

How to claim for the effects on your property of new or altered roads



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Introduction

The Secretary of State for Transport appointed Highways England Company Limited as a strategic highways company with effect from 1 April 2015. As a result, Highways England became the highway authority for the strategic road network in England, in place of the Highways Agency.

Highways England has been set up by the Government to operate and improve the motorways and major 'A' roads in England. Our primary role is to deliver a better service for road users and to support a growing economy.

This booklet explains how compensation, often called 'Part I compensation', can be claimed for the effects on residential, agricultural and other property from the use of new roads or alterations to existing roads operated by Highways England.

It is not a complete guide to Part I compensation. Please ask if you have questions about your particular circumstances (**see Section 11 – How to contact us**). You may also consider taking independent professional advice (**see Section 4 – How do I claim?**).

1 – What is Part I Compensation?

Under Part I of the Land Compensation Act 1973 ('the Act'), compensation can be claimed by people who own and also occupy property that has been reduced in value by more than £50 by physical factors caused by the use of a new or altered road.

The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the property of any solid or liquid substance.

The cause of the physical factors must be the new or altered road in use. For example, if a road is altered, the noise and other adverse effects must arise from the traffic using the altered stretch of road. Part I compensation cannot be claimed for the effects of traffic further down the road where no alteration has taken place.

Under the provisions of the Act, a road is altered only when there is a change to the location, width or level of the carriageway or an additional carriageway is provided beside, above or below an existing one. Part I compensation is not payable when the carriageway has simply been resurfaced.

Part I compensation is also not payable where part of the affected property has been taken for the construction of the new or altered road. This is because the effect of the use of the road on the value of the rest of the property must be taken into account in calculating the compensation for the part of the property taken.

Loss of view or privacy, personal inconvenience and physical factors arising during the construction of the road are also not included under Part I compensation. However, we do compensate for damage to property arising from incidents on our road network but not under the provisions of Part I.

2 – Can I claim?

Residential property

To claim, you must have been the owner of the property before the date the road first came in to public use (known as the ‘relevant date’). You must also still be the owner on the date you claim.

For the purposes of making a claim under the Act, you are the owner of the property if you hold either the freehold or a lease that has at least three years left to run at the date you claim.

In addition to being the owner, you must also occupy the property as your home at the date you claim. The exceptions to this are where you have let the property to someone else or there is another legal reason preventing you from occupying, for example, there is a court order in place which removes your right to occupy the property.

Agricultural unit

You must be the owner and the occupier both before the new or altered road first came into public use and at the date you claim.

You must occupy the whole of the unit and own the freehold or a lease with at least three years left to run in the whole or any part of the unit at the date of claiming.

Other property

Small business premises are an example of the type of property that falls into this category. The property must not have an annual value above a set amount. At the time of publication, that amount is £34,800 but please note it is varied from time to time. The rating office at your local council will be able to tell you the annual value of your property.

You must be the owner and the occupier both before the new or altered road first came into public use and at the date you claim. You

must occupy the whole or substantial part of the property and own the freehold or a tenancy with at least three years left to run at the date of claiming.

Can I claim if only part of my property is residential?

Where a property has more than one use, for example, a shop with living accommodation above, then you can claim for the living accommodation. You may also claim for the business part of the property provided that business part has an annual value of not more than £34,800.

Can I claim if I transfer ownership of my property to another family member and continue to occupy it?

Although your occupation of the property has continued, you must still satisfy the ownership requirements described earlier in this section. So, if you transfer the property to a family member before you claim, you will not be eligible for Part I compensation. The family member to whom the property was transferred may be able to claim, providing the transfer took place before the date the road first came in to public use. He/she must also occupy the property unless they do not have a legal right to do so, as described earlier in this section. Whether a legal right exists will depend on the terms under which the previous owner continues to occupy the property. An informal arrangement where there is no tenancy agreement in place means a claim is unlikely to succeed.

Can I claim if I inherited my property after the road first came into public use?

Yes, provided the person from whom you inherited the property was the owner before the date the road first came into public use. Also at the date you claim, you must also be the owner of the inherited property. Ownership does not pass by inheritance immediately on the death of the previous owner. Further, being named as a beneficiary in a will does not mean that ownership has transferred. You are the

owner only when the legal title of the property has passed to you. You must also occupy the inherited property at the date you claim, if you have a right to do so, even if you still have another property to live in.

Can the personal representatives (executors/administrators) of a deceased person make a claim?

No. They obtain legal title by operation of the law and not by inheritance. As they have not inherited, they cannot take the benefit of those provisions described above.

3 - When can I claim?

The first day for claiming compensation is a year and a day after the new or altered highway first came into public use (known as the ‘first claim day’).

For most road schemes, we publish notices on our website:

<https://www.gov.uk/government/collections/compensation-claims-notice>

We do this at the time the road first came into public use.

We cannot accept claims made before the first claim day, except when you are selling your property or granting a lease (**see [Selling my property before the first claim day below](#)**). It is important that you claim as early as possible after the first claim day. Your right to compensation may be lost if your claim is not made and settled within the six years following the first claim day. Claims made after those six years will not be accepted (**see [Section 10 – The Limitation Act 1980](#)**).

Selling my property before the first claim day

Normally, claims cannot be made during the 12 months between the

new or altered road first coming into use and the first claim day. However, if you are selling your property or granting a lease during that period, you can lodge a claim with us but you must do so after exchanging contracts to sell and before completing the sale or granting the lease. We will not negotiate your claim or pay any compensation before the first claim day.

Your claim may not be accepted if, while waiting for your property to be sold, you move into another before the date of your claim. This is because you may no longer be able to meet the occupancy requirement **(see Section 2 – Can I claim?)**.

4 – How do I claim?

You can make a claim yourself or ask someone to do this for you. Anyone can act for you but most people prefer to use a professional property valuer or an agent that specialises in Part I claims to prepare and negotiate the claim on their behalf.

Making a claim yourself

Forms for making a claim are available from us **(see Section 11 – How to contact us)**.

You should keep a copy of your completed claim form. Using a type of postal delivery that provides you with proof of posting is advisable in case your claim does not reach us and we need to be sure that a claim was, in fact, made.

It is important that all the information asked for on the claim form is provided.

You need to be sure you are the owner of either the freehold or a lease with at least three years left to run and that you can prove this. If you do not occupy the property, you will need to show that you do

not have a legal right to do so. For example, if the property is let, we may ask to see a copy of the tenancy agreement.

Details of joint owners must be included in the claim. People with a different interest to yours in the property should submit their own, separate claim. For example, if they are the owners or long-term tenants of a different part of the same property, you cannot claim for them.

Please make sure you tell us about any changes relating to your claim, including your contact details.

Using an agent to act on your behalf

It is quite possible that one or more agents offering to act on your behalf have already approached you. It is not unusual for such approaches to be made well before the first claim day or even before the new or altered scheme has opened for public use.

We can accept only one claim on your behalf. The settlement of your claim may be delayed if you or any other person you have authorised makes further claims on your behalf. This is because we will need to clarify which agent will be representing you.

We have no authority over the agent you employ or any responsibility for his actions or conduct. This includes the terms of any contract or agreement between you and your agent, the content of your agent's literature and the way in which your agent may ask for payment of fees from you. We cannot comment on the terms of an individual contract or agreement, which are private matters between you and your agent. For these reasons, it is important that you are clear about the contractual arrangements you enter into with your agent, which could be legally binding. You should also be clear about what your agent will actually do on your behalf and what payments and other costs you may be asked to meet. This includes any charges if your

claim is not successful or if you choose no longer to employ the agent. It also includes any other payments in addition to the fee we will repay.

Paying for the services of an agent

We will refund what we consider to be reasonable valuation expenses incurred by you to employ an agent to prepare and negotiate your claim (**see Section 7 – What shall we pay for?**). We shall repay only one set of agent's fees. You need to keep this in mind if you consider changing your agent during the processing of your claim. The repayment of your agent's fee will only happen if your claim is successful and compensation is to be paid. When we make a formal offer of compensation to you, we will also ask whether you would like us to send the fee directly to your agent. Otherwise, the fee will be paid to you for you to settle with your agent at the time we pay you the agreed compensation.

The Highways Agency Method of calculating reasonable valuation expenses

We have worked closely with a number of the national firms of claims agents to develop a way of calculating the level of their fees. Using 'the Highways Agency Method', we will repay an amount to an agent for all the successful claims he/she has negotiated on a particular scheme. That way of working out fees recognises the increased costs an agent faces when working on a scheme with a small number of claims and the benefits obtained when negotiating a large number of claims. As it would not be reasonable to expect an agent to wait until all claims are settled, a notional fee per claim is calculated to be paid on the settlement of each claim. The amount of that fee is worked out by using the 'Highways Agency Fee Table' – a copy of which is available from our website or by post (**see Section 11 – How to contact us**). The figures shown in the Table are inclusive of all costs and expenses incurred. The Table is reviewed not earlier than twelve months from the previous review and, in line with government policy,

is revised in accordance with the Consumer Prices Index all items (CPI1). Highways England will continue to use 'the Highways Agency Method' for the payment of claimants' agents fees.

In calculating these fees we have taken into account the many activities agents tell us they carry out when negotiating claims. Namely:

making pre-instruction enquiries;

- taking written instructions from a client and confirming those instructions, often several years before a scheme commences;
- researching and storing data both in relation to the scheme and also the subject properties;
- communicating with Highways England and claimants to ensure claims are valid;
- dealing with correspondence during the course of the claims process and obtaining, for example, any necessary documents, for example, marriage/death certificates or those relating to divorce, dissolution of civil partnerships etc;
- handling those claims which can be submitted between road opening to traffic and first claim day;
- obtaining technical data (dust/noise impact studies etc) and comparable evidence of open market values before, during and after construction;
- inspecting property prior to the claim date;
- determining amount to claim, completing claim form and submission of claim to Highways England;

- negotiating claims with our independent valuer including attending meetings, undertaking site visits and submitting further/additional evidence of claim;
- submitting any offers of compensation to the claimant (including subsequent discussions and explanation of reasoning behind offer);
- considering whether to refer a dispute to the Upper Tribunal (Lands Chamber) and discussions with the claimant on the appropriate action;
- dealing with final agreement by claimant and reporting provisional settlement to Highways England;
- handling invoicing and payment enquiries.

Whatever method is used to determine the level of agent's fees, Highways England recognises that it cannot prevent agents seeking additional fees from their clients – that is a private matter and one that must be left to the parties concerned.

5 - How shall my claim be dealt with?

We will write to tell you we have received your claim form. It is important that you, or your appointed agent, contact us if you do not receive an acknowledgement letter within six weeks of your claim being sent to us.

Your claim will be checked to see that all the necessary information has been provided. Other checks will be carried out to establish that your claim is valid.

Once our initial checks are successfully completed, we will then ask one of our valuers to contact you, or your appointed agent, to discuss your claim and negotiate the amount of compensation. However, the discussion or negotiation of any amounts payable neither constitute an acceptance of your claim nor an offer of compensation. The valuer will report to us when the negotiations have been completed to help us to decide the final validity of your claim. If you have access to the internet, you will be able to check the progress of your claim on our website: <https://www.gov.uk/track-your-part-1-compensation-claim>

Please note: whether you use an agent or act for yourself, it is important that you do not enter into any financial commitment in the hope that you will receive compensation. This is because:

- something may arise during the processing of your claim that could lead it to being rejected;
- the amount of compensation offered to you may be less than you claimed or no compensation will be offered to you if your property has been devalued by less than £50;
- if your property is mortgaged, we are required by law to offer the compensation to the mortgage lender to reduce the amount you owe them. They may decide not to accept the compensation and it will be paid to you.

6 – How is compensation worked out?

Our valuer will weigh up the impact of physical effects arising from the road in use against the value of your property based on property prices current on the first claim day.

If you sell your property or grant a lease before the first claim day, your compensation will still be assessed on the basis of property values applying at the first claim day **(see Section 3 – Selling my property before the first claim day)**. Although the new owner may have altered the property by then, its condition will be assumed to be as it was on the date you claimed.

The compensation will be assessed based on the amount of traffic using the new or altered road at the first claim day. Account will also be taken of any future increase in traffic that could reasonably be predicted at the first claim day.

We may well have already undertaken to provide noise insulation for your property or pay a grant towards its installation. If so, the benefit of the insulation will be taken into account and it will be assumed for valuation purposes that it has been installed. If we have carried out other works as part of the road scheme, such as noise barriers, the benefit of those works will be taken into account.

Sometimes the value of property can be increased because of the road scheme; for example, noise levels are reduced because heavy traffic has been removed from roads closer to your property. Such benefits will also be taken into account.

If an amount of compensation has not been agreed or our valuer recommends that no compensation is payable, we shall write to tell you that and inform you no further action will be taken. If you disagree with our decision, you may refer your claim to the Upper Tribunal (Lands Chamber) for determination **(see Section 9 – What can I do if there is a dispute about my claim?)**.

7 – What shall we pay for?

Successful claims

If your claim is successful, we **will** pay:

- the agreed compensation for the decrease in value of your property.
- interest on your compensation. This is simple interest payable at a rate 0.5% below the Bank of England Base Rate so, when this rate is low little or no interest may be paid. It will be calculated from the date your claim was received by us to the date your compensation is paid. If your claim was received before the ‘first claim day’ because you were selling your property or granting a lease, the interest will be calculated from the first claim day.
- the reasonable fees of your agent (see Section 4 – Using an agent to act on your behalf). We will ask you to say whether you would like us to pay the fees directly to the agent or to you so that you can arrange for your agent to be paid.
- if our simple ownership check at the Land Registry is unsuccessful, the reasonable costs of a solicitor to prove your ownership of the property, including the cost incurred to retrieve title deeds. Your solicitor will be asked to invoice us for their costs, which will be paid after your compensation has been paid.
- any other costs for proving title will have to be met by you.

Even if your claim is successful, we **will not** pay:

- any charges your agent may seek from you that are additional to the reasonable fees agreed by Highways England for the preparation and negotiation of your claim

- the fees of more than one agent
- solicitor's costs that have been unnecessarily incurred for proving your ownership of the property
- any charges made by your mortgage lender relating to our legal obligation to offer the compensation to the lender before you.

Unsuccessful claims

If your claim is not successful, we will not pay any:

- compensation
- interest
- agent's fees
- solicitor's costs.

8 – How long does it take to settle a claim?

We aim to clear up all claims as quickly as possible. A small road scheme where there is a small number of claims, which are straightforward will usually take about six months to complete. For bigger road schemes where there is a large number of claims or if your claim is complex, the processing period may be up to 18 months. The process can take even longer for the very largest road schemes or if negotiations are especially complex. As already mentioned, if you have access to the internet, you will be able to

check the progress of your claim on our website:

<https://www.gov.uk/track-your-part-1-compensation-claim>

Because there can be no certainty about how long it will take to process your claim, it is important that you claim as soon as possible after the first claim day to be sure your claim does not become time barred (**see Section 10 – The Limitation Act 1980**).

9 – What can I do if there is a dispute about my claim?

We hope we will reach an agreement. But if we cannot, you may refer your case to the Upper Tribunal (Lands Chamber).

The Upper Tribunal (Lands Chamber) is the court of law appointed to deal with this type of dispute. The Tribunal will make the final decision on your claim but you should be aware that it has power to award costs to either party, so it is wise to take professional advice before referring your claim.

It is important that you make your referral no later than six years from the first claim day (**see Section 10 – The Limitation Act 1980**).

10 – The Limitation Act 1980

A person whose property has been reduced in value by more than £50 by physical factors caused by the use of a new or altered road must, within six years of the first claim day:

- either agree an offer of compensation [made by us] or,
- if agreement cannot be reached, ask the Upper Tribunal (Lands Chamber) to decide the amount of compensation.

After that six-year ‘limitation period’, we can no longer be ordered to pay compensation.

11 – How to contact us

If you have any questions about how to claim or if you would like a claim form or additional copies of this booklet:

- call our information line on **0300 123 5000**, or
- email us at **info@highwaysengland.co.uk**

A claim form and electronic version of this booklet are also available on our website at:

<https://www.gov.uk/government/publications/part-i-claims-claim-for-compensation-form>

Tips to help your Part I claim

1. Don't delay making your claim – do so as quickly as possible after the first claim day **(see Section 3 – When can I claim?)**.
2. Act quickly at all stages in the life of your claim so that it does not become time barred under the Limitation Act 1980 **(see Section 10 – The Limitation Act 1980)**.
3. If you are selling your property after the road has opened and before the first claim day, make sure you claim after exchanging contracts and before completing the sale **(see Section 3 – When can I claim?)**.
4. Make sure you have an owner's interest in the property at both the date the road opened and the date you claim and that this can be verified **(see Section 2 – Can I claim?)**.
5. Make sure you can verify you are occupying the property where you have a right to do so (as your home for residential property) at the date you claim **(see Section 4 – How do I claim?)**.
6. Tell us about all other persons who may also have an owner's interest in the property **(see Section 4 – How do I claim?)**.
7. Keep a copy of your completed claim form and use a type of postal delivery that provides you with proof of delivery in case your claim does not reach Highways England **(see Section 4 – How do I claim?)**.

8. We acknowledge all claims. If you do not receive an acknowledgement after six weeks contact us to check we have your claim **(see Section 5 – How shall my claim be dealt with?)**.
9. If you intend to ask an agent to make a claim on your behalf, be careful to appoint just one **(see Section 4 – How do I claim?)**.
10. Make sure all the information you provide to us is accurate and that you keep us informed of any changes, including those to your contact details **(see Section 4 – How do I claim?)**.
11. Make sure that you are able to prove your identity. If compensation is payable we will ask for copy documentation confirming your identity before payment is made.

Notes:

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