

EXPLANATORY MEMORANDUM TO
THE PARTY WALL ETC. ACT 1996 (ELECTRONIC COMMUNICATIONS)
ORDER 2016

2016 No. 335

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends to the Party Wall etc. Act 1996 (c.40) to enable the electronic service of notices and documents under that Act.

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 This instrument is made under sections 8 and 9 of the Electronic Communications Act 2000 (c.7). Section 8(1)(a) gives the Secretary of State the power to modify any enactment by order for the purpose of authorising or facilitating the use of electronic communications.
- 4.2 The instrument is being made to enable the electronic service of notices and documents provided for in the Party Wall etc. Act 1996, provided that the intended recipient has stated a willingness to receive them by those means, in addition to the methods of service already set out in section 15 of the Act. The new provisions are sections 15(4) and 15(5).
- 4.3 By virtue of section 9(3) and (4) of the Electronic Communications Act 2000 an order may be made either under the negative procedure or under the affirmative procedure, in the latter case after laying of a draft before Parliament. The negative procedure has been chosen in this case, as it is thought that the provisions made are not contentious, and that no purpose would be served by laying them in draft.
- 4.4 By virtue of section 8(3) of the Electronic Communications Act 2000 an order under that section authorising the use of electronic communications 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 or electronic storage than in other cases. The Minister is content that the availability of the records

will be no less satisfactory or secure in cases where use is made of electronic communications or electronic storage than in other cases.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State, James Wharton, has made the following statement regarding Human Rights:

In my view the provisions of the Party Wall etc. Act 1996 (Electronic Communications) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 Currently legislation allows for notices and documents to be served or given only in person or by post. Even if notices and documents are in practice sent electronically, the current legislation nevertheless requires them to be served also by the paper-based methods. This is not consistent with the Government's policy to enable digital communication wherever practicable. The amendments will allow the use of electronic communication as an alternative to paper based methods. Therefore those who do not wish, or do not have the means, to communicate electronically will be able to continue to use the paper based methods as hitherto..

Consolidation

- 7.2 There are no current plans to consolidate the provisions of Party Wall etc. Act 1996..

8. Consultation outcome

- 8.1 The relevant individuals who would be affected by the amendments could not be identified and as the amendments are voluntary and beneficial a consultation was only carried out with members of the professional bodies for surveyors: The Royal Institution of Chartered Surveyors, The Pyramus & Thisbe Club and the Faculty of Party Wall Surveyors. Most respondents already use electronic communications for the service of notices and documents along side the paper-based methods currently required. This provides further support for allowing electronic transmission.

9. Guidance

- 9.1 The Department will publish amended guidance on the operation of the Act on the Communities and Local Government section of the GOV.UK website.

10. Impact

- 10.1 There is no negative impact on business, charities or voluntary bodies. As the use of electronic communication is voluntary and subject to the consent of the recipient, only those persons who find it beneficial will use it.
- 10.2 There is no negative impact on the public sector. As the use of electronic communication is voluntary and subject to the consent of the recipient, only public

sector building owners (and their surveyors) who think it will be beneficial to their organisation will use it.

- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The impact of the requirements on small businesses (employing up to 50 people) is minimal as the use of electronic means of service is voluntary and subject to the consent of the recipient.

12. Monitoring & review

- 12.1 The Parliamentary Under Secretary of State, James Wharton, has made the following statement regarding a review provision:

In my view it is not appropriate to make provision for review in this instrument, as a review would be disproportionate taking into account the economic impact of the provision made. The use of electronic communications under the new provisions for service of notices and documents under the Party Wall etc. Act 1996 is additional to existing options for service, and subject to the consent of the recipient. The use of electronic communications and electronic storage is standard business practice, and no purpose would be served by periodical review of the provisions made in this particular case. Therefore only surveyors (and their building owner clients) who think it will be beneficial to their business will wish to use the new provision to serve or give notices and documents by electronic communications.

13. Contact

- 13.1 Sandra Simoni at the Department for Communities and Local Government Tel: 0303 44 41781 or email: sandra.simoni@communities.gsi.gov.uk can answer any queries regarding the instrument.