

REGULATORY APPRAISAL

ACQUISITION OF LAND, WALES

THE HOME LOSS PAYMENTS (PRESCRIBED AMOUNTS) (WALES) REGULATIONS 2005

Background

1. Under section 30 of the Land Compensation Act 1973 the National Assembly has devolved powers to prescribe a different maximum and minimum payments for owner-occupiers (although not the percentage of the market value) and a different flat rate for tenants. Any variation in these amounts is required to be exercised via a statutory instrument.
2. Home Loss payments are statutory compensation paid by acquiring authorities and other organisations who 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. 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 Act). Tenants receive a flat rate equal to the minimum payment to owner-occupiers (in section 30(2) of the Act). The proposed 2005 Regulations will effect an incremental uplift in these Payments.
3. Prior to the 2003 Regulations the Home Loss Payment regime had remained unchanged since September 1991. Both the UK and Welsh Assembly Governments now have a policy of ensuring that the maximum, minimum and flat rate Home Loss Payments are regularly reviewed and increased as necessary to reflect relative changes in property values.

Purpose and intended effect of the measure

4. The proposed Regulations will increase the maximum and minimum Home Loss Payments from their current levels of £34,000 and £3,400 respectively to £38,000 and £3,800 and increase the flat rate payment from £3,400 to £3,800.
5. The current minimum, maximum and flat rate Home Loss payments were implemented on the 1 September 2004 by the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2004.
6. Both the UK and Welsh Assembly Governments have a firm commitment to ensure that Home Loss Payments are revised as necessary to reflect relative changes in property values. Since the uplifted compensation provisions set out in both the 2003 and 2004 Regulations for England and Wales respectively house price inflation has continued.
7. The increase in the maximum, minimum and flat rate Home Loss Payments will be compiled in a similar manner to both the 2003 and 2004 Regulations S. I. 2003 No. 1856 (W.206) and S.I. 2004 No. 1758 (W.189) respectively. This is by reference to the

actual increase in the 'Mixed Adjusted Housing Index' for Great Britain (an index of house prices) up to the first Quarter of 2005. The figures in the Index are compiled annually and available from the Statistical Directorate of the Office of Deputy Prime Minister (ODPM) each year in mid May.

8. The latest available statistical information on which the payments are based i.e. the 'Mix Adjusted index' is for 1st Quarter of 2005 was compiled on 9 May 2005. The information has been analysed for the purposes of introducing the new 2005 Regulations.
9. Using the GB mix-adjusted index for all dwellings, the increase in the 1st Quarter 2005 'Mix Adjusted House Price Index' from the 1st Quarter of 2004 figure has been:

1st Quarter 2004 is 134.8 and for 1st Quarter 2005 is 149.6.

Therefore, the sum for the calculation of the revised payments is: $(3400 / 134.8) \times 149.6 = 3773$. (Round to the nearest £100) =£3,800.

10. As a result it is proposed to increase the minimum, maximum home loss payment and the flat rate payments as follows:

Maximum Payment –from £34,000 to £38,000

Minimum Payment and Flat Rate Payment - from £3,400 to £3,800

These proposed increases correlate with the average year on year house price inflation to Quarter 1 2005 of 11%.

Risk Assessment

10. Parallel implementation of new secondary legislation by the National Assembly and Westminster on the 1 September 2005 is necessary 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 untenable.
11. 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 in 2003 and 2004.

Options

Option 1 – Do Nothing

12. Doing nothing is not an option as it is necessary to ensure that there is comparability between England and Wales in respect of the amounts of compensation payable to parties who lose their homes and are eligible to claim these payments. The primary

legislative provisions which provides powers to make these payment is common to England and Wales.

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

Option 2 – Make the Legislation

14. The legislation is considered necessary to ensure there is consistency in England and Wales 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

15. 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.
16. It will also ensure that Wales is on consistent terms with England.

Costs

17. 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 minor. This is because the acquisition of high value residential properties by or under the threat 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.
18. The increased payments which acquiring authorities will make are assessed to be less than one per cent of the overall compensation. 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.
19. Given the incremental nature of the increase in these payments it is expected (as in previous years 2004 and 2005 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 approved budgets.

Consultation

With Stakeholders

20. 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 ODPM/ Assembly Government consultation exercise which 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 Office of the Deputy Prime Minister (ODPM) to undertake an annual review of the level of these payments.

21. The joint ODPM/Welsh Assembly Government consultation exercise ran for 3 months and ended on 6th January 2003. The consultation exercise included Local Authorities other acquiring authorities, Registered Social Landlords and professional bodies. A full list of consultees in Wales is attached at Appendix 1. Copies of the consultation were placed in the Assembly's Library for information. The consultation document was available on the Assembly's Internet site:

<http://www.wales.gov.uk/subitransport/content/consultation/homeloss/default-e.htm>

22. The 5 options presented in the 2002-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.

23. 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.

24. Assembly Government Ministers and 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 will have to find the extra money for these payments from their scheme budgets.

25. 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), but 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.

With Subject Committee

26. These Regulations were notified to the Environment, Planning and Countryside Committee on 6 October 2004 and ever since via the list of forthcoming legislation (EPC(2)09-04 (p.4) Annex 1, item no.16), but were not identified for detailed scrutiny. The Committee will also be advised of the extent of increases to be effected by these Regulations in the Minister's Report to Committee on 22 June 2005.

Review

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

Summary

28. 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 Act) reflects an increase in line with house price inflation in the last year.
29. 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 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.
30. It is anticipated that there will be at least a 2-month period between the proposed Regulations being made and coming into force on the 1 September 2005. This period will enable acquiring authorities to be informed of the Regulations and to prepare accordingly.

List of Consultees for Home-loss payments joint consultation exercise 2002

WALES

All Local Authorities/National Parks Authorities
WLGA
Lands Division WDA
All Housing Associations in Wales
Welsh Federation of Housing Associations
Local Government Research Unit
Housing Research Unit University of Swansea
Chartered Institute of Housing
RICS (Wales)

Consultation Document also made available on National Assembly website.

ENGLAND

The Local Government Association
Association of London Government
National Association of Local Councils
The Planning Officers Society
Association of County Planning Officers
ALBPO
County Surveyors Society
Professional bodies representing Surveyors – RICS, CAAV, IRRV, ACES & ICSA
RTPI
CIPFA
The Bar Council
The Law Society
The Society for Advanced Legal Studies
UK Environmental Law Association
Environmental Law Foundation
TCPA
National Housing and Town Planning Council
English Heritage
The Land Tribunal
Country Land and Business Association
National Union of Farmers
Tenant Farmers Association
BURA
Business Compensation Forum
CBI
Institute of Directors

Office of the Rail Regulator
SRA
Railtrack
London Transport Property
BAA
British Ports Association
Civic Trust
CABE
Chartered Institute of Housing
The Housing Corporation
National Housing Federation
British Property Federation
House Builders Federation
The Council of Mortgage Lenders
National House Building Council
Chartered Institute of Environmental Health
GLA
English Partnerships
The Regional Assemblies
The Regional Development Agencies
Representatives of the Utilities (Water, Gas, Electricity, BT)
Airport Operators Association