EXPLANATORY MEMORANDUM TO

THE COMPULSORY PURCHASE OF LAND (PRESCRIBED FORMS) (MINISTERS) (AMENDMENT) REGULATIONS 2024

2024 No. 473

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?

4.1 As part of the compulsory purchase order ("CPO") process under the Acquisition of Land Act 1981 ("the 1981 Act") bodies which have compulsory purchase powers (known as acquiring authorities) must issue certain documents at different stages of the CPO process. 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 contained in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 ("the 2004 Regulations") to give full effect to reforms which were introduced through the Environment Act 2021 ("the 2021 Act") and the Levelling-up and Regeneration Act 2023 ("the 2023 Act").

4.3 It also removes a statutory requirement for the Secretary of State to review the 2004 Regulations (and associated forms) and publish a report on that review which is no longer considered necessary.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales. However, the 2004 Regulations (as amended by this instrument) only apply to CPOs covering land in Wales in rare cases where the relevant CPO falls to be made or confirmed by a UK Government Minister. For the vast majority of CPOs covering land in Wales the Welsh Ministers are the confirming authority and the 2004 Regulations (as amended by this instrument) will not apply.

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 prescribed forms as a result of three aspects of the reforms in the 2023 Act. It amends the information which must be included in those forms when issued by acquiring authorities at certain stages of the CPO process.

5.2 Acquiring authorities are required to serve a notice of the making of a CPO on every 'qualifying person'. The definition of a qualifying person, which is set out in legislation, was amended by the 2021 Act to include a further category. This statutory instrument reflects that change in definition in the prescribed forms for the notice of the making of a CPO which must be issued by acquiring authorities.

5.3 This statutory instrument also removes a requirement in the 2004 Regulations for the Secretary of State to carry out reviews of those regulations (and the associated forms) and publish reports at intervals not exceeding 5 years. This statutory review requirement is no longer considered to be appropriate because the regulations have no significant regulatory impact on businesses (see paragraph 5.19).

What was the previous policy, how is this different?

Online publicity

5.4 Previously, acquiring authorities were required to make hard copies of 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. Such notices were prepared using the prescribed forms set out in the 2004 Regulations.

5.5 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. It also gives the confirming authority the power to remove the requirement to deposit CPO documents in a physical location (while retaining the requirement to publish those documents on a website) if special circumstances mean that it is impractical to do so. Finally, section 181 clarifies the final date for submitting objections to a CPO.

5.6 This statutory instrument amends the information which is set out in the prescribed forms for the required notices to reflect these reforms.

Time limits for implementation

5.7 Previously, the time limit for implementing a CPO once it has been confirmed was three years in all cases.

5.8 Section 185 of the 2023 Act is intended to give acquiring authorities greater confidence in their ability to bring forward CPOs and, in doing so, increase use of

CPOs where appropriate to bring forward schemes which are in the wider public interest, for example, regeneration schemes. It gives confirming authorities the discretion, when confirming a CPO, to allow acquiring authorities a longer time limit to implement their CPO where that is considered appropriate.

5.9 This statutory instrument amends the prescribed forms for CPOs to require a statement setting out the time period for the implementation of the CPO.

Power to require prospects of planning permission to be ignored

5.10 Where land is acquired by compulsion, those whose land is taken are entitled to compensation. Previously, for all CPOs, landowners could claim compensation for the loss of the prospect of the grant of a planning permission ('hope value') where applicable and compensation for the loss of any potential for development for which there was a reasonable expectation that planning permission would have been granted in the absence of the CPO scheme (known as 'appropriate alternative development').

5.11 Section 190 of the 2023 Act gives the Secretary of State the power to direct, when confirming CPOs of certain types, that particular compulsory purchase compensation rules will not apply, provided doing so is justified in the public interest. Those rules provide for compensation for the loss of the prospect of 'hope value' and compensation for the loss attributable to 'appropriate alternative development'.

5.12 The purpose of the reform is to seek to restrict the payment of 'hope value' and value attributable to 'appropriate alternative development' in certain, carefully defined circumstances. Directions may be issued on a scheme-by-scheme basis after consideration of objections and will only be available for the following types of compulsory purchase orders which facilitate:

- affordable or social housing,
- health provision, or
- education facilities.

5.13 The reform is intended to enable more land value to be captured and invested for the public benefit in schemes where there is a compelling case in the public interest to do so.

5.14 This statutory instrument amends the prescribed forms for CPOs and required notices to provide acquiring authorities with text to include in those documents where a CPO has been made which includes a direction that the compulsory purchase compensation rules discussed above will not apply.

Additional category of 'qualifying person'

5.15 Acquiring authorities are required to serve a notice of the making of a CPO on every 'qualifying person'. The definition of qualifying person for these purposes is set out in section 12(2) of the 1981 Act.

5.16 The 2021 Act (paragraph 2 of Schedule 20) added a further category of qualifying person to include a person who is entitled to the benefit of an obligation under a conservation covenant (within the meaning of Part 7 of the 2021 Act) relating to the land.

5.17 This statutory instrument amends the prescribed form for the notice of the making of a CPO to provide for acquiring authorities to include details of persons who fall within this category of qualifying person.

Removal of the statutory review requirement

5.18 There was a requirement in the 2004 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.

5.19 The review 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?

6.1 The 1981 Act sets out a process for acquiring authorities to follow when compulsorily acquiring land and requires acquiring authorities to make CPOs using certain forms and issue certain notices to interested parties at different stages of that process. That Act empowers the Secretary of State to prescribe the forms of those documents.

6.2 The 2004 Regulations prescribe the relevant forms. This statutory instrument makes minor changes to the prescribed forms contained in the 2004 Regulations to give effect to the modernisation reforms to the CPO process which were introduced through the 2021 Act and the 2023 Act. The amendments to the 2004 Regulations and the new forms reflect the new online publicity requirements, power to vary the time limit for implementation of a CPO, power to require prospects of planning permission to be ignored, and the change to the definition of who is a "qualifying person" on whom notices of a CPO must be served.

6.3 The Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2017 introduced a requirement for the Secretary of State to review the 2004 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.

Why was this approach taken to change the law?

6.4 The changes relating to the 2021 and 2023 Acts are minor and directly reflect the changes made in those Acts. Substantively this is the only possible approach to make the necessary changes.

6.5 This is the only possible approach to make the necessary changes to remove the review requirement.

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 2021 Act and the 2023 Act. They are minor, technical changes in nature and are necessary to give full effect to reforms in those Acts. 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 CPOs and notices which acquiring authorities are required to issue at certain points in the CPO process. Guidance on the use of the forms 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 in using the new forms.

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 5.19.

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 (Vesting Declarations and Land Compensation Development Order) (England) (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 not subject to Parliamentary 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").