

**EXPLANATORY MEMORANDUM TO**  
**THE COMPULSORY PURCHASE OF LAND (WRITTEN REPRESENTATIONS**  
**PROCEDURE) (MINISTERS) (MISCELLANEOUS AMENDMENTS AND**  
**ELECTRONIC COMMUNICATIONS) REGULATIONS 2018**

**2018 No. 253**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 These Regulations amend the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (S.I. 2004 / 2594) (“the 2004 Regulations”). The amendments make a number of procedural changes to the 2004 Regulations, 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. As an alternative (and provided all those with remaining objections consent to this) a written representations procedure may be used to determine the issue.
- 4.4 The 2004 Regulations set out the written representations procedure. This instrument amends the 2004 Regulations 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 2004 Regulations 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 in relation to electronic communications. The definition of “send” in regulation 2(2) of the 2004 Regulations currently requires the use of first class post. This is amended by this instrument so that the “authorising authority” (i.e. the confirming authority for a non-Ministerial CPO and the relevant Minister in relation to a Ministerial CPO) can send documents by post or use electronic communications.
- 4.7 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 2004 Regulations which apply in Wales where the CPO which is relevant to the written representations procedure 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 Regulations amend the 2004 Regulations in order to set out more detailed matters to implement the ‘streamlining proposals’. This instrument:
- provides that any site visit under the written representations process must be undertaken within 15 weeks of the “starting date” (as defined in regulation 2(2) of the 2004 Regulations);
  - makes clear that the 2004 Regulations 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 make various changes to reflect that the decision whether to confirm the CPO will be taken by the inspector. They also clarify where certain procedural steps will not be required e.g. the inspector will no longer need to submit a report and recommendation to the relevant Minister 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 legal challenge; and
  - authorises the use of electronic communications under the 2004 Regulations.
- 7.7 Alongside these Regulations, 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 2004 Regulations at this time.

## **8. Consultation outcome**

- 8.1 In March 2015, the Government published a *Technical consultation on improvements to compulsory purchase processes* ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/413866/Technical\\_consultation\\_on\\_improvements\\_to\\_compulsory\\_purchase\\_processes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413866/Technical_consultation_on_improvements_to_compulsory_purchase_processes.pdf))

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* (<https://www.gov.uk/government/consultations/improving-the-compulsory-purchase-process>, 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 Regulations 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](mailto:theresa.donohue@communities.gsi.gov.uk) can answer any queries regarding the instrument.