EXPLANATORY MEMORANDUM TO

THE MOBILE HOMES (REQUIREMENT FOR MANAGER OF SITE TO BE FIT AND PROPER PERSON) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations amend the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020 to correct an error in that instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, 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, 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.

3.5 The Department has reached this view because the primary purpose of the instrument relates to housing, which is with the devolved legislative competence of each of the three devolved legislatures.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Housing Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made to correct an error in the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020 -(SI 2020/1034) (the principal Regulations). It changes the reference to the Local Government Finance Act 1992 in Regulation 3(5)(a) to the Local Government Finance Act 1988.

6.2 The principal Regulations prohibit the use of land in England as a relevant protected site (a caravan site on which year-round residential occupation is allowed) unless the relevant local authority is satisfied that the owner or manager of the site is a fit and proper person to manage it. An owner of a site that operates in contravention of the Regulations will commit an offence.

7. Policy background

What is being done and why?

7.1 Sections 12A to 12E in the Caravan Sites and Control of Development Act 1960, provide the Secretary of State with the power to make regulations that prohibit the operation of a relevant protected site unless the site owner or its site manager has been assessed by the local authority as a fit and proper person to do so ("the fit and proper person test").

7.2 A "relevant protected site" is defined in section 5A(5) of the Caravan Sites and Control of Development Act 1960. The term is used for caravan sites for which a site licence is required under the 1960 Act and on which year-round residential occupation is allowed. These are mainly mobile home sites known as "park home" sites but also include owner occupied sites, such as those with planning permission for use by the Gypsy and Traveller communities. It does not include sites operated by a local authority or any other caravan site that does not require a licence under the Caravan Sites and Control of Development Act 1960.

7.3 The Regulations setting out how the fit and proper person test will operate were made on 23 September 2020. Under the Regulations, a site is exempt if it is only occupied by members of the same family and is not being run as a commercial residential site.

7.4 To determine if a site is a commercial residential site, a local authority will take into consideration, the amount which any person is required to pay the site owner in respect of the right to station a caravan or reside in a caravan on the site and use of the common areas of the site, and if it exceeds a fair contribution towards the relevant costs.

7.5 "Relevant costs" is defined in regulation 3(5) as the total of;

(a) any amount which the occupier is liable to pay as regards the site by way of a non-domestic rate under Part 3 of the Local Government Finance Act 1992;

(b) any council tax for which the occupier is liable in respect of any caravan situated on the site (other than a caravan in which the occupier resides);

(c) any council tax for which the occupier is liable in respect of any dwelling situated on the site that is not a caravan (other than a dwelling in which the occupier resides); and

(d) the occupier's reasonable costs of repairs, maintenance and insurance in respect of the site.

7.6 The reference in Reg 3(5)(a) to the Local Government Finance Act 1992 is an error, as it is Part 3 of the 1988 Act of that name and not the 1992 Act, which deals with non-domestic rates. The amendment is necessary to ensure local authorities are able to properly apply the intended exemption from the fit and proper person test requirements for non-commercial, family occupied sites when the principal regulations come into force on 1 July 2021 and 1 October 2021.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020. There are no plans at present to consolidate the two instruments.

10. Consultation outcome

10.1 The Department consulted on how the fit and proper test would work in practice between 22 July and 17 September 2019. The summary and the Government's response can be downloaded from https://www.gov.uk/government/consultations/mobile-homes-a-fit-and-proper-person-test-for-park-home-sites.

No consultation has been undertaken in connection with the correction of the statutory reference in regulation 3(5)(a) of the principal Regulations.

11. Guidance

11.1 Guidance is not required.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 A full impact assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sectors is anticipated based upon our internal assessment of impact.

13. Regulating small business

13.1 As this instrument applies mostly to small businesses, excluding them would undermine the purpose of the instrument.

13.2 No specific action is therefore proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Housing Minister has made the following statement.

14.2 "As the provisions of the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020 (which this instruments amends) have an EANDCB of only £0.63m, carrying out a review for this instrument would be disproportionate."

15. Contact

15.1 William Tandoh, Policy Advisor at the Ministry of Housing Communities and Local Government, Telephone: 030 3444 3699 or email: William.tandoh@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Stephanie Kvam, Deputy Director, Private Rented Sector, at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Eddie Hughes MP, Minister for Housing at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.