EXPLANATORY MEMORANDUM TO

THE COMPULSORY PURCHASE (INQUIRIES PROCEDURE) (WALES) RULES 2010

2010 No. 3015

1. This explanatory memorandum has been prepared jointly by the Welsh Ministers and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules prescribe the procedure to be followed in connection with public local inquiries which may be held when considering whether to authorise the compulsory purchase of land in Wales by compulsory purchase order (CPO). They replace the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 and the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994. Those Rules related to both England and Wales and have been combined in England by virtue of the Compulsory Purchase (Inquiries Procedure) Rules 2007 (SI 2007 3617). In Wales, these new combined Rules relate to all public local inquiries where Welsh Ministers are either the confirming or the appropriate authority for the purposes of the Acquisition of Land Act 1981. An Act of Parliament will usually authorise a named authority or body to compulsorily purchase land for a given purpose and a typical acquiring authority is likely to be a local authority or statutory undertaker.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These Rules are made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992, which enables him, after consultation with the Administrative Justice and Tribunals Council, which took place on 17 February 2009, to make rules regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of the Welsh Ministers.

5. Territorial Extent and Application

5.1 This instrument applies to Wales and, to a limited extent, to England, i.e. where the land, which is subject to the CPO relevant to the Inquiry, is in England and that CPO falls to be made by Welsh Ministers.

5.2 At the request of the Department for Communities and Local Government these Rules revoke Paragraphs 1(2) and 22(3) of The Compulsory

Purchase (Inquiries Procedure) Rules 2007 (SI 2007 3617), applicable to England, as they become obsolete as a consequence of the Rules.

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

7.1 The main reason for the new Rules is to take account of changes to the procedure and new terminology introduced by Part 8 of the Planning and Compulsory Purchase Act 2004. The introduction of a single set of unified Rules dealing with the procedures to be followed in relation to inquiries into the authorisation of CPOs where the Welsh Ministers are either the confirming authority or the appropriate authority, also reflects current practice as adopted in procedure rules prepared more recently for other types of inquiries, such as the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (SI 2003 No. 1266).

7.2 Where the Welsh Ministers are the appropriate authority, the CPO is published in draft by them and if any objections have been received which are not withdrawn then, unless the matter can be dealt with by way of the written representation process, the appropriate authority must hold a public local inquiry. The Welsh Ministers can proceed to decide whether or not to "make" the Order, with or without modification, once the report by the Inspector appointed by them has been considered. CPOs made by non-ministerial acquiring authorities are made by the relevant acquiring authority and then submitted to the Welsh Ministers for confirmation. Where a public local inquiry is required the Welsh Ministers can proceed to decide whether or not to "confirm" the Order, with or without modification, once the report by the Inspector appointed by them has been considered. The procedures for inquiries into each type of CPO differ only in minor matters of detail.

7.3 The new Rules include minor changes both in terminology and procedure including the replacement of the reference to a "statutory objector" with "remaining objector". New definitions have been imported in consequence of amendments made to the Acquisition of Land Act 1981 by the Planning and Compulsory Purchase Act 2004. The Rules now refer to "authorising authority" which is the confirming authority in the case of a non-ministerial order or appropriate authority in the case of a ministerial order. References to "confirming authority" and "appropriate authority" reflect the terms used in the 2004 Act. The deadline for serving notice of intention to hold an inquiry has been extended to five weeks from the end of the objection period reflecting a slight change in procedure to accommodate the possibility of the confirming authority deciding to offer the written representations procedure as an alternative to inquiry, in which case a period of three weeks needs to be built into the procedure for objector's consent and, if necessary, reverting to the inquiry procedure. In order to reduce the potential for delay, the present requirement in the 1994 Rules for an objector to submit in advance

any proof of evidence ("statement of evidence" in these Rules) he proposes to rely on at inquiry is being extended to apply to all inquiries.

7.4 For the reasons set out above the Welsh Ministers consider that the right option is to combine these two sets of Rules into one common set for clarity and also to keep in line with the Rules in England.

8. Consultation outcome

8.1 Details of the consultation exercise held are set out in Annex A attached.

8.2 Some minor amendments have been incorporated into the Rules as a result of this exercise and although the substance is largely unchanged, the structure of the Rules has been changed for purposes of clarity. As part of the consultation process both The Administrative Justice and Tribunals Council and the Department for Communities and Local Government were specifically consulted.

9. Guidance

9.1 The new rules are already in place in England and Public Inquiry Inspectors there are familiar with them. Copies will be sent to all Welsh local authorities when they come into force.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it does not impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will be minimal as the instrument largely combines two sets of Rules currently used by acquiring and confirming bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The usage of the new Rules will be monitored in conjunction with the Planning Inspectorate when arranging Public Inquiries. This should ensure that the public are not disadvantaged by the introduction of the new Rules.

13. Contact

13.1 Helen Burr at Orders Branch, Transport, Housing and Regeneration, Welsh Assembly Government: Telephone: 029 2082 6498 or e-mail: helen.burr@wales.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Details of Consultation Exercise

1. A Consultation Exercise was undertaken between 15 September 2006 and 11 December 2006 seeking comments on the draft set of Rules. The consultation period lasted 13 weeks. The following were consulted.

22 local planning authorities in Wales
Brecon Beacons National Park Authority
British Telecom
Cadw
Civic Trust for Wales
Commercial Legal Services Team
Countryside Council for Wales
CPRW
Dwr Cymru
Environment Agency Wales
Law Society of Wales
Pembrokeshire Coast National Park Authority
Planning Inspectorate Bristol and Cardiff
Railtrack
Royal Institution of Chartered Surveyors Wales
Royal Society of Architects Wales
Royal Town Planning Institute Wales
Snowdonia National Park Authority
Welsh Local Government Association

2. A summary of responses is as follows.

NUMBER	BODY	COMMENTS
1	Pembrokeshire CC	Initially the distinction between Assembly and Non-ministerial CPOs was difficult to follow but the need for this is understood.
2	The Law Society	1. Query whether the title is correct. As the Rules only apply to cases where the Assembly is either the acquiring authority (AA) or the confirming authority it would be more accurate to call them "NAW" rather than "Wales". 2. Concern about the number of Statements required to be submitted, particularly the

		retention of the Outline Statement (OS). If an OS is required (only if there is a PIM) it would mean 3 Statements are necessary – a Statement of Reasons (SR) (with the draft Order) an OS and a Statement of Case (SC). In practice the OS is virtually identical to the SR. The only value of the OS is that it directs an objector to provide their case for the PIM, which may be the first opportunity the AA has to see the objectors case. A possible solution could be to put the SR on a statutory footing, incorporating it into the pre-inquiry process and keep the requirement for an OS for objectors only. 3. One of the purposes of the Rules is to speed matters up. Although in consolidation the fact that the longer timescales have been adopted is welcomed, the change from 14 days to 5 weeks for the giving notice of Inquiry in non-ministerial cases seems at odds with this purpose. 4. Rule 3(4) – a copy of the objection rather than a statement indicating the substance would be better. 5. The power to charge for copies should be clarified. Rule 17(5) allows charging for copies of Proofs of Evidence. A reasonable charge could be included for copies of other documents. 6. Rules 8(3) and 8(8) and Rules 9(3) and 9(8) – there seems to be some overlap here as both contain requirements for inspection of documents. Are both needed? 7. Rule 17(1) – why should the acquiring authority be exempt from providing a PE? Should the words “unless that person is the AA” be deleted?
3	Welsh Assembly Government	1. Rule 5(5)(a)(iii)- should this renumbered to 5(5)(b) as in 6(5)(b)? 2. Rule 15 – should this be limited to Assembly Ministers? What about other Government Ministers? Also, is there a need to refer to AM s in this way where the Order is a NAW Order or should it be limited to non-ministerial Orders? 3. Rule 20(4) – the final 2 lines require notice to be given to those who appeared at the Inquiry. The current Rules apply to a more limited group. Why has this been extended

		when a similar extension has not been given under Rule 21(1)(c)? 4. Rule 24(2) – should "the 1990 Rules and the 1994 Rules shall continue…" be amended to read "the 1990 Rules or the 1994 Rules as the case may be shall continue…"?
4	Planning Inspectorate	1. The term "proof of evidence" is used throughout. The consultation paper says that for consistency with other sets of Rules the concept of "statement of evidence" has been replaced by "proofs of evidence" but WAG specifically introduced "statements of evidence" instead of "proofs of evidence" in its 2003 TCP PI Rules as a deliberate change from the English Rules. 2. Rule 19 – (Site Visits) – For Inspectors to satisfy themselves as to the reasonableness of the CPO proposals they need to look at all of the land whether there are objections or not. The Rules only make provision for the Inspector to make an unaccompanied inspection of the land or an accompanied inspection with a representative of the AA and any outstanding objectors. Inspectors have no authority to enter private land if it is required. Also, there may be a need for someone to explain the extent of the proposals to the Inspector. Some thought could be given to including provision for the AA to give the Inspector a full tour of the site (with or without objectors) to help allay criticism of being accompanied by only one party.
5	The Compulsory Purchase Association	The extensions of time suggested should not dramatically affect delivery times so it can be demonstrated that potential objectors have been provided with more time to exercise their human rights in being given ample time to address issues of concern and/or preparing a statement of case.
6	Royal Institute of Chartered Surveyors	1. The Rules are generally expressed clearly but the timescales and how they correspond with each other as referred to in Rules 5, 6, 8 and 9 could perhaps be explained in a flow chart? Rule 6 (1) line 2 – the word "in" should be inserted after "published".