

EXPLANATORY MEMORANDUM TO

THE COMPULSORY PURCHASE (INQUIRIES PROCEDURE) (MISCELLANEOUS AMENDMENTS AND ELECTRONIC COMMUNICATIONS) RULES 2018

2018 No. 248

1. Introduction

- 1.1 This explanatory memorandum has been prepared jointly by the Ministry of Housing, Communities and Local Government and the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Rules amend the Compulsory Purchase (Inquiries Procedure) Rules 2007 (S.I. 2007 / 3617) (“the 2007 Rules”). The amendments make a number of procedural changes to the 2007 Rules, including to authorise the use of electronic communications and to set out the modifications which will apply where a “confirming authority” appoints an inspector to act instead of it in relation to the confirmation of a compulsory purchase order (“CPO”).

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 Part 2 of the Acquisition of Land Act 1981 (“the 1981 Act”) sets out the procedure to be followed for the confirmation of a non-Ministerial CPO by a “confirming authority”. The “confirming authority” is the Minister having power to authorise the acquiring authority to purchase the land compulsorily.
- 4.2 Schedule 1 to the 1981 Act sets out the procedure for the making of a Ministerial CPO.
- 4.3 If there is a remaining objection to the confirmation of a non-Ministerial CPO (or the making of a Ministerial CPO), the person who has made it has a right to be heard at a public local inquiry or hearing. The 2007 Rules set out the procedure to be followed where a public local inquiry is held.
- 4.4 This instrument amends the 2007 Rules to make a number of procedural changes (outlined at paragraph 7.6 below).
- 4.5 Part 2 of the instrument sets out miscellaneous procedural amendments. Some of these are required as a result of new section 14D of the 1981 Act (which was introduced by section 181 of the Housing and Planning Act 2016). New section 14D

gives a “confirming authority” the power to appoint a person to act instead of it in relation to the confirmation of a CPO. This instrument sets out how the 2007 Rules will be subject to a number of modifications where a person is appointed under section 14D of the 1981 Act.

- 4.6 Part 3 of the instrument makes amendments to authorise and facilitate the use of electronic communications under the 2007 Rules. Section 8(3) of the Electronic Communications Act 2000 provides that an instrument authorising the use of electronic communications for any purpose shall not be made unless the Minister making it considers that the authorisation is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases. The Minister is satisfied that this will be the case.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies to England and, to a limited extent, to Wales (as it amends the 2007 Rules which apply in Wales where the CPO which is relevant to the inquiry includes land in Wales and falls to be made or confirmed by a UK Government Minister).

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 Once an acquiring authority has made a CPO it is submitted to the confirming authority for authorisation. Where a CPO is objected to, an Inspector is appointed to hold a public inquiry or to consider the case through written representations. The Inspector then submits a report and recommendation to the relevant Minister / Secretary of State who decides whether or not to confirm the CPO.
- 7.2 At present, the confirmation process can be lengthy and the timescales for a decision unclear. In addition, some relatively straightforward cases may be unnecessarily delayed because the current process requires orders to be referred to the Secretary of State for determination.
- 7.3 In 2015 the Government consulted on a package of compulsory purchase reforms, including proposals to make the confirmation stage more streamlined and transparent, without compromising the ability of parties to engage properly in the process and make their views known, or compromising the quality of the decisions. This included enabling a confirming authority to delegate its decision whether or not to confirm a CPO to an appointed person.
- 7.4 Following the consultation, the Government decided to take forward all of the ‘streamlining’ proposals. The Government Response was published in October 2015 (see paragraph 8.2 below).
- 7.5 These proposals were partly implemented through the Housing and Planning Act 2016 (sections 180 and 181), which amended the 1981 Act so as to:

- require the Secretary of State to publish timetables for the confirmation of CPOs and to publish an annual report to Parliament setting out the extent to which confirming authorities have complied with any applicable timetable;
- enable a confirming authority to appoint an inspector to act instead of it in relation to the confirmation of a CPO.

7.6 These Rules amend the 2007 Rules in order to set out more detailed matters to implement the ‘streamlining proposals’. This instrument:

- provides that “the authorising authority” (which is the confirming authority for a non-Ministerial CPO and the relevant Minister for a Ministerial CPO) must inform the parties to the inquiry of the expected date of its decision within ten working days beginning with the day after the day on which the inquiry closes;
- makes clear that the 2007 Rules will be subject to a number of modifications where a confirmation decision is delegated to an inspector under section 14D of the 1981 Act. These modifications, for instance, clarify where certain procedural steps will not be required. For example, a “confirming authority” will no longer have the power to call a pre-inquiry meeting as it will not be making the decision on the CPO (so only the inspector will have the power to call a pre-inquiry meeting). In addition, after the inquiry, the inspector will no longer need to submit a report and recommendation to the “confirming authority” as the inspector will decide whether to confirm the CPO;
- sets out the procedures to be followed where a decision whether or not to confirm a CPO is quashed following a successful challenge; and
- authorises and facilitates the use of electronic communications under the 2007 Rules.

7.7 Alongside these Rules, the compulsory purchase guidance published by the Ministry of Housing, Communities and Local Government has been amended to set out:

- the criteria which the Secretary of State for Housing, Communities and Local Government will consider when deciding whether to delegate a case to an inspector;
- the target timetables for the confirmation of CPOs by confirming authorities (other than the Welsh Ministers).

Consolidation

7.8 We have no plans to consolidate the 2007 Rules at this time.

8. Consultation outcome

8.1 In March 2015, the Government published a Technical consultation on improvements to compulsory purchase processes which sought views on a package of reforms to make the compulsory purchase process clearer, faster and fairer.

8.2 The proposals to streamline the confirmation process were well supported and the Government decided to take forward all of the measures. A summary of the consultation responses can be found in the Compulsory purchase process: government response to consultation (pages 7-9).

9. Guidance

- 9.1 The Ministry of Housing, Communities and Local Government's guidance on the compulsory purchase process (<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>) has been updated to reflect the new measures.

10. Impact

- 10.1 An impact assessment for the compulsory purchase reforms, including the 'streamlining' measures, was produced for the Housing and Planning Act 2016. A copy of that assessment is available online at: <https://www.parliament.uk/documents/impact-assessments/IA16-002I.pdf>. No additional impact assessment has been produced in respect of this instrument as no additional impact on the private or voluntary sectors is foreseen.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The impact of the broader streamlining measures will be monitored through the requirement in the Housing and Planning Act 2016 for the Secretary of State to publish an annual report to Parliament setting out the extent to which confirming authorities have complied with the timetables associated with confirming CPOs.
- 12.2 We will keep the impact of the measures in these Rules under review.

13. Contact

- 13.1 Theresa Donohue at the Ministry of Housing, Communities and Local Government Telephone: 0303 4441719 or email: theresa.donohue@communities.gsi.gov.uk can answer any queries regarding the instrument.