EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (TIMETABLE FOR DECIDING REQUEST FOR DIRECTION) REGULATIONS 2026

2026 No. 728

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.

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 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 Aimee Smith, 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 The instrument sets statutory time limits for the Secretary of State to decide whether to give a direction under section 35B of the Planning Act 2008, following receipt of a qualifying request. The Secretary of State must make a decision within 35 days of receiving a qualifying request. Where further information is requested, any information must be provided within 21 days, and the Secretary of State must then make a decision within 35 days of either the day after receiving that information or, if the information is not provided, within 35 days after the 21-day deadline expires, whichever is the sooner.

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 and Scotland (in very limited circumstances). It extends 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 and 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 Section 4 of the Planning and Infrastructure Act 2025 (PIA 2025), brought into force on 24 July 2026 by way of the Planning and Infrastructure Act 2025 (Commencement No. 4 and Transitional Provisions) Regulations 2026 , inserts section 35B into the Planning Act 2008, introducing a new power for the Secretary of State (SoS) to direct development that comes within the meaning of a Nationally Significant Infrastructure Project (NSIP) out of the Planning Act 2008 regime, where an appropriate alternative consenting regime applies. The instrument ensures the effective operation of this new direction-making power by providing certainty and transparency about the timescales within which direction requests will be decided by the Secretary of State. There will be a 35-day period for decisions on qualifying requests and, where further information is requested by the Secretary of State, a 21-day period for its provision followed by a further 35 days from either the day after the expiry of that 21-day period or receipt of any information, whichever is sooner. This reduces uncertainty for applicants and ensures direction decisions are handled consistently and efficiently.

What was the previous policy, how is this different?

5.2 Prior to the Planning and Infrastructure Act 2025, there was no mechanism to direct development out of the Planning Act 2008 regime where that development came within the statutory meaning and thresholds for NSIPs. Although section 35 enables certain projects to be directed into the regime, there was no reciprocal power to direct them out. The PIA 2025 inserts this direction-making power into the Planning Act, but provides for the timetable for determining such requests to be provided for in delegated legislation. These Regulations provide the time limits for making decisions and the provision of information for the purposes of such decisions.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 35B to 35D of the Planning Act 2008 are inserted by section 4 of the PIA 2025, to give the Secretary of State the power to give a direction disapplying the requirement for development consent. As part of this measure, section 35D provides that the Secretary of State may by regulations set time limits for deciding qualifying requests for directions under section 35B of the PA 2008 and in connection with the provision of information for the purposes of such decisions. This instrument is the first time the regulation-making power has been exercised and prescribes a period of 35 days for making the decision. Before the end of this initial period of 35 days, the Secretary of State may request information. Where such a request is made, this information must be provided within 21 days, and the SoS must make their decision within a further 35 days of either the day after the expiry of the 21-day period or from receipt of that information, whichever is sooner.

Why was this approach taken to change the law?

6.2 This instrument implements section 35D of the Planning Act 2008 and sets a timetable for the SoS to make decisions on qualifying requests. This approach delivers

clarity and certainty for applicants and ensures the effective operation of the new section 35B direction-making power. This instrument supports the wider implementation of sections 35B to 35D as a whole.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation was undertaken on the contents of these Regulations because the instrument is procedural in nature, gives effect to powers conferred by primary legislation, and does not introduce new policy or substantive requirements. Engagement with relevant government consenting departments has taken place during the development of the Regulations and supporting guidance.

8. Applicable Guidance

8.1 Non-statutory guidance on the operation of the sections 35B – 35D of the Planning Act 2008 will be published alongside the laying of the Regulations on GOV.UK, effective on 24 July 2026.

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 it is procedural in nature and is not expected to have a significant impact on businesses, the public sector or the voluntary and community sector. Its practical effect is limited to the way in which government decision-making is timetabled under the Planning Act 2008.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the instrument is procedural in nature and does not impose new substantive requirements or regulatory burdens.

9.3 The legislation has no impact on small or micro businesses because it is procedural in nature, does not create new substantive obligations, and relates to development of a scale that would not usually involve such businesses directly as applicants. There is no, or no significant, impact on the public sector because the instrument is procedural in nature and primarily affects the timetabling of decisions by government departments under statutory powers. It does not impose new substantive obligations on the wider public.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that MHCLG 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.

10.2 This instrument does not include a statutory review clause because it is procedural in nature and does not impose regulatory burdens.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is made in reliance upon section 13 of the Interpretation Act 1978, which allows powers to be exercised before they come into force. The instrument is made under section 35D(1) of the Planning Act 2008 which is coming into force on 24 July 2026 by the Planning and Infrastructure Act 2025 (Commencement No. 4 and Transitional Provisions) Regulations 2026. This is the same date as the coming into force of this instrument. This regulation-making power is being exercised, and the instrument made thereunder is being made, so as to come into force at the same time, so far as is necessary or expedient for the purpose of giving full effect to the Act at the time when it comes into force. These regulations provide for the timetable for making decisions by the Secretary of State about whether to give a direction under s.35B. This is necessary or expedient to ensure that a timetable is in place when the statutory provisions providing for directions to be given by the Secretary of State come into force. Without such regulations, there would be no timetable in place on commencement of section 35B.

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”).