

**Advance payments under
Section 52 of the Land
Compensation Act 1973**

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Introduction

- Section 52 of the LCA 1973 provides a right to advance payment amounting to 90% of an acquiring authority's initial estimate of compensation (or any agreed figure)
- Purpose is to put claimants in a financial position so that they can re-order their affairs as early as possible – so that they can move home or to other business premises with the minimum of disruption. (see Explanatory Notes to **Housing and Planning Act 2016**)

Basic procedure (as currently in force)



1. Claimant must make request in writing, giving particulars of his interest
2. AP must be made within 3 months of written request, or if expired before date of possession, on the date of possession.
3. AP should be registered as local land charge
4. If AA's estimate is less than proper compensation, AA must pay balance;
5. If final figure is less than the AP, then excess is recoverable.

Problems



For Claimants

- Payments are often delayed or significantly below sum sought.
- Lack of clarity as to information that has to be provided leads to extended wrangling.
- Only way to challenge decision is by way of judicial review.
- Businesses still have to fund their move if the earliest date on which they can receive AP is date of possession.

For AAs

- Level of information provided is often insufficient to estimate amount of compensation
- Need to be cautious so as to avoid overpayment (recovery of excess may be difficult)

Between them the **Housing and Planning Act 2016** and **Neighbourhood Planning Act 2017** contain significant amendments.

- 1) Clarify information to be provided in request (s.52(2))
- 2) New duty to respond to request (s.52(2A))
- 3) Timing of advance payment (s.52(1B),(4))
- 4) Payment of interest (s.52B)
- 5) Clearer provisions in relation to repayment (s.52AZA)
- 6) Provide AP in relation to compensation for temporary possession (s.24 of NPA 2017)

Not currently in force.

(1) Greater clarity as to information which needs to be supplied with request for AP



- Current wording of ss.52(2) rephrased, now clearer that onus is on claimant to provide:

“information to enable the [AA] to estimate the amount of the compensation in respect of which the advance payment is to be made”

- Should be read with the DCLG Guidance on Compulsory Purchase Process (see questions 56-8) which suggests that such information should normally include:
 - *“a statement of the amounts claimed ascribed to recognised heads of compensation in the compensation code,*
 - *an explanation of how those amount are calculated,*
 - *and a summary of reasons why entitlement to compensation arises.”*

Power to make regulations detailing form and content of request



- New power inserted as s.52ZD to give Secretary of State/Welsh Ministers the power to make regulations specifying:
 - Form
 - Content

of applications by both claimants and mortgagees.
- This appears to respond directly to proposals put forward by Compulsory Purchase Association.

Possible content for future form?

- CPA proposed that the prescribed information should include:
 - Claimant details and details of interest (inc office copy entries; mortgage details; ancillary leasehold docs)
 - Property details including floor areas (with statement of measurement scheme) and break down of areas by type. Any outstanding statutory notices
 - Business details including last three years of full trading accounts; details of other offices; if it is intended to opt for total extinguishment under s.46 LCA 1973
 - VAT status

- Outline of the claim including where relevant:
 - Supporting calculations for compensation for land taken;
 - Basis for injurious affection claim including calculations and explanations
 - Basis of any disturbance claim including breakdown by heads of claim with supporting evidence or reasons.
- Even if not taken up by Govt, might form useful touchstone in any dispute about level of information provided.

(2) New duty on AA to give response within 28 days and request



- New s.52(2A) obligation on AA :
 - Within 28 days of receiving request to:
 - Determine if they have enough information to estimate amount of compensation
 - Require claimant to provide any further information required.
- Corresponding change to s.52ZC to impose same duty in relation to request for AP by a mortgagee.

(3) Time limit for payment brought forward

- No longer 3 months from request/date of possession
- Payment must now be made:
 - Before the end of the day on which a notice of entry is given or GVD is executed; or (if later)
 - Before the end of two month period from date of request/or date of receipt of further information requested under s.52(2A)(b)
- Only exception relates to **Lands Clauses Consolidation Act 1845** cases where the trigger date is still possession (s.52(1A)). Further modifications to the new s.52(4) by **Neighbourhood Planning Act 2017** make clear that the procedure is otherwise the same.

(4) Payment of interest

- Under the new s.52B interest must be paid on any amount paid late.
- Treasury regulations will specify the level of interest (s.52B(4))
- If the amount of the AP is greater than amount of compensation finally determined, claimant must repay “*any interest under this section that is attributable to the amount by which the advance payment exceeded the actual amount*”
- Treasury regulations may also address timing of interest payments?

(5) New provisions re repayment

- Ss. 52(5) to be repealed and replaced with new s.52AZA

Specifies:

- That an excess between estimated amount and final compensation amount must be repaid
- If found that claimant not entitled to any element of compensation it is to be repaid
- If notice to treat is withdrawn or ceases to take effect before possession then AA can require repayment of sum by notice
- Where claimant disposes of his interest after AP the AA may give notice requiring repayment to the successor in title (by ss.52AZA(5)), provided AP is registered as a local land charge
- Equivalent provision re mortgagees in s.52ZE

New procedure (when/if in force)

- 1) Claimant makes request, providing information to enable AA to determine initial estimate of compensation
- 2) AA must come to a view within 28 days (either initial estimate or request for further information)
- 3) AA must make payment either at date of GVD/notice of entry, or within 2 months of request/provision of further info
- 4) AP should be registered as local land charge
- 5) If AA's estimate is less than proper compensation, AA must pay balance
- 6) If final figure is less than the AP, then excess is recoverable
- 7) If land not acquired then AP can be recovered from claimant or successor in title.

Further amendment under Neighbourhood Planning Act 2017



- Some minor changes to s.52.
- Section 24 of NPA 2017 extends advance payment to compensation for temporary possession (see Simon Pickles' talk to follow)
- Duty to make AP arises after notice of intended entry under s.20 NPA 2017. Otherwise equivalent.
- Provision for interest on late AP at s.25 NPA 2017

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