EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (COMPULSORY ACQUISITION) (AMENDMENT) (NO. 2) REGULATIONS 2017

2017 No. 1073

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument corrects a defect in Form A of Schedule 1 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (S.I. 2010/104) ("the 2010 Regulations").

2.2 The Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017 (S.I. 2017/105) ("the Amendment Regulations") amended the 2010 Regulations to provide a substituted prescribed form for a compulsory acquisition notice (Form A).

2.3 The Amendment Regulations were defective in that Form A did not reflect amendments to section 118 of the Planning Act 2008 ("the 2008 Act") made by section 92(4)(a) of the Criminal Justice and Courts Act 2015 ("the 2015 Act").

3. Matters of special interest to Parliament

3.1 This instrument corrects a defect in the Amendment Regulations. The procedure for free issue has been applied following the Department's consultation with the SI Registrar.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 When a Development Consent Order (DCO) is made under the 2008 Act and includes provision authorising compulsory acquisition, the prospective purchaser of the land must serve a "compulsory acquisition notice" on certain persons.

4.2 Form A to Schedule 1 to The 2010 Regulations prescribes the form of the compulsory acquisition notice.

4.3 The 2008 Act specifies the period in which a claim form for judicial review is to be filed. Section 118 of the 2008 Act was amended by section 92(4)(a) of the 2015 Act. The 2015 Act changed the period for making a legal challenge relating to applications for orders granting development consent.

4.4 These Regulations amend paragraph 4 of Form A to Schedule 1 to the 2010 Regulations to reflect the changes made to section 118 of the 2008 Act by section 92(4)(a) of the 2015 Act.

4.5 The amendments to section 118 were not reflected in the Amendment Regulations. These Regulations correct that defect.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales, and Scotland (for limited purposes, see section 240 of the 2008 Act).

5.2 This instrument applies to England and Wales, and Scotland (for limited purposes, see section 240 of the 2008 Act).

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

What is being done and why

7.1 The 2008 Act requires a developer benefitting from a DCO to publish a notice confirming that the DCO has authorised compulsory acquisition. Form A prescribes the form of the compulsory acquisition notice.

7.2 The prescribed Form A in the 2010 Regulations was substituted by the Amendment Regulations.

7.3 There was an error in paragraph 4 of substituted Form A. Section 118 of the 2008 Act was amended by the 2015 Act to change the deadline for filing a claim for judicial review but this change was not reflected in the substituted form.

7.4 It is important that potential claimants are given the correct information as to when the 6 week legal challenge period starts. These Regulations are therefore, made to correct the defect.

Consolidation

7.5 These Regulations amend only a small part of the 2010 Regulations, so there are no plans to undertake a consolidation.

8. Consultation outcome

8.1 No consultation has taken place on these Regulations as they are simply amending an error.

9. Guidance

9.1 Any necessary amendments will be made to the guidance entitled “Planning Act 2008 – Guidance related to procedures for compulsory acquisition”.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A full impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Amendment Regulations make provision for a review under section 28 of the Small Business, Enterprise and Employment Act 2015, as private sector entities can be authorised to acquire land compulsorily by way of a development consent order under the Planning Act 2008.

12.2 The Secretary of State must review the operation and effect of new regulation 3 of the 2010 Regulations and publish a report within five years after it comes into force and within every five years after that.

13. Contact

13.1 Theresa Donohue at the Department for Communities and Local Government Telephone: 0303 4441719 or email: theresa.donohue@communities.gsi.gov.uk can answer any queries regarding the instrument.