EXPLANATORY MEMORANDUM TO

THE INFRASTRUCURE PLANNING (FEES) (AMENDMENT) REGULATIONS 2026

2026 No. 513

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

2.2 Alex Bush, Deputy Director for Infrastructure Planning, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Meyrem Erisken at the Ministry of Housing Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: meyrem.erisken@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 (Fees) Regulations 2010 ("the 2010 Regulations") to add host local authorities to the list of Prescribed Public Authorities who are able charge fees in relation to the provision of relevant services provided in connection with Nationally Significant Infrastructure Projects (NSIPs) in Schedule 2. A host local authority is any local authority in whose area the land, or any part of that land, to which the application relates is situated.

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, Wales and Scotland (in very limited circumstances). It applies 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.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland (in very limited circumstances). It applies 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 will provide host local authorities with the power to charge fees for the relevant services they provide to applicants (including proposed applicants) throughout all stages of the Development Consent Order (DCO) process. This will enable host local authorities to secure adequate resources for their NSIP services, including conducting impact assessments and producing required reports, thereby helping to prevent any delays. Furthermore, this policy aligns with the Government's objectives[1] to accelerate the delivery of major infrastructure projects and achieve clean power by 2030 by addressing factors that contribute to project delay.

5.2 The amending instrument amends the 2010 Regulations to add host local authorities to the list of prescribed public authorities who may charge fees for relevant services they provide to applicants in connection with an application/proposed application for a DCO. "Relevant services" means any advice, information or other assistance (including a response to a consultation) provided in connection with an application or proposed application for a DCO or to make a change to, or revoke such a DCO. The fees charged by host local authorities must not exceed the reasonable costs of providing the relevant services. Currently there are eight prescribed (see section 5.3) public authorities who may charge applicants fees for relevant services.

What was the previous policy, how is this different?

5.3 Since April 2024 eight public authorities have been able to charge applicants fees for relevant services provided in relation to applications/proposed applications for DCOs made under the Planning Act 2008. These public authorities are: The Environment Agency, Natural England, Natural Resources Wales, National Highways, Historic Buildings and Monuments Commission for England, Marine Management Organisation, The Coal Authority (now rebranded as the Mining Remediation Authority) and The Health and Safety Executive.

5.4 Some local authorities previously charged for planning services, but this was limited to discretional activity (i.e. those that are not in discharge of an express statutory function) and was not mandatory. This was previously charged to an applicant via non-legislative mechanisms including service level agreements and discretionary advisory services.

5.5 This instrument adds host local authorities to the list of Prescribed Public Authorities in Schedule 2 to the 2010 Regulations, providing host local authorities the legislative power to charge applicants for relevant services provided in connection with applications and proposed applications for DCOs.

5.6 Local authorities are instrumental in the DCO process, providing local expert knowledge to the applicant and Examining Authority and acting as a conduit for the communities they serve. However, local authorities have expressed difficulty in finding the necessary resource required to provide relevant services and effectively engage with NSIP applicants in a timely manner, which can lead to delays throughout the DCO application process.

5.7 The ability to charge fees for relevant services helps to support host local authorities to secure the right resources and deliver a more sustainable funding model to support

[1] Plan for Change - GOV.UK (https://www.gov.uk/missions)

the role of host local authorities in the NSIP system and provide assurance of the quality of engagement for applications.

6. Legislative and Legal Context

How has the law changed?

6.1 The amending instrument amends the 2010 Regulations to add host local authorities to the list of Prescribed Public Authorities, enabling host local authorities to charge applicants/proposed applicants fees for relevant services provided in connection with applications / proposed applications under the Planning Act 2008.

6.2 These Regulations are made under s.54A of the Planning Act 2008 (inserted by the s.126 of the Levelling-Up and Regeneration Act 2023) which gives the Secretary of State the power to make regulations for and in connection with the charging of fees by prescribed public authorities for services connected with a DCO application/proposed application. The 2010 Regulations provide (amongst other things) that these public authorities may only charge fees in accordance with a statement published on their website which describes the relevant services, sets out the fees (or the method by which the fees are calculated), and refers to any relevant statutory provision. The fees must not exceed the costs reasonably incurred by the public authority in providing the relevant services.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes. Changes are needed to the 2010 Regulations in order to add host local authorities to the list of prescribed public authorities able to charge fees to proposed applicants and applicants for relevant services provided.

7. Consultation

Summary of consultation outcome and methodology

Proposed reforms to National Planning Policy Framework and other changes to the Planning system

7.1 Government launched a consultation that ran for 8 weeks from 30 July 2024 to 24 September 2024 seeking views on revising the National Planning Policy Framework, ensuring that it was up to date and fit for purpose in order to achieve sustainable growth and development and able to meet the national need for new homes and build much needed infrastructure.

7.2 The purpose of the consultation was to seek views on the Government's approach to revising the National Planning Policy Framework and supporting sustainable growth within the planning system. This included consulting on whether Government should extend cost recovery measures to host local authorities for the services they provide to applicants throughout a DCO application. A total of 954 responded to this question, of which 695 (73%) supported the proposed reforms, 259 (27%) did not agree. The Government response to the consultation was published in December 2024 and updated on 27 February 2025.2

[2] Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation - GOV.UK (https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system/outcome/government-response-to-the-proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system-consultation)

8. Applicable Guidance

8.1 The Planning Act 2008: Infrastructure Planning (Fees) Regulations 2010 guidance[3] will also be updated to reflect the changes. The Planning Advisory Service will publish practical guidance alongside the amending instrument which will support host local authorities in best practice on setting up cost recovery mechanisms and recouping their fees. This information will be publicly available and accessible by any local authority who may deem it useful.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is an expected small level of business impacts.

9.2 The impact of amending the 2010 regulations to allow charging by host local authorities for the provision of relevant services is estimated to be up to £8.7 million per annum cost to businesses, charities or voluntary bodies (and within the range of £4.9 - £8.7 million per annum based on uptake of the measure and complexity of future NSIP schemes). As the estimated cost is below the de minimis threshold, a full Impact Assessment for this measure has not been produced.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is to enable host local authorities to recover the costs they incur in providing relevant services in connection with DCO applications, and as set out above, impacts on businesses are not significant. Those applicants/proposed applicants obtaining these services will do so with the full knowledge that these services will be chargeable. Some local authorities are already charging fees for relevant services on a discretionary basis. In cases where the local authorities wish to exercise the power in the regulations and publish a fee schedule, there will be no or minimal additional impact.

9.4 There is no, or no significant, impact on the public sector because the amendments are designed to enable cost recovery for services provided for their engagement with NSIP applications.

9.5 Due to the scale of projects associated with NSIPs we would not expect this legislation to impact small or micro businesses.

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 the mechanisms of local authority cost recovery under review by working with local authorities and industry to monitor the ongoing impact of cost recovery.

10.2 A statutory review clause has not been included in the amending instrument because Regulation 13 (Review) of the 2010 Regulations already includes a review provision

[3] Planning Act 2008: Infrastructure Planning (Fees) Regulations 2010 - cost recovery by the Planning Inspectorate and public authorities - GOV.UK (https://www.gov.uk/guidance/planning-act-2008-infrastructure-planning-fees-regulations-2010-cost-recovery-by-the-planning-inspectorate-and-public-authorities)

which requires the Secretary of State to carry out a review of the regulatory provisions contained in the regulations.

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 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").