EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. [XXXX]

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 These Regulations will enable any Mayoral development corporation, or urban development corporation, to charge for giving pre-application advice to an applicant about applying for any planning permission, approval or consent under the Town and Country Planning Act 1990 (c.8) ("the 1990 Act"). A Mayoral development corporation is a corporation established by the Secretary of State, at the behest of the Mayor of London, to secure the regeneration of a particular area of London. An urban development corporation is a similar body established by the Secretary of State, to secure the regeneration of a particular area in England.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) ("the 2012 Regulations"). The 2012 Regulations were made under section 303 of the 1990 Act, which was substituted by section 199 of the Planning Act 2008 (c.29).

4.2 Section 198 of the Localism Act 2011 provides for the establishment of Mayoral development corporations and section 202 of that Act provides that the Mayor may decide that the Mayoral development corporation may have planning functions for the area. Where a Mayoral development corporation has planning functions under Part 3 of the 1990 Act, section 7A of that Act applies to make the Mayoral development corporation the local planning authority for the area in question.

4.3 Section 135 of the Local Government Planning and Land Act 1980, ("the 1980 Act") provides for the establishment of urban development corporations. Section 149 of that Act provides that the Secretary of State may provide for the urban development corporation to have planning functions for

its area. Where an urban development corporation has planning functions under Part 3 of the 1990 Act, section 7 of that Act applies to make the urban development corporation the local planning authority for the area in question.

4.4 Local authorities have the power to charge for giving pre-application advice under section 93 of the Local Government Act 2003 (power to charge for discretionary services). The purpose of this instrument is to put Mayoral development corporations and urban development corporations on the same footing as local authorities in being able to charge for this service.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 The Government is keen to encourage applicants to prepare planning proposals to a high standard before they are submitted, including having discussions at an early stage with the local planning authority. Pre-application discussions about planning proposals are an important part of the planning system and can help to iron out issues at an early stage and avoid time being wasted on ill-conceived applications. The pre-application advice service is particularly useful for large and complex developments. Applicants can opt to use this service – it is not compulsory.

Mayoral development corporations

7.2 The first Mayoral development corporation, the London Legacy Development Corporation, was established in 2012 and took on planning functions, including the determination of planning applications, from the four London boroughs covering the Olympic Park and surrounding area. Since it was established as a Mayoral development corporation and given the powers of a local planning authority, the London Legacy Development Corporation has been providing pre-application advice free of charge to businesses to aid the planning process.

7.3 It is the Government's intention that a further Mayoral development corporation at Old Oak and Park Royal will be established on 1 April 2015. The Mayor of London has decided that this Mayoral development corporation will become the local planning authority for the Mayoral development area

taking over a range of planning functions from the London boroughs covering that area.

Urban development corporations

7.4 An urban development corporation is a statutory body which reports to the Secretary of State for the Department of Communities and Local Government. An urban development corporation's objective, which is set out in section 136 of the 1980 Act, is to 'secure the regeneration of its area' and is achieved through:

- bringing land and buildings into effective use;
- encouraging the development of existing and new industry and commerce;
- creating an attractive environment; and
- ensuring that housing and social facilities are available to encourage people to live and work in the area.

7.5 An urban development corporation can have some of the planning functions of the local authorities covering its area transferred to it. The Government is currently proposing to establish an urban development corporation at Ebbsfleet, which will be working with local partners including the local authorities (Kent County Council, Dartford Borough Council and Gravesham Borough Council) and landowners to act as a catalyst for the creation of a new garden city.

Rationale

7.6 At the moment, if an applicant intends to apply to one of the London boroughs in a prospective Mayoral development area, or to one of the authorities in the proposed area of the urban development corporation, and wishes to engage in pre-application discussions, they would be charged a fee to cover the cost to the local planning authority of giving any pre-application advice. However, if a developer applied to the London Legacy Development Corporation (or to the Old Oak and Park Royal Development Corporation or to the Ebbsfleet urban development corporation, subject to Parliament approving the necessary secondary legislation,) they could not be charged for pre-application discussions as those bodies would not have the necessary powers to charge such fees. This results in the cost, which would normally be met by the applicant, being met by the taxpayer. Implementing this change will align Mayoral development corporations and urban development corporations with local authorities which the Government considers will help them to perform their planning functions effectively.

Consolidation

7.7 There are no plans to consolidate the 2012 Regulations in the immediate future.

8. Consultation outcome

8.1 The Government undertook a focused consultation with the local planning authorities whose areas are part of a current or proposed development corporation and with a sample of developers/agents who have expressed an interest in making applications within the areas covered by the existing and proposed development corporations. The consultation ran from 9 January 2015 to 6 February 2015. A total of 4 replies were received, from one local business, the Greater London Authority, one statutory harbour authority and one planning agent.

8.2 Those who responded were supportive overall of the proposal that Mayoral development corporations and urban development corporations acting as the local planning authority for a designated area should have the ability to charge for giving pre-application advice to applicants and have their own fee charging schedule, like local authorities.

8.3 Respondents felt that prior to a fee schedule being adopted it should be published. Mayoral development corporations and urban development corporations will be required by Section 303(10) of the Town and Country Planning Act 1990, to secure that, taking one financial year with another, the income from pre-application fees does not exceed the cost to them of giving that advice.

8.4 No concerns were raised through the consultation process and the Government therefore intends to proceed with these changes, but with safeguards in place including the requirement to publish it widely before any charge can be introduced.

9. Guidance

9.1 The Government has published guidance on Fees for Planning Applications as part of the Planning Practice Guidance which will be updated to provide advice on how fees are set by Mayoral development corporations and urban development corporations for pre-application advice.

10. Impact

10.1 It has been assessed that the impact on business, charities or voluntary bodies is negligible, as the primary purpose of these changes is to provide consistency in the treatment of Mayoral development corporations and urban development corporations with local authorities, including the ability to charge for pre-application advice.

10.2 There is a small benefit to the public sector in that the cost, which would normally be met by the tax payer, will be met by the applicant.

10.3 An impact assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 Whilst the proposals affect small businesses, the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business.

12. Monitoring & review

12.1 The Department will review the implementation of the Regulations through monitoring of information collected from the accounts of the Corporations to understand the sum effect of these changes.

13. Contact

Alan Cornock at the Department for Communities and Local Government, tel: 0303 444 1646 or email: alan.cornock@communities.gsi.gov.uk can answer any queries regarding the instrument.