

EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (COMPULSORY ACQUISITION)
(AMENDMENT) REGULATIONS 2017

2017 No. 105

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 the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (“the 2010 Regulations”) to prescribe new information to be included in a compulsory acquisition notice under section 134 of the Planning Act 2008 (“the 2008 Act”). This is required as a result of the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017 / 16) (“the Corresponding Amendments Regulations”) which inserted a new paragraph (cza) into section 134(7) of the 2008 Act. New paragraph (cza) provides that a compulsory acquisition notice must contain an additional prescribed statement and form.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument must come into force on 23 February 2017, which will be less than 21 days after it has been laid in Parliament. The reason for this is that the next decision by a Secretary of State on a development consent order (as to whether to make it or not) is due by 24 February, being the last date for the decision under the statutory timetable required by the 2008 Act. The Department understands the decision will be made on 23 or 24 February 2017.
- 3.2 It is essential that these Regulations are in force by then, as, if the relevant Secretary of State decides to make the order, there will need to be a prescribed statement and form in place for the purposes of new paragraph (cza) of section 134(7) of the 2008 Act (introduced by the Corresponding Amendments Regulations).
- 3.3 New paragraph (cza) provides that a compulsory acquisition notice (which is served after an order is made) must contain an additional prescribed statement and form (see paragraph 4.2 below).
- 3.4 These Regulations prescribe the necessary statement and form. They, therefore, need to be in force before the next decision, as, if the order is made, the claimants (in relation to the proposed compulsory purchase) will need to be given the important information contained in new Form B (inserted by the Schedule to these Regulations) about the procedure for general vesting declarations.
- 3.5 It was not possible to make these Regulations any earlier, because the instrument introducing the enabling power into the 2008 Act did not come into force until 3 February 2017 (see paragraph 2.1 above and 4.2 below).

- 3.6 Only one decision on a development consent order is due within 21 days of these Regulations being laid. The Department will notify the applicant for the order that this instrument with the new forms will be in force on 23 February and so, if the Secretary of State decides to make the order, should be used instead of the current Form C in the 2010 Regulations. As the applicant will be directly notified, it should not be unduly inconvenienced by the shorter period between the laying and coming into force of this instrument. Any slight inconvenience to one potential acquiring authority should be weighed against the unfairness to claimants who would otherwise not receive important information about the process for taking their property.

Other matters of interest to the House of Commons

- 3.7 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 When a development consent order is made under the 2008 Act and includes provision authorising compulsory acquisition, the prospective purchaser of the land must serve a “compulsory acquisition notice” on various persons including the owners, lessees and occupiers of the land. Section 134(7) of the 2008 Act provides that the compulsory acquisition notice must be in a prescribed form.
- 4.2 Paragraph 6(1)(b) of the Schedule to the Corresponding Amendments Regulations inserts a new paragraph (cza) into section 134(7) of the 2008 Act. New paragraph (cza) provides that, where the development consent order applies Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 (“the 1981 Act”), the compulsory acquisition notice must also contain a prescribed statement about the effect of those Parts and invite potential claimants (if a declaration were executed under section 4 of the 1981 Act) to give the prospective purchaser information about their name, address and interest in land, using a prescribed form.
- 4.3 This information used to be contained in a preliminary notice of a general vesting declaration under section 3 of the 1981 Act (which was abolished by paragraph 5 of Schedule 15 to the Housing and Planning Act 2016 (“the 2016 Act”)).
- 4.4 These Regulations amend the 2010 Regulations in order to prescribe the necessary statement and form (see Parts 1 and 2 of new Form B). An updated prescribed form of a compulsory acquisition notice is contained in new Form A.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales and, for limited purposes, to Scotland in accordance with the extent of the 2008 Act (see section 240).
- 5.2 This instrument applies to England and Wales and, for limited purposes, to Scotland (see section 240 of the 2008 Act).

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 2016 Act makes technical changes to the compulsory purchase regime. One of these is to lengthen the minimum period of notice for entry and taking possession of a claimant's interest in land (from 14 days under the notice to treat / notice of entry system and 28 days under a general vesting declaration) to three months. As part of the changes to the general vesting declaration system, the preliminary notice, issued two months before the execution of a general vesting declaration, is abolished.
- 7.2 The preliminary notice contained important information about the effect of Parts 2 and 3 of the 1981 Act; and an invitation to everyone who would be entitled to claim compensation if a general vesting declaration were made to provide the acquiring authority with their name and address and details of their interest in the land in question. As a result of the 2016 Act, this information will now be issued with the confirmation notice of a compulsory purchase order under section 15 of the Acquisition of Land Act 1981.
- 7.3 Those Acts which do not follow the compulsory purchase procedures in the Acquisition of Land Act 1981 (including the Planning Act 2008) required corresponding amendments to provide for such information to be issued to claimants. The Corresponding Amendments Regulations therefore provide for a statement and form containing the information previously contained in the preliminary notice to a general vesting declaration to be sent with the compulsory acquisition notice of a development consent order. The 2010 Regulations must therefore be updated if claimants subject to compulsory acquisition as a result of a development consent order are to receive the information about Parts 2 and 3 of the 1981 Act.
- 7.4 These Regulations substitute a new regulation 3 into the 2010 Regulations. New regulation 3 prescribes a new form of a compulsory acquisition notice and prescribes the statement about the effect of the 1981 Act and the form to be used by claimants for providing information to the prospective purchaser of the land.
- 7.5 The statement about the effect of the 1981 Act reflects recent changes to the procedure for general vesting declarations (made by Part 7 of the 2016 Act).

Consolidation

- 7.6 These Regulations amend only a small part of the 2010 Regulations, so there are no plans to undertake a consolidation.

8. Consultation outcome

- 8.1 No consultation has taken place on these Regulations as they are consequential to the provisions of Schedule 15 to the 2016 Act.

9. Guidance

- 9.1 Any necessary amendments will be made to the guidance entitled "Planning Act 2008 – Guidance related to procedures for compulsory acquisition".

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.

10.3 These Regulations simply ensure that the information that used to be sent to claimants in a preliminary notice to a general vesting declaration is now sent to them in a notice accompanying the notice of confirmation of the compulsory acquisition provisions of the development consent order.

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

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 Regulations make provision for a review under section 28 of the Small Business, Enterprise and Employment Act 2015, as private sector entities can be authorised to acquire land compulsorily by way of a development consent order under the Planning Act 2008.

12.2 The Secretary of State must review the operation and effect of new regulation 3 of the 2010 Regulations and publish a report within five years after it comes into force and within every five years after that.

13. Contact

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