

EXPLANATORY MEMORANDUM TO
THE COMPULSORY PURCHASE OF LAND (VESTING DECLARATIONS AND
LAND COMPENSATION DEVELOPMENT ORDER) (ENGLAND) (AMENDMENT)
REGULATIONS 2024

2024 No. 477

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Jacob Young MP, Parliamentary Under Secretary of State for Levelling Up at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Lucy Hargreaves, Deputy Director for Development Management, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Theresa Donohue at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 1719 or email: PDMCorrespondence@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

Amendments to the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017

- 4.1 As part of compulsory acquisition processes bodies which have compulsory purchase powers (known as acquiring authorities) must issue certain documents at different stages of the acquisition processes. The information which must be included in these documents is set out in legislation (known as prescribed forms).
- 4.2 This statutory instrument makes minor changes to the prescribed forms set out in the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 (“the 2017 Regulations”). These changes are needed to give full effect to a reform which was introduced through the Levelling-up and Regeneration Act 2023 (“the 2023 Act”) which places an additional requirement on acquiring authorities to publish certain documents on an appropriate website.
- 4.3 It also removes a statutory requirement for the Secretary of State to review the 2017 Regulations (and associated forms) and publish reports as it is no longer considered necessary.

Amendments to the Land Compensation Development (England) Order 2012

- 4.4 The Land Compensation Act 1961 (“the 1961 Act”) sets out the planning assumptions for compulsory purchase compensation. Land is valued in the “no-scheme world” where the scheme for which the compulsory acquisition 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 acquisition (but generally the claimants whose land is being taken) can apply to the local planning authority for a certificate of appropriate alternative development (“CAAD”), which will state what permissions could reasonably have been expected to have been granted in the no-scheme world.
- 4.5 The Land Compensation Development (England) Order 2012 (“the 2012 Order”) regulates the process by which applications for CAADs are made and issued.
- 4.6 This statutory instrument amends the 2012 Order to give full effect to reforms to the CAAD process which were introduced through the 2023 Act.

Where does the legislation extend to, and apply?

- 4.7 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.8 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 The 2023 Act contains a package of reforms to improve the compulsory acquisition process and associated land compensation system. This statutory instrument makes minor changes to give full effect to aspects of those reforms. It amends the information which must be included in notices issued by acquiring authorities at certain stages of the compulsory acquisition process. It also clarifies that following the 2023 Act, CAADs can only be issued for development as described in the CAAD application or for development less extensive than as described in the application and that CAAD applications may be rejected.
- 5.2 This statutory instrument also removes a requirement in the 2017 Regulations for the Secretary of State to carry out reviews of those regulations (and associated forms) and publish reports at intervals not exceeding 5 years. This statutory review requirement is no longer considered to be appropriate.

What was the previous policy, how is this different?

Online publicity

- 5.3 Previously, acquiring authorities were required to make hard copies of compulsory purchase order (CPO) documents and maps available for inspection in person at a specified physical location. Notices issued by acquiring authorities at certain stages of the CPO process contained the address of the physical location. As part of that process, notices in connection with general vesting declarations associated with the compulsory acquisition process were prepared using the prescribed forms set out in the 2017 Regulations. The prescribed forms required those notices to specify the address of the physical location where copies of the relevant general vesting declaration and associated plan could be inspected.
- 5.4 Section 181 of the 2023 Act is intended to modernise and increase transparency in the CPO process and make it easier for people to engage with the process. It adds a

requirement for acquiring authorities to publish public notices on an appropriate website.

- 5.5 This statutory instrument makes a corresponding amendment to a form prescribed by the 2017 Regulations to require or allow (depending on the compulsory acquisition process used) acquiring authorities to include details of the website where copies of the relevant general vesting declaration and associated plan may be viewed.

Prospects of planning permission for appropriate alternative development

- 5.6 Those whose land is subject to a compulsory purchase order can apply to the relevant local planning authority for a CAAD to get an indication of what planning permissions could reasonably have been expected to have been obtained for the land in the absence of the scheme underlying the compulsory acquisition, which might have affected the development value of the land. This information is then used in the calculation of the person's compensation entitlement. The procedure for applying for and issuing a CAAD is set out in the 2012 Order.
- 5.7 Previously, the relevant local planning authority, in issuing a 'positive' CAAD that it would have granted permission for appropriate alternative development in the absence of the scheme underlying the compulsory acquisition, was required to identify all types of appropriate alternative development irrespective of what the CAAD applicant had applied for. The local planning authority was alternatively required to issue a 'negative' CAAD where it decided there was no development that was appropriate alternative development on the land in the absence of the scheme underlying the compulsory acquisition.
- 5.8 Section 189 of the 2023 Act is intended to rebalance the position between the acquiring authority and landowner for the purposes of assessing compensation entitlement, making the assessment of value attributable to prospective planning permission more akin to the position in a normal market transaction and ensuring valuations are not disproportionate. It makes various changes to the process for assessing the value attributable to prospective planning permission. One of the changes is that local planning authorities are no longer required to issue 'negative' CAADs and may only issue a CAAD for development as described in the CAAD application or development less extensive than as described in the application.
- 5.9 This statutory instrument makes consequential changes to the 2012 Order to reflect this reform. It amends the requirement for the local planning authority to give a statement of reasons when it makes a decision that is not consistent with the CAAD application to reflect the more limited parameters of that decision.

Removal of review requirement

- 5.10 There was a requirement in the 2017 Regulations for the Secretary of State to carry out reviews of those regulations (and the associated prescribed forms) and publish reports at intervals not exceeding 5 years.
- 5.11 The requirement was introduced to satisfy section 28 of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act") that secondary legislation should be reviewed. The government now considers that a statutory review provision is not an appropriate way of keeping these regulations under review because the regulations requiring statutory review have no significant regulatory impact on businesses, in terms of the Statutory Guidance under section 31 of the Small Business, Enterprise and Employment Act: Determining whether it is appropriate to make provision for review (Post-Implementation Review Guidance) (September 2023) ("the Guidance").

6. Legislative and Legal Context

How has the law changed?

Amendments to the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017

- 6.1 The Compulsory Purchase (Vesting Declarations) Act 1981 sets out a process for authorities to, by declaration, vest in themselves land which they are authorised to acquire by compulsory purchase. That Act empowers the Secretary of State to prescribe the form of a general vesting declaration and the form of an associated notice.
- 6.2 The 2017 Regulations prescribe the relevant forms. This statutory instrument makes minor changes to the prescribed forms contained in the 2017 Regulations to reflect the modernisation reforms to the CPO process relating to online publicity requirements introduced through the 2023 Act.
- 6.3 The 2017 Regulations included a requirement for the Secretary of State to review the 2017 Regulations (and associated forms) and publish a report on that review at intervals of not less than five years to reflect the 2015 Act. Subsequently, the Guidance was issued which clarified that statutory review provisions are focussed on regulatory measures which have significant regulatory impacts on business (more than +/- £10 million annually). This statutory instrument removes that review requirement.

Amendments to the Land Compensation Development (England) Order 2012

- 6.4 The 1961 Act regulates the assessment of compensation when land is compulsorily acquired. That Act empowers the Secretary of State to prescribe the process by which CAADs are applied for and issued.
- 6.5 The 2012 Order sets out the relevant process. This statutory instrument makes consequential changes to the CAAD application process required following the passing of the 2023 Act. These changes reflect that local planning authorities are no longer required to issue a 'negative' CAAD and may only issue CAADs for the development described in the CAAD application or a description of development less extensive than, but otherwise falling within, the description given in the CAAD application, or reject the CAAD application. The changes reflect the more limited parameters of the decision on the CAAD application but retain the requirement in the 2012 Order for the local planning authority to issue a statement of reasons when it makes a decision that is inconsistent with the relevant application.

Why was this approach taken to change the law?

- 6.6 The changes to the 2017 Regulations reflecting the online publicity requirement are minor and directly reflect the changes made in the 2023 Act. Substantively, this is the only possible approach to make the necessary changes.
- 6.7 This is the only possible approach to make the necessary changes to the 2017 Regulations to remove the review requirement.
- 6.8 This is the only possible approach to make the necessary changes to the 2012 Order to reflect the limits introduced in the 2023 Act on what local planning authorities may issue CAADs for.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 There has been no public consultation on the changes being introduced through this statutory instrument which reflect the 2023 Act. They are minor, technical changes in nature which are necessary to give full effect to reforms in that Act. Key stakeholders were engaged in the development of those reforms and they were subject to detailed Parliamentary scrutiny during the passage of the Acts through Parliament.
- 7.2 There has been no public consultation on the changes being introduced to the review provision. The change is minor and technical and follows the Guidance.

8. Applicable Guidance

- 8.1 This statutory instrument makes minor changes to the prescribed forms for general vesting declarations and the associated notices. Guidance on the use of the form is included in the “Notes” section of the prescribed forms.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the changes being made are purely administrative and will not have a significant cost impact on any party.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the changes are procedural and minor in nature. No significant costs will be incurred by acquiring authorities which fall within these categories in using the new forms.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because the changes are procedural and minor in nature. No significant costs will be incurred by public sector acquiring authorities.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through routine engagement with the sector and key stakeholders.
- 10.2 The instrument does not include a statutory review clause for the reasons set out in paragraph 5.11.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This statutory instrument is related to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2024 which also makes minor changes to give full effect to the compulsory acquisition reforms in the 2023 Act.

12. European Convention on Human Rights

- 12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).