

REGULATORY APPRAISAL

THE COMPULSORY PURCHASE OF LAND (PRESCRIBED FORMS) (NATIONAL ASSEMBLY FOR WALES) REGULATIONS 2004

Objective of proposal

1. To replace the existing regulations prescribing the 6 forms used by non-ministerial acquiring authorities (e.g. local authorities) as the basis for drafting compulsory purchase orders (“CPOs”) and the 5 forms used by all acquiring authorities, including the National Assembly for Wales (“the National Assembly”), for drafting CPO-related statutory notices. The proposed new Regulations will:
 - reflect changes made to the Acquisition of Land Act 1981 by Part 8 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) and
 - clarify the existing forms to make them easier to use.

Background

2. Acquiring authorities (other than the National Assembly) who make CPOs under the provisions of the Acquisition of Land Act 1981 have to draft their CPOs in conformity with the forms set out in the Compulsory Purchase of Land Regulations 1994 (S.I. 1994/2145). The forms of notice set out in those Regulations must be used by all acquiring authorities when drafting CPO-related notices under the 1981 Act.
3. The purpose of prescribing such forms is to ensure that the CPOs and notices drafted:
 - conform to the requirements of the relevant legislation
 - include the details the National Assembly needs in order to inform its decision and
 - ensure that any affected landowners are properly informed of the proposal to acquire their land compulsorily. This is necessary to ensure that they are able to exercise the right to object to the CPO and, if they wish, to trigger the right to have their case against the CPO heard by an independent Inspector.
4. The relevant changes in Part 8 of the 2004 Act are described below.
5. If the existing forms are not amended to reflect the provisions of the 2004 Act, acquiring authorities will have to use prescribed forms which no longer reflect the statutory requirements.
6. The need to revise the prescribed forms also presents the opportunity to introduce minor amendments to clarify matters, to address occasional misunderstandings which arise and to make the forms easier to use.

Risk assessment

7. The revisions proposed to the existing Regulations are relatively minor. The forms are, however, essential to the smooth administration of the CPO system and misuse could result in legal challenges against the acquiring authority. It is therefore important for the revisions to be as clear as possible and this is more

likely to be achieved by incorporating the changes in a fresh set of Regulations, rather than by amending the existing Regulations.

Impact on acquiring authorities

8. If the existing Regulations were merely amended, acquiring authorities would have to make their own ad-hoc amendments to the existing formats for CPOs and notices. This is likely to increase acquiring authorities' workload, extend preparation times and increase the likelihood of errors.

Impact on interests in land being acquired by an order

9. In addition, lack of clarity over whether CPOs and notices have been properly prepared, and the possibility of errors, could adversely affect landowners and other parties with private interests in land being compulsorily acquired. It could extend the period of uncertainty that exists for such people between the impact of a CPO becoming known (and resolved) and increase the potential for disputes and legal challenges.

10. The main changes to the forms are:

- amended references to parties with interests in the land being acquired, to take into account the widening of this category
- a standard format for CPO titles
- a clearer layout of the main paragraphs, setting-out the effect of each CPO and
- clearer notes on how to use the forms.

11. The 2004 Act requires that two new site notices are posted on/near land included in a CPO, i.e. notice of preparation/making of a CPO and notice of making/confirmation. These will, however, simply conform to existing prescribed formats for similar such notices and do not require additional forms to be included in the Regulations.

12. The changes unrelated to the 2004 Act are opportunistic and are intended to make it easier for acquiring authorities to understand and use forms properly where experience has shown that they are over complex and confusing. Such improvements should minimise errors and reduce the time taken to prepare and consider CPOs. This applies to all parties - acquiring authorities, those whose land is affected by a CPO and the National Assembly (whether it makes or confirms a CPO).

Options

13. The Welsh Assembly Government has considered three options for the future:

- Not to amend existing prescribed forms;
- Amend prescribed forms only to reflect the change made by the 2004 Act; or
- Amend prescribed forms as proposed.

Costs and benefits

Business sectors affected

14. Any individual or business whose interests in land are being acquired or are affected by compulsory acquisition will see a CPO and related notices in the prescribed format.

Option 1

Benefits

15. None (retaining the existing forms would generate only disbenefits)

Costs

- confusion amongst acquiring authorities about how to draft CPOs/notices in accordance with new legislation, increasing man-hours required
- increased confirming authority time and acquiring authority time required to address poorly drafted, or incorrect, CPOs
- confusion amongst owners of interests being acquired, increasing time required to consider the impact and potentially increasing costs to them of professional advice
- longer inquiries to address confusion, therefore increased costs for acquiring authorities and owners who object to the CPO. However, if the CPO is successfully opposed, objectors' inquiry costs are usually paid by the acquiring authority.

Option 2

Benefits

- clear basis for the format of CPOs and related notices which is consistent with procedural legislation, thereby leading to no increase in time taken for acquiring authorities to prepare CPOs and notices
- no increased need for confirming authority and acquiring authority to address poorly drafted CPOs or errors in them
- no confusion amongst owners of interests being acquired; therefore no increase in time required to consider the impacts and no change in costs to them of professional advice
- no extension to inquiry time required, with concomitant costs, arising from confused drafting of CPOs or notices.

Costs

16. essentially cost neutral, as acquiring authorities already have to use the existing prescribed forms, though they will need to spend a small amount of time familiarising themselves with the new forms

Option 3

Benefits

17. As for option 2 but with potential for additional minor reductions in time required to use the forms arising from increased clarity

Costs

18. as for option 2.

Costs for a typical business

19. A typical business cannot be identified, as compulsory acquisition can affect any type of business. Given that the changes to the prescribed forms are cost neutral to individuals and businesses whose interests in land are included in CPOs, it is safe to assume there would be no cost.

Equity and fairness/Small firms impact test/competition assessment

20. As the revisions to the prescribed forms are cost-neutral for the individuals and businesses whose interests in land are shown on them, there are no equity and fairness issues, there is no measurable impact on small firms and no competition impacts.

Enforcement

21. As for CPOs prepared and administered using the existing prescribed forms, there are no enforcement procedures, but it is possible for the confirmation or making of a CPO to be challenged in the High Court on the basis that proper procedures have not been followed.

Consultation

22. The changes to the CPO procedures from which the changes to the prescribed forms stem arose from the recommendations of an expert advisory group which reported in July 2000. The procedural changes incorporated into the 2004 Act arising from these recommendations were the subject of a general consultation exercise ending in March 2002. Consultation included local authorities, property professionals, property law specialists and other interested parties.

23. The draft Regulations have been the subject of a consultation exercise.

24. The Small Business Service has been consulted and it concurs with our initial view that these proposals will not have a significant impact on small businesses.

Monitoring and review

25. The forms are low key and do not herald any major change. No formal review process is therefore proposed. Day-to-day feedback from acquiring authorities using the forms will be sufficient.

Summary and Recommendation

26. The Welsh Assembly Government's preferred option is Option 3, i.e. to amend the prescribed forms both to take account of legislative changes and to make them easier to understand. The changes to the existing prescribed forms proposed by the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 are cost neutral towards acquiring authorities and to individuals and businesses whose interests in land are being acquired through them. There may be a cost to both if the forms are not updated as proposed. The Regulations will assist acquiring authorities and parties whose interest in land is proposed for compulsory acquisition by ensuring CPOs and related notices are as clear as possible. It is recommended that the proposed Regulations should be made on the basis of the draft attached.

27. As the proposal has no adverse impact on business, there is no need for further review or expansion of this RIA.