Draft Regulations laid before Parliament under section 68 of the Countryside and Rights of Way Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

COUNTRYSIDE, ENGLAND

Vehicular Access Across Common and Other Land (England) Regulations 2002

Made - - - - 2002

Coming into force in accordance with regulation 1(1)

The Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred on her by section 68 of the Countryside and Rights of Way Act 2000(**1**), hereby makes the following Regulations a draft of which has been laid before and approved by resolution of each House of Parliament:

Title, commencement and extent

1.—(1) These Regulations may be cited as the Vehicular Access Across Common and Other Land (England) Regulations 2002 and shall come into force on the day after the date on which they are made.

(2) These Regulations shall apply to land in England only.

(3) For the purposes of paragraph (2), "land" means any land which is crossed by a way used as a means of access for vehicles to premises.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Countryside and Rights of Way Act 2000;

"the applicant", "the land" and "the land owner" have the meanings given in regulation 3(2);

"compensation sum" means the amount of compensation payable by the applicant;

"easement" means an easement subsisting at law for the benefit of the premises and giving a right of way for vehicles;

"the parties" means the applicant and the land owner and "party" shall be construed accordingly;

(**1**) 2000 c. 37.

"the premises" means the premises served by the way in respect of which an application for an easement is made;

"the value of the premises" has the meaning given in regulation 11(4).

(2) Any reference in these Regulations to a numbered regulation shall be construed as a reference to the regulation so numbered in these Regulations.

Entitlement to make an application

3.—(1) An owner of any premises may, as respects a way to which section 68 of the Act applies, apply for the creation of an easement in accordance with these Regulations.

(2) For the purposes of these Regulations, the owner who makes an application shall be referred to as "the applicant", the land crossed by the way shall be referred to as "the land" and the person who, for the time being, has the freehold title to the land, shall be referred to as "the land owner".

Prescribed date

4. The prescribed date for the purpose of section 68(1)(b) of the Act is 5th May 1993.

Nature of easement

5. An easement created in accordance with these Regulations shall—

(a) be subject to any limitation agreed by the parties or determined by the Lands Tribunal;

(b) include any right incidental to the right of way agreed by the parties or determined by the Lands Tribunal; and

(c) be subject to any rule of law which would apply to the easement had it been acquired by prescription.

Procedure for making an application

6.—(1) An application for the easement shall be made by the applicant serving a notice on the land owner.

(2) The application must be served within 12 months of the date on which these Regulations come into force or, if later, the date on which the relevant use of the way has ceased.

(3) The application shall contain the information specified in paragraph 1, and be accompanied by the information specified in paragraph 2, of the Schedule to these Regulations.

Unopposed applications

7.—(1) Where the land owner does not object to the application he shall, within three months of receipt of the application, serve a notice on the applicant, agreeing to the application.

(2) The notice shall contain the following information—

(a) the name and address of the land owner and a description of his interest in the land; and

(b) a statement confirming that upon payment of the compensation sum he will provide a written receipt.

(3) The notice shall be accompanied by evidence of the land owner's title to the land.

Opposed applications

8.—(1) Where the land owner has objections to the application, he shall, within three months of receipt of the application, serve a notice (a "counter notice") on the applicant, objecting to the application.

(2) Objections to the application may be made on the following grounds—

(a) the applicant has served the application after the expiry of the period for service;

(b) the applicant has not provided the information required by regulation 6(3);

(c) information provided by the applicant is not correct;

(d) the easement should be subject to limitations other than those (if any) described in the application;

(e) any rights incidental to the right of way which are described in the application as being rights which should be included in the easement, are not agreed;

(f) the value of the premises is not agreed.

(3) The counter notice shall contain the following information—

(a) the name and address of the land owner and a description of his interest in the land;

(b) the objections to the application; and

(c) any alternative proposals.

(4) The counter notice shall be accompanied by—

(a) any evidence relevant to the objections and alternative proposals; and

(b) evidence of the land owner's title to the land.

Amended application and amended counter notice

9.—(1) Within two months of receipt of a counter notice, the applicant may serve on the land owner an amended application addressing the objections and any alternative proposals set out in the counter notice.

(2) An amended application shall contain the information specified in paragraph 1 of the Schedule to these Regulations and shall be accompanied by any evidence relevant to the applicant's response to the objections and any alternative proposals set out in the counter notice.

(3) Where the applicant has served an amended application on the land owner, the land owner shall, within two months of receipt of the amended application—

(a) serve a notice on the applicant agreeing to the amended application and confirming that upon payment of the compensation sum he will provide a written receipt, or

(b) serve an amended counter notice on the applicant objecting to the amended application.

(4) An amended counter notice shall comply with regulation 8(2), (3) and (4)(a) and, for this purpose,—

(a) references in regulation 8(2) and (3) to the application, except for the reference in sub-paragraph (a) of regulation 8(2), shall be treated as references to the amended application; and

(b) an objection may also be made on the ground that the applicant has served the amended application after the expiry of the period for service or has not provided the information required by paragraph (2) of this regulation.

(5) Where the land owner has served an amended counter notice on the applicant, the applicant may, within two months of receipt of the amended counter notice, serve a notice on the land owner agreeing to the amended counter notice.

Lands Tribunal

10.—(1) Where a counter notice has been served, either party may, where there is a dispute relating to any matter other than the value of the premises, request the Lands Tribunal to determine the matter in dispute by sending a notice of reference to the Lands Tribunal in accordance with the Lands Tribunal Rules 1996(**2**).

(2) The notice of reference shall have annexed to it—

(a) the application;

(b) the counter notice; and

(c) if applicable, the amended application and amended counter notice.

Calculation of the compensation sum

11.—(1) Subject to paragraph (2), the compensation sum shall be 2 per cent. of the value of the premises.

(2) Where the premises were in existence on—

(a) 31st December 1905; or

(b) 30th November 1930,

the compensation sum shall be 0.25 per cent. or 0.5 per cent. of the value of the premises respectively.

(3) Where the premises are in residential use and replaced other premises on the same site which were also in residential use ("the former premises"), the compensation sum shall be calculated in accordance with paragraph (2) by reference to the date on which the former premises were in existence.

(4) For the purposes of these Regulations, the value of the premises shall be calculated as at the valuation date on the basis of the open market value of the premises with the benefit of the easement.

(5) In paragraph (4), the "valuation date" means the date as at which the premises are valued for the purposes of the application, being a date no more than 3 months before the date on which the application is served.

Determination of the compensation sum in default of agreement

12.—(1) Where no agreement can be reached on the value of the premises, either party may serve on the other a notice (the "valuation notice") requiring the amount to be determined by a chartered surveyor.

(2) Where a valuation notice has been served, the appointment of a chartered surveyor shall be agreed by the parties within one month of the service of the valuation notice and, where agreement on such appointment cannot be reached, either party may request the President of the Royal Institution of Chartered Surveyors to appoint a chartered surveyor.

(3) Where a chartered surveyor has been appointed in accordance with paragraph (2), the following provisions shall apply as appropriate—

(a) where the appointment has been made by the President of the Royal Institution of Chartered Surveyors, the parties shall be equally liable for the costs of that appointment;

(b) unless the parties agree that the chartered surveyor shall act as an independent expert, he shall act as an arbitrator and the provisions of the Arbitration Act 1996(**3**) shall apply; and

(c) where the chartered surveyor acts as an independent expert, the parties shall—

(**2**) S.I.1996/1022, amended by S.I. 1997/1965 and 1998/22.
(**3**) 1996 c. 23.