

EXPLANATORY MEMORANDUM TO

THE SELF-BUILD AND CUSTOM HOUSEBUILDING REGULATIONS 2016

2016 No. 950

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes provision under powers in the Self-build and Custom Housebuilding Act 2015 (“the 2015 Act”) in relation to the definition of a “serviced plot of land”, registers kept under the Act and applications to the Secretary of State for exemption from the duty contained in section 2A to grant certain planning permissions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations revoke and replace SI 2016/105 and in doing so replace the provisions in those Regulations reported on by the Committee in their 21st Report of the 2015/16 session in such a manner as to meet the Committee’s concerns. See the definition of “member” in regulation 2 which removes any ambiguity as to what that expression refers to in relation to bodies corporate.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 1 of the 2015 Act places duties on certain public authorities to keep a register of individuals and associations of individuals who are seeking to acquire a serviced plot of land in their area to bring forward self-build and custom housebuilding projects, and to have regard to those registers in carrying out their planning, housing, land disposal and regeneration functions.
- 4.2 The Housing and Planning Act 2016 inserted section 2A into the 2015 Act to place a duty on those authorities to grant sufficient development permissions in respect of serviced plots of land to meet the demand evidenced by the register (“the section 2A duty”). Section 2B makes provision for regulations to provide for exemption from the section 2A duty.
- 4.3 The Schedule to the Act makes provision in relation to registers under section 1. In particular it provides for regulations to provide for relevant authorities to set local

eligibility criteria for entry in the register and for the register to be divided into different Parts, with different legal duties applying depending which Part of the register a person is entered into. The Schedule enables provision to be made by regulations in relation to registers. These include eligibility requirements for entry on a register, information that applicants must provide and that a relevant authority must keep on their register, timescales for making entries on the register and notifying applicants, and the circumstances and procedure for removing an entry

- 4.4 Section 5 of the 2015 Act defines certain terms and enables regulations to supplement the definition of the expression “serviced plot of land”.

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 England only.

6. European Convention on Human Rights

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

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 the most acute constraint holding back the growth potential of the 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 custom builders tend to be under-capitalised and can’t compete effectively with speculative builders who can access finance more easily to acquire land. Sites are often optioned or sold to developers before they come onto the open 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 custom builders and those who finance them. This leads to potential custom builders being displaced or crowded out of the housing land market, despite the growing demand for this form of house building.
- 7.6 These Regulations set out detail on the requirements for custom build registers including the ability for relevant authorities to define their own eligibility criteria in limited circumstances, and provide the detail required for the section 2A duty. In

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>

particular they provide further detail to the definition to a serviced plot of land by allowing land which in the opinion of the relevant authority will be provided with the relevant services within the duration of the granted planning permission to count as serviced land. The Regulations also set out the exemption process from the section 2A duty.

- 7.7 The section 2A duty requires relevant authorities to grant sufficient development permissions in respect of serviced land to meet the demand on the register. While there is no requirement to match permissioned land to individuals on the register a general increase in available land should make it easier for self-build and custom housebuilders to find suitable land. However, authorities with a combination of land constraints and high demand may be unable to comply with the section 2A duty so these regulations allow authorities to apply to the Secretary of State for an exemption. To provide an indication of when an exemption may be granted the regulations set out a test which compares the number of entries on the register and hence the number of new homes required with the anticipated number of new homes that will be delivered on land identified as deliverable and suitable for housing.
- 7.8 National planning policy requires authorities to objectively identify and then meet the housing needs of their area. This will usually require a mix of market and affordable as well as specific types of housing to meet the needs of different groups in the community, such as, but not limited to, students, older people and self-build and custom housebuilders. It would be unreasonable to require authorities to grant development permissions in respect of all of their future land supply for self-build and custom housebuilding. Currently around 10% of new homes in England are self or custom-built and we are seeking to double this. The Regulations therefore enable those authorities where the demand for self-build and custom housebuilding is greater than 20% of their future deliverable housing supply to apply for an exemption.
- 7.9 Exemption is not automatic because it is important that the decision is made on a range of factors rather than what is a simple test based on a degree of subjectivity around likely future housing supply. The test therefore is aimed at identifying those areas where greater consideration is required when deciding whether an exemption is appropriate. In making a decision on whether to grant exemption the Secretary of State will consider factors such as the level of demand on the registers compared with land supply for future housing, whether a local connection test has been considered and how the authority would continue to support self-build and custom housebuilders in their area to ensure that exemption is appropriate.
- 7.10 Authorities which are granted an exemption must still have regard to those on the register when carrying out their housing, planning, land disposal and regeneration functions.

Consolidation

- 7.11 These Regulations revoke and replace SI 2016/105.

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 operation of the proposed registers. The key feedback in relation to the registers was for authorities required to keep a register to have flexibility in designing and operating their register. This feedback was considered in the drafting of these Regulations. As

a result the Regulations set out only the minimum detail that relevant authorities must include when designing their register.

- 8.2 There was strong support among respondents for authorities to have the discretion to apply a local connection test, with a significant majority of local authority respondents expressing support. A number of the respondents also stressed the importance for the legislation to provide a degree of flexibility, with many suggesting that a local connection should not be treated as a test of eligibility, but instead used in the calculation of priority. This has been reflected in the drafting of these Regulations with the introduction of a second part of the register for those who do not meet a local connection test. The consultation and consultation outcome can be viewed at: <https://www.gov.uk/government/consultations/right-to-build-supporting-custom-and-self-build>
- 8.3 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. Stakeholders agreed that an exemption was necessary and were content with the approach now adopted in these Regulations. Stakeholders sought clarification on the intention behind the definition of “serviced plot of land”. We have incorporated comments as appropriate in these Regulations.

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 create a new burden. The 2015 Act places duties on relevant authorities to keep a register. These Regulations set out the process for considering applications and maintaining the register. Funding has been identified through the New Burdens Assessment process to support authorities who will incur additional burdens as a result of setting up and maintaining a register. These Regulations also allow authorities who have significant demand on their register when compared to the expected number of homes which will be delivered over the next three years to seek exemption from the section 2A duty.
- 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 444 4616 or email: sophie.corbett@communities.gsi.gov.uk can answer any queries regarding the instrument.