



## Roads: compensation for loss of business from road works

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This note explains the right of businesses to compensation in the event of loss of trade due to road works.

**Compensation is a complicated subject and any individual whose business is affected is strongly recommended to consult a legal professional to advise on their rights and who could also act on their behalf in negotiations.**

The general rule is that there is no compensation if a business is affected by road works. Successive governments have taken the view that businesses should not have the right in law to any particular given level of passing trade, and that traders must take the risk of loss due to temporary disruption of traffic flows along with all the other various risks of running a business. There is no statutory provision for compensation by the highway authority (as opposed to a utility) if a business is affected by road works. Where land is not being acquired, compensation for loss of business attributable to road works carried out by a utility is payable only where the relevant statute authorises it.

Information on other roads-related issues can be found on the [Roads Topical Page](#) of the Parliament website.

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## 1 Road works and loss of trade

Relating specifically to road works, where a highway authority (as opposed to a utility) carries out works under a statutory power or duty and performs these properly, there will not at law be any liability on the authority for any loss of business. Owners of businesses have no right in law to a maintained level of passing trade. Temporary or permanent reductions in traffic flow are considered to be part of the risks of running a business. The owner of a business would only have a claim against the highway authority for road works (the Secretary of State in the case of trunk roads and the county council or unitary authority in the case of local roads) if the loss of business was a result of negligent action by the highway authority or contractor.

The then Conservative Government looked at the case for a general right to compensation when the [New Roads and Street Works Act 1991](#) was passed and opted not to make any changes to that effect.<sup>1</sup> Successive governments have taken the view that businesses should not have the right in law to any given level of passing trade, and that traders must take the risk of loss due to a temporary disruption of traffic flows along with all the other risks of running a business. This position was set out by the then Transport Minister, Keith Hill, in July 2000:

Highway works ultimately benefit the whole community. Occupies of premises may be entitled to compensation if something is done improperly (for example, the blocking of access without authority) but not otherwise. Businesses have no right in law to any given level of passing trade, and may suffer temporary loss owing to disruption of traffic flows. Trade may fluctuate for a variety of reasons, and accurately assessing the losses directly attributable to works in the highway can be difficult. There is, too, an element of 'windfall' profit and loss: often when one trader suffers a rival business in the neighbourhood stands to gain custom as a direct result of the same works. There are therefore no plans to introduce legislation to create legal liability to compensate anyone for loss of trade when a highway authority properly executes road works under its statutory powers.<sup>2</sup>

## 2 Compensation from utilities

The utilities operate under separate legislation that was drawn up when each was privatised back in the 1980s, therefore compensation for loss of business attributable to road works by a utility is payable only where the relevant statute authorises it and it will vary between utilities.

For example, section 180 and Schedule 12 of the [Water Industry Act 1991](#), as amended, and section 177 and Schedule 21 of the [Water Resources Act 1991](#), as amended, make provision for compensation for works done; the original provisions were contained in the [Water Act 1989](#), following a law case in 1979 between Thames Water and Leonidis which determined that 'losses' covered economic losses and therefore losses to profit.

Schedule 4(3) of the [Gas Act 1986](#), as amended, states that, in the course of placing pipes etc in the street, or from time to time repairing or altering these fittings, the undertaker may need to open or break up a street, drain or sewer, or remove earth in or under a street and that they should make compensation for any damage done. This was amended by the [Gas](#)

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<sup>1</sup> [HC Deb 12 May 1994, c208W](#); further information on street works by public utilities can be found in HC Library standard note [SN/BT/739](#)

<sup>2</sup> [HC Deb 21 July 2000, cc350-51W](#)

[Act 1995](#) to insert a provision (Schedule 12(4)) that any loss sustained would be compensated by a sum determined under regulations.

Under the *Gas (street works) (compensation of small businesses) regulations 1996* ([SI 1996/491](#)) a gas company must pay compensation for loss of turnover sustained by a small business during a specified period of at least 28 days, in consequence of the works, except where the compensation would be less than £500 or would not exceed two and a half per cent of the annual turnover of the business. The amount of the compensation is the difference between the profit (or loss) which would have accrued to the business but for the works and the reduced profit (or increased loss) which is a consequence of the works. A person must reserve the right to claim compensation within three months of the completion of the street works and submit supporting evidence within six months of their completion. This includes strict definitions as to the meaning of small businesses and their annual turnover.

### **3 New roads**

Compensation claims can be considered if physical factors from a new highway affect a business which thereby lowers the market price of the property. Part 1 of the *Land Compensation Act 1973*, as amended, is aimed at providing compensation in respect of property value depreciation caused by physical factors arising directly from the use of new or altered public works. These works include roads. Although there is no provision for compensation for loss of trade caused by altered traffic patterns, should physical factors from a new or altered highway affect business being conducted at the premises, and that effect lowers the market price of the property, then appropriate depreciation compensation could be considered. Part 1 of the 1973 Act is not, however, relevant to the construction work itself or to repairs to utilities in the road.

### **4 Compulsory purchase**

If business premises are taken over for development and no alternative premises can be found, compensation will be paid based on the loss sustained by the total extinguishment of the business, i.e. having regard to the value that it would have had as a going concern if the authority had not needed the land. Full details of compulsory purchase and compensation can be found in HC Library standard note [SN/SC/1149](#).