

Explanatory Memorandum to the Town and Country Planning (Blight Provisions) (Wales) Order 2011

This Explanatory Memorandum has been prepared by the Transport, Housing and Regeneration Group and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Town and Country Planning (Blight Provisions) (Wales) Order 2011. I am satisfied that the benefits outweigh any costs.

Ieuan Wyn Jones

Minister for the Economy and Transport

15 February 2011

1. Description

The new Order will increase the Rateable Value (RV) Limit from £29,200 to £34,800 for the purpose of allowing qualifying owners of commercial premises to be eligible to serve blight notices under section 149 of the Town and Country Planning Act 1990. The same limit is also adopted in respect of properties entitled to make claims for compensation under Part 1 of the Land Compensation Act 1973 and the application of rules relating to the extinguishment of a business affected by public development (under section 46) of the same Act.

It is necessary to revoke the Town and Country Planning (Blight Provisions) (Wales) Order 2005 (S.I 2005 No. 367 (W.33) which it will replace.

2. Matters of special interest to the Constitutional Affairs Committee

None

3. Legislative Background

The powers enabling this Instrument to be made are contained in sections 149(3) (a) and 333(7) of the Town and Country Planning Act 1990. The powers conferred on the Secretary of State under these sections were transferred to the National Assembly for Wales by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as varied by article 4 and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5). Functions of the National Assembly for Wales transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

This instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

The rating revaluation in England and Wales (undertaken by the Valuation Office Agency, (the VOA) part of the H M Revenue and Customs HMRC) became effective from 1 April 2010 and as a result there was a general increase in Rateable Values (RV) for commercial properties. The RV of a commercial property is the base figure against which the Non-Domestic Rate (NDR) is levied.

To reflect the changes brought about by the rating revaluation it will be necessary to increase the RV limit for the purposes of the statutory blight provisions found in the Town and Country Planning Act 1990 (the 1990 Act). To do this, it is necessary to make an Order in Wales to

replace the current Town and Country Planning (Blight Provisions) (Wales) Order 2005, (S.I. 2005/367) (W.33).

The limit of annual RV in the Blight Provisions Order has two other uses, both of which are found in the Land Compensation Act 1973 (as amended):

- i. In section 2(6), it is used to define the threshold (for businesses) for making claims for compensation under Part I of the Act and in section 46(2) it is used similarly to define the threshold for claiming disturbance under that section.
- ii. Part I of the 1973 Act allows those holding a qualifying interest to claim for depreciation in the value of their property caused by the physical effects of public works (for example noise, fumes and artificial lighting for highways) Section 46 of the 1973 Act allows proprietors aged 60 to claim disturbance on the basis of total extinguishment of their business rather than for relocation if they are subject to a compulsory purchase order.

The Town and Country Planning (Blight Provisions) (Wales) Order 2005 (S.I. 2005/367)(W.33) currently in force in Wales sets the upper annual RV limit for the purposes of section 149(3)(a) of the Town and Country Planning Act 1990 at £29,200 RV. All owners of commercial properties whose RV is within the limit of this figure are eligible to serve blight notices provided other criteria are also satisfied.

Blight notices allow qualifying owners whose properties are affected by proposed public development to require the authority promoting the development to purchase their property provided certain criteria are satisfied.

The same limit is also adopted in respect of commercial properties entitled to make claims for compensation under Part I of the Land Compensation Act 1973 and in the application of the rules relating to compensation claims for disturbance on the extinguishment of a business by proprietors aged 60 and over who are affected by public development (under section 46) of the same Act.

The rating revaluation in England and Wales (undertaken by the Valuation Office Agency (VOA); part of HMRC) became effective from 1 April 2010 and as a result there has been a general increase in RVs for commercial properties. This SI will increase the £29,200 RV limit in Wales to £34,800 to reflect the changes brought about by the revaluation.

5. Consultation

As this is straightforward updating exercise, compiled in a similar manner to the 2005 Order, formal consultation is considered

unnecessary. This is consistent with the approach taken in England and is referred to at section 10 of the Regulatory Impact Appraisal below.

REGULATORY IMPACT ASSESSMENT

6. Statistical Analysis

The average revaluation factor increase between the 2005 and 2010 Rating Lists shows an increase of 20% in Wales and compares closely with the 19.8% for England. This would suggest that the upper limit in Wales should follow a similar pattern and be increased to £34,800 RV to maintain parity.

Bearing in mind that property values (and therefore R Vs) are generally less in Wales than in England, broadly speaking, equally-sized businesses should have lower RVs in Wales than in England. If rental values and hence RVs are lower in Wales than England, and in order to keep consistent eligibility to serve blight notices the same either side of the border, a lower threshold in Wales than in England could apply for the purposes of the new SI. However (as with the 2005 revision) because of regional market variations RVs across Wales for similar commercial properties can vary significantly making it unfair and undesirable to increase the RV threshold in Wales to a lesser limit than that being proposed for England. Adopting a lower RV limit for the new S.I. in Wales could disenfranchise certain commercial property owners in the higher value locations (i.e. comparable in rental value to properties in England) from satisfying the necessary criteria to allow them to qualify within the respective statutory provisions in section 149 of the Town and Country Planning Act 1990 and Part I of the Land Compensation Act 1973. It is not possible to give a figure for this because the number of affected parties is determined by the number of Compulsory Purchase Orders made by acquiring authorities in a year, for which there is no concise information available. Therefore, in order to account for the geographical related differences in RVs for businesses in the same market, it is considered fair to adopt a consistent approach and set the RV threshold in both England and Wales at the same figure of £34,800.

7. Proposed Increase in the threshold

Business rate revaluations reflect changes in the property rental values and have different effects for different types of businesses and geographical location. The data indicates a very similar average RV increase in Wales compared to England. It is considered that it would not be desirable (and might be seen as positively discriminating against the business community in Wales) to restrict the opportunity for owners of commercial property (adversely affected by the threat of public development) to serve a blight notice or to claim appropriate compensation.

It is therefore proposed that the increase in the RV threshold for the purposes of any new Blight Order be the same to ensure consistency of application in England and Wales.

Furthermore, the introduction of the higher RV limit of £34,800 for Wales will ensure that potential claimants (small businesses) who currently have a qualifying interest in respect of the provisions to which the Order refers will not be disenfranchised as a consequence of the new Rating Lists.

8. Options

Option 1: Do nothing. This is not considered an option as the rating revaluation has been carried out and it is necessary to ensure that affected property owners continue to qualify under the relevant criteria to serve blight notices and pursue claims for compensation.

Option 2: Make the Legislation. The legislation is considered necessary to ensure there is consistency in England and Wales with regard to the uplift in the RV threshold. A lower limit in Wales for the purposes of the proposed Order would not be desirable and might be seen as positively discriminating against small businesses in Wales who may be adversely affected by the threat of public development.

9. Costs and benefits

a. Costs

Option 1 – Do Nothing

If the SI were revoked small businesses in Wales would be disadvantaged compared to their English counterparts.

Option 2 – Make the Legislation

There is no additional financial burden placed on the Welsh Assembly Government or local authorities as a result of this revision in the R V threshold. All property owners who currently qualify to serve blight notices and are eligible for statutory compensation will continue to enjoy the same commensurate qualifying criteria. It is considered that the financial implications of this new RV will be cost neutral.

b. Benefits

We have identified the benefits for each option as follows:

Option 1 – Do Nothing

Small businesses in Wales would be disadvantaged compared to their English counterparts.

Option 2 – Make the Legislation

The proposed Order will ensure that potential claimants who currently have a qualifying interest to serve blight notices and are eligible for statutory compensation will continue to enjoy the same commensurate qualifying criteria.

It will also ensure that Wales is on consistent terms with England.

10. Consultation

Consultation is considered unnecessary as the proposed Order will be an “uprating to a formula or index” exercise compiled in a similar manner to the 2005 Order. Consultation was not carried out on that Order and DCLG did not consult on their legislation in England. It is not novel or contentious and will only be of concern to acquiring authorities with statutory powers of compulsory purchase and who are subject to the statutory blight provisions.

11. Post Implementation review

The next review will be undertaken in approximately 4 years time when the next rating revaluation of commercial properties in England and Wales is due.

12. Summary

This SI increases the RV limit for commercial properties and ensures that small businesses in Wales will enjoy the same qualifying criteria as their English counterparts with regards to serving blight notices and statutory compensation.