EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (FEES) (AMENDMENT) REGULATIONS 2024

2024 No. 333

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Claire Porter, Deputy Director for Planning-Infrastructure, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Josh Wainman, Senior Policy Lead, at the Department for Levelling Up, Housing and Communities Telephone: +44(0) 303 444 9022 or email: infrastructureplanning@levellingup.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 (Fees) Regulations 2010 ("the 2010 Regulations").

4.2 The amending instrument introduces provisions to enable the Secretary of State to charge fees to applicants for the provision of 'pre-application services' associated with the Nationally Significant Infrastructure Projects (NSIP) planning system. These are services provided to the applicant by the Secretary of State in connection with the Secretary of State's major infrastructure functions in relation to a proposed application for development consent under the Planning Act 2008. The amending instrument also prescribes the amount of the fee which the Secretary of State may charge to applicants for each day the service is provided.

4.3 The amending instrument also provides that certain prescribed public authorities may charge a fee to applicants for the provision of services, referred to as 'relevant services[1]', in relation to the application/proposed application. These provisions are made under a new power that was inserted into the Planning Act 2008[2] by the Levelling Up and Regeneration Act 2023. The amending instrument also specifies the effect where the fee is not received by the public authority and provides that the

[1] See section 54A(2) of the Planning Act 2008.
[2] Section 54A of the Planning Act 2008 was inserted by section 126 of the Levelling-up and Regeneration Act 2023.

public authority may charge a fee only in accordance with a statement published on its website.

Where does the legislation extend to, and apply?

4.4 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).[3] 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 b) the other end of which is in Scotland.

4.5 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 b) the other end of which is in Scotland.

5. Policy Context

What is being done and why?

5.1 The amending instrument forms part of a package of statutory instruments which make legislative reforms to the Nationally Significant Infrastructure Projects (NSIP) consenting process as proposed by the government's NSIP Action Plan (February 2023). These amendments will bring forward operational reforms to support faster consenting with an emphasis on delivering proportionate examinations for all projects and supporting fast-track applications.

5.2 The amending instrument amends the 2010 Regulations by adding the following:

New provisions to enable the charging of fees by prescribed public authorities

5.3 The government has introduced new provisions for prescribed public authorities to charge for 'relevant services' associated with applications, and proposed applications, made under the Planning Act 2008. '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 Development Consent Order. Relevant services also apply to an application, or a proposed application, to make a change to, or revoke a Development Consent Order.

5.4 The public authorities able to charge for relevant services are prescribed in the amending instrument, these are; the Environment Agency, Natural England, Natural Resources Wales, The Coal Authority, The Health and Safety Executive, National Highways, Marine Management Organisation, and the Historic Buildings and Monuments Commission for England.

New provisions to enable the charging of fees by the Secretary of State (the Planning Inspectorate) for pre-application services

5.5 The Planning Inspectorate did not previously charge for the services which it provides to proposed applicants during the pre-application stage of an application for Development Consent – this is the stage of the process which typically starts from the proposed applicant's inception meeting (as defined the Planning Inspectorate's current Pre-application Prospectus (May 2014)[4]) with the Planning Inspectorate up to, but not including, submitting the application for 'acceptance'. Pre-application is a vital stage

[3] See Section 240 (Extent) of the Planning Act 2008.
[4] https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/05/NSIP-prospectus_May2014.pdf.

in the Development Consent application process, which is frontloaded to ensure that engagement with stakeholders is undertaken early in the process and that issues are resolved ahead of examination of the application, if and when the application is 'accepted' for examination by the Planning Inspectorate.

5.6 The Planning Inspectorate plays an integral role in guiding proposed applicants through the pre-application stage. The services they provide are designed to help proposed applicants in planning and carrying out their pre-application duties under the Planning Act 2008. In accordance with the NSIP Reform Action Plan (February 2023), the Planning Inspectorate will be moving to more effectively resource and deliver new pre-application services. The detail of the level of service that will be offered will be contained in a new 'Pre-Application Prospectus' produced by the Planning Inspectorate which will be published in Spring 2024.

5.7 The choice of tier will be at the discretion of the proposed applicant, apart from proposed applicants who wish to undertake a 'fast-track' consenting process, who will all be required to undertake the enhanced pre-application service.

5.8 In order to effectively deliver the new pre-application services, the government has introduced new provisions in the 2010 Regulations for the Secretary of State to charge for fees in respect of 'pre-application services'. These services are undertaken by the Planning Inspectorate on behalf of the Secretary of State for Levelling Up, Housing and Communities. The pre-application services (which the Planning Inspectorate will be able to charge proposed applicants for) means services provided by the Secretary of State in connection with the Secretary of State's major infrastructure functions in relation to a proposed application. It includes providing the following services during the pre-application stage:

- Giving of advice to the proposed applicants and applicants under s.51(1) (Advice to potential applicants and others) of the Planning Act 2008;
- Services provided to applicants and proposed applicants in relation to the environmental impact assessment process[5];
- Services provided to proposed applicants and applicants in relation to s.98 (Timetable for examining, and reporting on, applications) of the Planning Act 2008; and
- Services provided to proposed applicants in relation to any matters which the Secretary of State thinks may be both important and relevant to the Secretary of State's decision under s.104 (Decisions in cases where national policy statement has effect) and s.105 (Decisions in cases where no national policy statement has effect) of the Planning Act 2008.

What was the previous policy, how is this different?

Charging by the Secretary of State for fees associated with the provision of pre-application services

5.9 The Planning Inspectorate is an Executive Agency of the Department for Levelling Up, Housing and Communities and is responsible for administering applications associated with the NSIP planning consenting process in relation the Planning Act 2008. It is at the heart of the NSIP consenting process and plays a fundamental role in operating the NSIP planning system. It currently provides services to applicants at different stages of the application process ranging from pre-application advice to

[5] The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017/572.

deploying an Examining Authority to examine applications and handle examination procedures and plays a critical role in delivering a streamlined application service.

5.10 Previously, the Planning Inspectorate provided only one form of pre-application advice service. Such services were optional and therefore used at the discretion of the applicant to help them in planning and carrying out their pre-application duties. Such services included; providing advice about making an application, reviewing draft application documents, and facilitating and making links between parties.

5.11 Whilst the Planning Inspectorate charges for services across the various stages of the NSIP consenting process, these were only limited to the following:

- a fixed acceptance fee that is the same for all projects.
- a fixed pre-examination fee that is dependent on and proportionate to the size of the Examining Authority.
- an examination fee which is based on a day rate proportionate to the size of the Examining Authority and the number of working days during the examination.

5.12 The Planning Inspectorate did not previously charge applicants for the provision of pre-application advice.

5.13 This policy has now changed and the Planning Inspectorate will now be charging applicants for the provision of its pre-application services. However, if a proposed applicant does wish to obtain a pre-application service from the Planning Inspectorate, they will now have a choice of different levels of service that will be set out through the Planning Inspectorate's pre-application prospectus. A fee will be charged depending on the level of service provided. The amending instrument provides that the Planning Inspectorate will be charging a rate of £2,300 multiplied by the number of relevant days.

Charging of fees by prescribed public authorities for the provision of relevant services

5.14 Statutory consultees are bodies that must be notified and consulted in relation to NSIP applications and play an important role to ensure expertise is reflected within development proposals. They provide services in the discharge of statutory duties, the provision of discretionary services, and where applicable, post-consent activities (e.g., discharging requirements and consents/licensing).

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

5.16 The position now is that certain public authorities will have a legislative basis to charge applicants for certain relevant services when engaging with applications/proposed applications for development consent made under the Planning Act 2008. These public authorities are:

- The Environment Agency
- Natural England
- Historic Buildings and Monuments Commission for England
- National Highways
- The Coal Authority
- The Health and Safety Executive
- The Marine Management Organisation
- Natural Resources Wales

5.17 These expert bodies represent a group of organisations that are instrumental in the early identification and mitigation of impacts associated with water, energy, and transport infrastructure projects. However, these organisations have experienced

difficulties in finding the necessary resources required to provide detailed advice and effectively engage with NSIP applications which can lead to delays throughout the DCO application process.

5.18 The ability to charge for their relevant services will help to support them to secure the right resources and deliver a more sustainable funding model for statutory consultees' role 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 introduce new provisions which enable the Secretary of State (the Planning Inspectorate) to charge applicants a fee for the provision of 'pre-application services'.

6.2 'Pre-application services' means services provided to the applicant by the Secretary of State in connection with the Secretary of State's major infrastructure functions in relation to a proposed application. This may include:

- Giving of advice to the applicant under s.51(1) (Advice to potential applicants and others) of the Planning Act 2008;
- Services provided to the applicant in relation to the environmental impact assessment process;
- Services provided to the applicant in relation to s.98 (Timetable for examining, and reporting on, applications) of the Planning Act 2008; and
- Services provided to the applicant in relation to any matters which the Secretary of State thinks may be both important and relevant to the Secretary of State's decision under s.104 (Decisions in cases where national policy statement has effect) and s.105 (Decisions in cases where no national policy statement has effect) of the Planning Act 2008.

6.3 The amending instrument introduces a fee by the Secretary of State of £2,300 per relevant day on which the Secretary of State provides pre-application services. The total fee charged to applicants will depend on the number of days within each level of service.

6.4 The Planning Inspectorate has calculated a rate to be charged, multiplied by the number of relevant days, to reflect the cost of providing its pre-application advice service. The rate of £2,300 will be translated into the levels of service that will be contained in a new 'Pre-Application Prospectus' to reflect the level of expected input on a case at each tier of service, commensurate with the number of days required.

6.5 This rate has been calculated of undertaking casework, by taking the full gross costs of the organisation and using appropriate apportionment/allocation methodologies to attribute those costs to particular case types. The costs broadly fit into three categories:

- Inspector costs – Being salaries plus on-costs.
- Support costs – Being the cost of those teams/ activities that input directly to casework such as operational casework officers.
- Overheads – Being costs that are integral to the functioning of the organisation but are not directly related to casework such as the cost of the HR and finance functions.

6.6 The cost of these elements are attributed on the following basis:

- Inspector costs – the total cost to the organisation of employing inspectors split across casework types on the basis of the proportions of worked hours booked to those case types via timesheets.
- Support costs – staff in this area do not record time, therefore each team was asked to provide, based on their experience the proportions of their time spent on the different casework types. Their direct and indirect costs are then apportioned to the relevant casework types accordingly.
- Overheads and depreciation – these are split out across the Planning Inspectorate on the most appropriate basis for the type of cost. Where overheads are attributable to particular case types which is particularly relevant to depreciation, they are allocated directly, if they are more general, they are allocated on a reasonable basis such as headcount.

6.7 A breakdown of each cost element is provided in the table below.

Cost element	Included in rate of £2,300
Inspector costs – Total cost of inspectors employed by PINS (salaries and on-costs including employer pension and NI), divided by the total hours booked to timesheets, multiplied by the hours booked to NSIP.	√
Support costs – Cost of the operational support teams (salaries and on-costs including pension and NI, plus direct costs associated with the team) apportioned across casework types on the basis of staff experience of how they spend their time.	√
Overheads and depreciation – if these are specific (often depreciation) they will be attributed to particular case work types directly, if they are general, they are attributed on a suitable basis such as headcount.	√

6.8 The amending instrument also sets out that the fee must not exceed the costs reasonably incurred by the Secretary of State in providing the pre-application services, and the ability for the Secretary of State to waive the fee (in whole or in part) in relation to the proposed application.

6.9 The amending instrument amends the 2010 Regulations to also introduce provisions which enable prescribed public authorities to charge fees for relevant services when engaging with applications/proposed applications for development consent under the Planning Act 2008. It also introduces a new schedule which lists the prescribed authorities who will be able to charge for relevant services. These provisions are made under the new power to make regulations in s.54A of the Planning Act 2008 which was inserted by the s.126 of the Levelling Up and Regeneration Act 2023. 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[6]. The fees must not exceed the costs.

Why was this approach taken to change the law?

6.10 This is the only possible approach to make the necessary changes. Changes were needed to the 2010 Regulations in order to introduce the necessary provisions for the

[6] See s.45A(3)(j) of the Planning Act 2008.

Secretary of State and prescribed public authorities to charge fees to proposed applicants and applicants for their respective services.

6.11 Section 4 of the Planning Act 2008 provides the power for the Secretary of State to make regulations in respect of charging of fees by the Secretary of State. Hence, these regulations are made under this power. Section 54A of the Planning Act enables the Secretary of State to make regulations for and in connection with the charging of fees by prescribed public authorities and so these regulations are made under this power.

7. Consultation

Summary of consultation outcome and methodology

Consultation on the operational reforms to the NSIP consenting process

7.1 A consultation on the operational reforms to the NSIP consenting process took place between 25th July 2023 and 19th September 2023. The consultation was published on www.GOV.uk and responses were accepted via online survey, email and written letter.

7.2 The purpose of the consultation was to seek views from stakeholders on the operational reforms to the NSIP process which sought to make the system work more effectively for applicants, local authorities and communities. The consultation sought views on the following policy areas:

- Strengthening the role of pre-application and ensuring that consultation is effective and proportionate;
- Operational reforms which support faster and more proportionate examinations;
- Establishing a fast-track route to consent;
- Reviewing the process for making post-consent changes to Development Consent Orders;
- Resourcing the Planning Inspectorate and updating existing fees;
- Strengthening the performance of government's expert bodies;
- Improving engagement with local authorities and communities;
- Building the skills needed to support infrastructure delivery; and,
- Updates to national infrastructure planning guidance;

7.3 The consultation received 142 responses across a broad range of stakeholders including members of the public, local authorities, town and parish councils, project promoters, legal professionals, professional organisations and bodies, interest groups and voluntary organisations.

7.4 A government response to the consultation was published on 6th March 2024. This included setting out the policy changes that will be delivered through amendments to secondary legislation.

7.5 When asked about whether they were supportive of the proposals for a new and chargeable pre-application service from the Planning Inspectorate, 46% of respondents agreed and 8% strongly agreed. This demonstrated majority support for these proposals with less than 3% disagreeing or strongly disagreeing.[7] Stakeholders stressed the importance of ensuring that there is sufficient resource at the Planning Inspectorate to meaningfully engage with applicants. Ensuring that there is sufficient resource will minimise the risk of delays in providing timely advice to inform the

[7] 9% neither agreed or disagreed and 34% of respondents did not answer this question.

preparation of the application and engagement with various parties (e.g. statutory consultees, local authorities and communities).

7.6 Stakeholders also suggested there should be complete transparency from the Planning Inspectorate to the applicant setting out the services that they can expect to receive in guidance or other documentation. Details of how this will be set out are set out in new guidance (see Section 8 below) and in the Planning Inspectorate's updated Pre-Application Prospectus.

7.7 When asked whether respondents support the proposal to enable specific statutory consultees to charge for the planning services, 28% agreed and 16% strongly agreed with less than 2% disagreeing or strongly disagreeing.[8] Respondents acknowledged the positive contribution cost-recovery will have on the system including enabling increased engagement, supporting early and detailed negotiations, improved speed and quality of planning services, and enabling statutory consultees to be properly resourced and funded to process applications in a timely manner.

7.8 The responses were supportive of the principle to charge for advice with reference to it being an important component in identifying and resolving issues early on in the application process. Comments received from respondents expressed support for initially limiting the ability to charge to specific set of consultees with the proviso that the effectiveness of the funding model is evaluated alongside key performance indicators to guarantee a good level of service.

Engagement with devolved administrations

7.9 Details of this this amending instrument were shared with Welsh Government and Scottish Government ahead of the SI being laid in parliament.

8. Applicable Guidance

8.1 Government is revising the suite of guidance relating to the NSIP system which will include new guidance relating to the provisions within the amending instrument. A new guidance document *(Infrastructure Planning (Fees) Regulations 2010 guidance – Addendum*) is published in draft at the same time the amending instrument is laid and provides guidance on measures set out in this legislation. The guidance comes into force on the same day as the amending instrument.

8.2 The remaining suite of revised NSIP guidance is due to be published on www.gov.uk in April 2024.

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. The impact on business, charities or voluntary bodies is such that amending the 2010 regulations to allow charging by the Secretary of State for fees associated with the provision of pre-application services will allow for cost recovery of PINS services provided on NSIP pre-applications. Based on initial modelling this cost is estimated at ~ £1.2m per annum.

9.2 The impact of amending the 2010 regulations to allow charging by prescribed public authorities for the provision of relevant services is estimated at ~£1.8m per annum cost to business, charities or voluntary bodies. These amendments are required in

[8] 7% neither agreed or disagreed and 46% of respondents did not answer this question.

order to resource the effective delivery of the services throughout the consenting process. Fees will be in line with cost recovery and due to the de minimis nature of the impacts a full Impact Assessment has not been produced.

9.3 Fees will be in line with cost recovery and due to the de minimis nature of the impacts a full Impact Assessment has not been produced. Proportionate analysis of impacts have been included in 9.1 and 9.2.

Impact on businesses, charities and voluntary bodies

9.4 The impact on business, charities or voluntary bodies is estimated at ~£3m per annum.

9.5 We do not expect the legislation to impact small or micro businesses. Due to the scale of projects associated with NSIPs we would not expect these changes to impact on services provided by SMBs.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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 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 amending instrument is subject to negative resolution 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”).