

*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.*

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DRAFT STATUTORY INSTRUMENTS

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**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<sup>(1)</sup>, 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;

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(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 subparagraph (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<sup>(2)</sup>.

(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<sup>(3)</sup> shall apply; and
- (c) where the chartered surveyor acts as an independent expert, the parties shall—

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<sup>(2)</sup> S.I.1996/1022, amended by S.I. 1997/1965 and 1998/22.

<sup>(3)</sup> 1996 c. 23.

- (i) be bound by his final decision; and
- (ii) each party shall bear their own costs and shall be equally liable for the fees and costs of the chartered surveyor.

### **Payment of the compensation sum**

#### **13.—(1) Where—**

- (a) the land owner has notified the applicant in accordance with regulation 7 or 9(3)(a);
- (b) the applicant has notified the land owner in accordance with regulation 9(5); or
- (c) any matters in dispute have been determined in accordance with regulation 10 or 12,

the applicant shall pay the compensation sum to the land owner.

#### **(2) The compensation sum shall be paid within two months of—**

- (a) the date of notification under regulation 7 or paragraph (3)(a) or (5) of regulation 9, as the case may be; or
- (b) where a determination is made under regulation 10 or 12, the date of the determination, or if more than one such determination is made, the date of the last determination.

(3) The land owner shall, within one month from the date of receipt of the compensation sum, provide the applicant with a written receipt for that sum.

### **Payment into court**

#### **14. Where—**

- (a) the land owner does not serve a notice in accordance with either regulation 7 or 8; or
- (b) the applicant has served an amended application on the land owner and the land owner fails to act in accordance with regulation 9(3),

the applicant may, within two months of the expiry of the period for service of a notice under regulation 7, 8 or 9(3), as the case may be, pay the compensation sum into a county court in accordance with the Court Funds Rules 1987(4).

### **Creation of the easement**

#### **15. Upon payment of the compensation sum either—**

- (a) to the land owner in accordance with regulation 13; or
- (b) into court in accordance with regulation 14,

the easement shall be created.

### **Notices**

**16.—(1)** A notice under these Regulations shall be in writing and may be served by sending it by post.

(2) Where any notice is required by these Regulations to be served within a specified period, the parties may, except in the case of an application, agree in writing to extend or further extend that period.

**Abandonment etc. by applicant**

17. Where the applicant withdraws or otherwise fails to continue with the application at any stage, he shall be liable for the reasonable costs incurred by the land owner.

2002

Minister of State  
Department for Environment,  
Food and Rural Affairs

## SCHEDULE

Regulation 6(3)

### INFORMATION TO BE PROVIDED BY THE APPLICANT

1. The application shall contain the following information—
  - (a) the name and address of the applicant;
  - (b) a description of the premises;
  - (c) a description of the applicant’s interest in the premises;
  - (d) details of the current use of the premises and the use during the period giving rise to the entitlement to apply for the easement;
  - (e) where the relevant use of the way has ceased, the date of the cessation;
  - (f) where the premises, or, where regulation 11(3) applies, the former premises, were in existence on 31st December 1905 or 30th November 1930, a statement confirming those facts;
  - (g) the nature of the use of the access, including any limitation or incidental right to which the easement should be subject or which should be included in the easement;
  - (h) the dimensions of the width of the way; and
  - (i) the proposed compensation sum to be paid to the land owner in respect of the easement, together with the basis on which it is calculated.
2. The application shall be accompanied by—
  - (a) a map of an appropriate scale (1:1250 or 1:2500) showing the premises (marked in blue), the way (marked in red) and sufficient other land to establish the exact location of the premises and the way in relation to the surrounding area;
  - (b) evidence (which may include a statutory declaration) that—
    - (i) the way is a way to which section 68 of the Act applies; and
    - (ii) where the application is served after 12 months of the date on which these Regulations come into force, either that the relevant use of the way has not ceased or that such use ceased no more than 12 months before the date on which the application is served; and
  - (c) an estimate prepared by a chartered surveyor of the value of the premises as at the valuation date, and “valuation date” has the same meaning for this purpose as in regulation 11(4).

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations regulate the procedure to be followed by persons wishing to apply for an easement subsisting at law for the benefit of premises and giving a right of way for vehicles over common or other land pursuant to section 68 of the Countryside and Rights of Way Act 2000.

Regulation 3 states who is entitled to make an application and regulation 4 the prescribed date for the purpose of section 68(1)(b) of the Countryside and Rights of Way Act 2000.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *Vehicular Access Across Common and Other Land (England) Regulations 2002 No. 1711*

Regulation 5 states the nature of an easement created pursuant to these Regulations and regulations 6 to 9 set out how to make an application for an easement and the subsequent procedure.

Regulation 10 provides for the Lands Tribunal to determine any matters in dispute between the applicant and the land owner except for the value of the premises. Regulation 11 provides for the compensation sum payable to the land owner in return for the easement, to be calculated by reference to a percentage of the value of the premises. Regulation 12 sets out how, where no agreement can be reached on the value of the premises, this is determined by a chartered surveyor who is chosen by the parties or specially appointed.

Regulations 13 and 14 stipulate how the compensation sum is to be paid to the land owner or into court. Under regulation 15 an easement is created on payment of the compensation sum.

Regulation 16 makes provision for notices served under these Regulations.

Regulation 17 provides that the applicant shall be responsible for the costs incurred by the land owner if the application is withdrawn or abandoned.

A Regulatory Impact Appraisal has been prepared in relation to the Regulations. It has been placed in the Library of each House of Parliament and copies may be obtained from the Common Land Branch, Department for Environment, Food and Rural Affairs, Zone 1/05 Temple Quay House, 2 The Square, Bristol BS1 6EB (telephone 0117 372 8520).

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