EXPLANATORY MEMORANDUM TO

THE PROVISION OF INFORMATION (CONTRACTUAL CONTROL) (REGISTERED LAND) REGULATIONS 2026

2026 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 His Majesty.

2. Declaration

2.1 Matthew Pennycook, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Hester Wadge, Deputy Director for Land and Accelerating New Developments at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Andrew Wilson and Tom Kenny at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: contractualcontrol@commmunities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument increases transparency over land by requiring the disclosure of certain contractual rights – *contractual controls* – to HM Land Registry. Contractual controls are legal agreements that give a party the ability to control how and when land is sold, without conferring legal ownership.

4.2 Contractual controls are widely used in the land market in England and Wales, particularly by developers and land promoters. Common examples include options to purchase, pre-emption rights, and promotion agreements. These tools allow a party to secure future rights over land (such as planning permission) while leaving legal ownership unchanged.

4.3 Currently, there is no requirement for contractual control rights to be disclosed or recorded at HM Land Registry. Although references to contractual control rights may appear on a register of title where protection has been secured via a notice or restriction, this information is often unclear and difficult to interpret due to its complexity and lack of standardisation. This creates a transparency gap where the extent of control over land use and development is not always visible to the public, developers, or planning authorities.

4.4 This instrument addresses the transparency gap by requiring that specified types of contractual controls over registered land are recorded with HM Land Registry. Once submitted, details of these controls must be published in a public dataset and updated

on at least a monthly basis. Any subsequent changes to the status of a contractual control – such as its expiry, exercise or determination – must also be reported.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) of which the instrument forms part of the law) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales. This matches the territorial application of the Land Registration Act 2002.

5. Policy Context

What is being done and why?

5.1 Currently, information relating to contractual controls held with HM Land Registry is limited, unclear, and not easily searchable. There is no legal requirement to provide information, making it impossible to build a picture of land subject to such agreements.

5.2 The policy intention is to create and publish an accurate, reliable, and freely accessible dataset containing information on contractual control rights across England and Wales. This will enable communities, small and medium-sized businesses, and local authorities to better understand where land is being brought forward for development; support developers in identifying potential sites; and improve transparency around who holds control over land through such agreements.

What was the previous policy, how is this different?

5.3 There is currently no legal requirement for information on contractual controls to be provided to HM Land Registry, and there has been no previous government policy in this area. Although references to contractual control rights may appear on a register of title where protection has been secured via a notice or restriction, this information is often unclear and difficult to interpret due to its complexity and lack of standardisation.

5.4 In the absence of individual incentives to make this information publicly available, and with no private sector solution, legislative intervention is needed to mandate the provision and publication of this data and to ensure it is accurate, reliable and freely accessible.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations require certain information about contractual control agreements affecting registered land in England and Wales to be provided to and published by the Chief Land Registrar of HM Land Registry ("the Registrar"), in accordance with powers under Part 11 of the Levelling-up and Regeneration Act 2023 ("the Act").

6.2 Part 11 of the Act enables the Secretary of State to make regulations requiring the provision of information that appears useful for understanding "relevant contractual rights". Section 221(3) defines "relevant contractual rights" as contractual rights that relate to the development, use or disposal of land in England and Wales and are held for the purposes of an "undertaking". Undertakings include businesses, charities, and exercises of a public nature (section 221(4) of the Act).

6.3 Section 224 of the Act allows for regulations to provide for the retention, sharing and publication of the information collected. Section 226 permits regulations to prevent relevant registration acts (for example, entry of a notice or restriction) if information requirements have not been met. Section 226(3) provides that regulations may amend the Land Registration Act 2002 or make consequential amendments of any other enactment.

6.4 These Regulations specify the categories of contractual control agreements that must be registered, the information that must be provided, and the manner in which this must be done. The information must be submitted by a conveyancer using prescribed channels.

6.5 Regulation 10 amends rule 72 of the Land Registration Rules 2003 to allow the Registrar to refuse to register or update a notice or restriction that appears to relate to a contractual control right unless satisfied that the information required by these Regulations has been provided.

6.6 A person who fails to comply with the information requirements imposed by these Regulations, or who deliberately or recklessly provides false or misleading information in response to these requirements, commits a criminal offence under section 225 of the Act.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes. There is no existing legal requirement to provide or publish information on contractual control agreements affecting land, and no viable non-legislative alternative to ensure a consistent, accurate and publicly accessible dataset.

7. Consultation

Summary of consultation outcome and methodology

7.1 The *Contractual controls on land* consultation was published in January 2024 and ran for eight weeks. It sought views on the proposed policy, a draft statutory instrument, and a draft impact assessment. The consultation was open to all and publicised via sector networks and LinkedIn. In addition, targeted engagement sessions were held before and during the consultation period to ensure that those most likely to be affected by the regulations were aware of the opportunity to engage.

7.2 A total of 41 responses were received from lawyers, developers, local authorities, and other stakeholders. Respondents provided views on the proposed policy scope, the likely real-world effects of transparency, and the potential market impact. The consultation demonstrated broad support for the principle of transparency of contractual control agreements, particularly for the benefit of local authorities, developers, and communities. Respondents also raised concerns about commercial sensitivity, potential burdens on small and medium-sized businesses, and unintended consequences.

7.3 Evidence from the consultation informed changes to the policy and the final scope of the regulations. In particular, responses indicated that most contractual control agreements relate to registered land, supporting the decision to limit the scope of the regulations to registered land only (unless and until unregistered land becomes registered). To help manage concerns around burdens and sensitivities, the Regulations will apply only to new contractual control rights created after the

Regulations are made or to pre-existing rights when they are varied after the Regulations are in force.

7.4 A government response and a summary of consultation responses are being published alongside this Explanatory Memorandum.

8. Applicable Guidance

8.1 The Regulations do not require accompanying statutory guidance when laid in Parliament. Practice guidance will be published before the service becomes live in 2027.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the estimated cost to business is below the de minimis threshold of £10 million per annum.

9.2 The total cost to business is estimated at approximately £4.2 million per annum. This estimate is built on the previously published Consultation Impact Assessment, refined in light of consultation responses and updated assumptions.

9.3 Since the total cost to business is estimated to be below the £10 million threshold, it was not necessary to undertake a full impact assessment, and therefore it was not necessary to fully monetarise the benefits of the regulation. In any event, monetising the benefits would be challenging due to the variable and context-dependent nature of increased transparency. However, the Regulations are expected to deliver meaningful benefits to the operation of the land market and wider planning system. As a result, we expect the net cost to business to be lower than the estimated figure – possibly even negative.

9.4 There will also be one-off costs for HM Land Registry to design and build the systems necessary to implement the Regulations, estimated at £4.6 million. Ongoing running costs are expected to be approximately £200,000 per annum to support operational, customer service, and correspondence functions.

9.5 All estimates are presented in 2019 prices and are discounted where applicable.

Impact on businesses, charities and voluntary bodies

9.6 The impact on business, charities or voluntary bodies is estimated at approximately £4.2 million per annum (2019 prices, 2024 present value). This consists of ongoing compliance costs (£3.7 million per annum) and one-off familiarisation costs to developers, land promoters and conveyancers (£4.5 million total).

9.7 The legislation will impact small or medium-sized businesses. A key objective of the intervention is to support businesses – particularly small builders – in identifying land for development. At present, information pertaining to contractual controls is limited, unclear in nature, and not easily searchable.

9.8 Anyone can purchase a copy of a register of title from HM Land Registry, but this incurs a cost and does not consistently reveal whether land is subject to a contractual control agreement. If a contractual control agreement has been protected through a notice or restriction, it may appear on a register of title, but this depends on whether the interest has been registered and how, if at all, it has been described. Where a

reference does exist, the information is often difficult to interpret due to variation in legal drafting and a lack of standardised format. This creates barriers to access and understanding, particularly for smaller developers and non-specialist users, and instead favours larger developers with greater legal and resource capacity.

9.9 By contrast, these Regulations should help smaller developers identify sites more easily, cheaply, and across a broader area. There is a risk that small developers face increased competition within their local area where local knowledge is a source of competitive advantage. Nonetheless, small and medium-sized businesses, as with all other businesses, public bodies and third sector organisations holding relevant contractual control rights, will need to provide details of these that they hold within scope and provide additional details going forward creating a small resource impact. The per-control cost will be consistent across organisations, but smaller firms may experience proportionately higher impacts due to limited in-house legal resource. However, they are also less likely to hold multiple or complex agreements.

9.10 It would not be appropriate to exempt small and medium-sized businesses from the scope, as doing so would undermine the completeness and value of the published dataset. There are also definitional challenges in this sector, where developer size can fluctuate and given the use of subsidiaries. Small and medium-sized businesses will therefore remain in scope, incurring modest costs but benefiting from improved visibility of contractual control across the market.

9.11 The public sector is also expected to incur average additional costs of £0.7 million per annum (over a 10-year appraisal period, in 2019 prices, 2024 present value). This includes: one off transition costs and familiarisation costs to local planning authorities (LPAs) and public sector conveyancers (£0.3 million total); HM Land Registry start-up costs (£4.6m total); and ongoing running costs to HM Land Registry (£0.2 million per annum).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The legislation will be monitored to assess its impact on both the users and providers of contractual control information, and whether it meets the original policy objectives. HM Land Registry will collect metadata on the number and location of submissions as a by-product of the application process. This will help to estimate the prevalence and geographic distribution of contractual control rights, and to better understand how land is controlled in practice.

10.2 To assess whether the data is meeting user needs, HM Land Registry may also conduct user research or surveys, particularly focused on whether the information is complete, accurate, reliable, and easy to find and interpret. The policy objectives will be considered met if the resulting dataset enables users to see which land is subject to contractual control, where it is located, and the nature of the rights held.

10.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Matthew Pennycook, Minister of State for Housing and Planning, has made the following statement:

"A statutory review cause into this legislation would not be appropriate as the net annual cost of the legislation is significantly under £10m as stated in the impact assessment (paragraph 9.2) and there are no factors that would make it particularly desirable."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Matthew Pennycook, Minister of State for Housing and Planning has made the following statement regarding Human Rights:

"In my view the provisions of the Provision of Information (Contractual Control) (Registered Land) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").