EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 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 The Government is introducing a new permitted development right to allow purpose-built detached blocks of flats, of 3 storeys or more, to be extended upwards to create new homes. These regulations prescribe the fees to be payable to local planning authorities for applications for prior approval for these new permitted development rights.

2.2 The fee introduced for such applications for prior approval is £334 per dwellinghouse for development proposals of 50 or fewer new dwellinghouses and, for development proposals of more than 50 new dwellinghouses, £16,525 plus an additional £100 for each dwellinghouse in excess of 50, subject to a maximum fee of £300,000.

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 only to England.

3.3 This instrument amends the 2012 Regulations, which apply in relation to England only (see Regulation 1(2) of the 2012 Regulations). The instrument does not have minor or consequential effects outside England.

3.4 In the view of the Ministry, for the purposes of House of Commons Standing Orders Nos. 83P and 83T 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 Welsh Parliament if equivalent provision in relation to Wales were included in an Act of the Welsh Parliament.

3.5 The Ministry has reached this view because it considers that the primary purpose of the instrument relates to planning, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and

is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within Part 1 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the Welsh Parliament (see section 108 of that Act). Under section 303 of the 1990 Act the Welsh Ministers can, for example, make provision in regulations for the payment of a fee or charge to a local planning authority in respect of the performance of any function or anything calculated to facilitate or is conducive or incidental to the performance of such function (see subsection (1)).

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 England.

5. European Convention on Human Rights

5.1 Christopher Pincher, Minister of State for Housing, has made the following statement regarding Human Rights:

5.2 In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2020 are compatible with the Convention rights.

6. Legislative Context

6.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) ("the General Permitted Development Order") grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a "permitted development right". The effect is that an application for planning permission does not need to be made to the local planning authority for development within the scope of a permitted development right, although in some cases permitted development rights require the local planning authority to approve certain key planning matters before development can proceed. This is known as "prior approval" for which a fee can be charged.

6.2 The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (S.I. 2020/632) ("the 2020 Regulations") amend Schedule 2 of the General Permitted Development Order by inserting a new Part 20 (construction of new dwellings). Class A of Part 20 permits existing, purpose-built detached blocks of flats, of 3 storeys or more, to be extended upwards to create new self-contained homes. The 2020 Regulations were laid on 24 June and come into force on 1 August.

6.3 Planning fees in England are set nationally by the Government in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) ("the 2012 Regulations"). These regulations amend Regulation 14 of the 2012 Regulations to introduce a fee for applications for prior approval under Part 20 of the General Permitted Development

Order (as introduced by the 2020 Regulations) of £334 per dwellinghouse for development proposals of 50 or fewer new dwellinghouses and, for development proposals of more than 50 new dwellinghouses, £16,525 plus an additional £100 for each dwellinghouse in excess of 50, subject to a maximum fee of £300,000.

7. Policy background

What is being done and why?

7.1 Permitted development rights have an important role to play in the planning system. For certain types of development, they provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through a light-touch prior approval process.

7.2 Following the consultation, *Planning Reform: Supporting the high street and increasing the delivery of new homes* in October 2018, legislative changes are being made to the General Permitted Development Order to introduce a new permitted development right to allow existing purpose-built detached blocks of flats to be extended upwards to provide additional homes and to increase residential densities. The aim of the new permitted development right is to support housing delivery and boost density by making effective use of existing buildings and avoiding the need to develop greenfield sites.

7.3 The new Part 20 of the General Permitted Development Order is the first category of permitted development rights that allow the construction of new dwellinghouses rather than, for example, the change of use of a building to residential with minimal building works, or extensions to an existing house. As a consequence, the level of scrutiny required by local planning authorities for the prior approval of such permitted developments is expected to be greater than for other existing types of prior approval.

7.4 Additional considerations for prior approval under Part 20 of the General Permitted Development Order include consideration of the safety impact of the proposed development, its impact on the amenity of the local community and the area and on protected views, the appearance of the proposed development and whether there will be adequate natural light in all habitable rooms. This may require consultation with a number of bodies including neighbouring property owners, occupiers and residents in the block being extended, the Environment Agency, the relevant highway authority, aerodrome operators, Civil Aviation Authority, Ministry of Defence, Historic England and the Mayor of London.

7.5 The fee levels set by the 2012 Regulations for other existing applications for prior approval under the General Permitted Development Order range from £96 to £206, depending on the nature of the development proposed. In considering an appropriate fee level for applications for prior approval under Part 20 of the General Permitted Development Order, it is recognised that, due to the additional matters for local planning authorities to consider, there are greater resource implications for them in determining these prior approval applications and therefore a higher fee is required.

7.6 The new fee introduced by these regulations of £334 per dwellinghouse for development proposals of 50 or fewer new dwellinghouses, and for development proposals of more than 50 dwellinghouses, £16,525 plus an additional £100 for each dwellinghouse in excess of 50 reflects the additional work for these prior approval applications. It represents a midway point between the £206 fee for an application for prior approval for the change of use of a building to residential which include building

operations and the fee for a full planning application of £462 per new dwellinghouse for development proposals of 50 or fewer new dwellinghouses and £22,859 plus £138 per additional dwellinghouse for development proposals of more than 50 new dwellinghouse.

7.7 Structuring the new fee introduced by these regulations by reference to the number of dwellinghouses in the development proposed by the relevant application is designed to be consistent with the established fee structure in the 2012 Regulations for other types of applications for developments for the construction of new dwellinghouses, where an initial fee is set and then multiplied by the number of dwellinghouses created, with a reduction in the fee for development proposals of more than 50 dwellinghouses and subject to a maximum fee of £300,000.

7.8 In recognition of the similarity in nature between applications for developments under Part 20 of the General Permitted Development Order and full planning applications where new dwellinghouses are created, it is considered appropriate that, just as for certain full planning applications, applicants have a 'second application' exemption from payment of the newly introduced prior approval fee. This exemption only applies where a fee was paid for an earlier application for prior approval under Part 20 of the General Permitted Development Order and where the second application is made by the same applicant, in respect of the same development on the same site and within 12 months from when the earlier application for prior approval was determined or, in the case of an earlier application for prior approval which was withdrawn, the date when that application was received by the local planning authority.

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 The 2012 Regulations consolidated 12 statutory instruments dating back to 1989. This is the sixth amending instrument to the 2012 Regulations. There are no current plans for a consolidation.

10. Consultation outcome

10.1 The proposal for new permitted development rights to allow certain existing buildings to be extended upwards to provide additional homes, including the introduction of a fee per dwelling for applications for prior approval, was included in the *Planning Reform: Supporting the high street and increasing the delivery of new homes* consultation published in October 2018 and is available at: https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes.

10.2 A summary of responses to the consultation and the Government's response was published in May 2019 and is available at: https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes

10.3 There was considerable support from the 269 responses for including the greater range of matters to be considered through an application for prior approval to mitigate the

impact of the permitted development right. There was also support for local communities to be able to comment on prior approval applications. It was noted that the extent of matters that should be considered would require significant local planning authority resources and therefore should be subject to an appropriate fee.

11. Guidance

11.1 The Government has published guidance on Fees for Planning Applications at: https://www.gov.uk/guidance/fees-for-planning-applications. This will be updated and made available following the coming into force of these regulations.

12. Impact

12.1 An assessment of the overall impact of the 2020 Regulations, including the introduction of a fee, has been completed. A copy of that assessment of impact has been published to legislation.gov.uk: http://www.legislation.gov.uk/id/ukia/2020/43.

12.2 The fee for applications for prior approval under Part 20 of the General Permitted Development Order of £334 per dwellinghouse for development proposals of 50 or fewer new dwellinghouses and for development proposals of more than 50 new dwellinghouses, £16,525 plus an additional £100 for each dwellinghouse in excess of 50 represents a cost to applicants. However, this is a reduced fee compared to a fee for a full planning application of £462 per new dwellinghouse for development proposals of 50 or fewer new dwellinghouses and £22,859 plus £138 per additional dwellinghouse for development proposals of more than 50 new dwellinghouse. The impact on business, charities or voluntary bodies has therefore been assessed as negligible.

12.3 In relation to the overall impact on the public sector, the new fee for applications for prior approval under Part 20 of the General Permitted Development reflects the greater administrative costs and time for processing these applications. This will mitigate the impact on local planning authorities through the loss of full planning application fees which, now that the relevant permitted development right is introduced, will not be payable.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

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

13.3 The basis for the final decision to not take specific action is that 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.

14. Monitoring & review

14.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2015 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. The Government continues to keep under review the planning system and associated fees and maintains discussion with local planning authorities and users of the planning system.

15. Contact

15.1 Stephen Gee at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 0013 or e-mail Stephen.Gee@communities.gov.uk) can answer any queries on this instrument.

15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.