EXPLANATORY MEMORANDUM TO THE

COMPULSORY PURCHASE OF LAND (WRITTEN REPRESENTATIONS PROCEDURE) (MINISTERS) REGULATIONS

2004 No. [2594]

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument sets out a written representations procedure for the determination of the confirmation or making of a compulsory purchase order by a UK government Minister. If there is a remaining objection to the confirmation or making of such an order under the Acquisition of Land Act 1981, the person who made it has a right to be heard at an inquiry or hearing. As an alternative and provided all those with remaining objections consent, a written representations procedure may be used to determine the issue.

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

None.

4. Legislative Background

4.1 The Planning and Compulsory Purchase Act 2004 amends the procedure for the confirmation of a compulsory purchase order under Part 2 of the Acquisition of Land Act 1981 and for the making of a Ministerial compulsory purchase order under Schedule 1 to that Act. The 2004 Act extends the category of objectors who have a right to have their objections heard at an inquiry or hearing ('a remaining objection') to include those having an interest in or over the land to be acquired and who would be entitled to claim compensation.

4.2 The 2004 Act provides for a written representations procedure to be prescribed by regulations (section 13A(6) of and paragraph 4A(7) of Schedule 1 to the 1981 Act as inserted by sections 100(6) and 101(4) of the Planning and Compulsory Purchase Act 2004). Such procedure is to afford an opportunity for every person who has made a remaining objection, the acquiring authority and any other person the Minister thinks appropriate to make written representations.

4.3 Section 100(3) of the 2004 Act inserts subsection (3) into section 7 of the 1981 Act to provide that regulations prescribing a written representations procedure are subject to negative procedure.

5. Extent

5.1 This instrument applies to England and Wales.

5.2 The National Assembly for Wales has the same power to make regulations for determining compulsory purchase orders which it can confirm or make under the Acquisition of Land Act 1981. The Assembly proposes to make similar regulations.

6. European Convention on Human Rights

None

7. Policy background

7.1 When there is a remaining objection, the usual method for determining whether to authorise the compulsory acquisition is for an inspector appointed by the Minister to hold a public inquiry and to prepare a report with a recommendation. The procedure is set out in the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 (S.I. 1990/512) or the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (S.I. 1994/2145).

7.2 Currently, there is no statutory impediment to the use of a written representations procedure as a means of deciding whether to confirm a compulsory purchase order (or to make an order that has been prepared in draft) to which there is an objection. However, as the use of such a procedure in any case would have to be agreed by all the parties, necessitating delays in the process before knowing whether agreement can be reached, there is little incentive to attempt this.

7.3 This instrument prescribes both a mechanism for obtaining the consent of all those with remaining objections to the use of a written representations procedure and, in the event of such consent, the procedure to be followed.

7.4 The use of the procedure is at the discretion of the Minister. However, its use is excluded when the confirmation or making of the order is subject to special parliamentary procedure.

7.5 The procedure is likely to be most appropriate for small scale compulsory acquisitions, for instance, for a single dwelling house, where the objector does not wish to employ agents and prefers not to make oral representations at an inquiry. Once it has been decided to proceed by means of written representations, an objector does not have a right to withdraw his or her consent. The prescribed form of consent in the Schedule to the instrument draws this point to the attention of those whose consent is sought. It also advises that the confirming authority may decide that an inquiry should be held, notwithstanding that all the parties have consented to the use of the written representations procedure.

7.6 The provision of a procedure for considering objections to compulsory purchase orders by means of written representations was unanimously welcomed during early consultations on proposed legislative changes and during the passage of the 2004 Act through Parliament. A draft of the instrument has been subject to a twelve week public consultation, which resulted in five responses. None of these questioned the overall thrust of the proposed procedure, but concentrated on points of detail including concerns that the deadlines for various actions were too long or too short. Given the need to keep the procedure short if it is to provide a realistic alternative to the inquiry procedure, only the period in which remaining objectors can

request an accompanied site visit has been extended, to not later than 10 working days after the starting date referred to in regulation 4(a). (5 working days had been proposed in the consultation draft).

8. Impact

A Regulatory Impact Assessment is attached.

9. Contact

Peter Frost at the Office of the Deputy Prime Minister Tel: 0207 944 3927 or e-mail: petera.frost@odpm.gsi.gov.uk can answer any queries regarding the instrument.