EXPLANATORY MEMORANDUM TO

THE HOUSING AND PLANNING ACT 2016 (BANNING ORDER OFFENCES) REGULATIONS 2017

2017 No. [XXXX]

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.

2. Purpose of the instrument

2.1 This instrument specifies the criminal offences which are banning order offences for the purposes of Part 2 of the Housing and Planning Act 2016 ("the Act"). The Act introduced a power enabling a First-tier Tribunal to make a banning order against a residential landlord or property agent who has been convicted of a banning order offence, following an application by the local housing authority. A person who is subject to a banning order is banned from letting housing, engaging in letting agency work, engaging in property management work or doing two or more of those activities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 A banning order is defined in section 14(1) of the Act for the purposes of Part 2 of the Act (rogue landlords and property agents in England). A banning order may be made against a person only for the purpose of banning them from letting housing in England or from engaging in English letting agency work or English property management work.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

4.1 These Regulations are being made to specify which offences will constitute "banning order offences" for the purposes of Part 2 of the Act. Section 14(3) of the Act confers power on the Secretary of State to specify in regulations what constitutes a "banning order offence". This is the first use of the power under the Act.

4.2 The Act provides that the Regulations may describe an offence by reference to the nature of the offence, the characteristics of the offender, the place where the offence was committed, the circumstances in which it is committed, the court sentencing a person for the offence, or the sentence imposed.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales only.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Secretary of State for Communities and Local Government has made the following statement regarding Human Rights:

"In my view the provisions of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The purpose of a banning order is to enable local authorities to tackle the most serious and prolific offenders by preventing them from being involved in the renting out or management of housing in the private rented sector. Any banning order must be for a minimum period of 12 months. There is no upper limit on the length of a banning order.

7.2 Someone subject to a banning order can be banned from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work, or
- Doing two more of those things.

7.3 The Act introduced a package of measures designed to help local authorities take effective action against rogue landlords and property agents. Although the majority of landlords provide decent and well managed accommodation, there are a small number of rogue landlords and property agents who knowingly flout their legal obligations and rent out accommodation which is substandard, frequently to vulnerable tenants.

8. Consultation outcome

8.1 The banning order offences specified in this instrument were the subject of a public consultation held over an 8 week period between 13 December 2016 and 10 February 2017. Consultees included local authorities, landlord organisations, tenant groups, housing charities and representatives of letting agents. There were 223 responses and a high level of support for the proposals. Overall, 84% of respondents agreed that the proposed banning order offences were the right ones.

8.2 In addition, we have included a range of further offences that were suggested by respondents during the consultation exercise because it is considered that they are offences which it is likely that a rogue landlord may commit against their tenants.

Those additional offences have been included in the Schedule to the Regulations at items 7 to 14. The Government's response to the consultation document will be published shortly.

9. Guidance

9.1 Statutory guidance for local authorities on using the powers to apply for a banning order is currently being developed and will be published by 6 April 2018.

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 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 There are no plans to monitor or review this instrument.

13. Contact

13.1 Jonathan Bramhall at the Department for Communities and Local Government Telephone: 0303 444 1803 or email: jonathan.bramhall@communities.gsi.gov.uk can answer any queries regarding the instrument.