EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY LEVY (AMENDMENT) (ENGLAND) REGULATIONS 2026

2026 No. 1034

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Baroness Blake, Parliamentary Under-Secretary of State for Building Safety, Fire and Resilience at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Clare Clark, Deputy Director for the Building Safety Levy, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Bhavika Pinto at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: buildingsafetylevy@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Building Safety Levy (England) Regulations 2025 ("the Levy Regulations") and other secondary legislation to make specific changes to how the Building Safety Levy ("the levy") will operate upon commencement on 1 October 2026. This instrument makes corrective amendments to enable the levy to operate as intended, such as amendments to the definition of a previously developed site for the purposes of determining the applicable levy rate, and other technical changes to the administrative and procedural framework.

Where does the legislation extend to, and apply?

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

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The Levy Regulations were made in November 2025 and provide for a levy to be charged on specified applications for building control approval ("building control applications") concerning the provision of dwellings or purpose-built student accommodation ("PBSA"), submitted to building control authorities on or after 1 October 2026. The levy is for the purpose of meeting expenditure incurred by the Secretary of State in providing financial assistance to persons for the purpose of enabling them to improve the safety of persons in or around buildings in England and will be paid by residential property developers.

5.2 This instrument makes targeted amendments to the Levy Regulations and related building control regulations ahead of commencement on 1 October 2026. This instrument makes corrective amendments to enable the levy to operate as intended, including amendments to the definition of a previously developed site, which benefits from a separate levy rate that is half the standard rate to reflect the often higher cost of building on these sites, and other amendments and corrections to address issues identified since the Levy Regulations were made.

5.3 Amendments are not intended to alter the policy design of the levy, but to correct drafting and operational issues considered necessary for the levy to operate as intended from commencement.

What was the previous policy, how is this different?

5.4 The Levy Regulations provide for a separate levy rate for developments built on previously developed sites that is half the standard rate for each local authority area. A site is a previously developed site if at least 75% of the land is previously developed. The policy intention is for this definition of "previously developed" to draw on the definition of previously developed land in the National Planning Policy Framework (NPPF), with appropriate amendments to reflect use in regulations and practicalities of application. This was publicised in the technical consultation response for the levy in March 2025.[1] This instrument makes amendments to the definition to clarify the treatment of fixed-surface-type infrastructure and unlawful operations, to exclude wholly underground buildings from the definition, and to exclude underground parts of buildings from the 75% calculation. These changes are considered necessary to align the definition more closely with the NPPF definition and give effect to this policy intention.

5.5 This instrument makes other changes to the Levy Regulations and related building control regulations (the Building Regulations 2010 (S.I.2010/2214) ("the 2010 Regulations"), the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (S.I. 2023/909) ("the HRB Regulations") and the Building (Registered Building Control Approvers etc.) (England) Regulations 2024 (S.I. 2024/110) ("the RBCA Regulations")) to correct and clarify the operation of the levy framework, addressing technical and procedural issues, including;

- Specifying an earlier deadline for the authority responsible for collecting and administering the levy ("collecting authority") to notify the person who is liable to pay the levy ("the client") of a levy information spot check for assessing the accuracy of levy information. A spot check extends the period for levy determination from 5

[1] https://www.gov.uk/government/consultations/building-safety-levy-technical-consultation/outcome/building-safety-levy-technical-consultation-response

weeks to 8 weeks and this change is to ensure clients receive timely notification within a 5 week period that a levy information spot check is being carried out;

- Aligning information requirements for levy update notices more closely with those that apply to building control applications and variations to those applications. This change is to ensure consistency of levy information received by a collecting authority under different provisions for ease of processing and consideration; and
- Amending provisions relating to revised levy determinations, refunds, reviews and appeals, to provide consistency in how levy determination notices and levy payment certificates are to be treated where there is no longer levy chargeability. These changes are to clarify for clients that levy liability notices and levy payment certificates are cancelled in such circumstances.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 105C of the Building Act 1984 (inserted by section 58 of the Building Safety Act 2022) gives the Secretary of State the power to make regulations for the imposition of a levy on relevant applications or notices, for the purpose of meeting building safety expenditure.

6.2 The Levy Regulations were the first use of that power, making provision for the imposition of the levy by reference to building control applications. The Levy Regulations also amended the 2010 Regulations, the HRB Regulations and the RBCA Regulations for the levy to operate as part of the existing building control process, by requiring that information related to the levy is to be included in certain applications and notices made to the local authority, to the registered building control approver or to the Building Safety Regulator.

6.3 This instrument amends the Levy Regulations, the 2010 Regulations, the HRB Regulations and the RBCA Regulations in the following ways:

- This instrument amends the Levy Regulations:
  - To amend the definition of previously developed sites (regulation 21 of the Levy Regulations) to clarify when land is treated as previously developed, including the treatment of fixed-surface-type infrastructure, unlawful operations and underground buildings or parts of buildings;
  - To make correcting amendments relating to the determination period for levy liability (regulation 38 of the Levy Regulations);
  - To amend the levy information spot check provisions (regulations 46 and 49 of the Levy Regulations) to set an earlier deadline by when a collecting authority must notify the client if information relating to their building control application is selected for a levy information spot check and to make clear the period during which the collecting authority must carry out the spot check;
  - To amend the levy update notice provisions (regulations 52 and 53 of the Levy Regulations) to align the content requirements of a levy update notice with those of a building control application. Also to make some correcting amendments and to make clear that a levy update notice can concern an application in respect of which a notice of no charge has been issued;
  - To amend provisions for requests for revised levy determinations, refunds, reviews and appeals (regulations 54, 67, 72 and 73 of the Levy Regulations) to make clear

what constitutes a revised levy determination notice for the purposes of regulation 54 and to provide for the cancellation of a levy liability notice or levy payment certificate (as the case may be) in circumstances specified in those regulations;

- To make a minor correcting amendment to the name of the local authority area of St Helens in the table in Schedule 3 to the Levy Regulations.
- This instrument also amends the 2010 Regulations, the HRB Regulations and the RBCA Regulations to make correcting amendments relating to the levy, including making clear that references to "dwelling" for levy purposes do not include PBSA and to make clear that levy information is required in relation to building control approval applications for a stage of HRB work. This instrument also substitutes a new version of Form 2 in Schedule 1 of the RBCA Regulations to incorporate minor corrections.

Why was this approach taken to change the law?

6.4 Given this instrument only amends a few targeted provisions of the Levy Regulations, the 2010 Regulations, the HRB Regulations and the RBCA Regulations, amending those Regulations so that the amendments come into force at the same time as the Levy Regulations, rather than re-making the Levy Regulations, is considered the most proportionate approach.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 120B(3) of the Building Act 1984, the Secretary of State must consult the Building Safety Regulator and any other persons the Secretary of State considers appropriate before making any regulations under the Act.

7.2 The amendments to the definition of previously developed sites have been informed by consultation with the Building Safety Regulator and targeted engagement with a range of identified stakeholders, including developers, local authorities, Registered Building Control Authorities ("RBCAs") and representative bodies. A wider public consultation was not undertaken on these amendments, on the basis that the changes are intended to be clarificatory and do not represent a substantive change from the policy position previously consulted on during the design of the levy and publicised in the response to technical consultation. The amendments are intended to address practical uncertainty identified by stakeholders about whether lawful, fixed-surface-type infrastructure qualifies as previously developed and to align the definition more closely with the NPPF definition as originally intended, including by excluding wholly underground buildings from the definition, and to exclude underground parts of buildings from the 75% calculation. The Secretary of State considered that consultation with the Building Safety Regulator and targeted engagement with those groups most directly affected constituted a proportionate approach to consultation.

7.3 The targeted engagement focused on testing stakeholder understanding of the proposed clarifications, identifying potential implementation issues and gathering views on alignment with planning frameworks and practical application. Developers had suggested that the existing drafting was unclear (or perceived to exclude fixed-surface-type infrastructure) and that clarification would assist consistent application and reduce disputes. RBCAs were broadly relaxed about the proposed changes and did not feel their operations were directly affected. Local authorities also supported the idea of clarifying the regulations to avoid disputes and the additional time and resources these would take to resolve. As a result of this feedback, changes were made to the definition for closer alignment with how the NPPF operates in practice.

7.4 The remaining amendments made by this instrument are technical and procedural in nature, addressing matters such as information requirements, administrative time limits and the operation of review and appeal provisions. These changes do not alter the core design or policy intent of the levy, and the Department has therefore not undertaken consultation on those aspects.

7.5 The Department has regular engagement with local authorities, their representative bodies, RBCAs and the Building Safety Regulator to discuss the levy operation ahead of commencement.

7.6 The Department also undertook public consultation on whether to amend the Levy Regulations exemption for sites that do not meet the major residential development minimum threshold of 10 dwellings or 30 PBSA bedspaces. This was part of the Government's consultation on proposed changes to the National Planning Policy Framework and other changes to the planning system,[2] which ran from 16 December 2025 to 10 March 2026. It contained questions about whether the levy exemption should be extended to sites of fewer than 50 dwellings or fewer than 120 PBSA bedspaces (described as "medium sites"), the appropriateness of the proposed PBSA equivalent, and the potential economic, competitive and behavioural, and equality impacts. In accordance with section 120B(3) of the Building Act, views were sought from the Building Safety Regulator.

7.7 Responses showed a range of views, with many respondents supporting an extension as a proportionate way to reduce burdens on smaller schemes and support SME housing developers, while others raised concerns about potential behavioural effects (such as incentivising delivery of sites just below the threshold) and the impact on levy receipts.

7.8 Having given due consideration to the consultation responses on the medium sites levy exemption, and other relevant evidence and factors such as the relative prioritisation of fiscal interventions at this time, the Government will not take forward an extended exemption threshold for major residential development in the Levy Regulations in this instrument. As with all elements of the levy design, Ministers may review this position at a later date. The Levy Regulations include a requirement on the Secretary of State to conduct a review of the levy operation and rates and publish a report at least every 3 years (see 10.1). The decision on the levy was based on its own rationale and separate from the other proposals in the NPPF consultation. This decision does not determine the outcome of the NPPF's separate medium sites proposals and no future policy changes on NPPF areas should be inferred from this decision.

8. Applicable Guidance

8.1 Operational guidance relating to the Levy Regulations was published on 10 July 2025.[3] This guidance will be updated to reflect the amendments made by this instrument when this instrument is laid.

[2] https://www.gov.uk/government/consultations/national-planning-policy-framework-proposed-reforms-and-other-changes-to-the-planning-system

[3] https://www.gov.uk/guidance/building-safety-levy-guidance

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An assessment of impact for the levy and incorporating the changes being made in this instrument is submitted with this memorandum and published alongside this memorandum on the legislation.gov.uk website. An assessment of impact was also published with the Levy Regulations.[4]

9.2 As this instrument relates to a levy, it falls outside the better regulation framework, and a regulatory impact assessment is not required. A Tax Information and Impact Note (TIIN) has not been produced, as the levy is administered by local authorities rather than HMRC. The Department has instead updated an assessment of impact which broadly follows the TIIN structure.

Impact on businesses, charities and voluntary bodies

9.3 The levy, including the amendments made in this instrument, does impact small or micro businesses.

9.4 This instrument amends the definition for which sites qualify for a reduced levy rate for previously developed land with the intention of clarifying the treatment of fixed-surface-type infrastructure and unlawful operations, to exclude wholly underground buildings from the definition, and to exclude underground parts of buildings from the 75% calculation. These changes may result in additional administrative requirements and costs, should it take longer to prove the status of areas of land. However, reduced administration costs can also be expected where the definition more closely aligns with how the NPPF operates in practice. These amendments are therefore not expected to make a measurable difference to overall administration costs. The remaining amendments in this instrument are technical and procedural in nature and not intended to alter the policy design of the levy. As such, the amendments made in this instrument do not substantively change the levy's assessment of impact.

9.5 There will be one-off costs to housing developers, architects, and building control entities relating to familiarisation with levy, including the amendments introduced in this instrument. There will also be ongoing costs related to measurement; data submission and payment for developers.

9.6 There is no, or no significant, impact on charities or voluntary bodies because they are not directly involved in the building control process.

9.7 The levy, including the amendments introduced in this instrument, will have an operational impact on the public sector as local authorities will have to administer the levy as collecting authorities. The Ministry for Housing, Communities and Local Government has committed to support local authorities where this creates financial difficulties at year-end.

9.8 Updated estimates of the levy's impact, incorporating the changes being made in this instrument, are provided in the impact assessment published with this instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument does not include a statutory review clause. Although not required by the Small Business, Enterprise and Employment Act 2015, the Levy Regulations

[4] https://www.legislation.gov.uk/ukdsi/2025/9780348273779/impacts

include a requirement on the Secretary of State to conduct a review of the levy operation and rates and publish a report at least every 3 years. The Department will monitor the operation of the levy as part of implementation and ongoing oversight, including through engagement with collecting authorities and analysis of management information returns from local authorities.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument makes amendments to the Levy Regulations ahead of their commencement. This instrument therefore forms part of the first use of the power in section 105C of the Building Act 1984 to impose a building safety levy and will come into force alongside the Levy Regulations on 1 October 2026.

11.2 Enforcement mechanisms for some of the new duties introduced by the Levy Regulations and amended in this instrument sit within existing Regulations. Where a developer wishes to dispute a decision by the local authority or the Regulator where the enforcement mechanisms sit within existing Regulations, that will follow the processes outlined in those existing Regulations.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State for Building Safety, Fire and Democracy has made the following statement regarding Human Rights:

12.2 "In my view the provisions of the Building Safety Levy (Amendment) (England) Regulations 2026 are compatible with the Convention rights."

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").