

Compulsory Purchase Order (CPO)

- 2.20 If the Scottish Ministers have decided not to proceed with the compulsory purchase that brings an end to the matter. If the Scottish Ministers have decided to proceed with the compulsory purchase then those parties specified by statute, including each owner listed in the schedule to the CPO, will be served with the relevant notices under the statutory procedure along with explanatory literature outlining the effects of the CPO and a form for claiming compensation. At the same time the Scottish Ministers will advertise the making of the CPO in a notice in the press.
- 2.21 The date of publication of the notice of making the CPO by the Scottish Ministers is relevant in terms of the timetable for the following two actions:
- for you to mount a legal challenge against the making of the CPO. The time limit is 6 weeks. The challenge can only be made by way of a formal Court action. There is therefore a need to act very quickly. If you think there are valid grounds for challenge, you should take legal advice;
 - for the Scottish Ministers to take possession of your property.

Possession

- 2.22 Following completion of the statutory procedure the next stage is for the Scottish Ministers to take title and possession of the property included in the CPO.
- 2.23 There are a number of different methods for taking possession. The one normally followed by the Scottish Ministers is the General Vesting Declaration (GVD).
- 2.24 The GVD is a formal procedure that gives the Scottish Ministers title to the property and the right to enter and take possession.
- 2.25 The GVD cannot be made for 2 months after the making of the CPO. The Scottish Ministers will serve a notice of the making of the GVD on the affected parties. The notice will specify a date, which must be at least 28 days away, when the Scottish Ministers will take title and entry to, and possession of, the property.

Short tenancy and long tenancy which is about to expire

2.26 Tenancy agreements are normally included in the GVD process. However this is not the case for either a short tenancy or long tenancy which is about to expire. A short tenancy is a lease for up to a year or from year to year. A long tenancy which is about to expire is a lease which has more than a year, but less than a specified period to run. The period specified in the GVD itself and is typically (but not always) 15 months. The Scottish Ministers cannot purchase a short tenancy or a long tenancy which is about to expire by the GVD route. There are several alternative procedures open to the Scottish Ministers and the method chosen will depend on the individual circumstances of the tenancy in question. Alternatively the Scottish Ministers may decide that the best course of action is to let the tenancy run its course.

Related procedures

Severance

2.27 Where part of your property is included in the CPO and GVD, and you consider the effect on the remainder of the property is particularly severe, then you may be entitled to serve a notice of objection to severance. If successful the Scottish Ministers would be required to purchase the whole of your property. There is a strict time limit for formally objecting to severance. The exact time limit depends on factors such as the type of your property and the nature of your interest in it. The time limit can be as short as 28 days. Whatever the extent of the time limit, it starts running from the date you are served with the notice that the Scottish Ministers have made the GVD. If you are concerned about severance you should consult your professional advisor.

Blight

2.28 Blight is a procedure whereby you can require the Scottish Ministers to buy your property without going through the whole CPO process. In certain limited circumstances a property may be blighted as a result of the CPO. Your property could also be blighted by the scheme over and above the CPO, for example by the road orders. The rules governing when a property is blighted are complex. If you think your property may be blighted then you should consult your professional advisor.

Voluntary purchase as an alternative to compulsory purchase

2.29 Notwithstanding the fact that the Scottish Ministers are exercising compulsory powers of purchase for the scheme nothing prevents them at any time from purchasing property for the scheme on a voluntary basis. Where the purchase proceeds on a voluntary basis the terms, including the price, must be agreed. In those circumstances the compensation provisions explained in this brochure no longer apply.

SECTION 3 COMPENSATION

- 3.1 This Section provides guidance on compensation which is payable for property compulsorily purchased for the scheme. This guidance is not intended to be a complete guide. The statutory provisions and case law that govern the eligibility for and assessment of compensation are complex. It is stressed again that you should seek advice from a professionally qualified person such as a surveyor or solicitor and you are referred to paragraphs 1.3 and 1.4 of Section 1.
- 3.2 Where the Scottish Ministers do not purchase any of your property, compensation may still be payable for the effects of the actual construction of the new road as well as following its completion. General guidance on this will be available at the relevant time.
- 3.3 The Scottish Ministers appoint the Valuation Office to assess the level of compensation. The District Valuer, and his staff from the Valuation Office, will discuss the level of compensation with you or your professional advisor.

Compensation when property is purchased

General principles

3.4 The assessment of compensation will depend on individual circumstances. The underlying principle is to put you, in financial terms, so far as money can do so, in the same position as if your property had not been taken from you. Basically, the assessment of compensation will take into account the value of your property and the value of related effects (known as Severance, Injurious Affection and Disturbance).

However, the level of compensation is assessed without any increase or decrease in value attributable to the scheme itself.

3.5 The amount of compensation payable cannot exceed your total financial loss. There is a duty on you to mitigate that loss.

Value of property

3.6 There are 6 basic rules for assessing the value of property compulsorily purchased. These rules are set out in an Act of Parliament. A brief summary of the rules is set out below.

Rule 1:

3.7 In assessing the compensation, no addition to or reduction from the value of the property is made to reflect the fact that it is being compulsorily purchased. The purchase of the property is assumed to be an open market transaction between willing parties.

Rule 2:

3.8 The value of the property is based upon what the property might be expected to realise if sold in the open market by a willing seller.

3.9 In most circumstances the open market value will be based on the existing use of the property, provided proper consents are in place.

3.10 The property may have potential for development if planning permission for that development could be obtained. If the Scottish Ministers accept the property has development potential then this will be taken into account in assessing compensation.

- 3.11 If the Scottish Ministers do not accept that your property has development potential then you can apply to your local planning authority for a Certificate of Appropriate Alternative Development. This will determine whether or not your proposed development would have received planning permission had the scheme not gone ahead. The rules governing such an application are linked to planning law and are complex and outwith the scope of this guidance. You should refer any query on this aspect to your professional advisor or your local planning authority.

Rule 3:

- 3.12 This rule applies in special circumstances where certain uses of property can only be undertaken by a statutory authority. In assessing compensation no account is taken of these special circumstances.

Rule 4:

- 3.13 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, is not taken into account.

Rule 5:

- 3.14 It may not be possible to arrive at a market value where the property to be purchased is (and but for the CPO would continue to be) devoted to a purpose for which there is no general demand or market (e.g. a church). In such circumstance, compensation may be assessed on the basis of how much it would cost to reinstate the facility elsewhere.

Rule 6:

- 3.15 The provisions of Rule 2 do not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the property. The compensation you receive, therefore, may not only reflect the open market value of your property, but may also take into account the value of related effects, as described in the following paragraphs.

Value of related effects

Severance and other injurious affection

- 3.16 Severance is where only part of your property is purchased for the scheme. Compensation may be payable for the adverse physical effects the severance has on the remainder of your property, e.g. the purchase of part of your property may result in the loss of access to the remainder.

- 3.17 In circumstances where you consider the effect of severance on the remainder of your property is particularly severe, then you may be entitled to serve a notice of objection to severance. If successful the Scottish Ministers would be required to purchase the whole of your property. There is a strict time limit for formally objecting to severance. The exact time limit depends on factors such as the type of your property and the nature of your interest in it. The time limit can be as short as 28 days. Whatever the extent of the time limit, it starts running from the date you are served with the notice that the Scottish Ministers have made the GVD. If you are concerned about severance you should consult your professional advisor.
- 3.18 Injurious affection can also arise where only part of your property is purchased for the scheme. Compensation may be payable for any injurious affection, the term used to describe the adverse effects (such as noise and vibration) the road and its construction can have on the remainder of your property.
- 3.19 Any claim for severance or other injurious affection must be consistent with the remainder of the claim. If you claim compensation based on the potential your property would have had for development, that may have an effect on any claim for severance and injurious affection.
- 3.20 There may be instances where the scheme does not have an adverse effect on your remaining property. On the other hand the scheme may increase the value of your remaining property. In such circumstances, any compensation will take into account any increase in value of your remaining property.

Disturbance

- 3.21 The compulsory purchase of your property may involve you in costs or expenses such as removal expenses, loss of goodwill, loss of profits, professional fees etc. These items are generally referred to as disturbance. Any disturbance would be included in your overall compensation but any disturbance element of the claim must be consistent with the remainder of the claim. Compensation will normally only include a payment for disturbance if the value of the property is based on existing use and not its development potential.

Residential disturbance

- 3.22 In the case of a residential property you can claim reasonable costs and expenses if you have to leave that property. The claim can include the costs associated with purchasing a replacement property (but not the purchase price of the property itself) and the costs of moving into the property. Examples of additional items which may be claimed are legal fees and surveyor fees.

Business disturbance

- 3.23 In the case of a business property depending upon the particular circumstances of the purchase, disturbance compensation may be based on either the costs of relocating the business or extinguishing the business. Normally you would be expected to relocate your business. If this is not possible it may be necessary for the business to close, in which case compensation will be based on the cost of the total extinguishment of the business.
- 3.24 There may be circumstances where the costs of relocating the business are greater than the value of the business. In these circumstances there is a case that can be made that compensation is based on extinguishment, as no prudent businessman would incur the costs of relocating the business. However each case must be looked at on its own merits.
- 3.25 If you relocate your business you may be entitled to claim the reasonable costs and expenditure arising, including for example, removal expenses, legal fees, surveyor's fees and architect's fees.

Individual assessment

- 3.26 Every loss will be considered on its merits. The onus is on you to justify your claim. It is up to you to prove that you should be compensated. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the compulsory purchase of your property. You should keep all relevant documentary evidence such as receipts, invoices and fee quotes.

Other issues

Loans

- 3.27 If a loan is secured over your property the lender is entitled to be compensated. All or part of your compensation may need to be paid to the lender to redeem all or part of your loan.

Home loss payment

- 3.28 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 your distress and discomfort at being compelled to move out of your home.

Farm loss payment

- 3.29 If you are occupying an agricultural unit and are displaced from that unit, you may be entitled to a farm loss payment in addition to any other compensation due. The farm loss payment recognises that as a result of a move to unfamiliar land, you may be faced with temporary losses of yield.

Planning permission after acquisition

- 3.30 If during the period of ten years after the purchase of your property by the Scottish Ministers, planning permission is granted for the additional development of that property, you may be entitled to additional compensation to reflect any increase in the value of the property.

Advance payment of compensation

- 3.31 It is not unusual for final compensation to take a considerable time to be agreed. You are entitled to request an advance on your compensation. The Scottish Ministers are obliged to make the payment within three months of receipt of the request provided they have taken possession of the property.
- 3.32 The level of advance payment is normally 90% of either the agreed compensation, or where there is no agreement, the Scottish Ministers' estimate. If there are outstanding loans on the property then the advance payment may be reduced.

Interest

- 3.33 Simple interest, at a prescribed rate, is payable from the date the Scottish Ministers take possession of your property until the compensation is paid.

Lands Tribunal for Scotland

- 3.34 If the amount of compensation payable for the compulsory purchase of your property is not agreed, then it can be referred to the Lands Tribunal for Scotland for determination.

SECTION 4 CONTACT DETAILS

- 4.1 If having read this guidance you are still unclear about the compulsory purchase process and compensation and require further explanation, or wish to discuss any particular aspect in more detail, please contact the scheme Project Manager. In any correspondence quote the scheme name and provide as much detail as you can to help us with your enquiry.

Write to:

The Project Manager
[PLEASE INSERT THE NAME OF THE SCHEME]
Trunk Roads: Infrastructure and Professional Services
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow G4 0HF

Or telephone:

0141 272 7100

www.transportscotland.gov.uk

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