DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

Communities and Local Government Circular 01/2008
Department for Communities and Local Government
Eland House, Bressenden Place, London SWIE 5DU

15 January 2008

THE COMPULSORY PURCHASE (INQUIRIES PROCEDURE) RULES 2007, SI 2007 No.3617

INTRODUCTION

1. The Lord Chancellor, after consultation with the Council on Tribunals, has made the above-mentioned Rules which come into force on 29 January 2008. This Circular provides guidance concerning the new Rules. The advice given in this Circular is intended to be a guide and does not purport to be an authoritative interpretation of the law which can only be provided by the Courts.

SCOPE OF THE NEW RULES

2. The new Rules replace the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990, (the "1990 Rules", SI 1990 No. 512) and the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994, (the "1994 Rules", SI 1994 No. 3264). They will apply to all inquiries into compulsory purchase orders (CPOs) made in draft by a UK government minister which include land in England and/or Wales, as well as inquiries into CPOs made by non-ministerial acquiring authorities in England. Separate Rules to be issued by the Welsh Assembly Government will apply to CPOs made or confirmed by the Welsh Ministers.

BACKGROUND TO THE CHANGES

3. The primary reason for the new Rules is to take account of changes introduced by Part 8 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") and the subsequent Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004 No. 2594). The changes to the Rules also reflect the commitment given by the former Office of the Deputy Prime Minister in 2002 to combine into a single unified set of Rules the previously separate arrangements which applied to ministerial and non-ministerial CPOs. Changes have also been made that reflect the current practices adopted in procedure rules employed in other types of inquiries.

4. It has hitherto been considered necessary to have two separate sets of procedure rules for CPO inquiries because the arrangements in primary legislation for orders made by ministers and orders made by non-ministerial acquiring authorities are different. CPOs made by ministers are published in draft by the appropriate Secretary of State and, once objections have been considered by an inspector, that minister then proceeds to make the order himself (assuming that he decides that it is an appropriate course of action). CPOs by non-ministerial acquiring authorities, however, are made by the relevant acquiring authority and then submitted to the relevant confirming authority, who is usually the Secretary of State of the government department with power to authorise the compulsory purchase. That minister then considers any objections, including deciding whether or not to call an inquiry, and makes the final decision as to whether or not to confirm the order[1]. Despite this basic difference in the underlying statutory provisions, the mechanics of the inquiry processes are essentially the same.

MAIN FEATURES OF THE NEW COMBINED RULES

5. Where there were differences in the timescales set in the previous Rules for any particular section, the new Rules propose adopting the longer: see for example Rules 5 and 6 below. This is intended to avoid the risk of infringing the human rights of objectors. However, as both of the previous sets of Rules had always included provision for the minister making or confirming the order to allow extra time for any step in the procedures, its practical import will be minimal.

6. There is no longer any reference to the application of the Rules to compulsory rights orders under the Opencast Coal Act 1958 as that Act was repealed in 1999.

7. The terminology used in the Rules has been updated to reflect the terms used in the 2004 Act such as "confirming authority", "appropriate authority" and "remaining objector". In addition, the Rules also use the term "authorising authority", see Rule 2 below.

8. There are also a number of minor procedural changes; the deadline for serving notice of intention to hold an inquiry has been extended to 5 weeks from the end of the objection period, see Rule 3.

9. While retaining the requirement that a "statement of case" is to be submitted not later than 6 weeks after the "relevant date", the previous requirement that statements of case for non-ministerial order inquiries should be served at least 28 days before the date fixed for the inquiry has been removed, see Rule 7 below.

10. The term "statement of evidence" used in the 1990 Rules has been retained in place of the term "proofs of evidence" used in the 1994 Rules. However, in order to reduce the potential for delay, the current requirement in the 1994 Rules for an objector to submit in advance any evidence which he proposes to rely on at the inquiry is being extended to apply to all CPO inquiries, see Rule 15.

11. The Rules apply where an "authorising authority" (who may be an appropriate authority in the case of a ministerial order), other than the Welsh Ministers, causes an inquiry to be held. "Appropriate authority" is defined in paragraph 4(8) of Schedule 1 to the

1 Further guidance on the making of compulsory purchase orders is provided in ODPM Circular 06/2004: *Compulsory Purchase and the Crichel Down Rules*

Acquisition of Land Act 1981. For an order proposed to be made in the exercise of highway land acquisition powers, the Secretary of State for Transport and the Planning Minster will act jointly as the appropriate authority. In any other case it means the Minister. Paragraph 9 of Schedule 1 goes on to make it clear that highway land acquisition powers must be construed in accordance with the Highways Act 1980.

12. In applying the Rules, regard should be given to the definitions of "acquiring authority" and "confirming authority" given in section 7 of the Acquisition of Land Act 1981. These definitions make it clear that the acquiring authority, in relation to a compulsory purchase, means the Minister, local authority or other person who may be authorised to purchase land compulsorily. In relation to a compulsory purchase order where the acquiring authority is not a minister, the confirming authority means the Minister having power to authorise the acquiring authority to purchase compulsorily.

Rule 2 – Interpretation, "authorising authority"

13. The Rules also use the term "authorising authority" which covers the role of the appropriate Minister both in the case of ministerial orders where a Government department or agency seeks to acquire land compulsorily, and the role of the Minister who confirms non-ministerial CPOs submitted by the relevant acquiring authority.

Rule 3 – Preliminary action to be taken by the authorising authority

14. This Rule provides for a written notice from the Minister of his intention to cause an inquiry to be held in relation to either ministerial orders or non-ministerial orders.

15. For both ministerial and non-ministerial orders, the time within which the Minister has to give written notice of his intention to cause an inquiry has been set at 5 weeks. This has been extended from 14 days to provide for those cases where, if the authorising authority decides to offer the written representations procedure as an alternative to an inquiry, it has to allow a period of three weeks for objectors to give consent to that procedure before, if necessary, reverting to the inquiry procedure.

Rule 4 – Pre-inquiry meetings called by the authorising authority

16. For both ministerial orders and non-ministerial orders, the pre-inquiry meeting called by the authorising authority must be held not later than 16 weeks after the relevant date. These meetings are meant to provide an opportunity for the inspector to identify the main issues likely to arise at the inquiry and any need for additional information. Normally, Ministers will call a pre-inquiry meeting only in exceptional cases. This may be, for example, where the draft order or order, either on its own or together with any associated planning or highways case, is of major public interest because of its national or regional implications and/or because of the extent or complexity of the environmental safety, technical or scientific issues involved and where for these reasons there is much third party involvement. In each case the relevance of the Code of Practice for preparing for Major Planning Inquiries, referred to at paragraph 31 of DETR Circular 05/00[2] and attached at Annex 4 to that Circular, and the extent to which it can be appropriately applied to the order, will need to be considered.

2 DETR Circular 05/00: *Planning appeals procedures (including inquiries into called-in planning applications)*.

Rule 5 – Pre-inquiry meetings: notices, outline statements

17. For both ministerial and non-ministerial orders for which a pre-inquiry meeting has been called by the authorising authority, this Rule requires the acquiring authority to serve an outline statement on each remaining objector not later than 8 weeks after the relevant date. In the case of a non-ministerial order the acquiring authority is also required to send its outline statement to the authorising authority. The Rule also gives a discretionary power to the authorising authority to require any remaining objector and any other person who has notified him of his intention or wish to appear at the inquiry to serve, within 8 weeks of the date of the notice, an outline statement on him and on any other person specified in the notice i.e., on any remaining objectors and on anyone else who is going to appear at the inquiry, including in the case of non-ministerial orders, the acquiring authority. Outline statements, which are intended to assist the inspector and other parties in preparing for the inquiry will comprise a written statement of the principle submissions which will be put forward at the inquiry and they should identify the key issues to be considered at the inquiry. The Rule requires the authorising authority to give notice of the date, time and place of the pre-inquiry meeting by either fixing site notices or publishing a notice in local newspapers or both. In addition to the use of a newspaper and the fixing of notices, acquiring authorities may also wish to consider the use of their website to publicise the pre-inquiry meeting.

Rule 6 – Powers of inspector in respect of pre-inquiry meetings

18. This Rule enables the inspector to hold a pre-inquiry meeting in cases where he considers it to be desirable and the authorising authority has not required a pre-inquiry meeting. The Rule follows the 1994 Rules in requiring the inspector to arrange for not less than 3 weeks' written notice of the pre-inquiry meeting to be given to the authorising authority, the acquiring authority (in the case of a non-ministerial order), each remaining objector, other persons entitled to appear at the inquiry and any other person whose presence at the meeting appears to be desirable to the inspector. It is for the inspector to determine the matters to be discussed and the procedures to be followed at the pre-inquiry meeting.

Rule 7 – Statements of case etc

19. The requirement in the 1990 Rules that statements of case should be served by acquiring authorities at least 28 days before the date fixed for the inquiry has been removed. It has been replaced by a requirement for the acquiring authority to send its statement of case to each remaining objector and, in the case of a non-ministerial order, to the authorising authority within 4 weeks of the conclusion of the pre-inquiry meeting held pursuant to Rules 4 or 6(3) or 6 weeks after the relevant date in any other case. This should give sufficient time for objectors to formulate and submit their statements of case where these are required by the authorising authority. The objectors will have to submit their statements of case within 6 weeks from the date of the notice issued by the authorising authority. The statement of case should set out the arguments that a party intends to put forward at the inquiry. It should also include copies or relevant extracts of any documents referred to in the statement and a list of all the documents that a party will rely on when presenting their case at the inquiry and refer to in their statement of evidence. This enables the parties to know as much as possible about each other's case at an early stage and will help parties to focus on matters which are in

dispute. It can also help parties assess whether there is scope for negotiation while there is still time for this to lead to a satisfactory outcome. Starting negotiations early can help avoid late cancellations of inquiries or requests for postponement.

20. To assist in ensuring that adequate information is supplied in advance of the inquiry, Rule 7(5) enables the authorising authority or inspector to require the provision of such further information as may be specified. If any party considers a statement of case produced by another party to be inadequate or incomplete, this should be drawn to the inspector's attention at the earliest opportunity.

Rule 8 – Inquiry timetable

21. Where a pre-inquiry meeting is held pursuant to Rule 4 or 6, Rule 8(1) requires the inspector to arrange, subject to the provisions of Rule 10(1)(b), a timetable for the inquiry proceedings. In other cases the inspector may arrange a timetable where he considers that this would be helpful. The inspector may vary the timetable but must also notify every person entitled to appear at the inquiry of any changes to the inquiry timetable.

22. Rule 8(2) enables the inspector to specify in any timetable arranged under this Rule, a date by which any statement of evidence and summary required by Rule 15(1) is to be sent to him. Where a timetable has been arranged under Rule 8(1), Rule 8(3) requires the inspector to send a copy of the inquiry timetable to every person entitled to appear at the inquiry no later than 4 weeks before the start of the inquiry.

Rule 9 – Notice of the appointment of an assessor

23. Where a suitably qualified assessor has been appointed, Rule 9 requires the authorising authority to notify persons entitled to appear at the inquiry of the assessor's name and the matters on which he is to advise the inspector. The assessor's role is to assist the inquiry to reach a better understanding of specialised issues.

Rule 10 – Date of the inquiry

24. The inquiry will normally be arranged by the Planning Inspectorate (PINS) in consultation with the acquiring authority and the aim will be to fix as early an inquiry as possible within 22 weeks of the relevant date (where there is no pre-inquiry meeting held under Rule 4). Where a pre-inquiry meeting has been held under Rule 4 or 6, the inquiry should be held within 8 weeks of the conclusion of the final pre-inquiry meeting. As there may be several objectors to a CPO it will not be practicable to offer dates to each of them, so the inquiry date will be fixed and imposed on all the participants in the inquiry. However, in cases where there is only one remaining objector, PINS will allow them and the acquiring authority one refusal of the date offered for the inquiry before fixing the date, time and place for the inquiry. To assist in arranging the inquiry, the acquiring authority and objector(s) should inform the Inspectorate of their availability as early as possible after the relevant date. Parties should also, where possible, try to agree a range of mutually acceptable dates. PINS will endeavour to meet such dates, subject to Inspector availability and other statutory timetabling considerations.

25. Where dates are offered to the acquiring authority and objector(s) there is a further opportunity to negotiate a mutually agreeable inquiry date. The period allowed for negotiation of inquiry dates in these cases will, in normal circumstances, be limited to

two weeks. The negotiation period will be deemed to have started when the first offer of an inquiry date is made. Once the date, time and place for holding the inquiry have been fixed, they would only be varied in exceptional circumstances. Ultimately, the decisions concerning the place of the inquiry rest with the authorising authority. The venue for the inquiry should afford adequate facilities for those with special needs.

26. Rule 10(5) enables the authorising authority to direct that the inquiry shall be held partly in one place and partly in another. This is only expected to occur where the order or draft order relates to a large, linear scheme such as a major road. For non-ministerial orders, PINS will consult on the arrangements for the inquiry in these cases with the acquiring authority.

Rule 11 – Public notice of inquiry

27. In addition to the fixing of notices about the inquiry and the publication of notices in local newspapers, the authorising authority and the acquiring authority may in addition also consider giving further publicity about the inquiry via their websites.

Rules 12 and 13 – Representation of the Minister and Government departments at the inquiry

28. Rule 12, representation of a Minster at inquiry, applies only to ministerial orders. Although under Rules 12 and 13 a representative of a Minister or Government Department is not required to answer any question directed at the merits of government policy, the inspector may permit such a question if the representative is prepared to answer it.

Rule 14 – Appearances at the inquiry

29. Rule 14(3) makes it clear that the inspector will not unreasonably withhold permission for any other person to appear at an inquiry (i.e., beyond those entitled to appear under Rules 14(1) and 14(2)). In practice, anyone who wishes to appear at an inquiry will usually be allowed to do so, provided that they have something relevant to say which has not already been said.

Rule 15 – Evidence at inquiry

30. This Rule contains a number of provisions designed to improve the participation by interested parties in the inquiry process and to help achieve savings in inquiry time, without detracting from either the fairness of the proceedings or the ability of participants to make their views known.

31. The term "statement of evidence" refers to the documents containing the written evidence from which a person appearing at the inquiry will speak. The statement should be concise and ideally contain facts and expert opinions deriving from witnesses' own professional or local knowledge as applied to individual cases. The statement should focus on what is really necessary to make the case and avoid including unnecessary detail. If case law is to be cited in the statement, it would be helpful if the law report reference is included and a copy of the report is attached with a cross-reference to the text.

32. A summary should be provided when a statement exceeds 1,500 words. As a guide, the summary should not exceed 10% of the length of the statement. It is normally only the summary that is read out at the inquiry. This should accurately condense the gist of the statement, concentrating on the case in relation to the main points at issue. The content of the summary should not go beyond the scope of the text it purports to summarise, otherwise unproductive disputes can arise.

33. By virtue of Rule 15(3) the statement of evidence and any summary are to be submitted to the inspector not later than 3 weeks before the commencement of the inquiry or where, pursuant to Rule 10, a timetable has been arranged for the inquiry, the date specified in the timetable.

Rule 16 – Procedure at inquiry

34. Unless the Rules stipulate otherwise, the inspector determines the procedure at the inquiry. The acquiring authority shall give evidence first unless the inspector in a particular case decides otherwise, and shall have the right of final reply. Other parties entitled or permitted to appear shall be heard in the order determined by the inspector.

35. All persons entitled to appear at the inquiry by virtue of Rules 14(1) or (2) shall be entitled to call evidence. Only the acquiring authority and the remaining objectors have an entitlement to cross-examine persons giving evidence, although the inspector may permit other persons to do so.

36. Rule 16(5) makes it clear that the full statement of evidence will still be treated as tendered in evidence and open to cross-examination unless the person required to provide the summary notifies the inspector that he wishes to rely on the summary only.

38. Rule 16(10) enables the inspector to take into account written representations, evidence or other documents received during the inquiry, as well as before it opens, provided that they are disclosed at the inquiry.

Rule 17 – Site inspections

39. This Rule allows the inspector to make unaccompanied site visits before or during the inquiry, as well as accompanied site visits during the inquiry or after its close. The inspector will refuse to hear evidence or other submissions during any accompanied visit. It is legitimate, however, for people to draw his attention to particular features of the site and its surroundings.

Rule 18 – Procedure after inquiry

40. This Rule draws upon Rule 17 of both the 1990 and 1994 Rules. The inspector shall make a report to the authorising authority which includes his conclusions and recommendations. The inspector, however, must give reasons for not making any recommendations. Where an assessor has been appointed to sit with the inspector at an inquiry on specialist matters, he may subsequently provide the inspector with a written report on those matters. The inspector is entirely responsible for the writing of his report to the authorising authority and for the recommendations made. However, the assessor's report is to be appended to the inspector's own report and the inspector will state how far he agrees or disagrees with the assessor.

41. Rule 18(4) requires reference back to the parties where the authorising authority is disposed to disagree with the inspector's recommendations or where he proposes to take into consideration any new evidence or new matters of fact (other than a matter of government policy). Where reference back takes place under Rule 18(4), all persons who appeared at the inquiry will be afforded the opportunity of submitting representations within 3 weeks. Where the reference back is because it is proposed to take account of some new evidence or new matters of fact, the parties may ask for the inquiry to be re-opened. If such a request is made by the acquiring authority (in relation to a non-ministerial order) or by a remaining objector, the inquiry must be re-opened. In other circumstances, the authorising authority may, at its discretion, cause the inquiry to be re-opened.

Rule 20 – Allowing further time

42. Rule 20 gives the authorising authority power to allow further time for the taking of any step taken by virtue of the Rules. Although it is accepted that there may be circumstances where it is reasonable to allow an extended period for the taking of any particular step, it is clearly important for the efficient and speedy operation of the Rules that the various time limits are adhered to as far as possible. Authorising authorities will be extremely sparing in the exercise of this power.

43. Moreover, it is clearly good practice were possible to issue, serve or submit the various notices, statements and proofs of evidence as soon as possible rather than waiting until the end of any time limits specified by the Rules. Where a failure to observe a requirement of the Rules causes an inquiry to be adjourned, this could lead to a claim for costs on the grounds of unreasonable behaviour.

Rule 22 – Revocation and savings

44. The 1990 Rules and the 1994 Rules apply in Wales until such time as they are revoked by the Welsh Ministers.

Cancellations

45. DOE Circular 1/90 *Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990* is cancelled in relation to inquiries held under these Rules.

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