EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (DEVELOPMENT CONSENT) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2026

2026 No. 735

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Minister for Housing, Communities and Local Government ("MHCLG") 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 Matthew Pennycook MP, Minister of State for Housing and Planning at MHCLG confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex Bush, Deputy Director, Planning Infrastructure at MHCLG confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Keeley Briggs at MHCLG can be contacted by email at the following address with any queries regarding the instrument: Keeley.Briggs@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 ("the amending instrument") amends the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (S.I. 2009/2264) ("the 2009 Regulations") and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (S.I. 2011/2055) ("the 2011 Regulations").

4.2 The Planning and Infrastructure Act 2025 ("the Planning and Infrastructure Act") made various changes to the pre-application and acceptance procedures for applications for orders granting development consent ("DCO applications") under the Planning Act 2008 ("the Planning Act"). Following these changes, applicants for development consent will no longer be required by statute to consult before submitting an application to the Secretary of State.

4.3 The amending instrument updates the 2009 Regulations and the 2011 Regulations to reflect these changes to the DCO application process under the Planning Act. It also updates cross-references to related statutory instruments and makes other minor and correctional amendments.

4.4 The instrument does not remove or alter statutory opportunities for public and stakeholder participation once a DCO application has been submitted, nor does it change requirements relating to environmental assessment, examination, or decision-making.

Where does the legislation extend to, and apply?

4.5 The amendments made by the amending instrument have the same extent as the provisions amended. The territorial extent and application of the provisions amended is England and Wales, and Scotland (in very limited circumstances). The provisions extend to Scotland only so far as required for the purpose of the construction (other than by a gas transporter) of an oil or gas cross country pipeline – one end of which is in England or Wales, and the other end of which is in Scotland.

5. Policy Context

What is being done and why?

5.1 The amending instrument facilitates government's objectives to reform the Planning Act's regime to support a faster, more proportionate and outcome-focused planning process for nationally significant infrastructure projects ("NSIPs"). The prescriptive and process-driven nature of the statutory pre-application consultation requirements were increasingly contributing to prolonged timetables, high costs and risk averse practices; without consistently improving the quality of applications or outcomes.

5.2 The Planning and Infrastructure Act's removal of the statutory requirement for pre-application consultation in the Planning Act enables applicants to tailor engagement to the nature, scale and expected impacts of individual projects, focusing effort on resolving decision critical issues rather than complying with mandatory procedural steps. Engagement will be encouraged through guidance rather than a statutory requirement, allowing greater flexibility and earlier, more meaningful issue resolution where it adds value.

5.3 Applicants, local authorities, statutory bodies, communities and other stakeholders are all affected by the change in these DCO application procedures; however, the amending instrument does not remove or alter statutory opportunities for public and stakeholder participation once an application has been accepted to proceed to examination. The policy is designed to improve certainty, reduce unnecessary duplication and unlock the timely delivery of nationally significant infrastructure, while retaining robust scrutiny through examination and decision-making stages.

5.4 The removal of statutory pre-application consultation, as well as government objectives to streamline and improve the overall DCO application process for NSIPs, resulted in subsequent amendments to the acceptance test, set out in section 55 of the Planning Act, for accepted DCO applications.

What was the previous policy, how is this different?

5.5 Previously, the Planning Act required those who intend to make a DCO application to carry out statutory pre-application consultation and submit evidence of that consultation with the DCO application. Consultation was then considered at the acceptance stage, forming part of the decision as to whether the application was of a satisfactory standard to proceed to examination. This applied uniformly across all DCO applications, regardless of complexity or local context.

5.6 Under the new policy given effect by the Planning and Infrastructure Act, statutory pre-application consultation is removed from the legislative framework and will no longer be an express consideration as to whether a DCO application is of a satisfactory standard to proceed to examination. Engagement at the pre-application stage now takes place on a non-statutory basis, guided by published best practice

guidance on DCO applications, and supported by Planning Inspectorate pre-application services, as well as services from other relevant public bodies. Environmental assessment and public participation requirements at later stages of the process are unchanged and must still be complied with post-submission of a DCO application, if such an application is accepted by the Secretary of State to proceed to examination.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 5 and 6 of the Planning and Infrastructure Act amend the Planning Act to remove certain pre-application requirements for DCOs. Further amendments to the acceptance procedure are made by section 7 of the Planning and Infrastructure Act. Sections 5 – 7 of the Planning and Infrastructure Act are to be brought into force at the same time as the amending instrument, on 24 July 2026, via the Planning and Infrastructure Act 2025 (Commencement No. 4 and Transitional Provisions) Regulations 2026 (S.I. 2026/641 (C. 52)).

6.2 This instrument makes various amendments to the 2009 Regulations and 2011 Regulations that are consequential on changes to the pre-application consultation requirements in the Planning Act. It also makes minor and correctional changes that are unrelated to the removal of pre-application consultation requirements in the Planning Act.

Changes consequential on amendments to the Planning Act

6.3 Section 5 of the Planning and Infrastructure Act repealed sections 42 – 45, 47 and 49 of the Planning Act. As a result, an applicant submitting an application for development consent will no longer be required by statute to consult statutory consultees, landowners, local authorities and the community before submitting their application to the Secretary of State.

6.4 Section 6 of the Planning and Infrastructure Act made further changes to the Planning Act, along with other primary and secondary legislation, as a result of the removal of the pre-application consultation requirements.

6.5 As a result of these changes to the Planning Act, the amending instrument makes the following amendments to the 2009 Regulations and the 2011Regulations:

- removes the requirement in regulation 4 of the 2009 Regulations to provide a deadline for receipt of responses to publicity under s.48 of the Planning Act (reg. 2(3)(d));
- removes the requirement to make available responses to consultation carried out under Part 5 of the Planning Act in regulation 5 of the 2009 Regulations (reg. 2(4));
- updates the title of column 1 of the table in Schedule 1 to the 2009 Regulations to reflect the fact that the persons listed in column 1 now only need to be notified (as opposed to both consulted and notified) (reg. 2(8));
- substitutes an updated DCO application form, along with updated certificates for the purposes of sections 58 and 59 of the Planning Act, in the 2009 Regulations (reg. 2(9) – (11));
- updates cross-references in the definition of "interested party" and "relevant local authority" in the 2011 Regulations (reg. 3(2)(b) and (c));

- provides a new cross-reference in relation to persons to be consulted under regulation 10 of the 2011 Regulations (reg. 3(3)); and
- amends regulation 17 of the 2011 Regulations so that it reflects the new wording of reg 17(2)(c) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 EIA Regulations"), following amendments to the 2017 EIA Regulations by the Planning and Infrastructure Act (reg. 3(4)(b)).

6.6 It was not necessary to omit regulation 3 of the 2009 Regulations, which prescribes the persons to be consulted for the purposes of section 42(a) of the Planning Act, as regulation 3 will be impliedly revoked upon the repeal of section 42 of the Planning Act. It was also not necessary to omit column 2 of the table in Schedule 1 to the 2009 Regulations, which sets out the circumstances in which the persons listed in column 1 must be consulted, as column 2 is only relevant to consultation in accordance with s.42.

Minor and correctional changes

6.7 The instrument also makes the following minor and correctional amendments to the 2009 Regulations:

- removes the definition of a term that had been erroneously included in the 2009 Regulations (reg.2(2));
- removes the reference to notices given or published on or after the 1st of March 2010, as this date is no longer relevant (regs. 2(5) and (6)); and
- omits a transitional provision that no longer has any effect (reg. 2(7)).

6.8 Finally, the instrument updates references in the 2011 Regulations to the now-repealed Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 with the relevant provisions of the 2017 EIA Regulations (see regs. 3(2)(a) and 3(4)(a)).

Why was this approach taken to change the law?

6.9 It was necessary to update the 2009 Regulations and 2011 Regulations to reflect changes to the Planning Act made by the Planning and Infrastructure Act. Amending, removing or disapplying provisions in existing regulations made under the Planning Act requires amendment by statutory instrument and could not be achieved through guidance.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken on the changes to the 2009 Regulations and the 2011 Regulations made by the amending instrument, as the majority of the changes directly relate to measures in the Planning and Infrastructure Act. Government did, however, consult on the proposed content of guidance which will support the amendments to the Planning Act, 2009 Regulations and 2011 Regulations, as part of the 'Streamlining infrastructure planning' consultation[1], the outcome and government response to this is provided here: Consultation on streamlining infrastructure planning - GOV.UK

[1] https://www.gov.uk/government/consultations/consultation-on-streamlining-infrastructure-planning

8. Applicable Guidance

8.1 Government is revising the suite of guidance relating to the DCO application regime under the Planning Act, which will include new guidance relating to the regulations amended by the amending instrument and the broader changes to the Planning Act.

8.2 Revised best-practice guidance under section 50 of the Planning Act will support applicants in preparing applications following the removal of statutory pre-application consultation requirements and other associated pre-application procedures. This guidance will set out principles for proportionate and effective engagement and explain how engagement interacts with subsequent stages of the DCO application process.

8.3 The revised guidance, which also relates to broader changes to the Planning Act, is due to be published on WWW.GOV.UK after 3 July 2026.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been published for this amending instrument as no significant impact on the private, voluntary or public sector is foreseen arising from the provisions this amending instrument amends. An impact assessment[2] has been published in relation to the Planning and Infrastructure Act, which considers the impact of changes to the pre-application consultation requirements for nationally significant infrastructure projects under the Planning Act. The policy removes statutory prescription at the pre-application stage and supports this with a flexible, guidance-led approach.

9.2 Government's assessment is that the impacts of the amending instrument are largely indirect and deregulatory, with effects primarily arising from reduced administrative burden and lower costs associated with pre-application procedures. These impacts are expected to be beneficial overall, and government therefore considers this amending instrument does not warrant a standalone Impact Assessment.

9.3 The Better Regulation framework sets out that the De Minimis threshold is the equivalent annual net direct cost to business (EANDCB) of less than ±£10 million. The partial Impact Assessment (a De Minimis Assessment) estimates the average annual cost of familiarisation with the amending instrument is between £0.6m and £1.2m (first year only). Of this, between £0.55m and £1.06m is estimated to fall to local councils with the remaining £0.03m and £0.09m is expected to fall on infrastructure providers (businesses). As the costs involved with amendments only relate to the above familiarisation costs to business of <£0.1m, we are confident that the proposed amendments will not exceed the +/- £10m De Minimis threshold.

Impact on businesses, charities and voluntary bodies

9.4 The impact on business, charities or voluntary bodies is expected to be beneficial overall. Applicants for development consent are likely to experience reduced costs and time savings through the removal of statutory pre-application consultation

[2] Planning and Infrastructure Bill: Impact assessment - GOV.UK https://www.gov.uk/government/publications/planning-and-infrastructure-bill-impact-assessment

processes, while retaining discretion to undertake engagement that is proportionate and appropriate to their proposals.

9.5 Charities, voluntary bodies and community organisations are not subject to new duties as a result of this instrument. Opportunities to participate in the statutory examination and decision-making stages remain unchanged.

9.6 We do not expect the amending instrument to impact small or micro businesses. Due to the scale of projects associated with DCO applications, we would not expect these amendments to impact on services provided by small or micro businesses.

9.7 The impact on the public sector is expected to be limited and positive. Public bodies, including local authorities and statutory bodies, will likely benefit from reduced resourcing pressures associated with statutory pre-application consultation requirements. Any changes to ways of working are to be supported through revised guidance and redesigned Planning Inspectorate pre-application services, rather than new statutory obligations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The impact of the amending instrument is De Minimis, as set out in the previous section. MHCLG will, however, continue to monitor legislation associated with the Planning Act regime to ensure intended policy outcomes are achieved.

10.2 The approach to monitoring the amending instrument will be through ongoing operational monitoring of the Planning Act regime, including application timelines, acceptance rates, examination efficiency and feedback from applicants, local authorities, statutory bodies, communities and other stakeholders.

10.3 The amending instrument does not include a statutory review clause. The Ministry of Housing, Communities and Local Government will keep the operation of the instrument under review as part of its wider monitoring of the Planning Act 2008 regime and associated reforms to ensure intended policy outcomes are achieved. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Matthew Pennycook MP, Minister of State for Housing and Planning at MHCLG has made the following statement: A statutory review clause has not been included in the amending instrument because it will not have a significant regulatory impact (over +/- £10 million net impacts annualised).

10.4 The Planning Inspectorate and MHCLG will also use existing performance data, user feedback and post-implementation learning to assess whether the removal of statutory pre-application consultation is contributing to improved proportionality, reduced delay and better focus on principal issues.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument contains amendments that are consequential on changes to the Planning Act, along with unrelated minor amendments and correcting provisions. In accordance with paragraph 4.76 of the Statutory Instrument Practice, the Department has consulted with the Statutory Instrument Registrar. The Department has taken the decision to apply the procedure for free issue to all known recipients of the 2009 Regulations and 2017 EIA Regulations.

12. European Convention on Human Rights

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

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").

13.2 The instrument does not relate to the withdrawal of the United Kingdom from the European Union. It makes changes solely within the domestic Planning Act framework in order to implement government policy to streamline the NSIP regime under the Planning and Infrastructure Act.