

EXPLANATORY MEMORANDUM TO
THE LAND COMPENSATION (ADDITIONAL COMPENSATION) (ENGLAND)
REGULATIONS 2024

2024 No. 915

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Matthew Pennycook MP, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Lucy Hargreaves, Deputy Director for Development Management, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Andrew Ward at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 4224 or email: PDMCorrespondence@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 Existing law allows public authorities (known as “acquiring authorities”) to acquire land without the consent of the owner via the making of a compulsory purchase order (CPO) in accordance with statutory procedures and providing there is a compelling case in the public interest. When making a CPO, certain acquiring authorities such as local authorities, Homes England and Development Corporations may include in the order a direction (“a section 14A direction” made in accordance with section 14A of the Land Compensation Act 1961 (“the 1961 Act”)) which restricts the assessment of compensation for the value of land taken by not allowing value to be attributed to:
- appropriate alternative development as described in section 14 of the 1961 Act, or
 - the prospect of a planning permission being granted (section 14(2)(b) of the 1961 Act).

The power to make a section 14A direction was introduced by section 190 of the Levelling-Up and Regeneration Act 2023 (“the 2023 Act”).

- 4.2 To be eligible to include a section 14A direction in a CPO, the acquiring authority’s scheme underpinning the CPO must be facilitating either affordable housing, health or educational development.
- 4.3 Where a CPO which includes a section 14A direction is confirmed, the acquiring authority may proceed to acquire the land and the assessment of compensation for the

land taken will be undertaken in accordance with the section 14A direction. Following acquisition of the land, if the acquiring authority's use of the land is not materially in accordance with the authority's stated intentions, the Secretary of State may, on an application made by a person who was entitled to compensation in respect of the acquisition (an "eligible person"), make a direction for additional compensation providing certain conditions have been met. Where a direction for additional compensation is made, the additional compensation which is to be paid will relate to the value of land taken without application of the section 14A direction.

- 4.4 This statutory instrument allows eligible persons, when submitting their claims for additional compensation, to include an amount to make good financial losses ("qualifying losses"). Qualifying losses are those losses suffered by an eligible person as a consequence of a CPO being confirmed with a section 14A direction included and not receiving the full market value for their land. This instrument also establishes:
- the procedure for making applications for directions for additional compensation;
 - the procedure for making claims for the payment of additional compensation (including provision about the costs of such applications or claims);
 - the steps to be taken for publicising or giving notice of a direction for additional compensation;
 - the rate of interest to be applied to amounts of additional compensation which are payable; and
 - how or when additional compensation (and any interest) is to be paid.

Where does the legislation extend to, and apply?

- 4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 The 2023 Act made reforms to the compulsory purchase compensation regime to ensure it doesn't deliver elevated levels of compensation for prospective planning permissions ("hope value"). It did this by introducing a power for certain acquiring authorities to remove from the assessment of compensation for land taken the value associated with the prospect of planning permission where it is justified in the public interest providing the CPO is facilitating affordable housing, health or educational development.
- 5.2 Where it appears the acquiring authority's use of land which was subject to a CPO that included a section 14A direction is not materially in accordance with the authority's stated intentions, an eligible person may make an application to the Secretary of State for a direction for additional compensation.
- 5.3 Where the Secretary of State makes a direction for additional compensation, additional compensation will be payable if the amount of compensation that would have been assessed without a section 14A direction ("alternative amount") is greater than the amount of compensation which was received by a person with the section 14A direction in place ("original amount"). Where the original amount of compensation received by a person is lower than the alternative amount, they may have suffered qualifying losses as a consequence. This instrument allows for the

payment of additional compensation to include an amount to make good qualifying losses suffered by an eligible person. It also establishes:

- the procedure for making applications for directions for additional compensation;
- the procedure for making claims for the payment of additional compensation (including provision about the costs of such applications or claims);
- the steps to be taken for publicising or giving notice of a direction for additional compensation;
- the rate of interest to be applied to amounts of additional compensation which are payable; and
- how or when additional compensation (and any interest) is to be paid.

What was the previous policy, how is this different?

- 5.4 Section 190 of the 2023 Act amended the 1961 Act to enable certain public sector acquiring authorities which are undertaking schemes to facilitate either affordable housing, health or educational development via compulsory purchase powers to include in a CPO a direction to apply section 14A of the 1961 Act. This means where a CPO is confirmed with a section 14A direction, the assessment of compensation for the value of land included in that CPO will not take account of either:
- the prospect of appropriate alternative development being established on the land, or
 - the prospect of planning permission being granted for other development on or after the relevant valuation date on the land.
- 5.5 Section 190 of the 2023 Act inserted new Schedule 2A into the 1961 Act. Schedule 2A contains provisions relating to the payment of additional compensation providing certain conditions are met where a CPO is confirmed with a section 14A direction included.
- 5.6 Paragraph 6(1) of Schedule 2A contains a power for the Secretary of State to make this instrument to provide that a payment of additional compensation may include an amount to make good qualifying losses suffered by an eligible person. “Qualifying losses” are defined in paragraph 6(2) of Schedule 2A whilst “eligible person” is defined in paragraph 1(6) of Schedule 2A. Paragraph 7 of Schedule 2A also provides a power for the Secretary of State to make the following provisions in this instrument:
- the procedure for making applications for directions for the payment of additional compensation;
 - the procedure for making claims for the payment of additional compensation (including provision about the costs of such applications or claims);
 - the steps which must be taken for the purposes of publicising or giving notice of a direction for additional compensation;
 - for interest to be applied to amounts of additional compensation that are payable;
 - how or when additional compensation (and any interest) is to be paid.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The 1961 Act provides the basic principles for the establishment of compensation for land which has been acquired through the use of compulsory purchase powers:
- Section 5 of the 1961 Act provides the rules for assessing that compensation. In particular:

- (i) Rule 2 provides that: “The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise”.
- (ii) Rule 2A states that the value of the land in rule 2 needs to be assessed in light of the no-scheme principle set out in section 6A.

The provisions in the remainder of Part 2 of the 1961 (including sections 14 and 17) have effect with respect to the assessment.

- Section 14 of the 1961 Act contains provisions about what should be considered in assessing compensation under rule 2 of section 5 of the 1961 Act for an actual planning permission, extant on the valuation date, or prospective planning permission. It also includes scheme cancellation provisions assuming that the scheme of development underlying the acquisition had been cancelled on the launch date and no action has been taken by the acquiring authority.
- Section 17 of the 1961 Act provides for the ability to apply for a Certificate of Appropriate Alternative Development to establish definitively for valuation purposes what appropriate alternative development may have been possible. Applications may be made by either party i.e. the landowner or acquiring authority.

6.2 Section 190 of the 2023 Act amended the Acquisition of Land Act 1981, the 1961 Act, the New Towns Act 1981, and the Town and Country Planning Act 1990 to enable certain types of public sector acquiring authorities, when submitting for confirmation a CPO of a certain type, to include a direction to apply section 14A of the 1961 which disapplies section 14 of the 1961 Act. The effect of this is where a CPO is confirmed with the inclusion of a section 14A direction, any value attached to establishing appropriate alternative development or the prospect of planning permission under section 14 of the 1961 Act (i.e. hope value) cannot be taken into account in the assessment of compensation for land taken.

6.3 Where it appears the acquiring authority’s use of land which was subject to a CPO that included a section 14A direction is not materially in accordance with the authority’s stated intentions of what it was going to do with the land set out when the CPO was confirmed, a person who was entitled to compensation in respect of the acquisition (an eligible person) may make an application to the Secretary of State for a direction for additional compensation.

Where the Secretary of State makes a direction for additional compensation, this instrument allows for the payment of additional compensation to include an amount to make good qualifying financial losses suffered by an eligible person as a consequence of them not receiving the full market value for their land which was subject to an compulsory acquisition under a section 14A direction.

6.4 This instrument also establishes:

- the procedure for making applications for directions for additional compensation;
- the procedure for making claims for the payment of additional compensation (including provision about the costs of such applications or claims);
- the steps to be taken for the purposes of publicising or giving notice of a direction for additional compensation;
- the rate of interest to be applied to amounts of additional compensation which are payable; and
- how or when additional compensation (and any interest) is to be paid.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no public consultation on the changes being introduced through this statutory instrument which reflect the 2023 Act. They are technical, procedural changes in nature which are necessary to give full effect to reforms set out in Schedule 2A to the 1961 Act (as inserted by section 190(2) of the 2023 Act). The reforms introduced by section 190 of the 2023 Act were subject to a public consultation in August 2022: Compulsory purchase - compensation reforms: consultation - GOV.UK (www.gov.uk) (<https://www.gov.uk/government/consultations/compulsory-purchase-compensation-reforms-consultation/compulsory-purchase-compensation-reforms-consultation#scope-of-the-consultation>). The Government response to that consultation was published in April 2023: Compulsory purchase - compensation reforms: consultation outcome - GOV.UK (www.gov.uk) (<https://www.gov.uk/government/consultations/compulsory-purchase-compensation-reforms-consultation/outcome/compulsory-purchase-compensation-reforms-consultation-outcome>).

The reforms introduced by section 190 of the 2023 Act were also subject to detailed Parliamentary scrutiny during the passage of the 2023 Act through Parliament.

7.2 Whilst no public consultation was undertaken on the changes being introduced through this statutory instrument, input was sought from professionals with technical expertise in compulsory purchase on the policy underpinning the changes. Comments were sought from stakeholders on the following:

- the scope of qualifying losses which should be allowed to be made good through the payment of additional compensation;
- the procedures for the making of applications to the Secretary of State for directions for additional compensation;
- the procedures for the making of claims to the Secretary of State for the payment of additional compensation;
- rate of interest to be applied to amounts of additional compensation which are payable.

8. Applicable Guidance

8.1 Guidance relating to the payment for additional compensation and the making good of qualifying losses will be included in an updated version of the Government's [Guidance on Compulsory Purchase Process and The Crichel Down Rules –](https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance) (<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>).

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the changes being made are procedural and in some limited circumstances arising from

this instrument there is likely to be a low impact on the public sector, business, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

- 9.2 The impact on business, charities or voluntary bodies from this instrument is low because it is restricted to limited circumstances. Where an applicant (which could be a business, charity or voluntary body) submits an application to the Secretary of State for a direction for additional compensation and the application is rejected, the cost of submitting the application will not be recoverable by the applicant. Where an application for a direction for additional compensation is allowed, and the Secretary of State proceeds to make a direction for additional compensation, the applicant will be able to recover the full costs of making the application from the acquiring authority. The Ministry estimates the cost of making an application for a direction for additional compensation will vary depending on the nature of the application:
- for small scale applications, the cost of submitting an application is likely to range between £500 and £2,999,
 - for medium scale applications, the cost of submitting an application is likely to range between £3,000 and £14,999, and
 - for large scale applications, the cost of submitting an application is likely to range between £15,000 and £39,999.

As the estimated economic impact of this instrument will not be greater than the \pm £10m Equivalent Annual Net Direct Cost to Business threshold, and therefore below the de minimis threshold, an Impact Assessments appraisal of the economic impact is not required.

- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The impact on the public sector is low. The changes implemented through this instrument will establish a general approach to limiting qualifying financial losses. This will result in claims which meet the criteria for qualifying financial losses set out in instrument being recoverable from public sector acquiring authorities.
- 9.5 The general approach to limiting qualifying financial losses through criteria set out in this instrument follows the principles established for disturbance compensation under rule 6 of section 5 of the 1961 Act. Whilst there is no direct equivalent to qualifying financial losses, disturbance compensation may include payment for any losses which are a reasonable consequence of dispossession of land (provided they are not too remote and are causally connected). This mirrors the criteria for qualifying financial losses set out in this instrument.

As such, disturbance compensation provides an indication of the type and amounts of losses which may be submitted as qualifying financial losses as part of an additional compensation payment.

- 9.6 A method to assess the potential financial impact on public sector acquiring authorities from claims being submitted for qualifying financial losses is to undertake a comparison with the payment of disturbance compensation under rule 5 of section 2 of the 1961 Act. The amount of compulsory purchase disturbance compensation paid to individuals is private information and is not generally a matter of public record unless it has been determined by the Upper Tribunal (Lands Chamber). Over the last 15 years the Upper Tribunal (Lands Chamber) has made determinations relating to nine cases which involved disputes about compulsory purchase disturbance compensation:

- (i) Warren James (Jewellers) Ltd v Watford Borough Council (COMPENSATION - compulsory purchase - redevelopment of retail centre - relocation of jewellery business - disturbance - temporary & permanent loss of profit) [2023] UKUT 153 (LC) (20 July 2023) = £634,132.85
- (ii) Pro Investments Ltd v London Borough of Hounslow (COMPENSATION - COMPULSORY PURCHASE) [2021] UKUT 201 (LC) (06 September 2021) = £55,413
- (iii) London Borough of Lewisham v Pearmain (COMPENSATION - Compulsory Purchase) [2021] UKUT 154 (LC) (25 June 2021) = £11,445.99
- (iv) Garner & Anor v Metropolitan Borough Council of Stockport (COMPULSORY PURCHASE - COMPENSATION - grazing land and part of car park) [2021] UKUT 28 (LC) (01 February 2021) = £48,445
- (v) Braithwaite v London Borough Of Enfield (COMPENSATION - Compulsory Purchase) COUNCIL [2020] UKUT 137 (LC) (01 May 2020) = £185.04
- (vi) Yazdiha & Anor v London Borough Of Brent (COMPENSATION – compulsory purchase – acquisition of flat in tower block - Costs) [2018] UKUT 74 (LC) (8 March 2018) = £10,000
- (vii) Bishop v Transport for London [2017] UKUT 405 (LC) (18 October 2017) = £46,815
- (viii) Walker v Blackburn With Darwen Borough Council [2014] UKUT 421 (LC) (24 September 2014) = £700
- (ix) Welford v Transport for London [2010] UKUT 99 (LC) (09 April 2010) = £7,891.50

An estimate of the range of qualifying financial losses which may be recoverable as part of an additional compensation payment from public sector acquiring authorities is between £185 to £635,000. Qualifying financial losses could in some circumstances be higher than compensation for disturbance losses because they may accrue over a longer period of time and disturbance compensation is usually for a one-off loss.

- 9.7 Another factor which will limit the financial impact on public sector acquiring authorities as a result of claims being submitted for qualifying financial losses is the low number of CPOs which are expected to be submitted each year for confirmation that will include a section 14A direction. Our initial estimate is the expected number of CPOs which will be submitted to the Ministry for confirmation each year and include a section 14A direction will be less than three. This is based on the current average of nine planning related CPOs being submitted for confirmation each year with the majority of schemes being of a commercial nature delivered through a private developer partnership. These types of schemes are thought to be unsuitable for delivery by a CPO which includes a section 14A direction. The financial impact on public sector acquiring authorities will be limited further as qualifying financial losses will only be claimable where a direction for additional compensation is made by the Secretary of State under paragraph 1(2) in Schedule 2A to the 1961 Act. A direction for additional compensation under paragraph 1(2) in Schedule 2A to the 1961 Act will only be made if the following conditions have been met:
- the acquiring authority did not complete the scheme underpinning the CPO as it originally intended; and
 - either that:

- (a) the period of 10 years beginning with the date on which the CPO became operative has expired, or
- (b) there is no longer any realistic prospect of the scheme underpinning the CPO being fulfilled as originally intended within that period; and
- the initial direction (i.e. the section 14A direction) would not have been confirmed on the basis of the scheme which the acquiring authority has undertaken.

As such, the expected instances where additional compensation, which may include an amount to make good qualifying financial losses, will be payable by public sector acquiring authorities will be rare.

- 9.8 Although compulsory purchase can be initiated by any public sector acquiring authority, most public sector acquiring authority do not make use of their compulsory purchase powers. Where they are used to deliver a major regeneration scheme it is usually a one-off event.
- 9.9 Giving the limiting factors outlined in paragraphs 9.5 to 9.8 above, it is considered the financial impact on public sector acquiring authority as a result of this instrument will not be significant.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through routine engagement with the sector and key stakeholders.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Matthew Pennycook MP, Parliamentary Under Secretary of State for Housing and Planning at the Ministry of Housing, Communities and Local Government has made the following statement:

The government considers that a statutory review provision is not an appropriate way of keeping these regulations under review because the regulations have no significant regulatory impact on businesses, in terms of the Statutory Guidance under section 31 of the Small Business, Enterprise and Employment Act: Determining whether it is appropriate to make provision for review (Post-Implementation Review Guidance) (September 2023) (“the Guidance”).

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:

“In my view the provisions of the Land Compensation (Additional Compensation) (England) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).