

# Compulsory purchase act 1965 and land compensation act 1973

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The aim of this report is to discuss the possible remedies that a land owner can claim for when compulsory purchase works effect his property without actually touching any of his land. Where land is compulsorily acquired for public works, legislation allows landowners from whom no land has been acquired for those works to claim compensation under two distinct statutory provisions:

Section 10 of the Compulsory Purchase Act 1965; and Part I of the Land Compensation Act 1973.

The aim of this essay will be to discuss these two legal points point and highlight any irregularities with the cases. I will attempt to describe how this law is different from section 7 and how the courts have differing views regarding the rewarding of compensation for the two sections. At the end of this essay I will attempt for the reader to have a good understanding of the laws but more importantly the arguments surrounding them.

### What Is Section 10

Section 10 is contained in the Compulsory purchase Act 1965. This enables a claim to be made during the construction process only of a compulsory purchase scheme. The relevant provision which is found in section 10 is based upon a similar provision contained in section 68 of the Lands Clauses Consolidation Act 1845. Although a literal interpretation of the words used in section 68 did not provide the basis for any substantial compensation entitlement for owners from whom no land had been taken, the section has been interpreted by the courts from an early date as providing exactly that; and section 10 now expressly recognises and confirms that entitlement.

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It is not therefore surprising that the present basis for determining entitlement to compensation under section 10 is determined by case law which developed under the 1845 legislation. Indeed, two decisions of the House of Lords in the 19th century provide the more complete formulation of the circumstances in which compensation may be claimed. Four main rules (often referred to as the McCarthy Rules) are derived from those decisions.

They are:

- (1) the damage or loss must result from the authorised exercise of the statutory powers of the acquiring authority;
- (2) the damage or loss must be such as would be actionable but for the statutory authority;
- (3) the damage or loss must be an injury to land and not a personal injury or an injury to trade; and
- (4) the damage or loss must be caused by the execution (i. e. construction) of the works and not by their subsequent use.

The fundamental principle underlying the compensation principle is equivalence ie the claimant should be put, in so far as money can do it, into substantially the same financial position that they would have been in the absence of compulsory purchase powers.

Why Is Section 7 Different From Section 10

S. 7 CPA 1965 states that:-...." regard shall be had not only to the value of the land to be purchased by the acquiring authority but also to the damage,

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if any, to be sustained by the owner of the land by reason of the severing of the land from the other land of the owner, or otherwise injuriously affecting the other land...." In layman's terms the major difference is that to be able to claim under section 7 some piece of land has to be taken, were to claim under section 10 no land has to be taken. Section 7 is more detailed and far newer, it also has more heads of claim such as planning assumptions and loss of profits, this gives a far clearer basis upon which claims can be based. Davies said the landowner 'should move heaven and earth to convey a square metre or less if necessary, to an acquiring body rather than have it acquire adjoining land yet none from him'. That is the extra weight that Section 7 carries in comparison to section 10. It is vital that the claimant does not confuse these two laws.

#### Why Was A Reform Needed

This left a huge gap in the law in so far as claiming for the use of the works had become a major problem and it was an issue that needed to be addressed. The reason use can not be claimed under s10 of 65 act is because " the golden rule " is courts must follow the literal meaning of a statute unless an absurd or unjust result would ensue. A grammatical reading of the legislation limits compensation to that " in respect of land or an interest in land which has been .... injuriously affected by the execution of the works.....". Therefore compensation cannot be claimed for economic loss to a business. In the McCarthy case Lord Chelmsford stated that " A mere personal obstruction or inconvenience, or damage occasioned to a mans goodwill of his business, although such a nature that but for the act of

parliament it might have been a subject of an action for damages, would not entitle the injured party for compensation under it."

This view was upheld in the case *Argyle Motors Ltd v Birkenhead Corporation* 1974 in which extensive works of reconstruction to the approaches to the Mersey tunnel prevented direct access to premises used by motor car dealers. Compensation could only be claimed to the extent that the ensuing loss of profits effected the value of their property. As the premises were only held on a tenancy for years the loss of profits was significantly greater than any impact on the value of their interest but this was not compensatable.

### Land Compensation Act 1973

Part I of the 1973 Act provides that where the value of an interest in land is depreciated by physical factors caused by the use of public works, then, subject to certain qualifications, and the making of a claim, compensation shall be payable by the responsible authority. The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the land in respect of which any claim is made of any solid or liquid substance. The public works are any highway, aerodrome and any works or land (not being a highway or aerodrome) provided or used in the exercise of statutory powers. By section 9, compensation is also payable in respect of certain alterations to public works.

Compensation is not payable in respect of physical factors caused by the use of any public works, other than a highway, unless immunity from actions for

nuisance in respect of that use is conferred (whether expressly or by implication) by an enactment relating to those works or, in the case of an aerodrome and physical factors caused by aircraft, the aerodrome is one to which section 77(2) of the Civil Aviation Act 1982 applies (conferring immunity).

### How Relevant Is Section 10

This sets out the case law for the two acts. However these acts can be critically analysed, first looked at will be section 10 and the McCarthy tests. Perhaps the major stumbling block as far as this rule is concerned is that it dates back to 1874, one must ask the question that surely times have changed and what was generally just and equitable in 1874 may not necessarily be so now. Rule one of the test states that this section only applies to the execution of the works and not there use. If this is then compared to section 7 of the same act were land is taken, both aspects are covered. Why then it is needed for an extra act in section 1 of the Land compensation act 1973 to be introduced simply for the provision of the works use, when an extension of the McCarthy tests or a new rule would have been more relevant.

This part of this rule also leaves the valuer with the problem of interpretation. The example in Baums book uses the example " generally a house affected by a road widening scheme is depreciated in value by the use of the road rather than the actual construction process. However should the construction process coincide with an attempt to sell the house then it should be argued that any depreciation suffered falls with in the ambit of this

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rule." This rule claims even if the construction works were to continue for a number of year then it would still be un claimable. So the valuer must again be forced to use a liberal interpretation as apposed to a precedent.

Rule 2 of this test says that we are unable to claim compensation for losing trade unless it can be shown that this is effected directly on the business. Again the point must be addressed that in 1874 whilst compensation to loss of trade may have been a factor of some concerns the amounts of money that was put into business was not nearly on the same scale that it is today, so giving the change in the economy generally gives weight to the argument of the instruction of a new rule.