

Compulsory Purchase and Compensation

A Guide to Compensation
for **Business** Owners
and Occupiers



Land &
Property
Services
Seirbhísí
Talún &
Maoiné



Department of
Finance
An Roinn
Airgeadais
www.finance-ni.gov.uk

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Foreword

Land & Property Services (LPS) is part of the Northern Ireland Department of Finance. It provides advice to government departments and other public bodies on the assessment of compensation following the exercise of compulsory purchase powers.

If you need to know whether your property is likely to be affected by a proposed scheme or what your rights are in connection with the proposal, you should contact the authority promoting the scheme.

This booklet is intended as a guide for owners and occupiers of **business** property that is affected by compulsory acquisition schemes. The general principles set out in it will be followed by LPS Valuers when assessing claims for compensation arising out of a compulsory acquisition scheme. Other booklets deal with the general principles which will be followed when assessing claims from the owners and occupiers of **residential** and **agricultural** property.

The right to compensation may arise as a result of the compulsory acquisition of part or all of your land or a right over that land (“land” includes the buildings on it). You may also have a right to compensation if your land is adversely affected by the construction and use of development works in close proximity but where no land is actually acquired from you. Both situations are covered in this booklet.

Legislation in Northern Ireland gives many authorised bodies (referred to in this booklet as “acquiring authorities”) the power to acquire land compulsorily where the landowner or occupier is not willing to sell by agreement, or where it is not practical for the effective planning of large schemes to acquire the land by agreement. In some cases, an acquiring authority may be able to satisfy their requirements by the creation of a new right over land rather than needing to seek full ownership. For example, in the case of major infrastructure projects it may be necessary to realign utilities and services over land that adjoins the project. The principles of compensation for the acquisition of new rights over land are the same as for the actual acquisition of land.

The law relating to compulsory purchase is complex. Of necessity, the information set out in this series of booklets is a simplification and cannot cover every circumstance that may arise. The information contained in this booklet is not intended to be a complete guide to the law and carries no legal force.

If your property is, or seems likely to be, affected in any of the ways described in this booklet, you should seek advice from a professionally qualified person such as a surveyor or solicitor, who can advise you on your rights and act on your behalf if appropriate. The acquiring authority may meet the reasonable professional fees incurred in preparing and negotiating your compensation claim. The Royal Institution of Chartered Surveyors operates a Compulsory Purchase Helpline which can be contacted on 02476 868555. This helpline puts you in touch with experienced chartered surveyors in your local area who will provide up to 30 minutes of free advice.

1. Introduction

Use of Compulsory Purchase Powers

- 1.1 Many government departments and bodies with statutory powers possess compulsory purchase powers. These enable them to acquire land and rights over land for specific purposes set out in legislation. Land includes buildings on the land. Common purposes include the construction and alteration of roads, urban regeneration, housing redevelopment, industrial development and the provision of new educational and health facilities.
- 1.2 In Northern Ireland the process involves the making of a vesting order by the acquiring authority. The authority must publish a notice of its intention to make a vesting order in at least two papers which circulate in the locality of the proposed works. It must also write individually to those with an interest in the land which is affected. There is a period for objections and if any are received and not subsequently withdrawn the authority may decide to arrange a local inquiry. If the local inquiry is supportive of the proposals the authority may make the vesting order. When it does it must publish a notice stating that the vesting order has been made and name a place where a copy of the vesting order and a map can be inspected at all reasonable hours. If there is no challenge to its validity within one month, the vesting order becomes operative one month after notice of the making of the vesting order is published.
- 1.3 On the operative date, ownership of the vested land transfers to the acquiring authority. As soon as possible after the vesting order becomes operative, the acquiring authority must write to everyone, from whom land has been acquired, giving them notice that the vesting order has become operative and where a copy of it may be seen. It is usual practice by acquiring authorities to enclose a copy of the vesting order and a claim form for compensation with this letter.

The Compensation Code

- 1.4 The rights to compensation and methods and procedures for assessing the correct amount are derived from what is commonly referred to as the “Compensation Code”. This is made up of Acts of Parliament, case law and established practice.
- 1.5 This booklet is aimed at lay people so avoids quoting extensive case law or legislation. However, the principal Statutes which are relevant are the Lands Tribunal and Compensation Act (NI) 1964, the Planning and Land Compensation Act (NI) 1971, the Land Acquisition and Compensation (NI) Order 1973, the Land Compensation (NI) Order 1982 and the Planning Blight (Compensation) (NI) Order 1981.

Terms Used in Compulsory Purchase

- 1.6 Wherever possible the use of jargon and technical language has also been avoided. However, there are a number of important terms which have a specific meaning in compulsory purchase matters. These are explained in Appendix 1 to this booklet.

Useful Contacts

- 1.7 There are a number of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase. A list of useful contact names, addresses and telephone numbers is set out in Appendix 2 to this booklet.

How to use this Booklet

- 1.8 The guidance contained in this booklet is divided into two principal sections: Compensation where land is taken and Compensation where no land is taken. It also includes a section on the Blight Notice procedure which is a process by which you may bring forward the acquisition of your property if it has

become “blighted” as defined in planning law.

- 1.9 In order to gain a better understanding of the entire subject you should read the whole booklet at least once then return to the sections which are relevant to your circumstances.

2. Compensation When Land is Taken

General Principle

- 2.1 Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that you should be no worse off in financial terms after the acquisition than you were before. Likewise you should not be any better off.
- 2.2 Because the effects of the vesting order on the value of a property are ignored when assessing compensation it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the vesting order.

Valuation Date

- 2.3 The valuation date for the assessment of compensation is the date the title of the land vests in the acquiring authority when the general vesting declaration procedure is followed. In Northern Ireland this is the same for all land affected by the scheme and is known as the operative date of the vesting order.

Heads of Claim

- 2.4 Depending upon the particular circumstances in each case, compensation can be claimed under the following categories, which are referred to as “Heads of Claim”:
- **Value of the Land Taken;**
 - **Severance and Injurious Affection:** This means the depreciation in value of land you retain where part only of your land holding is acquired;
 - **Disturbance:** This Head of Claim is only available to occupiers of the property. It represents the costs incurred and losses sustained as a result of being disturbed from the occupation of the property; and
 - **Fees:** The reasonable surveyor’s fees incurred in preparing and negotiating a compensation settlement together with reasonable solicitor’s fees for any conveyancing are normally paid by the acquiring authority.
- 2.5 A more detailed explanation of the basis of compensation under each of these heads of claim is set out below.

Compensation for Land Taken

- 2.6 When dealing with land for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, such as a specialized use of land for which there is no general market, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property. Each is dealt with separately below.

Land for Which There is a General Market or Demand

Disregard Compulsion

- 2.7 No addition to or reduction from the value of the land is made to reflect the fact that it is being compulsorily acquired. The acquisition of the land is assumed to be an open market transaction between willing parties.

Market Value

- 2.8 The value of the land is based upon what the land might be expected to realise if sold in the open market by a willing seller.
- 2.9 In assessing the open market value of your land you are assumed to be a willing seller. However, it is assumed that you would only be willing to sell at the best price which you could reasonably achieve in the open market.
- 2.10 This open market value may be based on the existing use of the property. However, it may reflect development value and any inherent value that could be obtained by selling to someone with a special need for the land or with a special interest in it provided it can be demonstrated that the development value or additional inherent value would have existed in the absence of the scheme which gives rise to the compulsory acquisition. An example of additional inherent value is 'ransom' value which arises where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Planning Assumptions

- 2.11 When considering the potential development value of your property you may assume that permission would be granted for particular uses of the land. Broadly the planning permissions which may be assumed are as follows:
- Any existing permission on the property;
 - Any permitted development which has not yet been implemented;
 - Any development which would be in accordance with an allocation in a development plan; and
 - The development which the acquiring authority proposes for the land. (However, the valuation cannot take into account a specialist use which could only be undertaken by a body with statutory powers. This is known as "Special Suitability").
- 2.12 It is important to note that whilst you can assume you would have obtained planning permission for the use of the acquiring authority's scheme, you cannot assume that the scheme itself would take place. So, for example, if your property is being acquired as part of a major residential development you can assume that your property would have been granted a residential planning permission. However, you have to consider that in isolation; you cannot assume that all of the other parts of the acquiring authority's scheme, such as the new roads, open space, community facilities, etc will occur.

- 2.13 Where there is a disagreement as to the planning permission to be assumed you may, in certain circumstances, seek a "Certificate of Alternative Development Value" from the planning authority which will confirm whether a particular use or list of uses would have been granted planning consent if there had been no vesting order. The procedure for dealing with this is similar to that applied when submitting a planning application but there are a number of differences. *Ask your professional adviser about these.*

Unlawful Use

- 2.14 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, may not be taken into account
- 2.15 A use which is unlawful is one which could be subject to planning enforcement proceedings. Therefore, if your property is used for a purpose which requires, but does not have, planning permission, no account can be taken of any increase in value attributable to that use if it could be terminated through enforcement proceedings. If, however, that use could not be subject to enforcement proceedings (for example, the use had been undertaken for such a length of time that a Certificate of Lawful Use would be granted) any increase in value attributable to that use should be taken into account.

Land for Which There is No General Market or Demand

Equivalent Reinstatement

- 2.16 If the property to be acquired is used for a purpose for which there is no general market or demand it is not possible to arrive at a value by adopting the market value approach. In these circumstances it may be appropriate to assess compensation on the basis of how much it would cost to reinstate the use elsewhere. Both freeholders and leaseholders can claim on this basis although it is more difficult to justify if you have only a short term lease.
- 2.17 This basis of compensation is unlikely to be applied to business premises as it relates to a use of property for which there is no general market or demand, for example, a church or the specialised premises of an enthusiasts club. In most instances there will be a market or demand for business properties. However, there may be circumstances where it is appropriate.
- 2.18 There are four general tests that must be satisfied to justify payment of the reasonable cost of reinstatement:
- The land must be **used for a purpose** which would continue if it was not to be acquired;
 - There must be no general demand or market for land for the purpose;
 - There must be a “bona fide” intention to reinstate – this is generally a question of fact; and
 - If the cost of reinstatement would be disproportionate to the value of the whole enterprise then compensation for equivalent reinstatement may not be allowed. The Lands Tribunal has discretion as to whether to allow a claim on this basis.
- 2.19 It must be emphasized that in these circumstances it is the purpose that is to be re-instated and not the building itself. This means that the resultant building could be much smaller than the existing structure. An example of this could be when a church is reinstated. If the building was originally erected to hold a congregation of 1000 but the current users number only 400 then the purpose will be reinstated by provision of a building sufficient to hold the lower figure.
- 2.20 If you think your property is used for a purpose for which there is no general market or demand you should seek professional advice from a surveyor or solicitor as compensation on this basis is more complicated.

Acquisition of Part Only

- 2.21 In addition to the value of the actual land acquired there may be other issues to consider if the acquiring authority only acquires a part of your land. These are summarised below.

Severance & Injurious Affection

- 2.22 If you have a part only of your land acquired there may be an additional entitlement to compensation in respect of the adverse effect on the land you retain.
- 2.23 The compensation is for the depreciation in value of the retained land and is referred to as “severance” and/or “injurious affection”.
- 2.24 The two elements of this head of claim should be considered in isolation.

Severance

- 2.25 Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a highway is built across a car park it may no longer be possible to have access by vehicle to part of the car park, rendering it virtually useless and therefore less valuable.

Injurious Affection

- 2.26 Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on and use of the land acquired by the acquiring authority for the scheme. For example, even though only a small part of its car park may be acquired for a new road, the impact on a commercial building of increased noise and vibration from traffic could be considerable.
- 2.27 It is the impact of the whole of the proposed scheme that is to be considered, not just the impact arising from use of the area acquired from you. Compensation is claimable both for the construction of works and their subsequent use.
- 2.28 Therefore it can be seen that both severance and injurious affection can reduce the value of the retained land. Severance occurs when the land becomes separated whereas injurious affection occurs as a result of the construction and use of the acquiring authority's scheme.
- 2.29 This can be demonstrated with a simple hypothetical example. You might own a business unit of say 1,000m² which was split into two equal bays of 500m² and one of those bays gets acquired for the construction of a new railway. In these circumstances, you would receive compensation for the land acquired based on its market value.
- 2.30 If you could demonstrate that there was greater demand for, and value in, units of 1,000 m² than 500 m² and that accordingly the retained property actually depreciated in value as a result of not being held with the part acquired, the compensation would include an amount in respect of severance.
- 2.31 If it could also be demonstrated that the value of the retained land had depreciated as a result of being adjacent to a railway line the compensation would also reflect this reduction in value under the heading of injurious affection.

"Before and After" Approach

- 2.32 If you only have a part of your property acquired, the claim for land taken, severance and injurious affection can all be dealt with together by adopting a "Before and After" approach. This is in line with the principle of equivalence which states that you should be in the same position in monetary terms after the acquisition as you were before.
- 2.33 The way this works is to agree the value of the whole of the property in the "no scheme world" (this means disregarding the development that gave rise to the vesting order) prior to acquisition and to compare this with the value of what you are left with in the "scheme world" (this means taking that development into account) after the acquisition. The difference between the two (if any) should be payable as compensation.
- 2.34 The "Before and After" approach can also be used to take account of betterment which is considered below.

Betterment

- 2.35 In assessing compensation, the acquiring authority will have regard to any increase in value of land you retain that is adjacent to or adjoining the land acquired. This is generally referred to as "betterment".
- 2.36 Betterment is the opposite of injurious affection. There may be instances where the scheme of the acquiring authority may increase the value of your retained land.
- 2.37 An example of this would be if you owned development land, part of which is acquired for the construction of a new road and that new road enhances access to the remaining land thereby increasing its value. In such circumstances, the acquiring authority will seek to offset this increase in value against the compensation that is payable in respect of the land acquired.

- 2.38 The acquiring authority should, of course, be able to explain their grounds for considering that their proposal has generated an increase in the value of your retained land.
- 2.39 Where betterment occurs it may sometimes be appropriate to adopt the “Before and After” approach referred to above. This will take into account the issues of land taken, severance, injurious affection and betterment.

2.40 In an extreme case you would receive no compensation because the enhancement in value of the retained land is equal to or greater than the compensation for the land acquired. The least compensation you can receive is nil. In no circumstances can the acquiring authority expect you to pay them.

Material Detriment

- 2.41 There is another course of action which you may be able to take if the authority has acquired only part of your property. It may be possible to advance a claim for “material detriment”, seeking to make the authority acquire the remainder of the property interest also. Such a claim must be made within six weeks of the operative date of the vesting order.
- 2.42 Where part only of a business premises is to be acquired you may require the authority to acquire the whole where the part retained will be less useful or less valuable in some significant degree. In the case of a dispute the issue will be determined by reference to the Lands Tribunal. **This can be a complicated matter which you should discuss with your professional adviser.**

Disturbance Compensation

- 2.43 In addition to being compensated for the value of the land taken and severance and injurious affection you are also entitled to the losses occasioned by being “disturbed” from land or premises. The right to compensation for disturbance only applies if the compensation for the land taken is based on existing use value. This is considered further at paragraph 2.62.
- 2.44 The general principles of disturbance are summarised below.

2.45 For the most part the right to disturbance compensation is restricted to occupiers.

- 2.46 Depending upon the particular circumstances of the acquisition, disturbance compensation may be based on the costs of relocating the business or the cost of extinguishing it. It is usually incumbent on you to seek 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.
- 2.47 Occasionally a business will be willing and able to relocate but the acquiring authority will still seek to base compensation on extinguishment. This can occur where the costs of relocating the business are greater than the value of the business. In these circumstances there is a strong case to say that the correct basis of compensation is extinguishment as no prudent businessman would incur the costs of relocating the business, if these far exceeded the end value of the business.

2.48 Generally speaking there is an accepted rule that the cost of total extinguishment must always form the ceiling to compensation. This may be open to challenge. **Each particular case must be treated on its merits and you should seek professional advice on business valuation issues.**

2.49 There is no obligation on an acquiring authority to provide alternative premises. However, most will assist claimants to identify potential relocation properties available on the market. **Accordingly, you should contact the acquiring authority and local estate agents at an early stage to register property search requirements.**

2.50 In certain circumstances, for example town centre redevelopment, the acquiring authority or developer may be prepared to offer premises within the new scheme. However, this may entail a move to temporary accommodation whilst the development is being built followed by a further move into the new scheme once it is complete. This may lead to increased costs which the acquiring authority may not be prepared to compensate if it can demonstrate that suitable properties were available outside the scheme and hence a double move was not necessary. **It is therefore prudent to establish the position before accepting such an offer.**

2.51 Examples of items which can be claimed in various scenarios are set out below.

Relocation

2.52 You are entitled to claim the reasonable costs and expenditure which arise as a natural and reasonable consequence of having to relocate your business as a result of the acquisition of the property.

2.53 Typical items of compensation for relocation include:

- Removal expenses;
- Legal fees arising from the acquisition of a replacement property;
- Stamp duty land tax arising from the acquisition of a replacement property;
- Surveyor's and architect's fees arising from the acquisition of a replacement property;
- Special adaptations to your replacement premises;
- Temporary loss of profits during the period of the move;
- Diminution of goodwill following the move (reflected in reduced profits);
- Depreciation in the value of stock;
- Notification of new address to customers; and
- New stocks of stationery due to change of address.

2.54 This is not an exhaustive list. Every loss should be considered on its merits and should be recoverable if it is a natural, direct and reasonable consequence of being disturbed. **The onus is on the claimant to justify his or her claim. Therefore it is up to you to prove that you should be compensated rather than expect the acquiring authority to come up with anything. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the acquisition of your property. You should keep all relevant documentary evidence such as receipts, invoices and fee quotes. You should also keep a record of the amount of time you have spent on matters relating to the compulsory purchase of your property.**

Some items that are not compensatable under disturbance include:

- Purchase price or rent of new premises;
- Cost of adaptations to new property that are value for money; and
- Double removal costs where one move would have been reasonable.

Extinguishment

Typical items of compensation for extinguishment include:

- The value of the business goodwill;
- Loss on forced sale of stock, vehicles and plant and machinery;
- Redundancy costs; and
- Administrative costs of winding up the business.

As with the relocation items listed above, this list is not intended to be exhaustive and any other matters which can be demonstrated to occur as a reasonable and natural consequence of the acquisition may be compensatable.

- 2.55 It should be noted that disturbance compensation based on extinguishment does not cover the same items as disturbance compensation based on relocation. This reflects the two different circumstances, namely winding up costs or removal costs respectively. Only one basis can be used.

Relocation or Extinguishment

- 2.56 **In most cases you will be expected to try and relocate your business if possible. You cannot choose to take compensation for extinguishment if you are able to relocate and it is economically viable for you to do so.**
- 2.57 There is one set of circumstances when you would be statutorily entitled to choose compensation based on extinguishment if you wished. The criteria to be fulfilled are:
- You are the sole proprietor of the business or it is run jointly by you and your spouse.
 - You are aged 60 or over on the date that you give up possession.
 - On that date the land is or forms part of a property with an annual (rateable) value not exceeding a “prescribed amount” (£19,865 in the 2015 Valuation List).
 - You have not disposed of the goodwill of the business and you give the acquiring authority an undertaking that you will not at a later date do so nor, within a specified area will you engage in the same or substantially the same business as that which you undertook on the land acquired.

- 2.58 In all disturbance cases, whether on the basis of relocation or total extinguishment, there is a duty on the claimant to “mitigate his loss”. This means that you must act reasonably at all times and take all rational and reasonable steps to avoid incurring additional losses where possible. If the acquiring authority is able to show that your losses were greater than they might have been, due to unreasonable behaviour on your behalf, the compensation should be adjusted to reflect this.

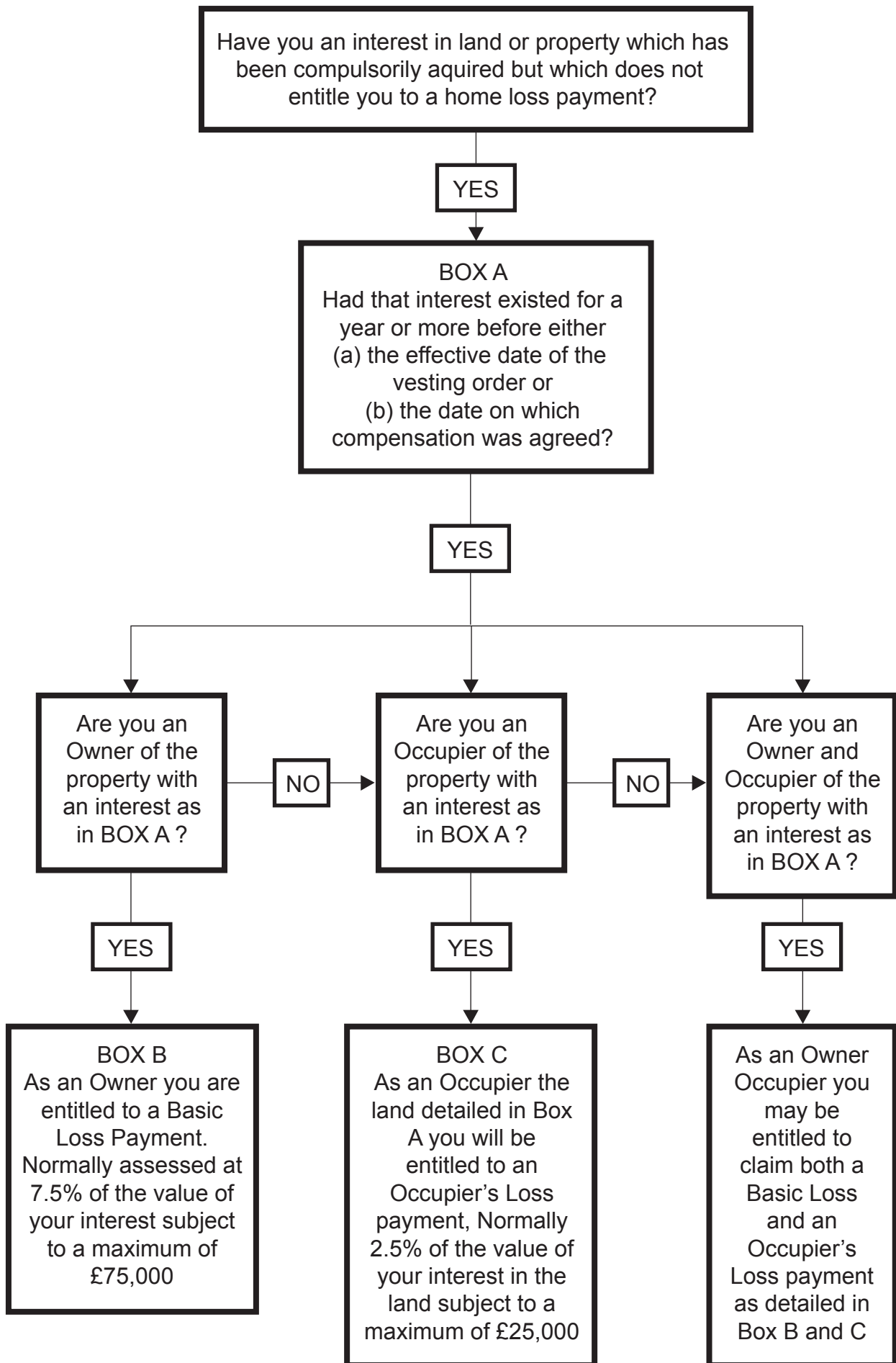
No Disturbance When Land Value Reflects Development Potential

- 2.59 You are only entitled to compensation for disturbance where the compensation for land taken has been based upon the market value for its existing use. Where the land compensation is based upon the development value of the land there is no entitlement to disturbance compensation.
- 2.60 This restriction only applies within a single claim. Where there are two or more claimants within one property (for example a landlord and a tenant), the actions of one claimant will not bind the other. So, for example, if the landlord of a property submits a claim based on the development value of his freehold interest in the property, this will not preclude the tenant being compensated for the existing use value of his leasehold interest plus the disturbance compensation for having to move out of the property.

Loss Payment

- 2.61 For any vesting order that becomes effective after 12th May 2016, If you have a qualifying interest in land for which you are not entitled to receive a home loss payment, you may be entitled to a loss payment in addition to any other compensation due. This is an additional amount to reflect and recognise the inconvenience and disruption caused by the acquisition. It is split into the basic loss payment, payable to the owner, which relates to the value of your interest in the property and an occupier’s loss payment, payable to the occupier. An owner/occupier would receive both elements. A number of criteria have to be fulfilled to qualify for the payments. These are summarised in the figure A.

Figure A



Basic loss payment

2.62 To qualify for a basic loss payment:

- You must have an interest in the land (whether freehold or leasehold);
- You must have held that interest for a year or more ending on whichever was the earliest of;
- The date on which the vesting order was operative; or
- The date on which compensation is agreed between the person and the acquiring authority.

Occupier's loss payment

2.63 In addition to a basic loss payment you will qualify for an occupier's loss payment if you occupied the land for the period referred to in paragraph 2.62 above.

Amount of Loss Payment

2.64 The basic payment is 7.5% of the value of the interest in the land concerned, subject to a maximum of £75,000.

2.65 The Occupier's loss payment is subject to a ceiling of £25,000. Within that limit it is whatever is the highest of 2.5% of the value of the interest in the land concerned or either the "land amount" or "buildings amount" as defined within the Land Acquisition and Compensation (Amendment) Act (Northern Ireland) 2016. The methodology for calculating these amounts is complex, and you should seek professional advice.

2.66 If you are being displaced from your home as well as your business, you may be entitled to a home loss payment. Please refer to the Compensation for Residential Owners and Occupiers Guide.

Accommodation Works

2.67 Accommodation works comprise anything which is carried out or paid for by the acquiring authority, usually situated on your retained land, in order to reduce the claim for severance, injurious affection and/or disturbance. Examples are walls, fences and the re-grading of driveways.

2.68 There is no statutory right to have accommodation works provided for you but it is normal practice for acquiring authorities to suggest and discuss the provision of such works where it is cost effective because compensation otherwise payable is reduced as a result of the works.

Occupiers with no Compensatable Interest in Land

2.69 There is a limited right of compensation to a displaced claimant who was in lawful occupation of land, but has no "compensatable" interest in the land. This may include tenancies at will, tenancies on sufferance and licences. Each of these amount to occupation of land or buildings by some form of agreement with the owner which is less than a formal lease and, in most cases, they may be terminated at short notice by either party. See Appendix 1 for a fuller definition.

2.70 Compensation should reflect relocation costs and any loss of goodwill. Regard is given to the amount of time the land occupied would have been likely to have remained available for the purposes of the business and to the availability of other land suitable for that purpose.

2.71 The rights to compensation on the basis of statutory extinguishment to a business proprietor over the age of 60 also apply. These are set out at paragraph 2.56.

Advance Payment of Compensation

2.72 Following the coming into operation of the vesting order you may request the acquiring authority to make an advance payment on account of the compensation payable by them for the compulsory acquisition of any interest in the land. The advance payment request may be made before or after possession of the land has taken place. The authority is obliged to make the payment within three months of receipt of the request.

2.73 The level of advance payment is 90% of either:

- The agreed compensation; or
- Where there is no agreement, the acquiring authority's estimate.

2.74 If the property is mortgaged the acquiring authority will reduce the advance payment by the amount of the outstanding mortgage sum. However, in some circumstances it may then be possible to require the authority to make an advance payment direct to your mortgagee.

2.75 Interest on compensation is payable from the operative date of vesting until compensation is paid – see Section 6.

3. Compensation When No Land is Taken

3.1 The procedures outlined so far apply only where land (or a new right over land) is acquired. However, a right to compensation may also arise in limited circumstances when no land is taken but when statutory powers are exercised.

Compensation can be claimed for:

- A reduction in the value of your land caused by the **Execution** (the construction) of Public Works; and
- A reduction in the value of your land caused by the subsequent **Use** of Public Works. Greater detail is provided in the text which follows.

Reduction in Value Caused by the Execution of Works

3.2 Compensation is payable when a loss occurs because some right in property (as opposed to the actual property itself) is taken away or interfered with. The requirements are that the injury done must:

- Be authorised by statutory power;
- Arise from that which would, if done without the statutory authority, have been actionable at law, for example as a nuisance;
- Arise from a physical interference with some right, public or private, which attaches to the land; and
- Arise solely from the execution of the works and not as a result of their subsequent use.

Valuation Date

3.3 The relevant date for the assessment of compensation is the date at which the loss occurred. This is likely to be the date of interference with the right in land.

Basis of Compensation

3.4 Were it not for the fact that the works giving rise to the loss are authorised by an Act of Parliament a claim for damages could be pursued.

3.5 **You must be able to demonstrate that the loss is a natural and reasonable consequence of the execution of the works.** Compensation is based upon the reduction in value of the land which had

benefited from the right which has been interfered with. **Business losses cannot be claimed unless they result in a reduction of the land value.**

Reduction in Value Caused by the Use of Public Works

3.6 This right to compensation is set out in Part II of the Land Acquisition and Compensation (NI) Order 1973. It is commonly referred to as a “Part II claim”. It applies to certain “public works” for example a highway, an aerodrome or other works provided under statutory powers. In addition to new works the provisions cover substantial alterations and changes of use to existing works but not intensification of a use (unless alterations are also carried out).

3.7 **In order to be able to submit a claim you must own a qualifying interest in the land before the relevant date.**

The Relevant Date

3.8 If the public works in question is a highway, the relevant date is the date on which it was first open to public traffic. With regard to any other public works it is the date on which they were first used after completion.

Qualifying Interest

3.9 In the case of business premises, a qualifying interest is one which has an annual (rateable) value not exceeding a prescribed amount. This is £19,685 in the 2015 Valuation List.

Valuation Date

3.10 Compensation is based upon prices current on the first claim day, which is 12 months after use of the public works first commenced. Interest is payable from the date the claim is submitted until payment is made.

Basis of Compensation

3.11 Compensation is based upon the depreciation in the value of the land due to the “physical factors” caused by the use of the public works.

There are seven physical factors referred to in the legislation:

- Noise;
- Vibration;
- Smell;
- Fumes;
- Smoke;
- Artificial light; and
- Discharge onto the land of any solid or liquid substance.

3.12 Any depreciation in value which is attributable to reasons other than these seven specific factors is not compensatable. For example, the loss of a view is not compensatable.

3.13 The important distinction between this and a claim for the execution of works (described at paragraph 3.2) is that it is the use of the works which must cause the depreciation. For example, if a motorway is constructed in close proximity to an office, any claim under Part II must relate to the depreciation in value caused by the noise and other physical factors associated with the traffic using the road and not to the physical existence of the highway.

3.14 **If you sell your property before the first claim day (see paragraph 3.10) you must make a claim between exchanging contracts and completion or you will lose your right to compensation.**

4. Compensation for Adverse Effects of Development

- 4.1 In addition to decreasing the value of land, development works may cause inconvenience and discomfort to people living in the area. An obvious example is the development of a new motorway.
- 4.2 Although financial compensation can be paid for the reduction in value of your property if the requirements of the Compensation Code are fulfilled, this will not remove the source of the discomfort. Acquiring authorities have therefore been given certain discretionary powers to take action which will help to mitigate the adverse impact which the existence or use of the proposed works will have on the surroundings of the works.
- 4.3 Such measures can include acquiring more land than that required for the actual development in order to carry out earth-moulding and other landscaping works.

5. Fees

- 5.1 The acquiring authority will usually pay the reasonable surveyor's fees which you incur for negotiating claims. Before employing a surveyor it is wise to ensure that you both agree a reasonable basis for calculating fees. **The acquiring authority should be able to advise you on the payment of fees and should be consulted if there is any doubt.**
- 5.2 Legal fees for conveyancing are also payable, and likewise a reasonable basis for their calculation should be agreed.
- 5.3 Normally only one surveying and legal fee is payable. If you decide to change your surveyor or solicitor after they have been instructed you may be liable for any costs or expenses they have incurred before they were replaced.

6. Interest

- 6.1 Simple interest on the compensation due is payable from the operative date of the vesting order until the compensation is paid. The rate of interest is prescribed in legislation and is 0.5% per annum below the base rate quoted each day by the major banks, subject to a minimum of 2% for periods after 1st August 2013.
- 6.2 If a claim is made for compensation which arises as a result of nearby public development, but no land is actually acquired, interest is payable on any sum due from the date you submit your claim to the date of payment.

7. No Agreement

- 7.1 In the event of a claimant being unable to agree the amount of compensation payable, the matter can be referred to the Lands Tribunal where a decision will be made regarding the compensation that should be paid by the acquiring authority.

8. Rent

- 8.1 As legal ownership is deemed to pass to the acquiring authority on the operative date of the vesting order there could be a liability on the claimant to pay rent for any period of occupation after this date until the authority actually takes possession. The charging of rent in these circumstances is at the discretion of the acquiring authority and if this is proposed the amount will be agreed with you or your advisor. Payment can be made at agreed periods, weekly or monthly, or the accumulated amount can be deducted from your compensation.

9. Blight

- 9.1 If your business property is “blighted” you may be able to serve a blight notice to compel the authority to acquire the property.
- 9.2 The blight notice procedure is a process by which you may bring forward the acquisition of your property if it has become “blighted” as defined in planning law.
- 9.3 Where the value of a property has been reduced by certain categories of planning or other development proposals, anyone with a qualifying interest, may be entitled to serve a “blight notice” on the body responsible for this, requiring them to buy the property at its untainted value. In short, the threatened or prospective compulsory purchase is brought forward thereby removing the uncertainty which might otherwise make the property unmarketable save at a significantly reduced price.
- 9.4 The guidance in this booklet is concerned with the procedures for compulsory purchase rather than the broader subject of public development. Accordingly, the consideration of the procedures relating to blight notices is restricted to the circumstances where blight arises as a result of the inclusion of a property in a vesting order.
- 9.5 It should be recognised that inclusion within a vesting order is only one of many circumstances in which a blight notice may be served. A full list of the circumstances in which a blight notice may be served is set out in Article 3(1) (a-l) of the Planning Blight (Compensation) (NI) Order 1981. Only the ones relating to compulsory purchase are considered in this booklet, but there may be opportunities to serve a blight notice earlier under one of the other categories of blight.

Qualifying Interests

- 9.6 In order to qualify to serve a blight notice, you must be one of the following:
- A resident owner-occupier of a private dwelling;
 - An owner-occupier of any business property where the annual value for rating purposes does not exceed £19,685 (based on 2015 Valuation List);
 - An owner-occupier of an agricultural unit with at least six months occupation of part or whole; or
 - Certain mortgagees and personal representatives.
- 9.7 An owner-occupier is defined as a freeholder or lessee with at least three years unexpired term who has occupied for at least six months when the blight notice is served. If the property is vacant when the blight notice is served, they must have been in occupation for six months ending not more than one year before the date of service of the blight notice.
- 9.8 An investment property owner is not entitled to serve a blight notice. **If you are concerned about blight arising from other circumstances you should ask your professional advisor.**

Content and Service of Blight Notice

- 9.9 A blight notice must be in writing and must state the interest in the land (for example freehold or leasehold) and the statutory ground for serving a blight notice. The correct form of a blight notice is set out in the Planning Blight Regulations (Northern Ireland) 1989.

Acquiring Authority’s Response to a Blight Notice

- 9.10 The acquiring authority has two months to accept or reject the blight notice. If it does not reject it in this time the notice automatically takes effect. If accepted or takes effect following expiry of the two months, a statutory deemed contract to purchase is created on that date which becomes the valuation date. The amount to be paid under that deemed contract is assessed in the same way as if the interest had been compulsorily acquired on that date.

- 9.11 If the acquiring authority does not wish to purchase the property under the blight provisions they may serve a counter notice within the two month period objecting on one or more of the following grounds:
- No part of the land is in a relevant category of blight;
 - The acquiring authority does not propose to acquire any of the land;
 - The acquiring authority only proposes to acquire part;
 - On the date of the notice, the claimant is ineligible; and
 - No real endeavours have been made to sell the property at a reasonable price.

9.12 If you do not agree with the acquiring authority's counter notice, you may refer the matter to the Lands Tribunal within a period of two months and it will determine the matter.

9.13 If you are successful and your blight notice is accepted, the principles of valuation and assessment of compensation are identical to those which apply had the land been compulsorily acquired.

9.14 Compensation following acceptance of a blight notice does not extend to abortive marketing costs incurred prior to service of the notice or to the costs of preparing and serving the blight notice. not to the physical existence of the highway.

Appendix 1 – Terms Used In Compulsory Purchase

Set out below is a list of terms and definitions commonly referred to when dealing with compulsory purchase matters.

Compensation Code: A collective term for the principles, derived from Acts of Parliament and case law, relating to compensation for compulsory acquisition.

Goodwill: The price which a purchaser of a business is prepared to pay, above the value of the premises and stock, for the probability that customers will continue to resort to the old place of business, or continue to deal with the firm of the same name: it is the benefit or advantage which a business has in its connection with its customers.

Investment Property: Generally, any property purchased with the primary intention of retaining it and enjoying the total return, i.e. income and/or capital growth, over the life of the interest acquired.

Land: Land includes buildings and structures. Existing interests and rights in land, such as freehold or leasehold together with any existing rights can be compulsorily acquired either as a whole or in part.

Lands Tribunal: A tribunal for Northern Ireland set up under the Lands Tribunal and Compensation Act (NI) 1964. Its jurisdiction includes adjudication on disputed compensation for the compulsory acquisition of land. The tribunal comprises the President (who is usually a judge) and a member who is qualified in valuation.

Marriage Value: Latent value which is or would be released by the merger of two or more interests in land. For example, two adjoining parcels may be worth more as one property than the aggregate of their separate values. Similarly, two interests in the same property (such as the freehold and the leasehold) may have a greater value when merged than the sum of their individual values.

Mitigation of Loss: It is the duty of a claimant seeking compensation to take any reasonable steps open to him to reduce or avoid loss. For example, a claimant could mitigate loss by seeking a number of quotes from reputable contractors and instructing the cheapest.

New Rights: Compulsory purchase can be used by most acquiring authorities to create and acquire new rights over land. An example would be the creation of a right of way or a right of support.

Public Development: A new or altered highway, aerodrome or other public works.

Ransom Value: The ability to obtain a high price for a small area which is key to the site being developed. For example, where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Tenancy at Will: A tenancy for no fixed term which continues so long as the landlord and tenant are willing that it should do so; it is an equitable interest and is created either by agreement or implication of law. Such an interest can be terminated by either party at short notice.

Tenancy on Sufferance: In cases where there is no statutory protection, a tenancy created by implication of law when the tenant has remained in possession on expiry of his term and the landlord has not challenged the tenants continued possession.

Vesting Order Procedure: A legal procedure used in connection with compulsory purchase whereby an acquiring authority is able to obtain possession and ownership of the land. This is a statutory procedure for the speedy acquisition of land and normal conveyancing practice does not have to be adopted.

Appendix 2 – Useful Contacts

Set out below is a list of contact details of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase.

Law Society of Northern Ireland

96 Victoria Street Belfast
BT1 3 GN
Tel: 028 9023 1614
Web Site: www.lawsoc-ni.org

Citizens Advice Bureau Northern Ireland

You should check your local telephone directory or call directory enquiries to find out details of your local branch office. Details of local offices can also be obtained from the web site below.
Web Site: www.citizensadvice.co.uk

Royal Institution of Chartered Surveyors (RICS)

Northern Ireland Branch
9 - 11 Corporation Square Belfast
BT1 3AJ
Tel: 028 9032 2877
Web Site: www.rics.org/ni

Northern Ireland Housing Executive (NIHE)

The Housing Centre 2 Adelaide Street Belfast
BT2 6PB
Tel: 028 9024 0588
Web Site: www.nihe.gov.uk

Department for Infrastructure (Strategic Planning)

Causeway Exchange
1 - 7 Bedford Street Belfast BT2 7EG
Tel: 03002007830
Web Site: www.planningni.gov.uk

Local Planning Issues

Contact your local Council Offices

Land & Property Services (LPS)

Tel: 0300 200 7801 (calls charged at local rate)
If outside UK, dial 0044 28 90495794

Email your local valuation office:
ballymena.valuation@lpsni.gov.uk
belfast.valuation@lpsni.gov.uk
craigavon.valuation@lpsni.gov.uk
londonderry.valuation@lpsni.gov.uk
omagh.valuation@lpsni.gov.uk

For your local valuation office address please visit Valuation Contact Details or search for Valuation contact details on LPS website.



Land & Property Services
Seirbhísí Talún & Maoine

0300 200 7801 (*calls charged at local rate*)

0044 28 90495794 (*From outside UK*)

<https://www.finance-ni.gov.uk/lps>

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