

EXPLANATORY MEMORANDUM TO
THE LAND COMPENSATION DEVELOPMENT (ENGLAND) ORDER 2012
2012 No. 634

1. 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**

2.1 This Order replaces (for England) the Land Compensation Development Order 1974 (the 1974 Order) mainly to reflect changes to the procedures for appealing against Certificates of Appropriate Alternative Development. These will in future be made to the Lands Chamber of the Upper Tribunal rather than to the Secretary of State.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.
4. **Legislative Context**

4.1 Part 9 of the Localism Act 2011 amended both the planning assumptions for compulsory purchase compensation and the criteria for issuing a certificate stating what development might have received planning permission in the absence of the scheme for which the compulsory purchase order had been made. The jurisdiction for appealing against the content of such a certificate was transferred from the Secretary of State to the Upper Tribunal (Lands Chamber). This Order replaces the 1974 Order to reflect this.
5. **Territorial Extent and Application**

5.1 This instrument applies to England.
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 Land Compensation Act 1961 sets out the planning assumptions for compulsory purchase compensation. Land is valued in the “no-scheme world” where the scheme for which the compulsory order had been made is assumed to have been cancelled. As land is worth more with, or with the prospect of, planning permission, certain assumptions must be made. Any of the parties to a compulsory purchase order (but generally the claimants whose land is being taken) can apply to the local planning authority for a certificate of appropriate alternative development, which will state what permissions might have been granted in the no-scheme world. If the applicant disagrees with the content of the certificate he can appeal: formerly to the Secretary of State, but in future to the Upper Tribunal.

7.2 The requirements for making an application for a certificate, the time limits for issuing one and the provisions for appeals were contained in the 1974 Order. Part 9 of the Localism Act 2011 made the following changes that affected the content of this Order. The first is the jurisdiction for appeals. The second is the removal of local planning authorities’ ability to specify conditions for the classes of planning permissions they might have granted by means of reference to published general requirements. This is no longer required because certificates of appropriate alternative development will refer to “descriptions of development” rather than “classes of development”. General requirements for conditions only have meaning when applied to classes (such as “housing” or “commercial”). “Descriptions” of development can go much wider, so general requirements for conditions could not be sensibly formulated. The Act therefore amended the enabling power for this Order so that it is no longer possible to make provision for either appeals or general requirements for conditions.

7.3 It is therefore necessary to replace the 1974 Order to remove the articles on appeals and general requirements and to provide for local planning authorities to tell applicants how to appeal to the Upper Tribunal rather than the Secretary of State. The opportunity was also taken to make specific provision for applications to be made electronically.

- Consolidation

7.4 This Order replaces the 1974 Order in its entirety, so the question of consolidation does not arise.

8. Consultation outcome

8.1 No consultation was carried out for this instrument as it only makes changes to the 1974 Order as a consequence of the changes to the primary legislation in the Localism Act 2011.

9. Guidance

9.1 The current guidance on Certificates of Appropriate Alternative Development in Appendix P to Part 1 of the Memorandum to ODPM Circular

06/2004 “Compulsory Purchase and the Crichel Down Rules” will be replaced to reflect the provisions of Part 9 of the Localism Act 2011 and this Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. This is set out in paragraph 11.2 below.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is no need to minimise the impact of the requirements on firms employing up to 20 people as the effect of this Order is negligible. The only difference for applicants for a certificate is that there is now specific provision for applications to be made electronically.

12. Monitoring & review

12.1 This is a procedural Order which makes minimal changes to the one it replaces, so no formal monitoring or review is necessary. A review would be undertaken if the Department received information about significant problems with the way the Order operated.

13. Contact

Robert Segall at the Department for Communities and Local Government Tel: 030344 41717 or email: robert.segall@communities.gsi.gov.uk can answer any queries regarding the instrument.