EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (BUSINESS OR COMMERCIAL PROJECTS) (AMENDMENT) REGULATIONS 2026

2026 No. 13

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 MP, 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 Alicia Ford, Deputy Director for Planning-Infrastructure at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 George Adams, Senior Policy Lead at the Ministry of Housing, Communities and Local Government email: InfrastructurePlanning@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 This instrument ("the amending instrument") amends The Infrastructure Planning (Business or Commercial Projects) Regulations 2013 ("the 2013 Regulations") to provide that data centres are prescribed projects capable of being directed into the Nationally Significant Infrastructure Projects (NSIP) consenting regime under section 35 of the Planning Act 2008 ("the Act").

Where does the legislation extend to, and apply?

4.2 The extent of this amending instrument (that is, the jurisdiction(s) which the amending instrument forms part of the law of) is England and Wales. As the amending instrument relates to data centres, it does not extend to Scotland because section 35 extends to Scotland only so far as required for the construction (other than by a gas transporter) of an oil and gas cross-country pipeline (see section 240 of the Act).

4.3 The territorial application of this amending instrument (that is, where the amending instrument produces a practical effect) is England, because the Secretary of State may only give a direction for business or commercial projects (section 35(2)(a)(ii)) if the development will (when completed) be wholly in England or waters adjacent to England up to the seaward limits of the territorial sea (section 35(3)(a)).

5. Policy Context

What is being done and why?

5.1 In 2013, Section 26 of the Growth and Infrastructure Act 2013 amended Section 35 of the Act to provide that the Secretary of State may give a direction that development that is or forms part of a business or commercial project (or proposed project) of a prescribed description be treated as development for which development consent is required under the planning regime that applies to NSIPs. The Secretary of State may give a direction, upon receipt of a qualifying request, if the Secretary of State thinks that a project is 'nationally significant' and it meets the other requirements in section 35 of the Act. The effect of a direction is that the project subject to the direction requires development consent through the NSIP consenting regime, rather than planning permission through the Town and Country Planning Act 1990. The 2013 Regulations prescribe the description of such projects.

5.2 A supporting Written Statement[1] published alongside the 2013 Regulations gives some indicators (such as the project being of substantial size, or exceeds a particular floorspace, or contributes to economic growth) which could be factors in the Secretary of State's consideration of a qualifying request.

5.3 The amending instrument takes forward the government's commitment in its response in December 2024 to the 'Proposed Reforms to the National Planning Policy Framework and other changes to the planning system' consultation earlier that year. Part of that consultation included the proposal to prescribe data centres as a business and commercial project that is then capable (on a qualifying request) of being directed into the NSIP consenting regime under section 35 of the Act.

5.4 The primary aim is to support, through the NSIP consenting regime, those changes to the planning system that have been made in the National Planning Policy Framework (NPPF) in December 2024. This provides particular support to key industries such as digital infrastructure (including data centres) as drivers of growth across the economy. Large scale data centre projects that are directed into the NSIP regime by the Secretary of State will be able to benefit from the more streamlined statutory timescales and 'one stop shop' approach to obtaining consent for that project that the NSIP consenting process provides for.

5.5 The UK's Modern Industrial Strategy 2025 (published June 2025) identifies digital and technologies as one of the eight high growth sectors, representing 32% of the economy. The importance of data centres to the UK economy and provision of resilience needed has also been recognised through data centres being given Critical National Infrastructure designation in September 2024[2], putting them on an equal footing with essential services such as water, energy and emergency services.

What was the previous policy, how is this different?

5.6 National planning policy for digital infrastructure continues to be delivered through the NPPF. The previous policy was that data centre projects were required to be considered through the Town and Country Planning Act 1990 planning application route.

[1] Suggested WMS (https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/06/2008_extension_statement.pdf)
[2] Written statements - Written questions, answers and statements - UK Parliament (https://questions-statements.parliament.uk/written-statements/detail/2024-09-12/hcws89)

5.7 This policy supports the increased profile given to data centres by enabling an opportunity, where there was not one before, for developers of larger scale data centres to 'opt in' to the NSIP consenting process, provided the Secretary of State thinks that the project or proposed project is one of national significance and the proposals meet the other requirements set out in section 35 of the Act.

6. Legislative and Legal Context

How has the law changed?

6.1 The amending instrument amends the 2013 Regulations. The 2013 Regulations and the amending instrument are made under section 35(2)(a)(ii) of the Planning Act 2008.

6.2 The amendment inserts a new paragraph 10 into the Schedule (*Matters in relation to prescribed projects*) to the 2013 Regulations. The effect of the inclusion of new paragraph 10 is that data centre projects will be capable of being directed (on qualifying request) into the NSIP consenting regime under section 35 of the Act where the requirements of section 35 have been satisfied.

Why was this approach taken to change the law?

6.3 The law requires amending to enable data centre projects to be directed into the NSIP consenting regime under section 35 of the Act.

7. Consultation

Summary of consultation outcome and methodology

Consultation on proposed reforms to the National Planning Policy Framework and other changes to the planning system.

7.1 A consultation on proposed reforms to the National Planning Policy Framework (NPPF) and other changes to the planning system took place between 30 July 2024 and 24 September 2024. The consultation was published on GOV.UK and responses were accepted via online survey, via email and via written letter.

7.2 The NPPF consultation proposed changes to the planning system to drive greater commercial development in those sectors which will be the engine of the UK's economy in the future, including data centres but also gigafactories and laboratories, and sought views on whether they should be eligible to be directed into the NSIP consenting regime through section 35 direction, on qualifying request and subject to certain conditions.

7.3 The Government's response to the consultation was published on 12 December 2024[3]. A total of 1,007 respondents answered the question posed in the consultation as to whether to support the prescription of data centres (as well as gigafactories and laboratories) as types of business or commercial development which could be capable (on request) of being directed into the NSIP consenting regime. Of those 1,007 respondents, 60% agreed with the proposal, while 40% did not.

7.4 Following the consultation outcome, the government decided that the proposal to prescribe data centres should be pursued, due to the overall favourability of responses

[3] 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)

and the important role such development has in supporting the government's economic growth mission.

7.5 The Government will clarify by way of Written Statement that on further reflection it is considered that gigafactories and laboratories are already covered under existing prescriptions of projects, and are therefore already capable of 'opting in' to the NSIP consenting regime should they wish to do so.

8. Applicable Guidance

8.1 The emerging new National Policy Statement for data centres that is being developed by the Department for Science, Innovation and Technology, will set out the national policy and framework for decision-making for data centres.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this amending instrument because of the low level of impacts per business and that such impacts would be limited to those comparatively few businesses who are not only developing a larger scale data centre project but who would also choose to request that project to be directed to proceed through the NSIP consenting regime. Thresholds around which projects are likely to be considered to be of national significance are being drawn up by the Department for Science, Innovation and Technology and will form part of the National Policy Statement for data centres.

9.2 Costs to business will only be to those developers who choose to prepare and submit qualifying requests to the Secretary of State under section 35 of the Act for their particular data centre project to be directed into the NSIP consenting regime. It is recognised that further costs will arise for those developers who have chosen to 'opt in' to the NSIP consenting process, through the preparation of subsequent applications to the Secretary of State for development consent, as it would if applying for planning permission under the Town and Country Planning Act 1990, but this would be the applicant's choice. These costs arise from the lengthier, more complicated nature of the NSIP application process, and the additional rigours placed on NSIP applications.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies relating directly to this amending instrument. Impacts might arise from any subsequent application for development consent for a large data centre proposal that comes forward, where a direction is given. Such impacts will be assessed as part of the overall consideration and determination by the Secretary of State of whether consent should be granted.

9.4 The amending instrument does not impact small or micro businesses. The 2013 Regulations, as amended by this amending instrument, apply to business and commercial projects that would be considered of national significance and as such, are unlikely to apply to small businesses. It is very unlikely that a small business would be in a position to take forward a large-scale data centre proposal and request that it should be considered of national significance and proceed through the NSIP consenting process.

9.5 There is no, or no significant, impact on the public sector because it is unlikely that a public sector body would be acting as a developer for the purposes of developing a

large data centre proposal and requesting it be considered under the NSIP process. In addition, for any subsequent application for development consent that comes forward, public authorities prescribed under the Infrastructure Planning (Fees) Regulations 2010 (as amended) have an ability to charge fees to the applicant to take account of the expenses they incur in providing advice, information or other assistance in respect of that application.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Ministry of Housing, Communities and Local Government will keep how the NSIP consenting regime applies to business and commercial projects under review.

10.2 The amending instrument does not 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 the amending instrument is subject to affirmative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This amending 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").