

EXPLANATORY MEMORANDUM TO
THE ACQUISITION OF LAND (RATE OF INTEREST AFTER ENTRY)
(AMENDMENT) REGULATIONS 2016

2016 No. 879

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the rate of interest payable on outstanding compensation after entry for the compulsory purchase of land, so that the minimum rate is 0%.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 11(1) of the Compulsory Purchase Act 1965 provides that where an acquiring authority have served a notice to treat and a notice of entry, compensation for the land shall carry interest after entry, at the rate prescribed under section 32 of the Land Compensation Act 1961, until the compensation is paid. Interest is also payable at the prescribed rate under section 32 on other compensation payable in the compulsory purchase context. This rate is also applied by section 80(1) of the Planning and Compensation Act 1991 where compensation is payable under the provisions mentioned in Part 1 of Schedule 18 to that Act.
- 4.2 The rate was last specified in the Acquisition of Land (Rate of Interest after Entry) Regulations 1995.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The acquisition of land following a compulsory purchase order requires the acquiring authority to pay compensation to claimants for loss of property. The valuation date for the assessment of compensation is the earlier of the date of entry (or the vesting date if the land is the subject of a general vesting declaration) and the date compensation is agreed or determined. Entry is often taken before compensation has been agreed. Although claimants can obtain an advance payment of 90% of the acquiring authority's estimate, there will be an amount outstanding.
- 7.2 The rate of interest on unpaid compensation after entry has, since 1995, been set at 0.5% below the standard rate of interest, as defined in the Acquisition of Land (Rate of Interest after Entry) Regulations 1995 ("the 1995 Regulations"). The 1995 Regulations refer to the standard rate of interest on the "reference day" most recently preceding the date of entry and on each subsequent reference day before compensation is paid. "Reference days" fall on 31st March, 30th June, 30th September and 31st December.
- 7.3 These Regulations amend the rate so that the rate of interest cannot be less than 0%. This follows the decision of the Monetary Policy Committee announced on 4th August 2016 to reduce the Bank of England base rate to 0.25%. If the standard rate of interest is below 0.5% on the relevant reference day, then a negative interest rate will otherwise apply. The Government is concerned that this will produce unintended consequences, including a reduction in the compensation payable and an obvious incentive to delay payment.

Consolidation

- 7.4 There are no plans to consolidate these provisions with any other instruments.

8. Consultation outcome

- 8.1 Given the short time between the change in the Bank of England base rate announcement and the subsequent reference day of 30th September 2016, the Government has not carried out any public consultation on this change.
- 8.2 Separately, in March 2015 the Government consulted on a package of reforms to compulsory purchase powers titled "Technical Consultation on Improvements to Compulsory Purchase Processes". The Government response to the consultation is here: www.gov.uk/government/consultations/improving-the-compulsory-purchase-process.
- 8.3 In the consultation, the Government asked whether a 1% floor should be introduced to guard against negative base rates. There was considerable support from respondents for a 1% floor, though those opposed argued it was unnecessary and would add complexity. However, with the rate currently still set at *below* the standard rate, the rate would now turn negative. The Government has therefore decided to make these amendments to avoid unintended consequences and protect claimants.

9. Guidance

- 9.1 The Department for Communities and Local Government will not issue specific public guidance on this change, but it publishes the payable rate every quarter on the

gov.uk website
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535500/LCA_rate.pdf). There is a link to this from the Government's general guidance on compulsory purchase
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication_FINAL2.pdf : see paragraph 55 on page 32).

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is no more than minimal.
- 10.2 The amendments will apply to participants in the business, charity and voluntary sectors, insofar as participants in those sectors act as acquiring authorities or claimants following compulsory purchase orders where compensation is outstanding on or after 30th September 2016. Charities and voluntary sector organisations are unlikely to act as acquiring authorities, due to the resources and legal powers required for compulsory purchase. This instrument will not increase the costs of acquiring authorities if they owe outstanding compensation but it will prevent them gaining from negative interest rates. Insofar as businesses, charities or voluntary bodies act as claimants, this instrument will benefit them by giving protection from negative rates.
- 10.3 The impact on the public sector is the same as described above insofar as public bodies act as acquiring authorities and pay compensation following compulsory purchase.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The instrument will not have any negative impact on small business. It will affect acquiring authorities and claimants but it will not actually increase the amount of compensation acquiring authorities have to pay as it only sets a “floor” of 0%. Businesses are represented in both categories, but small or micro-businesses will only be claimants. It is not possible to estimate the number of small businesses which will be affected by this proposal, but guarding against negative interest rates on outstanding compensation will be beneficial to claimant businesses, including small businesses.

12. Monitoring & review

- 12.1 The instrument does not include any specific requirement to conduct a review. The Chief Secretary to the Treasury, David Gauke MP, has made the following statement: “In my view, and having had regard to “Small Business, Enterprise and Employment Act 2015 – statutory guidance for Departments”, it is not appropriate to make provision requiring the review of the provisions of the Acquisition of Land (Rate of Interest after Entry) (Amendment) Regulations 2016. Such a provision would be disproportionate taking account of the economic impact of these Regulations.”
- 12.2 The Treasury will keep the setting of the interest rate on compulsory purchase compensation actively under review.

13. Contact

- 13.1 Michael Sherry at HM Treasury (tel: 0207 276 7453 or email Michael.Sherry@ipa.gov.uk) can answer any queries regarding the instrument.