EXPLANATORY MEMORANDUM TO

THE SELF-BUILD AND CUSTOM HOUSEBUILDING (TIME FOR COMPLIANCE AND FEES) REGULATIONS 2016

2016 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 To specify the time within which planning authorities are required to comply with the duty imposed by section 2A of the Self-build and Custom Housebuilding Act 2015 ("the 2015 Act") to grant development permission in respect of serviced plots of land for self-build and custom housebuilding and to make provision for those authorities to charge fees in connection with that duty and the function of maintaining a register of persons who are seeking to acquire such plots.

3. Matters of special interest to Parliament

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument extends to England and Wales but applies only to England.

3.3 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 Section 1 of the 2015 Act requires relevant authorities (defined in that section) to keep and publicise a register of individuals and associations of individuals who are seeking to acquire a serviced plot of land in the authority's area in order to build houses for those individuals to occupy as homes. The Schedule to that Act provides for regulations to make provision in relation to those registers. The Self-build and Custom Housebuilding (Register) Regulations 2016 (SI 2016/105) came into force on 1st April 2016.

4.2 Section 2A of the 2015 Act (inserted by the Housing and Planning Act 2016) requires those authorities to grant development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in their area. Section 2A(3) provides that regulations must specify the time in which such development permissions must be granted.

4.3 Paragraph 6 of the Schedule to the 2015 Act permits regulations to provide for the payment of fees in connection with the functions of relevant authorities maintaining the register required by section 1 and complying with the duty imposed by section 2A.

4.4 Section 4 of the 2015 Act provides for regulations made under section 2A(3) of and paragraph 6 of the Schedule to, that Act to be by affirmative resolution procedure.

4.5 Alongside these Regulations the Self-build and Custom Housebuilding Regulations 2016 are being made by the negative resolution procedure. A copy of those Regulations, in draft, is annexed to this memorandum.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

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

"In my view the provisions of the Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 There is strong evidence of demand for self-build and custom housebuilding in England. Latest figures from Ipsos Mori show 0.8 million people expect to take action to build their own home in the next 12 months.[1]

7.2 The Government wants to increase the capacity and diversity of the housebuilding industry to build more high quality new homes faster and believes expanding the self-build and custom build sector will make an important contribution to this.

7.3 Access to developable building plots remains an acute constraint holding back the growth potential of the self-build and custom build housing sector which has significant growth potential and which Government wants to support so that it becomes a mainstream form of house building.

7.4 Low risk 'shovel-ready' building plots are in very short supply and command high premiums. This is because self-build and custom builders tend to be under-capitalised and can't compete effectively with speculative builders who can access finance more easily to acquire land. Plots are often optioned or sold to developers before they come onto the market and larger sites are bought by or disposed to speculative builders.

7.5 Where plots are available, they can pose significant upfront costs and uncertainty for would be self-build and custom builders and those who finance them. This leads to potential self-build and custom builders being displaced or crowded out of the housing land market, despite the growing demand for this form of house building.

[1] Ipsos Mori Survey (2014), available at: https://www.ipsos-mori.com/researchpublications/researcharchive/3347/One-in-seven-Britons-expect-to-look-into-building-their-own-home.aspx

7.6 Section 2A of the 2015 Act imposes an obligation on authorities to give suitable development permission in respect of sufficient serviced land which is suitable for self-build and custom build to meet the demand on their self-build and custom build registers.

7.7 To ensure that land is made available in a timely manner, it is vital that relevant authorities are set a timescale within which they must grant development permission in respect of the land. It is the Government's view that three years strikes the right balance between ensuring that authorities have sufficient time to identify suitable land and satisfying the need for those looking for land to build quickly. These Regulations accordingly stipulate the period for compliance with the duty as being 3 years from the end of each "base period". What this means broadly is that the number of grants of planning permission in relation to serviced land should at least equal the number of individuals entered onto the register within 3 years of the year in which those individuals entered the register.

7.8 These regulations also provide for relevant authorities to charge a fee to be entered onto the register. Where entrants to the register count towards the number of plots for which the authority must grant development permission, relevant authorities can charge an additional fee which can be repeated on an annual basis whilst the individual or association of individuals remain on the register.

7.9 While a relevant authority is likely to incur set up costs which are covered by a new burden payment, ultimately it is important that they can support self-build and custom build on a cost recovery basis. It is appropriate that those people wishing to build or commission their own home pay the additional costs borne by the relevant authority in ensuring more permissioned land is available.

Consolidation

7.10 None.

8. Consultation outcome

8.1 Between October and December 2014 the previous Government undertook a public consultation on the principles of the Right to Build, which included the scope of the duty for local areas in supporting those on the register to find land and on the ability of authorities to charge fees. The key feedback was that a prescriptive allocation duty would be extremely difficult to meet, and this therefore has not been provided for in the legislation. There was a degree of acceptance that local authorities should be able to charge fees although unsurprisingly local authorities were strongly in favour while developers and prospective self-build and custom house builders were less supportive. The consultation and consultation outcome can be viewed at: https://www.gov.uk/government/consultations/right-to-build-supporting-custom-and-self-build

8.2 Sessions to discuss the scope of these Regulations were undertaken in November and December 2015 with a broad range of stakeholders operating in the public, private and third sectors. There was broad recognition among stakeholders that the time which relevant authorities should have to permission sufficient land to meet demand on their registers was a difficult balance between ensuring that relevant authorities had sufficient time to find suitable land and moving quickly to support those on the registers. Stakeholders were content with the proposed policy approach for fees,

noting the importance of allowing relevant authorities to have discretion on the level of fee to charge, provided they were on a cost-recovery basis.

9. Guidance

9.1 The Department for Communities and Local Government's planning guidance, which is a web-based resource (available at: http://planningguidance.planningportal.gov.uk/), includes guidance on planning for self-build and custom housebuilding. The Department intends to update and expand the guidance to reflect the changes made by these Regulations.

10. Impact

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

10.2 The impact on the public sector is that these Regulations will set out the length of time within which they have to grant sufficient development permissions in relation to serviced plots of land to match the demand on their register. These regulations also allow local authorities to charge fees to cover their costs of fulfilling their statutory duties under the 2015 Act.

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 These Regulations do not contain provision for review and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply.

12.2 The Government is committed to doubling the number of self-build and custom housebuilding projects by 2020. If evidence suggests that the sector is not doubling over the life of this Parliament, further measures will be considered as appropriate.

13. Contact

13.1 Sophie Corbett at the Department for Communities and Local Government Telephone: 0303 44 44616 or email: sophie.corbett@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex

STATUTORY INSTRUMENTS

2016 No.

TOWN AND COUNTRY PLANNING, ENGLAND

The Self-build and Custom Housebuilding Regulations 2016

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*31st October 2016*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 2B and 5 of, and paragraphs 1 to 4 of the Schedule to, the Self-build and Custom Housebuilding Act 2015([2]).

Citation and commencement

1. These Regulations may be cited as the Self-build and Custom Housebuilding Regulations 2016 and come into force on 31st October 2016.

Interpretation

2. In these Regulations—

"the Act" means the Self-build and Custom Housebuilding Act 2015;

"association" means an association of individuals;

"development permission" has the meaning given in section 2A(5) of the Act([3]);

"lead contact" means a member or officer of an association who acts on behalf of the association for the purposes of correspondence with a relevant authority([4]);

"local connection test" has the meaning given in regulation 5(2);

"member" in relation to an association which is a body corporate refers to a person who is a member of the association and not to a member of the body corporate; and

"register" means the register that a relevant authority is required to keep under section 1(1) of the Act (register of persons seeking to acquire land to build a home).

([2]) 2015 c.17; there are amendments to the Act made by the Housing and Planning Act 2016 (c.22) including the insertion of section 2B and amendments to section 5 and to paragraph 3 of the Schedule.
([3]) Section 2A was inserted by the Housing and Planning Act 2016.
([4]) See section 1 of the Act for the meaning of "relevant authority".

Definition of a serviced plot of land

3. For the purpose of section 5 of the Act (interpretation)([5]) a plot of land is a serviced plot of land if it can, in the opinion of a relevant authority, be provided with the things mentioned in paragraph (a) of the definition of that expression, within the period before any development permission granted in relation to that land expires.

Eligibility for entry in the register

4.—(1) Where a relevant authority sets eligibility criteria under regulation 5 (local eligibility conditions) the register kept by that authority must be divided into two parts, referred to in these Regulations as Part 1 and Part 2 of the register.

(2) Where a relevant authority does not set any eligibility criteria under regulation 5, references in these Regulations to Part 1 of the register are to be treated as a reference to the register kept by that authority.

(3) An individual is eligible for entry in Part 1 of the register if that individual—

(a) is aged 18 or over;

(b) is a British citizen, a national of an EEA State other than the United Kingdom, or a national of Switzerland;

(c) satisfies any conditions set by the relevant authority under regulation 5 (local eligibility conditions);

(d) has paid any fee required by the relevant authority to be paid to be entered in or to remain on the register; and

(e) is seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area to build a house for their own self-build and custom housebuilding.

(4) An association is eligible for entry in Part 1 of the register if each member of the association meets all of the eligibility requirements set out in paragraph (3).

(5) An individual is eligible for entry in Part 2 of the register if that individual meets all of the eligibility requirements set out in paragraph (3) apart from a local connection test.

(6) An association is eligible for entry in Part 2 of the register if all the members of the association meet all of the eligibility requirements set out in paragraph (3) apart from one or more who do not meet a local connection test but meet all the other requirements.

Local eligibility conditions

5.—(1) A relevant authority may set criteria for eligibility for entry in the register in accordance with this regulation.

(2) A relevant authority may set a criterion whereby only individuals who meet such conditions as the authority reasonably considers demonstrate that the individual has sufficient connection with the authority's area, are eligible ("a local connection test").

(3) A local connection test must include provision that any person in the service of the regular armed forces of the Crown is deemed to satisfy the test whilst in service and for a period after leaving service not exceeding the length of the longest of any periods required by the test for a condition to be satisfied.

(4) A relevant authority may set a criterion whereby only individuals who can demonstrate that they have sufficient resources to purchase land and for their own self-build and custom housebuilding, are eligible.

(5) A relevant authority which sets any criteria under this regulation must publicise those criteria in the same manner as it publicises the register under section 1(2) of the Act.

(6) In this regulation, "regular armed forces of the Crown" means the regular forces within the meaning of section 374 of the Armed Forces Act 2006([6]).

([5]) The definition of "serviced plot of land" was substituted by the Housing and Planning Act 2016.
([6]) 2006 c. 52.

Application for entry in the register

6.—(1) An application for entry in the register must be made in writing and include—

(a) if the applicant is an individual—

(i) the name, address, date of birth and nationality of the individual, and

(ii) confirmation that the individual is seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area to build a house to occupy as a home;

(b) if the applicant is an association—

(i) the name and address of the association,

(ii) the name and address, date of birth and nationality of each member of the association,

(iii) confirmation that each member of the association is seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area to build a house to occupy as a home,

(iv) the name and address (if different from the address of the association) of the lead contact, and

(v) the number of serviced plots of land in the relevant authority's area the members of the association are seeking to acquire.

(2) An individual or association entered on the register may apply to amend that entry and these Regulations apply to such an application as they do to an application for entry in the register with references to an entry in the register being read as references to the amendment of that entry.

Determination of applications

7.—(1) A relevant authority must determine an application for entry in the register within 28 days of the date that the application is received.

(2) Where a relevant authority determines that an applicant is eligible for entry in Part 1 of the register, the authority must notify the applicant.

(3) Where a relevant authority determines than an applicant is not eligible for entry in Part 1 of the register, that authority must notify the applicant and give reasons why the applicant is eligible only for entry in Part 2 of the register, or not eligible for entry in the register, as the case may be.

(4) Notification under paragraph (2) or (3) must be in writing and sent within 28 days of the date of the determination to—

(a) in the case of an individual, the individual;

(b) in the case of an association, the lead contact or such other person as the authority considers to be acting on behalf of the association.

Content of the register

8. The register must contain in respect of each entry—

(a) in the case of an individual, the name and address of the individual;

(b) in the case of an association—

(i) the name and address of the association,

(ii) the name and address (if different from that of the association) of the lead contact,

(iii) the number of serviced plots of land in the relevant authority's area the members of the association are seeking to acquire; and

(c) in all cases, the date on which the entry in the register was made.

Effect of entry in Part 2 of the register

9. The duty in section 2A([7]) of the Act does not apply in relation to any person entered in Part 2 of the register.

Removal of entry from register

10.—(1) A relevant authority must remove an entry from the register within 28 days of receiving—

(a) in the case of an individual, a written request from the individual to be removed from the register;

(b) in the case of an association, a written request for the association to be removed from the register from the lead contact or such other person as the authority considers to be acting on behalf of the association.

(2) A relevant authority may remove an entry from the register—

(a) if the authority considers that the individual (or in the case of an association, any member of the association) is no longer eligible for entry in the register;

(b) where the person has acquired land suitable for building a house; or

(c) if an individual or association fails to pay any fee required to remain in the register.

(3) Where an authority determines to remove an entry from the register under paragraph (2), the authority must notify the subject of the entry and give reasons for the determination.

(4) Notification under paragraph (3) must be in writing and sent within 28 days of the date of the determination to—

(a) in the case of an individual, the individual;

(b) in the case of an association, the lead contact or such other person as the authority considers to be acting on behalf of the association.

Exemption from duty in section 2A of the Act

11.—(1) A relevant authority may apply to the Secretary of State under section 2B(1) of the Act([8]) for exemption from the duty in section 2A of the Act in the circumstances specified in paragraph (2).

(2) The circumstances are that for any base period the demand for self-build and custom housebuilding ("demand") is greater than 20% of the land identified by the relevant authority as available for future housing ("land availability").

(3) For the purposes of this regulation for any base period—

(a) demand is to be taken to be the aggregate number of new entries in Part 1 of the register in that base period and the two preceding base periods; and

(b) land availability is to be taken to be the total number of new houses on land in the area of the relevant authority, assessed by that authority as being likely to be deliverable in that base period, the two preceding base periods, and the two following base periods.

(4) For the purposes of paragraph (3) no account is to be taken of any demand or land availability in any year before the first base period.

(5) An application of the description in paragraph (1) must be made within 6 months of the end of the base period for which the circumstances specified in paragraph (2) apply and must be in writing and accompanied by the following information—

(a) details of demand and land availability for the base period in question and any other relevant base periods;

(b) evidence of demand for other types of housing in the area of the relevant authority;

(c) where no local connection test has been set, details of the number of individuals entered in the register who would be likely to meet a local connection test if one applied;

([7]) Section 2A was inserted by the Housing and Planning Act 2016.
([8]) Section 2B was inserted by the Housing and Planning Act 2016.

(d) details of the relevant authority's policies for self-build and custom housebuilding including how those policies would apply if an exemption were to be granted;

(e) such other information as the relevant authority considers relevant to its application.

(6) Where a relevant authority has been granted an exemption under section 2B of the Act in respect of a base period, no application is required in respect of any subsequent base periods in which the circumstances specified in paragraph (2) continue to apply unless the Secretary of State gives notice in writing to the authority that an application is required in respect of any base period.

(7) A relevant authority that is granted an exemption under section 2B of the Act must notify any person entered on Part 1 of the register kept by that authority for the base period to which the exemption relates.

Revocation

12. The Self-build and Custom Housebuilding (Register) Regulations 2016([9]) are revoked.

Signed by authority of the Secretary of State for Communities and Local Government

Name
Minister of State for Housing and Planning
Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Self-build and Custom Housebuilding Act 2015 (c 17) ("the Act") requires relevant authorities to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area and, unless exempt, to grant sufficient development permissions to meet the demand for self-build and custom housebuilding. These Regulations are made under sections 2B and 5 of, and the Schedule to, the Act and make provision in relation to the definition of a serviced plot of land, registers kept under the Act and exemption from the duty.

Regulation 3 adds to the definition of the requirements about utilities and access to the public highway that a plot of land must meet to be a serviced plot of land specified the Act by specifying that if those requirements can be met within the duration of a development permission, the plot is to count as a serviced plot of land.

Regulation 4 provides eligibility criteria for entry in an authority's register and for registers to be divided into Part 1 and Part 2 depending on the circumstances of the applicant. Regulation 5 allows authorities to set additional criteria for eligibility. Regulation 6 sets out what information must be provided in an application for entry in the register and applies the Regulations to applications for amendment of an entry. Regulation 7 provides for the determination of applications and notifying applicants of that determination. Regulation 8 makes provision for the content of registers.

Regulation 9 has the effect that if a person is entered in Part 2 of the register, that person does not count towards the assessment of local demand for self-build and custom housebuilding for section 2A of the Act (which requires authorities to grant sufficient development permissions to meet that demand).

Regulation 10 makes provision for the removal of entries from the register, either at the request of the registered individual or association or if an authority considers that a registered individual or association is no longer eligible.

Regulation 11 permits relevant authorities to apply for exemption from the duty under section 2A of the Act in circumstances where demand for serviced plots of land is high but the supply of land for housing is constrained.

Regulation 12 revokes the Self-build and Custom Housebuilding (Register) Regulations 2016 (S.I. 2016/105).

([9]) S.I. 2016/105.

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or the voluntary sector.