EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT AND TRANSITIONAL PROVISION) REGULATIONS 2025

2025 No. [000]

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 Matthew Pennycook, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Stephen Gee at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0013 or email: PDMCorrespondence@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 These Regulations increase the fees payable for applications for householder development, applications for prior approval and applications for the approval of details reserved by condition. The Regulations also introduce a new three-tier banded fee structure for applications to vary or remove a condition, with separate fees for householder, non-major (other than householder) and major development.

4.2 The Regulations clarify that the fees for approval of details reserved by conditions apply in relation to the submission of a Biodiversity Gain Plan. This requirement applies to applications that are subject to the statutory Biodiversity Net Gain requirements for non-major and major development, but not householder applications.

4.3 The Regulations also correct two errors to specific fee amounts in Part 2 (scale of fees) of Schedule 2 the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 ("the 2023 Fees Regulations").

Where does the legislation extend to, and apply?

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

4.5 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 Planning application fees provide local planning authorities with an income which contributes towards the costs of providing a planning service. However, these fees do not fully cover the overall costs of the planning application (development management) service. This funding shortfall affects the resources available to local planning authorities, impacting their ability to deliver a high-quality and timely planning service to applicants. Greater resources will support the wider planning applications service and will benefit all users, including businesses.

5.2 Planning application fees were increased in December 2023 by 35% for major applications and 25% for all other applications. Despite this increase, it is estimated that there remains an overall funding shortfall for local planning authority development management services of £362 million, based on the most recent local government spending data for 2023-2024.

5.3 Applications with the greatest funding shortfalls (over 100%) constitute the majority of applications processed by local planning authorities which leave many local planning authorities vulnerable to significant financial gaps. According to the Department's 2023 statistics, householder applications accounted for 52% of all planning decisions. Other application types represented the following proportions of submissions from the Planning Portal in 2023: prior approval applications (5%), applications to vary or remove a planning condition (3%), and applications for the approval of details reserved by condition (13%).

5.4 The Government wants to reduce this funding shortfall and create greater financial sustainability for local planning authorities by increasing fees for applications where the current fee is much lower than the cost of processing the application.

5.5 In the longer term, the Government has confirmed its' intention to introduce measures through the Planning and Infrastructure Bill that will allow local planning authorities to vary or set their own fees. The measures in these Regulations will address the immediate need to reduce current shortfalls and provide an immediate boost to resources for local planning authorities while local fee-setting measures are developed.

What was the previous policy, how is this different?

Increase to householder application fees

5.6 Householder applications represent the largest proportion of applications received by local planning authorities. The most common type of householder application is for house extensions. Other types of householder developments include conservatories, loft and basements conversions, garages and outbuildings, walls, fences, and porches. Some householder development is covered by national permitted development rights.

5.7 These Regulations increase the fee for applications for the enlargement, improvement or other alteration of a single dwellinghouse from £258 to £528 (an increase of 105%) and from £509 to £1,043 (105%) for two or more dwellinghouses. This is estimated to be the cost for local planning authorities to determine these applications. Raising the fees to these levels will provide an important income boost for local planning authorities, enhancing their capacity to efficiently process these applications. This

increase in resources will benefit the wider planning application service allowing all users to benefit. The fee of £258 will remain unchanged for householder developments related to small-scale operations within the curtilage of a dwellinghouse, such as the construction of gates, fences, and walls, as these applications typically involve less complex considerations.

Increase to fees for applications for prior approval for permitted development.

5.8 National permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) ("the GPDO") allow certain development to take place without the need for a planning application. However, in some cases, permitted development rights require the local planning authority to approve certain key matters before development can proceed. This is known as "prior approval" for which a fee can be charged.

5.9 These regulations increase the flat fee for prior approval from £120 to £240 (100%) and from £258 to £516 (100%) if the development includes building operations. This reflects feedback from local planning authorities which indicates that these fees are significantly lower than the actual cost of determining the applications. The fee for prior approvals relating to the change of use of commercial, business and service uses to residential is increased from £125 per dwellinghouse to £250 per dwellinghouse (100%). This is necessary in order to enable local planning authorities to adequately resource the planning service to process these applications. The new fees for prior approval applications will reduce the current funding shortfalls but remain lower than fees for change of use applications or applications for full planning permission where the issues under consideration are greater.

5.10 These Regulations do not increase the fees for prior approvals related to the construction of new dwellinghouses. These fees are already higher (currently £418 per dwellinghouse) to reflect the additional demands placed on local planning authorities in assessing these applications.

Fees for applications to vary or remove a planning condition

5.11 Section 73 of the Town and Country Planning Act 1990 enables applications to vary or remove conditions imposed on an existing planning permission. This process is often used when developers want to make changes to a project without having to submit a completely new planning application. However, it is recognised that the current flat fee of £293 does not reflect the amount of work undertaken by a local planning authority, particularly in relation to major development where the matters under consideration can be complex and wide-ranging.

5.12 These Regulations introduce a new three-tier banded structure to fees for section 73 applications of £86 for householders, £586 for non-major development (other than householders) and £2,000 for major development. This new structure is more proportionate to the work involved for local planning authorities in considering proposed variations, while ensuring that the fee to vary or remove a planning condition remains lower than the fee for the original application.

Increase to fees for application for approval of details reserved by condition

5.13 The fee for an application for approval of details reserved by condition is £43 for householders and £145 for any other development. Many local planning authorities believe that these fees are too low and do not cover the actual costs to determine these applications. These Regulations increase these fees to £86 for householders and £298 for any development. This would be consistent with the proportionate increase to fees

for householder applications. Increasing fees for applications for approval of details reserved by condition will reduce the current funding shortfall and provide more resources to local planning authorities to deliver a more efficient service. This will bring wider benefit to all users of the planning service.

Fee for submission of a Biodiversity Gain Plan

5.14 In England, biodiversity net gain is the subject of a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990, as inserted by Schedule 14 of the Environment Act 2021 and amended by the Levelling-up and Regeneration Act 2023. The objective of biodiversity net gain is for developments to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.

5.15 Biodiversity net gain requirements came into force for planning permission granted on applications for major development on or after 12 February 2024 and for non-major development made on or after 2 April 2024. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 prescribe exemptions for certain categories of development, including householder applications.

5.16 Under the statutory framework, with some exceptions, every grant of planning permission is subject to the condition that the biodiversity net gain objective is met. To demonstrate compliance, developers must submit a Biodiversity Gain Plan to the local planning authority for approval before commencing development.

5.17 As explained in Planning Practice Guidance, the submission of a Biodiversity Gain Plan follows the same process as a request for written confirmation of compliance with conditions attached to a planning permission, for which a fee is applicable. The current fee is £145 per request. As set out above, these Regulations increase this fee to £298. Government is also taking this opportunity to clarify within Regulation 16 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests, and Site Visits) (England) (Amendment) Regulations 2012 ("the 2012 Fees Regulations") that this fee is applicable to the submission of a Biodiversity Net Gain Plan.

6. Legislative and Legal Context

How has the law changed?

6.1 The power to charge for planning fees is contained in section 303 of the Town and Country Planning Act 1990 (c. 8) ("the 1990 Act"), which was substituted by section 199 of the Planning Act 2008 (c. 29).

6.2 Planning fees in England are set nationally by the Government in the 2012 Fees Regulations. The 2012 Fees Regulations have been amended nine times, including a general increase of 20% to all planning fees introduced by the Town and Country Planning (Fees for Applications Deemed Applications, Requests and Site Visits (England) (Amendment) Regulations 2017 (S.I. 2017/1314) from 17 January 2018. This was the first increase since November 2012.

6.3 The 2012 Fees Regulations were last amended by the 2023 Fees Regulations, which increased fees by 35% for major applications and 25% for all other applications from 6 December 2023. Additionally, the 2023 Fees Regulations introduced an indexation mechanism, allowing planning fees to be adjusted annually in line with inflation starting from 1 April 2025.

6.4 These Regulations amend the 2012 Fees Regulations by the following:

6.5 Regulation 3 of these Regulations amends regulation 14 of the 2012 Fees Regulations which sets out the fees for certain applications under the GPDO made to the local planning authority for their determination as to whether their prior approval is required. As set out in paragraph 5.9 above, most prior approval application fees under regulation 14 of the 2012 Fees Regulations are subject to a flat fee of either £120 or £258 if the development includes building operations. The effect of this amendment is to increase the fees from £120 to £240 and to increase the fee from £258 to £516.

6.6 Regulation 4 of these Regulations amends regulation 16 of the 2012 Fees Regulations to increase the fees for requesting written confirmation of compliance with a condition attached to a planning permission from £43 to £86 in the case of a permission for householder development (within categories 6 and 7 of the table in Part 2 of the Schedule to the 2012 Fees Regs); and from £145 to £298 in any other case. The amendment also clarifies that this fee applies to requests to confirm compliance with a statutory biodiversity net gain condition.

6.7 Regulation 5 of these Regulations amends Part 1, paragraph 5 of Schedule 1 of the 2012 Fees Regulations which sets out the fee payable where an application is made pursuant to section 73 of the 1990 Act which provides for applications for planning permission to develop land without complying with previously imposed planning conditions. This amendment introduces a three-tier structure fee for section 73 applications, the effect of which is that householder section 73 applications are increased to £86, £2,000 for major development section 73 applications and for all other section 73 applications, £586.

6.8 Regulation 5 also increases the fees for two miscellaneous fee categories which had previously been erroneously set too low. The first correction relates to the fee payable for an outline application for the erection of a building where the area of gross floor created exceeds 3,750 square metres, the fee is corrected to £31,385. The second correction relates to an application for the erection, on land used for the purposes of agriculture, or buildings used for agricultural purposes where the gross floor space created is at least 1,000 metres but does not exceed 4,215 square metres, the fee is corrected to £5,077. This fee was miscalculated in the 2023 Fees Regulations and has now been amended to the correct fee level for larger agricultural buildings.

6.9 Regulation 6 makes related transitional provision. This includes provision to the effect that the annual increase of fees as provided for in regulation 18A of the 2012 Fees Regulations applies to the fee amounts in these Regulations from 1 April 2026.

Why was this approach taken to change the law?

6.10 Previous increases in planning fees have not adequately addressed those applications with the greatest shortfalls. Even with future inflation adjustment, this gap will remain unless further fee increases are implemented for these applications.

6.11 This is the only possible approach to make the necessary changes to planning fees which are set nationally by government through regulations.

7. Consultation

Summary of consultation outcome and methodology

Increase to householder application fees

7.1 The proposal to increase fees for householder applications formed part of the consultation *'Proposed reforms to the National Planning Policy Framework and other changes to the planning system'* ("the NPPF consultation") which ran from 30 July to

24 September 2024. The government response to this consultation is available at: Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK (https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=aac5d354-b73d-4234-aa23-14ce754384c0&utm_content=immediately).

7.2 The consultation asked whether householder application fees should be increased to secure full cost recovery. 1,343 people responded to this question. The proposal to increase householder fees was most strongly supported by local planning authorities and was least supported by individuals, neighbourhood planning groups and parish or town councils. 72% of respondents agreed that householder fees should be increased to cost recovery. In response to the question of whether the appropriate fee should be £528, over half (55%) of the 1,120 respondents to this question thought the householder fee should be set at £528 or more, with specific suggestions for full cost recovery ranging from £528 to £1,000.

7.3 Those who supported the fee increase considered it was necessary to provide local planning authorities with more resources to secure service improvements. It was also deemed fair that those benefitting from planning permission should pay for the service. Those respondents who did not support the fee increase suggested it could risk a rise in unauthorised development. Taking into account the responses received, a fee of £528 is considered to be a reasonable fee to cover costs. This also means that the existing fee for householder development for two dwellinghouses should increase by the same rate from £509 to £1,043.

7.4 14% of respondents thought the increase should be less than £528 ranging from £274 to £516. Approximately 100 respondents believed there should be a two-tier fee structure with a higher fee for extensions and enlargement of dwellings and a lower fee for smaller-scale development. This has been addressed by only increasing the fee for householder development for the enlargement, improvement or other alteration of an existing dwellinghouse, whilst the fee of £258 will remain unchanged for householder development related to small-scale operations within the curtilage of dwellinghouse. This approach acknowledges the varying levels of work required by local planning authorities to assess different types of developments. Additionally, it mitigates the risk of unauthorised developments for smaller-scale projects, which might occur as a result of a higher fee.

Increase to fees for other applications

7.5 The NPPF consultation also asked whether there are any other applications where fees are too low. The fees that were most cited as inadequate were applications for prior approval, section 73 applications to vary or remove planning conditions and applications for the approval of matters reserved by condition. Although respondents provided limited evidence on appropriate fee levels for these applications, it is considered that increasing fees in line with the proportionate increase for householder fees, which was supported by the majority of respondents, would also be appropriate for the fees for these applications.

7.6 Some respondents to the NPPF consultation also suggested introducing new fees for applications related to listed buildings, demolition in Conservation Areas and works to protected trees. These applications incur costs for local planning authorities, but no fees are currently charged, primarily because owners cannot opt out of these designations which impose burdens regarding preservation and maintenance that are

in the public interest. Given the mixed views, the government has decided not to introduce new fees for these applications at this time, but will keep this under review.

7.7 The consultation titled *'An Accelerated Planning System',* which ran from 6 March to 1 May 2024, sought views on the proposed three-tier banded fee structure for section 73 applications to vary or remove planning conditions. This proposal received support from 64% of respondents. Due to a subsequent change in government, there are currently no plans to publish a response to this consultation.

Biodiversity Gain Plan

7.8 A consultation on biodiversity net gain regulations and implementation was launched on 11 January 2022 and ran for 12 weeks. A total of 590 responses were received during the consultation period. This consultation included details of the discharge of the biodiversity gain condition, whereby the planning authority must approve the development's biodiversity gain plan. A consultation response was published on 21 February 2023 and can be viewed at: https://www.gov.uk/government/consultations/consultation-on-biodiversity-net-gain-regulations-and-implementation

8. Applicable Guidance

8.1 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 this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 While there is an impact on business, charities or voluntary bodies through increased fees, this is not considered to be significant. The increase in fees is necessary to better cover the costs incurred by local planning authorities in processing these applications. Planning fees are estimated to constitute less than 1% of overall development costs. Business, charities or voluntary organisations who submit planning applications should benefit from enhanced resourcing to local planning authorities, leading to more efficient service delivery.

9.3 There is no significant impact on small or micro businesses. As with other businesses, application fees may increase in some circumstances, but small or micro businesses should benefit from greater resourcing of local planning authorities to process planning applications. No specific action is proposed to minimise regulatory burdens on small businesses as the overall impact on small businesses is anticipated to be minimal.

9.4 There is no, or no significant, impact on the public sector. The increase in planning fees will benefit local planning authorities by providing additional resources, thereby enabling more effective processing of planning applications.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through routine engagement with the sector and key stakeholders.

10.2 The instrument does not include a statutory review clause for the reason that the Government has announced its intention to introduce measures through the Planning and Infrastructure Bill that will make provision for local planning authorities to vary or set their own fees. As the Government develops the details of this policy, it will undertake a comprehensive review of all planning fees.

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 The Minister of State for Housing and Planning, Matthew Pennycook MP has made the following statement regarding Human Rights:

"In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment and Transitional Provision) Regulations 2025 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").