

Explanatory Memorandum to the Town and Country Planning (Blight Provisions) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (Blight Provisions) (Wales) Order 2019.

Julie James AM

Minister for Housing and Local Government

13 June 2019

PART 1

1. Description

- 1.1 This Instrument revokes and replaces the Town and Country Planning (Blight Provisions) (Wales) Order 2011 (SI 2011/435) (“Blight Provisions Order 2011”) with the purpose of increasing the prescribed annual value limit to allow qualifying persons to:
- (a) serve blight notices under the Town and Country Planning Act 1990; and
 - (b) claim for compensation under the Land Compensation Act 1973 (“the 1973 Act”).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 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).
- 3.2 This Instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

Blight notices

- 4.1 Where owners of land or property are unable to sell land, except for a significantly reduced amount because of the planning proposals of a public authority, the owner may serve a ‘blight’ notice on the appropriate authority. For example, where a compulsory purchase order (CPO) for a railway scheme has been published but has yet to be confirmed.
- 4.2 Blight notices may also be served by persons holding certain interests in other categories of land. For example, land allocated for development in an adopted Local Development Plan or identified in a plan as land proposed for a highway or a highway improvement or alteration. The purpose of a blight notice is to compel acquiring authorities to acquire blighted properties/land early to mitigate hardship.

- 4.3 The right to serve blight notices is limited to the following categories of owners:
- (a) Residential owner-occupiers of a private dwelling;
 - (b) Owner-occupiers of agricultural units;
 - (c) Owner-occupiers of any rateable property (also known as hereditament) i.e. a unit of property/land that is, or may become, liable to non-domestic rating and appears in a rating list, of which the annual value does not exceed a prescribed limit. This category includes:
 - small commercial properties (including banks and shops);
 - mineral producing operations;
 - garages;
 - cafes.
- 4.4 The annual value is defined, in brief, as the rateable value of a business property. Business rate revaluations by the Valuation Office Agency (VOA) reflect changes in property rental values and have different effects for different types of non-domestic enterprises and geographical locations. They are used by Local Authorities to calculate business rates for properties.
- 4.5 For the purposes of paragraph 4.3(c) above, the previous annual value limit in Wales was £34,800 as prescribed in the Blight Provisions Order 2011.

Claims for compensation under the Land Compensation Act 1973

- 4.6 The annual value limit in the Blight Provisions Order 2011 also has two other uses:
- (1) It defines the limit for claiming compensation under section 46 of the Land Compensation Act 1973 (“the 1973 Act”) for disturbance where a business is carried out by person aged over 60 and is subject to compulsory acquisition. Section 46 of the 1973 Act allows business owners aged over 60 to claim disturbance on the basis of total extinguishment of their business. This is as a consequence of compulsory acquisition and the business owner subsequently giving up possession of the whole of the property or land on which they carried out their business. Compensation under section 46 of the 1973 Act is payable providing the annual value of the property does not exceed the prescribed limit in the Blight Provisions Order 2011.
 - (2) It defines the limit for claiming compensation under Part I of the 1973 Act in respect of the effects caused by public works. Part I of the 1973 Act allows owner-occupiers of land to claim for depreciation in the value of an interest in their land caused by the physical effects, i.e. noise, vibration, smell, fumes, smoke, as a result of public works.

Compensation under Part I of the 1973 Act is payable providing the annual value of the land does not exceed the prescribed limit in the Blight Provisions Order 2011.

Revaluation of annual values 2017

- 4.7 The latest revaluation of annual values in England and Wales, undertaken by the VOA, became effective from 1 April 2017. In response, The Town and Country Planning (Blight Provisions) (England) Order 2017 was brought into force to increase the annual value limit in England to £36,000.
- 4.8 To account for geographical market variations in annual values for non-domestic properties in the same market within Wales and England, and to maintain parity and consistency of application of the blight provisions across Wales and England, it is necessary to increase the prescribed annual value limit in Wales to £36,000. To do this, it is necessary to make an Instrument to revoke and replace the Blight Provisions Order 2011.

PART 2 - REGULATORY IMPACT ASSESSMENT

5. Options

Option 1: Keep the status quo. As there are geographical market variations in annual values for non-domestic properties in the same market within Wales and England it would be unfair and undesirable to retain the Blight Provisions Order 2011. This would result in a lesser annual value limit being in force in Wales than in England. Adopting a lower annual value limit 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 for:

- (a) serving blight notices under the Town and Country Planning Act 1990; and
- (b) claiming for compensation under the 1973 Act.

Option 2: Make the legislation. It is not considered desirable (and it might be seen as discriminating against the business community in Wales) to restrict the opportunity for owners of commercial property comparable in rental value to properties in England who are adversely affected by the threat of public development to serve a blight notice or to claim appropriate compensation. The legislation is therefore considered necessary to ensure there is consistency in England and Wales in the application of the relevant blight provisions.

6. Costs and benefits

a. Costs

Option 1 – Keep the status quo

Retaining the Blight Provisions Order 2011 would put some small businesses in Wales at a disadvantage compared to their English counterparts. However, there would be a neutral cost impact as the same number of properties would continue to be eligible to qualify for:

- (a) serving blight notices under the Town and Country Planning Act 1990; and
- (b) claiming for compensation under the 1973 Act.

Option 2 – Make the legislation

To account for geographical market variations in annual values for non-domestic properties in the same market within Wales and England, and to maintain parity and consistency of application of the blight provisions across England and Wales, new legislation is required to revoke and replace the Blight Provisions Order 2011 to increase the prescribed annual value limit in Wales to £36,000.

It is anticipated increasing the annual value limit in Wales to £36,000 will result in approximately 350 additional non-domestic properties in Wales being eligible to serve blight notices or make compensation claims under the 1973 Act.

The power to make a CPO is at the discretion of Local Authorities and one which is not routinely exercised in Wales. There is a low probability, therefore, of any of the circa 350 non-domestic properties being directly affected as a result of the legislation being made. These non-domestic properties would only be affected in the circumstances where a CPO is made by a Local Authority which impacts the land on which they occupy.

As such, the likelihood is of a low or near neutral cost impact to the Welsh Government or Local Authorities as a result of the revision in the annual value limit in Wales. All qualifying persons who currently qualify to:

- (a) serve blight notices under the Town and Country Planning Act 1990; and
- (b) claim for compensation under the 1973 Act

will continue to enjoy the same commensurate qualifying criteria.

b. Benefits

The following have been identified as benefits for each option:

Option 1 – Keep the status quo

The annual value limit prescribed in the Blight Provisions Order 2011 would be retained which qualifying persons and Local Authorities in Wales are familiar with. However, small businesses in Wales would be disadvantaged compared to their English counterparts.

Option 2 – Make the legislation

The Instrument will ensure qualifying persons who currently have a qualifying interest to:

- (a) serve blight notices under the Town and Country Planning Act 1990; and
- (b) claim for compensation under the 1973 Act

will continue to enjoy the same commensurate qualifying criteria. An additional circa 350 non-domestic properties will also qualify.

It will ensure Wales is on consistent terms with England in relation to blight provisions and the compensation code which is a non-reserved matter under the Government of Wales Act 2006.

7. Consultation

- 7.1 As this is straightforward updating exercise, compiled in a similar manner to when the Blight Provisions Order 2011 was made, formal consultation was considered unnecessary.