

# **LAND ACQUISITION AND COMPENSATION (AMENDMENT) BILL**

## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial memorandum has been prepared by the Department for Regional Development (DRD) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In Northern Ireland, many government departments and bodies with statutory powers possess compulsory purchase powers to enable them to acquire land and property for specific purposes set out in legislation. The right to compensation may arise. Land & Property Services of the Department of Finance and Personnel acts on behalf of all Northern Ireland Departments negotiating and approving compensation payments following vesting arising from compulsory acquisition.
4. The Land Acquisition and Compensation (NI) Order 1973 (“the 1973 Order”) as amended by the Home Loss Payments (NI) Order 1992 contains at Part IV (Articles 30 to 44) “Provisions for Benefit of Persons Displaced from Land”.
5. Under these Articles of the 1973 Order and, subject to qualifying conditions and a minima and maxima range, there is provision for entitlement to Home Loss payments; Farm Loss payments; Disturbance Payments, and Payments for certain Housing Executive tenants and for Rehousing.
6. In Northern Ireland, rules for determining the amount of compensation are set out in Article 6 of the Land Compensation (NI) Order 1982. Generally compensation payable in respect of land and property compulsorily acquired is assessed on the basis of its open market value.

#### **Home Loss Payments**

7. The Home Loss Payment is a sum which may be paid in addition to any other compensation due to reflect and recognise the distress and discomfort of a person being compelled to move out of their home. Entitlement to this payment is subject to qualifying conditions. In addition to payment of the market value of the property,

the amount of HLP payable to a qualifying person is 10 per cent of the market value of the qualifying person's interest in the dwelling subject to a minimum and maximum range of £4,500 to £45,000 as prescribed in the Home Loss Payments Regulations (NI) 2004 "the 2004 Regulations".

#### Farm Loss Payments

8. In Northern Ireland owner occupiers of land which is comprised or included in an agricultural unit, and who are displaced from the whole of the land as a result of the compulsory acquisition, and who are, subject to other qualifying conditions, a qualifying person are entitled to unlimited Farm Loss Payments. The amount of compensation is based on average net profits. There are few instances of FLP having been claimed in Northern Ireland.

#### Other

9. Other non-domestic property types do not qualify for any supplementary payment in addition to market value position.

#### England and Wales

10. In England and Wales section 5 of the Land Compensation Act 1961 is the equivalent of Article 6 of the Land Compensation (NI) Order 1982 (referred to above). Generally compensation payable in respect of land and property compulsorily acquired is valued on the basis of its open market value.

In England and Wales the Land Compensation Act 1973 (the 1973 Act) contains Part III Provisions for Benefit of Persons Displaced from Land. This Part of the 1973 Act was subsequently amended by the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"). Included amongst a number of amendments were:

1. Introduction of Basic Loss Payment (BLP);
2. Introduction of Occupier's Loss Payment (OLP);
3. The abolition of Farm Loss Payment;

Additional amendments making provision for exclusion from loss payments in certain circumstances and certain supplementary provisions were also introduced.

### **Department for Regional Development's Proposal**

11. The Department considers that an anomaly exists in respect of compensation payable to those who are affected by compulsory land acquisition, as citizens in Northern Ireland are compensated less favourably than their counterparts in England and Wales due to the absence of Basic Loss and Occupier's Loss payments. The Department proposes in this Bill to amend the 1973 Order to provide a mechanism for payment of enhanced compensation payments that would bring Northern Ireland into line with England and Wales. It is proposed that the legislation would:-

1. Introduce a mechanism to provide for Basic Loss Payment;
2. Introduce a mechanism to provide for Occupier's Loss Payment;
3. Abolish Farm Loss Payments; and
4. Make any other necessary amendments to legislation required as a result of carrying out these amendments.

These amendments will not apply to any land or property compulsorily acquired before the amendments take effect.

## **CONSULTATION**

12. The Department for Regional Development conducted a consultation on its policy proposals on this matter. This consultation ran from 21 August 2015 – 16 October 2015. A total of two responses were received, both of which were supportive of the proposals.

## **OPTIONS CONSIDERED**

13. The intention of the proposal is to provide parity for land and property owners in Northern Ireland with enhanced compensation amounts available in England and Wales. This can only be achieved by making similar amendments to the equivalent Northern Ireland legislation, the Land Acquisition and Compensation (Northern Ireland) Order 1973.

## **OVERVIEW**

14. The overall impact of the Bill will be to bring the levels of enhancement of compensation to land and property owners whose interests are compulsorily acquired into line with existing provision in England and Wales.

## **COMMENTARY ON CLAUSES**

15. The Bill is divided into 7 clauses:

### **Clause 1 - Basic loss payment**

This clause provides for the payment of basic loss to a person who has a qualifying interest in the land (see subsection (4)) and whose land has been acquired compulsorily to the extent that he is not entitled to a home loss payment in respect of any part of the interest. The enhanced payment is limited to 7.5% of the value of his interest or £75,000, whichever is the lower.

### **Clause 2 – Occupiers loss payment**

1. Agricultural land – New Article 33B inserted into the 1973 Order applies to a person if he has a qualifying interest in the land, the land is agricultural land, the interest has been acquired compulsorily and he has occupied the land for the period specified. A person to whom this Article applies is entitled to a payment of 2.5%

of the value of his interest, the land amount and the building amount, subject to a maximum payment of £25,000.

2. Other land – New Article 33C inserted into the 1973 Order applies to a person if he has a qualifying interest in the land, the land is not agricultural land, the interest has been acquired compulsorily and he has occupied the land for the period specified. A person to whom this article applies is entitled to a payment of 2.5% of the value of his interest, the land amount and the building amount, subject to a maximum payment of £25,000.

### **Clause 3 – Supplementary provisions**

This clause inserts into the 1973 Order provisions for the method of making a claim, provisions for dealing with a claim if a person entitled to a payment is subject to insolvency proceedings before the claim is made, provisions to administer the claim in the event of the death of an applicant before the payment is made, provisions to provide for disputes on the amount of payment to be determined by the Lands Tribunal, provisions relating to payment required of the acquiring authority, provisions regarding interest payments on outstanding amounts, provisions for dealing with the acquisition of land by agreement or following serving of purchase notice or blight notice and provisions for the Department for Regional Development to make regulations for specified purposes.

### **Clause 4 – Amendment of other legislation**

This clause provides for the Department of Regional Development to amend by regulations any existing Northern Ireland legislation dealing with compulsory purchase other than the 1973 Order for the purposes of making provision which corresponds to this Act.

### **Clause 5 – Interpretation**

This clause provides for the meaning of “the 1973 Order” and for the Bill to be construed as one with that Order.

### **Clause 6 – Repeal**

This clause provides for the repeal of the farm loss payment provisions in the 1973 Order.

### **Clause 7 – Short title, commencement and application**

This clause cites the title of the legislation as the “Land Acquisition and Compensation (Amendment) Act (Northern Ireland) 2016” and provides for the Act to come into operation the day after Royal Assent is received. The Bill applies only where compulsory acquisition takes place after commencement.

## **FINANCIAL EFFECTS OF THE BILL**

16. As the Bill seeks to provide for additional compensation to be payable in the event of compulsory acquisition, there will be additional costs arising in respect of all Departments who obtain land or property through these means. This matter has been made clear to all Departments during the development process of the proposal. Within the Department for Regional Development, the biggest user of such vesting powers, the average addition to cost is 1% of each scheme cost.

## **HUMAN RIGHTS ISSUES**

17. As part of the consultation exercise carried out during 2015 on the proposed policy, consultees were invited to comment on any likely impact including human rights issues. No significant impacts were indicated. The provisions of the Bill are compatible with the European Convention on Human Rights.

## **EQUALITY IMPACT ASSESSMENT**

18. As part of the consultation exercise referred to above, consultees were invited to comment on any likely equality impacts. No such impacts were identified.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

19. As the need for a regulatory impact assessment has been screened out, no regulatory impact assessment has been prepared.

## **LEGISLATIVE COMPETENCE**

20. The Minister for Regional Development had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Land Acquisition and Compensation (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## **SECRETARY OF STATE CONSENT**

21. Not required.