EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (RENTAL AUCTIONS) (ENGLAND) AND TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) REGULATIONS 2024

2024 No. 1139

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 Alex Norris MP, Parliamentary Under Secretary of State for Democracy and Local Growth at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Kay Withers, Director for Communities and Inclusive Growth, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The High Streets Team at the Ministry of Housing, Communities and Local Government. Email: highstreetrentalauctions@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Local Authorities (Rental Auctions etc.) (England) and Town and Country Planning (General Permitted Development) (Amendment) Regulations 2024 ("the Regulations") set out the process which must be followed when a local authority wants to exercise its powers under Part 10 of the Levelling-up and Regeneration Act 2023 ("the Act") to arrange for a high street rental auction to be carried out in relation to premises in a street or town centre designated by the local authority under the Act, which are used for a high street use, have been vacant for the time required by the Act, and satisfy the local benefit condition.

4.2 They specify the information which must be given in the initial and final letting notices the local authority must serve on the Landlord before the auction process may commence; and the form of the counter notice which a landlord wishing to appeal against a final letting notice must serve on the local authority. The Regulations provide for a ten-week auctions period, specifying the obligations on the local authority and the landlord, and how the successful bid is to be chosen at the end of the process. They also set out the provision which must be included in the contract for tenancy and in the tenancy to be granted in relation to the premises. The Regulations also amend the Town and Country Planning (General Permitted Development)

(England) Order 2015 to provide that the change of use of qualifying high-street premises to a suitable high street use for the duration of the tenancy is a permitted form of development.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument is England.

5. Policy Context

What is being done and why?

5.1 Vacant properties occupy a high proportion of existing commercial units on high streets and in town centres across England's towns and cities and are particularly pronounced across areas of the North of England. Commercial properties which are not operated from lead to a decline in economic activity with less members of the public frequenting local economic centres, which can lead to further decline. The source of these powers is the Levelling-up and Regeneration Act 2023. The government introduced 'High Street Rental Auctions' as part of its commitment to improving and regenerating areas which suffer from economic decline. This legislation is expected to improve local economies in areas of high vacancy by providing a process for local authorities to use to increase the occupation of high street properties and therefore decrease vacancy. As per research findings, national media coverage and the attention of parliament to the issue, we know that local communities, particularly in regions of England that suffer from high vacancy rates on high streets, feel a lower level of connection to the places they live, work and shop and have worse outcomes across a range of measures, such as employment and average life expectancy.

5.2 Following Covid-19 and its acceleration of changes in the behaviour of shoppers, for example a greater uptake of online retail, persistent vacancy is an issue impacting many high streets. Where vacancy is high, we know that many other metrics used to measure living standards decrease and anti-social behaviour often increases in areas of vacancy. Data from the Local Data Company found that nationally, in the first quarter of 2023, one in every seven high street shops were closed. Furthermore, in 2021 figures from Whythawk, the open data specialists, suggested that over eight in ten of these vacant properties have been empty for more than two years, and over one in five have been empty for more than four years.

5.3 This government is committed to revamping empty shops, pubs and community spaces. Whilst non-legislative levers were considered, government felt that the High Street Rental Auctions policy could empower local authorities and their communities to take meaningful action against high street vacancy, where landlords were not actively taking steps to rent the property. This instrument therefore builds on Part 10 of the Levelling-up Regeneration Act 2023.

5.4 This instrument builds on the primary legislation empowering local authorities to auction the lease rights to properties that have been vacant for more than 365 days (consecutively) or for 366 days or more in a two-year period. Landlords will be affected by the policy as they may be forced to rent properties against their wishes.

5.5 We acknowledge the impact upon landlords and has built in a number of safeguards including a grace period permitting landlords a final chance to find a tenant of their

own choice and on terms of their choosing once the process is initiated and prior to the auction commencing.

5.6 Planning permission is required for the material change of use. There is no material change of use where the qualifying high street use and the suitable high street use both fall within the commercial business and service use class (E). In some cases outside of this however, planning permission may be required. To support the effective High Street Rental Auction process and remove the need for a planning application in such cases, this permission is granted through the introduction of a new national permitted development right in regulation 15.

What was the previous policy, how is this different?

5.7 Despite being responsible for stemming vacancy within their areas, local authorities have little power to compel landlords who are not taking active steps to rent their properties to do so. Local authorities in England are currently able to procure the ownership of property via compulsory purchase order or via the open market but this requires significant funds and places the burden of ownership on local authorities rather than compelling the landlord to rent. This policy builds on existing powers by allowing local authorities to bring vacant commercial properties back in to use by auctioning short term rental rights to premises. The local authority is permitted to act even where a landlord fails to engage though the authority is never a party to the tenancy, empowering the local authority to act upon vacancy without becoming burdened by ownership and prohibitive costs.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations implement Part 10 of the Act, which provide new powers for local authorities to arrange for a rental auction of certain vacant premises. The Regulations set out the process to be followed by local authorities who wish to exercise these powers, and satisfy the requirements in the Act for regulations to provide for the suitable high-street use of the premises to be specified by the local authority ahead of the auction; to provide for the identification of the successful bidder and to make provision in relation to initial and final letting notices. They also make detailed provision for the obligations of the local authority and the landlord at each stage of the auction process and specify what provision must be included in contracts for tenancy and in tenancies granted in relation to the premises which are the subject of the rental auction.

6.2 The Regulations also amend the Town and Country Planning (General Permitted Development) (England) Order 2015, to provide for a new permitted development right, that is, a change of use of premises which are qualifying high-street premises under the 2023 Act to a suitable high-street use, for the duration of a tenancy granted under Part 10 of the Act. This ensures that the auction process is not delayed by the need to apply for planning permission for such a change of use.

Why was this approach taken to change the law?

6.3 The Regulations are required to implement Part 10, and to satisfy the requirements specified in that Part for certain provision to be made by regulations. They are also needed to amend the Town and Country Planning (General Permitted Development) (England) Order 2015.

6.4 Alternative auction methods, leasing arrangements and planning easements were considered as part of the Ministry of Housing Communities and Local Governments consultation and engagement. However, after due consideration the approach set out in these regulations is deemed to best meet the objectives of the policy whilst balancing the interests of those impacted.

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was conducted over 14 weeks from 31 March 2023 to 7 July 2023 and received 124 responses. The consultation sought views from an extensive range of stakeholders including, but not limited to, landlords, lenders, prospective tenants (including community groups), local authorities and the public.

7.2 Sections of the consultation included questions on the High Street Rental Auction process, the agreement for lease, the type of lease and its contents, the standard that the property would need to be brought to before being let, minimum energy efficiency standards, and routine questions on the Public Sector Equality Duty and impact assessment.

7.3 The results of the consultation reflected the diverse views of stakeholders, with local authorities generally being in favour of the policy and landlords having more objections. The government's response to the consultation can be found at: https://www.gov.uk/government/consultations/high-street-rental-auctions.

7.4 There was notable concern from landlords in the hospitality industry that under this policy the unique fittings characteristic of pubs could be stripped out. If this were the case, there would be a genuine risk of losing premises as these fittings, such as cellar cooling equipment and beer lines, are integral to the operation of a venue as a functioning pub. This is especially true within the context of buildings which are historic or listed. We therefore decided to include further protections within leases of pubs (subject to High Street Rental Auction) that stipulate the removal of the dispense systems, bar, toilets, commercial kitchens or cellars will always be at the absolute discretion of the landlord.

7.5 There was disagreement between landlords and local authorities on who would bear the majority of costs of operating a High Street Rental Auction. Despite concerted efforts throughout design, local authorities were concerned that the process is too burdensome, whilst there was a risk of legal issues (due to the policy disproportionately interfering with landlords' rights) if too many costs were apportioned to landlords. The costs have been split, with the majority of costs subsequently placed on the tenant as tenants can factor costs into their bids. In order to further address concerns that HSRAs are too burdensome, local authorities will be permitted to outsource all or part, of the process.

7.6 To reduce costs placed upon the landlord and ensure that the policy strikes a proportionate balance between the government's aims to empower local authorities to combat the damaging effects of vacancy and the interests of landlords and investors in property; the government proposed that where properties were leased under the High Street Rental Auction policy landlords would not be required to comply with the current legal obligation for properties to have an Energy Performance Certificate of level E and (proposed) future requirements for levels C and B.

7.7 There were diverging views about whether the proposed exemption from Minimum Energy Efficiency Standards is a sensible and proportionate measure. In the main,

respondents were concerned that an exemption deviates from wider government policy and could lead to perverse use where landlords deliberately await a High Street Rental Auction to avoid costs arising from compliance with Minimum Energy Efficiency Standards. We have undertaken an assessment of the financial burden placed upon landlords to comply with the minimum required current energy efficiency rating and considers the costs are reasonable and proportionate. The policy design for Minimum Energy Efficiency Standards also contains a number of exemptions which further protect landlords from disproportionate expenditure. Given this assessment, and the concerns around avoidance expressed by respondents, no exemption from Minimum Energy Efficiency Standards will be provided for within the High Street Rental Auction policy. Government considers this approach to draw a fair balance between the financial impact on landlords and achieving the government's policy objectives both in terms of energy efficiency and bringing vacant high street premises back into active use.

7.8 Specific questions sought views on the potential introduction of permitted development rights to support the High Street Rental Auction process. Whilst most respondent groups supported the use of the permitted development right, the government recognised that there was some division among respondents. The permitted development right will provide a tool to support the High Street Rental Auction policy; applying to qualifying high-street uses and providing for the change of use that the local authority determines is suitable. It will provide certainty for bidders to know that they will have planning permission for a use the local authority has deemed to be a suitable high street use and reduces the burden for local planning authorities. Following consideration of responses, the government is not proceeding with the further permitted development right that would have provided for the permanent change of use following the period of the lease. Tenants who agree a new lease with the landlord will need to make a planning application for change of use ahead of the expiry of their High Street Rental Auction lease. This will allow for a local decision on the permanent change of use.

8. Applicable Guidance

8.1 A guidance document for use by local authorities and for reference by other stakeholders will be published on GOV.UK on 02 December 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 We have assessed the impact on business, charities or voluntary bodies as £1.43m in direct costs. Familiarisation costs have been identified as the sole direct cost to businesses based on the universality and inevitability of these costs. Familiarisation costs encompass the time spent by landlords and legal professionals in reading and understanding the new policy, including its implications for their properties and practices. This cost is incurred regardless of whether a local authority chooses to apply the High Street Rental Auctions policy upon a vacant property. £1.43m is likely to be an upper bound estimate, as it is assumed all landlords and lawyers in this area will familiarise themselves with this new policy.

9.2 The estimated total net present social value (NPSV) is negative, at -£157.6m. The main affected groups are landlords, tenants, local authorities, and legal professionals. The most significant cost is borne by landlords as they have to bring their vacant units up to a minimum standard of use, which accounts for approximately 80% of the total

net present value cost (£137.4m). Landlords will also have to incur Minimum Energy Efficiency Standard (MEES) costs, which have not been monetised. The main monetised costs to tenants are legal fees (£5.3m) and survey costs (£3.2m). The main costs to Local authorities are marketing costs (£5.9m). A number of benefits such as the reduction in vacancy and increase in community engagement are not monetised and therefore not represented in the NPSV derived.

9.3 These costs are indirect and are conditional on specific actions following the policy's implementation. These costs, like legal fees or property adjustments, materialise only if a property is specifically targeted by the High Street Rental Auctions process. The indirect nature of these costs stems from their dependency on decisions made by Local Authorities and the individual circumstances of each property. This variability introduces an element of uncertainty and means that these costs are not universally experienced by all businesses under the policy's scope.

9.4 The legislation impacts small or micro businesses. This occurs where a landlord owns a small number of properties or a single property. The introduction of this policy will have a direct impact on landlords from familiarisation costs. We have worked on the assumption that it will take one landlord to familiarise themselves with the new policy, regardless of the size of the business. Research suggests that small landlords are less likely to have a vacant property. We do not therefore anticipate any disproportionate burdens on small and micro business from the implementation of High Street Rental Auctions and have decided not to mitigate on this basis. There are positive impacts for small businesses as the policy may make the High Street more accessible to them by providing rental opportunities at market rent without onerous obligations or high deposits.

9.5 The impact on the public sector is indirect costs attributed through marketing costs and auction fees.

9.6 Running an auction under High Street Rental Auctions will incur costs to the local authority. These derive from administrative fees such as a listing fee, registering the bidders, managing the auction process as well as accessing the property. This would likely be contracted out to an agency. The fees payable to the agency relate to the receipt of offers, advice to clients and any subsequent negotiation. Based on information from the Valuation Office Agency (VOA), agencies would be expected to charge 10% of the rent agreed. As the level of rent that will be agreed is unknown, this impact has not been monetised.

9.7 Local authorities also face costs associated with publicly promoting the auction details and that the unit is available for lease. For instance, it is standard practice for agents to pass on some of the marketing costs to the letting party – in this case the local authority. These would include “agent's details” – ‘in house’ design that would be used to create materials to promote the property displaying its key information. Production of a marketing board is also typical, as is marketing on a commercial property website. According to information from the Valuation Office Agency, these costs are expected to be in the range of £944-£3,720 – taking the average of £2,332 as our central case. This provides us with a net present value cost of -£2.9m, -£5.9m and -£8.8m for each scenario.

9.8 A full Impact Assessment has not been prepared for this instrument because the associated costs fall under the de minimis rule (regulatory provisions that that have an estimate of annual net direct costs to business (EANCB) of less than ±£5 million).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Alex Norris, Minister for Democracy and Local Growth, has made the following statement: The impacts of the policy have been assessed as de minimis, following the Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act it would therefore be disproportionate to include a statutory review clause.

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 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

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”).