

2018 No. 253

ACQUISITION OF LAND, ENGLAND AND WALES

The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018

<i>Made</i> - - - -	<i>26th February 2018</i>
<i>Laid before Parliament</i>	<i>28th February 2018</i>
<i>Coming into force</i> - -	<i>6th April 2018</i>

The Secretary of State, in exercise of the powers conferred by sections 7(2), 13A(2) and (6) and 13B(7) of, and paragraph 4A(2) and (7) of Schedule 1 to, the Acquisition of Land Act 1981(a) and sections 8 and 9 of the Electronic Communications Act 2000(b), makes the following Regulations.

The Secretary of State considers that the authorisation by these Regulations of the use of electronic communications for any purpose is such that the extent (if any) to which records of things done for the purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases.

PART 1

Preliminary matters

Citation and commencement

1.—(1) These Regulations may be cited as the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018.

(2) These Regulations come into force on 6th April 2018.

Application

2.—(1) Subject to the following paragraphs, the amendments made by these Regulations apply only in relation to—

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- (a) 1981 c. 67; sections 13A and 13B and paragraph 4A of Schedule 1 were inserted by sections 100(1) and (6) and 101(1) and (4) of the Planning and Compulsory Purchase Act 2004 (c. 5). Some, but not all, of the functions of the Secretary of State in authorising the compulsory purchase of land in Wales were transferred to the National Assembly for Wales by S.I. 1999 / 672. These functions were subsequently transferred from the National Assembly to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (b) 2000 c. 7. For the purposes of sections 8 and 9, the Secretary of State is “the appropriate Minister” in relation to matters under the Acquisition of Land Act 1981 (c. 67).

- (a) a compulsory purchase order^(a) which is submitted by an acquiring authority^(b) for confirmation in accordance with section 2(2)(b) of the Acquisition of Land Act 1981^(c) on or after 6th April 2018; or
 - (b) a draft compulsory purchase order in respect of which a Minister publishes a notice under paragraph 2(1) of Schedule 1 to that Act on or after that date.
- (2) Paragraph (1) does not apply to—
- (a) regulation 7 in so far as it inserts regulation 11 into the 2004 Regulations;
 - (b) the amendments made by regulation 8(3).
- (3) Regulation 7, in so far as it inserts regulation 11 into the 2004 Regulations, only applies in relation to a decision notified under regulation 10(1) of the 2004 Regulations which is quashed, in full or in part, in proceedings before any court on or after 6th April 2018.
- (4) The amendments made by regulation 8(3) only apply in relation to a consent form which is sent to a remaining objector under regulation 3(1) of the 2004 Regulations on or after 6th April 2018.

Interpretation

3. In these Regulations—

“the 2004 Regulations” means the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004^(d);

“remaining objector” means a person who has a remaining objection within the meaning of section 13A of the Acquisition of Land Act 1981 or, as the case may be, paragraph 4A of Schedule 1 to that Act.

PART 2

Miscellaneous Amendments

Amendment to regulation 2

4. In regulation 2(1) (interpretation) of the 2004 Regulations, after “references to Schedule 1” insert “, except in the closing words of regulation 3(1),”.

Amendment to regulation 3

5. In regulation 3(1) (consent to follow written representations procedure) of the 2004 Regulations, for “the Schedule” substitute “Schedule 1”.

Amendment to regulation 8

6. In regulation 8(1) (site inspections) of the 2004 Regulations, after “at any time” insert “within the period of fifteen weeks beginning with the starting date”.

Insertion of new regulations 11 and 12

7. After regulation 10 (notification of decision) of the 2004 Regulations, insert—

(a) For the definition of “compulsory purchase order”, see section 7(1) of the Acquisition of Land Act 1981 (c. 67).
 (b) For the definition of “acquiring authority”, see section 7(1) of the Acquisition of Land Act 1981 (c. 67).
 (c) Section 2(2) was substituted by section 181(1) and (3) of the Housing and Planning Act 2016 (c. 22).
 (d) S.I. 2004/2594.

“Procedure following quashing of decision

11.—(1) Where a decision notified under regulation 10(1) is quashed, in full or in part, in proceedings before any court, the authorising authority must send to—

- (a) the acquiring authority (where it is not the authorising authority),
- (b) each remaining objector,
- (c) any other person permitted to make representations under regulation 6,

a written statement of the matters with respect to which further representations are invited for the purposes of the further consideration of the compulsory purchase order by the authorising authority.

(2) On receipt of a written statement under paragraph (1), a person may—

- (a) make written representations to the authorising authority in respect of the matters mentioned in the statement; or
- (b) give written notice to the authorising authority of the withdrawal of any consent previously provided by that person to the use of the written representations procedure for the purposes of section 13A or (as the case may be) paragraph 4A of Schedule 1.

(3) Those persons giving notice or making representations under paragraph (2) must ensure that the notice or representations are received by the authorising authority within 3 weeks beginning with the date of the written statement sent under paragraph (1).

Application of the Regulations where a person is appointed under section 14D

12.—(1) Where a person is appointed under section 14D(a), these Regulations have effect subject to the modifications in Schedule 2.

(2) Where a person’s appointment under section 14D is revoked, these Regulations have effect without the modifications in Schedule 2 and any step taken or thing done before the revocation, which could be taken or done under the Regulations (without the modifications), is to have effect as if it had been taken or done under these Regulations (without the modifications).”.

Amendments to the Schedule

8.—(1) The Schedule to the 2004 Regulations is amended as follows.

(2) For the heading “Schedule”, substitute “Schedule 1”.

(3) In the form of consent to the written representations procedure—

- (a) in the fifth paragraph, after “heard orally at an inquiry” insert “(unless the decision as to whether to [confirm][make](c) the order is subsequently quashed in proceedings before any court)”;
- (b) in the seventh paragraph, for the words from “[Compulsory Purchase by Non-Ministerial” to the end of the sentence substitute “Compulsory Purchase (Inquiries Procedure) Rules 2007 (S.I. 2007/3617).”.

Insertion of new Schedule 2

9. After Schedule 1 (as renumbered by regulation 8(2) of these Regulations) to the 2004 Regulations, insert the Schedule 2 set out in the Schedule to these Regulations.

(a) Section 14D of the Acquisition of Land Act 1981 (c. 67) was inserted by section 181(2) of the Housing and Planning Act 2016 (c. 22).

PART 3

Electronic communications

Amendments to regulation 2

10.—(1) Regulation 2 (interpretation) of the 2004 Regulations is amended as follows.

(2) In paragraph (2)—

(a) after the definition of “authorising authority” insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);”;

(b) in the definition of “send”—

(i) the words from “by” to the end become sub-paragraph (a);

(ii) after that sub-paragraph, insert “or” and the following sub-paragraph—

“(b) by electronic communication to such address as may for the time being be specified by the recipient for that purpose;”.

(3) After paragraph (2), insert—

“(3) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

(a) except in sub-paragraph (a) of the definition of “send” in paragraph (2), the expression “address” includes any number or address used for the purposes of such communications;

(b) references to representations, statements, notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(4) Paragraphs (5) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give, send, return or supply any representations, statement, notice or other document to any other person (“the recipient”).

(5) The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(6) In paragraph (5), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if given, sent, returned or supplied by means of a document in printed form.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (5), and “written” is to be construed accordingly.

(8) Where the electronic communication is received by the recipient outside the recipient’s business hours, it is taken to have been received on the next working day.”.

Insertion of new regulation 2A

11. After regulation 2 of the 2004 Regulations, insert—

(a) Section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

“Withdrawal of consent to use of electronic communications

2A. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, the person must give notice in writing—

- (a) withdrawing any address notified to the authorising authority for that purpose, or
- (b) revoking any agreement entered into with the authorising authority for that purpose,

and such withdrawal or revocation is final and takes effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

Amendment to Schedule 1

12. In Schedule 1 to the 2004 Regulations (as renumbered by regulation 8(2) of these Regulations), in the form of consent to the written representations procedure, at the end of the eighth paragraph, insert “Where you are content to receive communications electronically, please provide your address for the purposes of electronic communications, in addition to your postal address, below.”.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Dominic Raab
Minister of State

26th February 2018

Ministry of Housing, Communities and Local Government

SCHEDULE

Regulation 9

“SCHEDULE 2

Regulation 12

Modifications where a person is appointed under section 14D

Modification of regulation 2

1. Regulation 2(2) (interpretation) has effect as if, after the definition of “electronic communication”, there were inserted—

““inspector” means a person appointed by a confirming authority under section 14D to act instead of it in relation to the confirmation of a compulsory purchase order;”.

Modification of regulation 2A

2. Regulation 2A (withdrawal of consent to use of electronic communications) has effect as if, after “authorising authority”, in both places, there were inserted “or the inspector”.

Modification of regulation 4

3. Regulation 4(d) (notification of decision to follow written representations procedure) has effect as if, for “it”, there were substituted “the inspector”.

Modification of regulation 5

4. Regulation 5 (representations) has effect as if, after paragraph (13), there were inserted—

“(14) An inspector may act in place of the authorising authority under this regulation—

- (a) to allow a longer period for the provision of an initial statement or representations;
- (b) to disregard any initial statement or representations received by the authorising authority after the relevant period.”.

Modification of regulation 6

5. Regulation 6 (third party representations) has effect as if, after paragraph (6), there were inserted—

“(7) An inspector may act in place of the authorising authority under this regulation—

- (a) to allow a longer period for the provision of representations;
- (b) to disregard representations received by the authorising authority after the relevant period.”.

Disapplication of regulation 7

6. Regulation 7 (appointment of an inspector) has effect as if it were omitted.

Modification of regulation 9

7. Regulation 9 (decision) has effect as if—

- (a) in paragraph (1)—
 - (i) for “authorising authority” there were substituted “inspector”;
 - (ii) for “it”, in the first and second places it occurs, there were substituted “he”;
- (b) in paragraph (2), for “its” there were substituted “the inspector’s”.

Modification of regulation 10

8. Regulation 10 (notification of decision) has effect as if—

- (a) in paragraph (1)—
 - (i) for “authorising authority” there were substituted “inspector”;
 - (ii) for “its” there were substituted “his”;
- (b) paragraphs (2) and (3) were omitted;
- (c) in paragraph (4)—
 - (i) the words “appended to the inspector’s report or otherwise” were omitted;
 - (ii) for “authorising authority”, in the second place it occurs, there were substituted “inspector”;
 - (iii) for “its” there were substituted “his”.

Modification of regulation 11

9. Regulation 11 (procedure following quashing of decision) has effect as if there were substituted—

“Procedure following quashing of decision

11.—(1) Where a decision notified under regulation 10(1) is quashed, in full or in part, in proceedings before any court, the authorising authority must send to—

- (a) the acquiring authority,
- (b) each remaining objector,
- (c) any other person permitted to make representations under regulation 6,

a written statement of the matters with respect to which further representations are invited for the purposes of the further consideration of the compulsory purchase order by an inspector (who may or may not be the inspector who made the decision originally notified under regulation 10(1)).

(2) On receipt of a written statement under paragraph (1), a person may—

- (a) make written representations to the inspector in respect of the matters mentioned in the statement; or
- (b) give written notice to the inspector of the withdrawal of any consent previously provided by that person to the use of the written representations procedure for the purposes of section 13A or (as the case may be) paragraph 4A of Schedule 1.

(3) Those persons giving notice or making representations under paragraph (2) must ensure that the notice or representations are received by the authorising authority within 3 weeks beginning with the date of the written statement sent under paragraph (1).”.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004/2594) (“the 2004 Regulations”). They come into force on 6th April 2018.

Part 1 contains preliminary matters.

Part 2 sets out miscellaneous amendments to the 2004 Regulations.

Regulations 4 and 5 amend regulations 2(1) and 3(1) of the 2004 Regulations in consequence of the amendment made by regulation 8(2) (which renames the Schedule to the 2004 Regulations as Schedule 1).

Regulation 6 amends regulation 8 of the 2004 Regulations so that any site visit by an inspector must be undertaken within the period of fifteen weeks beginning with the “starting date” (as defined in regulation 2(2) of the 2004 Regulations).

Regulation 7 inserts two new regulations into the 2004 Regulations.

New regulation 11 sets out the procedure to be followed where a decision notified under regulation 10(1) of the 2004 Regulations is quashed in proceedings before any court (whether under section 24(3) of the Acquisition of Land Act 1981 (c. 67) (“the 1981 Act”) or as a result of a judicial review challenge).

New regulation 12 provides that the 2004 Regulations are to have effect subject to certain modifications where a person is appointed under section 14D of the 1981 Act. Section 14D provides that a confirming authority may appoint a person to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A of the 1981 Act applies. The modifications are set out in new Schedule 2 to the 2004 Regulations (which is inserted by regulation 9 of these Regulations).

Regulation 8 amends the existing Schedule to the 2004 Regulations and renames it Schedule 1.

Part 3 concerns electronic communications.

Regulation 10 amends regulation 2 of the 2004 Regulations in order to authorise and facilitate the use of electronic communications. The definition of “send” in regulation 2(2) of the 2004 Regulations is amended so that the “authorising authority” (as defined in regulation 2(2) of the 2004 Regulations) may send documents by first class post or by using electronic communications.

Regulation 11 inserts a new regulation 2A into the 2004 Regulations which sets out how a person may withdraw their consent to the use of electronic communications.

Regulation 12 amends the prescribed form of consent to the written representations procedure in the 2004 Regulations to make clear that where a remaining objector is content to receive communications electronically, they should provide their address for the purposes of electronic communications on the form.

A final impact assessment was produced for Part 7 of the Housing and Planning Act 2016 (c. 22) on compulsory purchase, which, among other things, introduced section 14D (power to appoint an inspector) into the 1981 Act and inserted subsection (3) into section 24 of that Act (powers of the court). A copy of that impact 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.

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