

**EXPLANATORY MEMORANDUM TO**  
**THE SELF-BUILD AND CUSTOM HOUSEBUILDING (TIME FOR COMPLIANCE**  
**AND FEES) REGULATIONS 2016**

**2016 No. 1027**

**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**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 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 (SI 2016/950) are being made by the negative resolution procedure.

## **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.<sup>1</sup>
- 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

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<sup>1</sup> 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>

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.

- 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 entries entered onto the register within 3 years of the year in which those entries are entered onto 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](mailto:sophie.corbett@communities.gsi.gov.uk) can answer any queries regarding the instrument.