

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT TO THE HOME LOSS PAYMENTS (PRESCRIBED AMOUNTS) (WALES) REGULATIONS 2008

This Explanatory Memorandum has been prepared by the Department for the Economy and Transport and is laid before the National Assembly for Wales in accordance with Standing Order 24.1

(i) Description

These Regulations revoke The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2007, which set the current Home Loss Payments. They will incrementally increase the maximum and minimum Home Loss Payments from their current levels of £44,000 and £4,400 respectively to £47,000 and £4,700 and increase the flat rate payment from £4,400, to £4,700.

(ii) Matters of Special Interest to the Subordinate Legislation Committee

None

(iii) Legislative Background

The power enabling these Regulations to be made is contained in section 30(5) of the Land Compensation Act 1973. This power has been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. This legislation will follow the Negative resolution procedure.

(iv) Purpose and Intended Effect

These Regulations will increase the maximum and minimum Home Loss Payments from their current levels of £44,000 and £4,400 respectively to £47,000 and £4,700 and increase the flat rate payment from £4,400 to £4,700.

Home Loss payments are statutory compensation paid by acquiring authorities and other organisations that possess powers of compulsory purchase. They are paid to qualifying owner-occupiers and tenants of dwellings displaced by compulsory purchase or public redevelopment at a rate of 10% of the market value of the property. This is to compensate for the distress and inconvenience of having to move home at a time not of their choosing. These are subject to maximum and minimum payments in section 30(1) of the Land Compensation Act 1973. Tenants receive a flat rate equal to the minimum payment to owner-occupiers in section 30(2) of the 1973 Act. These Regulations will effect an incremental uplift in these Payments.

Since the uplifted compensation provisions set out in the 2007 Regulations for Wales, house price inflation has continued to occur. The increase in the maximum, minimum and flat rate Home Loss Payments for these Regulations will be compiled in a similar manner to all previous sets of Regulations since 2003. Since 2003 uplifts in the maximum, minimum and flat rate Home Loss Payment have been by reference to the actual increase in the 'Mixed Adjusted Housing Index' for Great

Britain (an index of house prices). The figures in the Index are compiled annually and are available from the Statistical Directorate of the Department for Communities and Local Government.

The latest available statistical information on which the payments are based i.e. the 'Mix Adjusted index' is for the 1st Quarter of 2008 and was compiled on 13 May 2008. The information has been analysed for the purposes of introducing these Regulations.

Using the Great Britain mix-adjusted index for all dwellings, the increase in the 1st Quarter of 2008 'Mix Adjusted House Price Index' from the 4th Quarter of 2002 (the index figure used for the introduction of the original 2003 increase) has been:

4th Quarter 2002 is 121.4 and for 1st Quarter 2008 is 182.0 . This provides the evidence to warrant a further uplift.

Therefore, the sum for the calculation of the revised payments is $(4400 / 170.8) \times 182.0 = 4688$ (Round to the nearest £100) = £4,700.

As a result it is proposed to increase the maximum, minimum Home Loss Payment and the flat rate payments as follows:

Maximum Payment –from £44,000 to £47,000

Minimum Payment and Flat Rate Payment - from £4,400 to £4,700

(v) Implementation

It is intended that the Instrument will come into force on 25 November 2008. Similar legislation in England came into force on 1 September 2008. In order to avoid any perceived discrimination against displaced occupiers of residential properties in Wales, the Welsh Assembly Government has agreed to voluntarily increase its payments in line with figures above, on an ex-gratia basis, until the revised Wales Regulations come into force. This will allow payments to remain in line with the equivalent Regulations in England. Local Authorities and Registered Social Landlords in Wales have been encouraged to follow the same course of action.

Scotland and Northern Ireland have their own separate legislation covering statutory compensation payments and there is at present no indication when they will be introducing similar Regulations.

(vi) Consultation

With Stakeholders

The established pattern of regular review and increase of these minimum and maximum flat rate Home Loss payments by reference to the 'Mix Adjusted House Price Index' for Great Britain was set following the formal joint Office of the Deputy

Prime Minister/Welsh Assembly Government consultation exercise that took place prior to the 2003 increase being implemented. The responses to the consultation from stakeholders gave overwhelming support for regular review of the Home Loss Payment regime. This was acknowledged by a policy commitment from both Assembly Government Ministers and counterparts in the former Office of the Deputy Prime Minister (ODPM) (now the Department for Communities and Local Government (DCLG)) to undertake an annual review of the level of these payments.

The joint ODPM/Welsh Assembly Government consultation exercise ran for 3 months and ended on 6 January 2003. The consultation exercise included Local Authorities, other acquiring authorities, Registered Social Landlords and professional bodies.

The 5 options presented in the joint consultation paper were:

- **Option 1:** no change;
- **Option 2:** uprate by reference to the 'Mix Adjusted House Price Index';
- **Option 3:** enhanced minimum;
- **Option 4:** enhanced minimum and flat-rate; and
- **Option 5:** enhanced maximum.

The joint consultation exercise attracted 35 responses. In brief, the consultation responses indicated the following preferences were

- **Option 2:** 6 for, 4 against;
- **Option 3:** 8 for, 6 against;
- **Option 4:** 4 for, 6 against; and
- **Option 5:** 15 for, 6 against.

Welsh Assembly Government Ministers and the Office of the Deputy Prime Minister (ODPM) agreed to adopt Option 2 for both England and Wales. Option 2 was the plain uprating by reference to the index, which was demonstrably fair to all parties and which imposed the minimum burden on acquiring authorities who would incur any additional costs arising from their budgets.

It should be noted that all other statutory compensation provisions related to the compulsory acquisition of land are comparable and consistent across England and Wales and it was recommended in the consultation documents that this ethos should be applied to the Home Loss Payments. Responses to the joint consultation supported this view. Provision could be made for there to be differing thresholds for the maximum and minimum Home Loss Payments between England and Wales (either higher or lower). However, this would be fraught with difficulties because unwarranted precedents would be set enabling interested parties with comparable properties in England and Wales to benefit from differing levels of compensation.

(vii) Regulatory Impact Assessment

Parallel implementation of these Regulations by the Assembly Government and the Department for Communities and Local Government is ideal to ensure compensation payments payable to eligible claimants in Wales are similar to those in England. The possibility of having lower levels of compensation for affected parties in Wales than in England who suffer the same disturbance from losing their homes because of public development is not desirable.

The increase in the maximum and minimum Home Loss Payments in Wales by uprating in accordance with the 'Mix Adjusted House Index' for Great Britain is demonstrably fair, as it will not alter the basis on which payments were previously uplifted since 2003.

Options

Option 1 – Do Nothing

This is not a viable option as it is necessary to ensure that there is comparability between Wales and England in respect of the amounts of compensation payable to parties who lose their homes and are eligible to claim these payments. The primary legislative provision, which provides powers to make these payments, is common to both Wales and England.

A different limit in Wales for the purposes of the proposed Regulations would not be desirable and might be seen as positively discriminating against displaced occupiers of residential properties in Wales who are adversely affected by the loss of their homes resulting from public development.

Option 2 – Make the Legislation

The legislation is considered necessary to ensure there is consistency in Wales and England with regard to the implementation of all aspects of the system of compulsory purchase. To ensure that all eligible claimants in Wales who lose their homes by compulsory acquisition or public development receive comparable levels of compensation.

Benefits

These Regulations will introduce increased Home Loss Payments in accordance with changes in the 'Mix Adjusted Index'. Potential claimants, who currently have a qualifying interest in respect of these provisions, will continue to receive appropriate levels of compensation commensurate with their loss. It will also ensure that Wales is on consistent terms with England.

Costs

The financial impact of any increase in the levels of maximum, minimum and flat rate Home Loss Payments on public sector bodies, acquiring authorities, Registered Social Landlords and the Assembly Government will be minimal. This is because the acquisition of high value residential properties by or under the threat of compulsion, (which attract the maximum payment) is comparatively rare in Wales. Most residential properties, which are compulsorily acquired and whose owner-occupiers satisfy the criteria for these statutory compensation payments receive the basic payment, which will remain at 10% of the market value of the property acquired from them as set out in section 30 of the Land Compensation Act 1973. There will be incremental increases of the maximum and minimum payments. Uplifts made in previous years indicate the financial impact on the public sector is slight.

The increased payments, which acquiring authorities will make, are assessed to be less than one per cent of the overall compensation. Total land compensation is typically around 5 – 10 % of the cost of major schemes, so any extra compensation payable because of these increases will be negligible.

Given the incremental nature of the increase in these payments it is expected (as in previous years since 2003 when an increase in the limits has been effected) that additional costs, which will fall on local authority capital programmes, should be able to be accommodated within current Assembly Government approved budgets.

The proposed 2008 increase in the maximum, minimum and flat rate Home Loss Payments in Wales by up-rating in accordance with the 'Mix Adjusted Index' for Great Britain is demonstrably fair, taking full account of regional variations in house prices. It will replicate the basis on which payments were previously uplifted since 2003.

Consultation

As set out in paragraph (vi) above.

Review

It is Welsh Assembly Government policy to review the maximum, minimum and flat rate Home Loss Payments annually to assess whether they need to be increased.

Summary and Recommendation

The increase in the maximum and minimum amounts for owner-occupiers (in section 30(1) of the Land Compensation Act 1973) and the flat rate for other occupiers (in section 30(2) of the 1973 Act) reflects an increase in line with house price inflation in the last year.

There will be only marginal additional financial implications resulting from this increase in the maximum, minimum and flat rate Home Loss Payment limits. Acquiring authorities should be able to accommodate these additional costs from agreed local authority capital programmes within current Assembly Government

approved budgets. These Regulations are the most effective way of ensuring that Wales will be consistent with England in making available appropriate levels of compensation to those parties who qualify following displacement from their homes as a result of public sector development.