

## **REGULATORY APPRAISAL**

### **THE COMPULSORY PURCHASE OF LAND (WRITTEN REPRESENTATIONS PROCEDURE) (NATIONAL ASSEMBLY FOR WALES) REGULATIONS 2004**

#### Objective of proposal

To prescribe in regulations a procedure by which objections to compulsory purchase orders (“CPOs”), to which the Acquisition of Land Act 1981 applies, can be considered through written representations as an alternative to the holding of a public local inquiry.

#### Background

Owners of land included in a CPO for acquisition have a right to object to that CPO. If they do so, they have a right to attend and take part at a public local inquiry held by an inspector appointed by the National Assembly for Wales (“the National Assembly”). The Inspector will consider the acquiring authority's case for the CPO, and the objectors' case against it. The Inspector then reports to the National Assembly, with a recommendation that the CPO should, or should not, be given effect.

There is, at present, no bar on objections to CPOs being considered by means of written representations if all the objectors agree, instead of holding an inquiry. This has never happened, however, as there is currently no standard procedure, nor any power to prescribe one. The procedure to be followed would therefore need to be agreed on a case-by-case basis. This would be time-consuming and would eliminate any time-savings achievable through the use of the written representations procedure. It would also be very difficult to ensure fairness and consistency between cases.

Part 8 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) amends the Acquisition of Land Act 1981 to provide a power to prescribe a written representations procedure and the proposed Regulations use that power to prescribe such a procedure. The new procedure would allow the acquiring authority to make representations in the light of the objections to the CPO, for the objectors to then comment in the light of those representations and the acquiring authority then to make any final comments. An Inspector would then consider all the representations and comments before reporting to the National Assembly.

The consideration of objections by means of written representations offers clear benefits in some circumstances. It is likely to reduce the time taken to issue decisions, reduce costs by avoiding public inquiries and be fairer for objectors who do not wish to employ agents but are reticent about representing themselves at an inquiry. These benefits are most likely to arise in the case of CPOs covering only a few properties and where the basis for each objection is relatively self-contained. The potential disadvantages of considering objections to a CPO by means of written representations included having no opportunity to cross-examine or question the acquiring authority's witnesses and, while some people may be reticent about taking part at an inquiry, others may find it easier to express their opinions, views and feelings orally to an Inspector rather than in writing.

#### Risk assessment

The risk being addressed is that some objectors would be content to have their objection heard by a relatively cheap and quick written procedure, but instead have no option for

voicing their opposition to an independent person other than to attend and take part at an inquiry. It is not possible to quantify how many people are in this situation as it depends upon the personal preference of objectors.

#### *Impact on acquiring authorities*

The proposed Regulations offer acquiring authorities advantages in terms of avoiding inquiry costs, i.e. less Inspector's time, therefore reduced charges from the Planning Inspectorate; avoid accommodation hire charges; and reduce costs of hiring legal representation.

#### *Impact on landowners affected by an order*

As the written representations procedure would only be used where all the landowners who object to an order agree, its impact would be purely beneficial, i.e. quicker, cheaper and less confrontational. It would be open for objectors who originally opted for the written representations procedure to subsequently seek an inquiry if circumstances change to an extent that they think their interests will be prejudiced if one is not held.

#### Options

The Welsh Assembly Government has considered two options for the future:

##### **Option 1**

Not to prescribe a written representations procedure (i.e. retain the status quo); or

##### **Option 2**

Prescribe the procedure as proposed under the new power.

#### Costs and benefits

##### *Business sectors affected*

As the written representations procedure will be optional, it is not possible to predict its application. It is, however, likely that it would appeal more to private individuals or sole proprietors.

##### Option 1

###### *Benefits*

None - the "do nothing" option is the status quo.

###### *Costs*

None

##### Option 2

###### *Benefits*

Potential time and costs savings for acquiring authorities and persons or businesses who object to a CPO.

###### *Costs*

None - the written representations procedure is optional and will only be followed where all objectors agree.

#### *Costs for a typical business*

A typical business cannot be identified, as use of the procedure will depend on objectors' personal preference. We anticipate the procedure would be preferred by very small businesses only, e.g. sole proprietors, because of the potential it offers to reduce costs.

#### *Equity and fairness/Small firms impact test/competition assessment*

As the written representations procedure is optional and offers only reduced costs and timescales, there are no equity and fairness issues, there is no adverse impact on small firms and no competition impacts.

#### *Enforcement*

There are no enforcement procedures required. It will be possible for the confirmation or making of an order subsequent to the written representations procedure being followed to be challenged in the High Court on the basis that proper procedures have not been followed.

#### *Consultation*

The changes to the CPO procedures from which the changes to the written representations procedure stems arose from the recommendations of an expert advisory group which reported in July 2000. The procedural changes incorporated in 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.

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

The procedure is low key and is likely to be followed for relatively few, small scale, CPOs. No formal review process is therefore proposed. Day-to-day feedback from local authorities will be sufficient.

#### **Summary and Recommendation**

The Welsh Assembly Government's preferred option is Option 2, i.e. to prescribe the written representation procedure as set out in the draft instrument. The procedure proposed by the Compulsory Purchase of Land (Written Representation Procedure) (National Assembly for Wales) Regulations 2004 is optional and, if pursued, will offer only reduced costs and time savings to acquiring authorities and to individuals and businesses whose interests in land are being acquired. It is recommended that the proposed Regulations should be made on the basis of the attached draft.

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