EXPLANATORY MEMORANDUM TO

THE TRANSPORT INFRASTRUCTURE (FEES) REGULATIONS 2026

2026 No. 1137

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Simon Lightwood MP, Parliamentary Under-Secretary of State, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Cambyse Jafari-Pak, Deputy Director for Transport, Housing and Development, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jennifer Hurley at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: InfrastructurePlanningReform@dft.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations allow prescribed public authorities to recover the costs of advice, information and other assistance provided in relation to certain schemes and orders under the Highways Act 1980 and applications for an order under section 1 or 3 of the Transport and Works Act 1992. Examples include proposals for a new special road, or an order authorising a railway or tramway scheme. Charges may be made to the highway authority promoting a scheme or order under the Highways Act 1980, or to the applicant for an order under section 1 or 3 of the Transport and Works Act 1992. The Regulations establish the framework for charging, including requirements to publish information about fees, limits to ensure charges do not exceed costs reasonably incurred, arrangements for payment, and supplementary powers to waive or refund fees. The Regulations support fair and transparent cost recovery for public authorities involved in these processes.

4.2 In this Explanatory Memorandum, references to "prescribed public authorities" are to the authorities prescribed in the Regulations for the purposes of the new fee charging powers.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of Part 2 of this instrument (that is, where the instrument produces a practical effect) is England. Part 3 applies territorially to England and,

only where an order is a cross-border order within the meaning of section 23A(9) of the Transport and Works Act 1992, Wales.

5. Policy Context

What is being done and why?

5.1 At present, certain public authorities can be consulted on specified schemes, orders and applications under the Highways Act 1980 and the Transport and Works Act 1992, where they provide technical advice, information and other assistance. However, there has not previously been a clear statutory framework enabling recovery of the costs of providing these services under these regimes. This can create unfunded burdens and may contribute to inefficiencies and delays, particularly where these authorities need to absorb the cost of providing their input within existing budgets.

5.2 The purpose of these Regulations is to introduce new provisions for prescribed public authorities to be able to charge highway authorities for "relevant services" associated with certain schemes and orders under the Highways Act 1980, and to charge applicants under section 6 of the Transport and Works Act for "relevant services" in connection with applications for orders under section 1 or 3 of the Transport and Works Act 1992.[1]

5.3 Under the Highways Act 1980 (as amended by the Planning and Infrastructure Act 2025), a "relevant service" means any advice, information or other assistance (including a response to a consultation) provided, whether or not to a highway authority, in connection with an order or a proposed order, and any other prescribed matter, under Parts 2, 6 and 12 of the Highways Act 1980. The Regulations also prescribe schemes under sections 16 and 106 of the Highways Act 1980, meaning that cost recovery can apply with respect to such schemes as it does to orders under Parts 2, 6 and 12 of the Highways Act 1980.

5.4 Parts 2, 6 and 12 of the Highways Act 1980 cover highway infrastructure projects involving the following:

5.4.1 Trunk Roads, Classified Roads, Metropolitan Roads, Special Roads.

5.4.2 Construction of bridges over and tunnels under navigable waters and diversion etc. of watercourses.

5.4.3 Acquisition, Vesting and Transfer of Land etc.

5.5 Under the Transport and Works Act 1992, a "relevant service" means any advice, information or other assistance (including a response to a consultation) provided, whether or not to an applicant, in relation to an application under section 6 or any other prescribed matter relating to an order, or proposed order, under section 1 or 3.

5.6 The objective is to ensure that prescribed public authorities involved with providing advice, information or other assistance with respect to certain transport infrastructure projects are properly resourced to provide timely, expert input, and support more efficient delivery of these projects.

5.7 The prescribed public authorities in the statutory instrument that can charge for relevant services under the Highways Act 1980 are as follows:

[1] Section 1 provides for orders in relation to, or matters ancillary to, railways, tramways, trolley vehicle systems and guided busways in accordance with any prescription under section 2 of the Transport and Works Act 1992. Section 3 provides for orders in relation to, or matters ancillary to, the construction or operation of an inland waterway in England and Wales and any the carrying out of any works set out in section 3(2)(b).

5.8 The public authorities prescribed under the Highways Act 1980 are:

5.8.1 The Coal Authority

5.8.2 The Environment Agency

5.8.3 The Health and Safety Executive

5.8.4 The Historic Buildings and Monuments Commission for England

5.8.5 Local authorities in England

5.8.6 The Marine Management Organisation

5.8.7 Natural England

5.8.8 National Highways

5.8.9 Transport for London

5.9 The prescribed public authorities in the statutory instrument that can charge for relevant services under the Transport and Works Act 1992 are as follows:

5.9.1 The Coal Authority

5.9.2 The Environment Agency

5.9.3 The Health and Safety Executive

5.9.4 The Historic Buildings and Monuments Commission for England

5.9.5 Local authorities in England

5.9.6 Local authorities in Wales, where providing relevant services in connection with an application for a cross-border order

5.9.7 The Marine Management Organisation

5.9.8 Natural England

5.9.9 National Highways

5.9.10 Natural Resources Wales, where providing relevant services in connection with an application for a cross-border order

5.9.11 Transport for London

5.9.12 The Welsh Ministers, where providing relevant services in connection with an application for a cross-border order

What was the previous policy, how is this different?

5.10 The Transport Infrastructure (Fees) Regulations 2026 provide a mechanism through which prescribed public authorities may recover the costs of providing relevant services under the Highways Act 1980 and the Transport and Works Act 1992 from highway authorities and applicants. The Regulations do not require authorities to charge fees, but enable cost recovery where authorities choose to do so. This brings these regimes into line with the government's wider approach to fair and transparent cost recovery and supports the timely provision of properly resourced advice. Similar arrangements already apply under other regimes, including the Planning Act 2008, which enables statutory bodies to charge for services connected with nationally significant infrastructure projects.

6. Legislative and Legal Context

How has the law changed?

6.1 This is a new, standalone statutory instrument made under new regulation-making powers. Its effect is to establish the framework for when and how prescribed public authorities may charge for relevant services when engaging with certain schemes and orders under the Highways Act 1980 and applications for orders under the Transport and Works Act 1992.

6.2 The Regulations are made under the fee-charging powers inserted into the Highways Act 1980 and the Transport and Works Act 1992 by the Planning and Infrastructure Act 2025. They prescribe the public authorities that may charge for relevant services under those regimes and establish the conditions subject to which charges may be imposed. In particular, a prescribed public authority may charge only where it has published information about the services covered, the amount of the charge or how it will be calculated. Any fee charged must not exceed the costs reasonably incurred in providing the relevant service. The Regulations also provide for action to be taken in the event of non-payment, including enabling the withholding of the applicable service.

6.3 This is the first time that a statutory instrument has been made under the fee-charging powers inserted into the Highways Act 1980 and the Transport and Works Act 1992 by the Planning and Infrastructure Act 2025. These Regulations are necessary to give practical effect to those powers by establishing a clear legislative framework under which prescribed public authorities may recover the costs of providing relevant services.

Why was this approach taken to change the law?

6.4 These Regulations are needed to give practical effect to the fee-charging powers inserted into the Highways Act 1980 and the Transport and Works Act 1992 by the Planning and Infrastructure Act 2025. Primary legislation established the power for the prescription of public authorities to recover fees for relevant services, but further provision in secondary legislation is required to prescribe which authorities may charge and to set out the framework and safeguards governing the exercise of that power. A non-statutory approach would not have been sufficient, as it could not create a lawful basis for charging where none previously existed. This approach therefore provides a clear, consistent and transparent legal framework for cost recovery under the two regimes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department did not undertake a formal public consultation on these Regulations. This was because the statutory instrument establishes a permissive framework for cost recovery by a defined group of prescribed public authorities, rather than imposing broad new duties or creating a broader policy regime requiring public consultation.

7.2 Instead, the Department undertook a 3-month targeted engagement with bodies expected to be directly affected by the Regulations. This included both public authorities that would be able to recover their costs and those who might be required to pay charges. Local authorities were engaged through the Chief Planner newsletter (issued by the Ministry of Housing, Communities and Local Government), which is an established channel for communicating planning policy matters, inviting views on

the Department's proposals. Wider awareness was further supported through engagement with the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), which represents senior local authority leaders across highways, transport and planning. Welsh Government officials were also engaged in relation to the application of the Regulations in Wales under the Transport and Works Act 1992.

7.3 Overall, those that participated in the targeted engagement were supportive of the proposed approach and considered that the Regulations would provide a proportionate and flexible framework for recovering the costs of such advisory activity. The intended alignment with the approach taken under the Planning Act 2008 was also welcomed. Feedback received through this engagement informed the final drafting of the instrument, including the emphasis on transparency and safeguards around charging. As this was targeted engagement rather than a formal public consultation, the Department does not intend to publish a formal consultation response, but further information may be obtained from the contact named in section 3.

8. Applicable Guidance

8.1 Guidance on the application of the Regulations will be published online at the same time as the Regulations come into force on 20 November 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 the measure is considered to fall outside the scope of the Better Regulation Framework. Provisions are outside the scope of an Impact Assessment if they relate to the imposition, abolition or variation of a tax, duty, levy or other charge. The Regulations provide for a discretionary cost recovery charging power, enabling prescribed public authorities to recover the reasonable costs they incur in providing specified advice, information or assistance. The Regulations clearly pertain to a charge and are therefore out of scope for an impact assessment.

Impact on businesses, charities and voluntary bodies

9.2 There is expected to be no significant impact on businesses, charities or voluntary bodies. Part 2 of the Regulations enables prescribed public bodies to charge highway authorities a fee for relevant services and accordingly has no impact on businesses, charities or voluntary bodies. Part 3 of the Regulations enables prescribed bodies to charge applicants for orders under the Transport and Works Act 1992. Applicants can include businesses. However, the impact on businesses is expected to be limited. On average, fewer than one business applicant per year has sought a Transport and Works Act Order over the last ten years. Further, the power to charge is discretionary, the services are linked to specific infrastructure consenting processes, and any fee must be limited to the reasonable cost of providing the service.

9.3 The legislation may affect a small number of small or micro businesses where they are applicants for relevant orders under the Transport and Works Act 1992 and choose to seek chargeable advice, information or assistance from a prescribed public authority. Of the nine business applicants during the last ten years, six were micro businesses and the remaining three employed only 10 or 11 staff. As set out above, any impact is expected to be limited.

9.4 Small and micro businesses have not been exempted from the charging framework. An exemption would not be appropriate because the Regulations are intended to allow prescribed public authorities to recover the reasonable costs of services provided to applicants. However, the framework contains safeguards to limit the impact; any charge must not exceed the costs reasonably incurred, public authorities must publish information about their fees, and they may waive or refund fees where appropriate.

9.5 There is expected to be no net additional cost to the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department will monitor the operation of the Regulations through proportionate engagement with the prescribed public authorities and applicants. This will include considering whether the charging framework is operating as intended, whether fee arrangements are clear and transparent, and whether any practical issues arise in relation to the recovery of reasonable costs. Monitoring will reflect the discretionary nature of the charging power and the expected level of use.

10.2 The 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 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").