EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. 1197

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. Purpose of the instrument

2.1 These Regulations increase the fees payable for planning applications by 35% for major applications and 25% for all other applications, add an annual inflation indexation of those fees from 1st April 2025 and introduce a new fee for prior approval of permitted development by the Crown on closed defence sites.

2.2 These Regulations also remove the exemptions from fees for repeat applications and reduce the 'Planning Guarantee' period for non-major planning applications to allow an applicant to obtain a refund of the planning fee if the application has not been determined within 16 weeks and an extension of time has not been agreed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 The Minister of State for Housing and Planning, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The power to charge for planning fees is contained in section 303 of the Town and Country Planning Act 1990 (c.8), which was substituted by section 199 of the Planning Act 2008 (c.29).

National fees increase and indexation

6.2 Planning fees in England are set nationally by the Government in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) ("the 2012 Regulations").

6.3 A general increase of 20% to all planning fees was introduced by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations (S.I. 2017/1314) which increased fees from 17 January 2018. This was the first increase since November 2012.

6.4 Regulations 7 to 17 of these Regulations amend Part 2 of the 2012 Regulations to increase planning fees by 35% for applications for major development and 25% for all other planning applications. Regulation 15 of these Regulations introduces new Regulation 18A to the 2012 Regulations for an indexation mechanism so that planning fees are increased annually in line with inflation or, if lower, 10% from 1st April 2025. In the event that there is deflation, the fee will not be adjusted

Removal of exemptions allowing a 'free-go' for repeat applications

6.5 The 2012 Regulations currently allow exemptions to the planning fees for various repeat applications made following the grant of permission for development of the same character or description as the development already permitted, or for applications made following the refusal or withdrawal of an earlier application. These exemptions are subject to conditions, such as the period within which a repeat application must be made. These Regulations remove those exemptions from the 2012 Regulations.

6.6 These changes do not affect repeat applications validly made before the date on which these Regulations come into force or any repeat application in respect of which the period mentioned above had begun but not ended before that date.

Reducing the 'Planning Guarantee' period for non-major applications

6.7 The Planning Guarantee is the government's policy that no application should spend more than a year with decision-makers, including any appeal. Regulation 9A of the 2012 Regulations (inserted by regulation 5(1) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 (S.I. 2013/2153)) was included to underpin the Planning Guarantee. Regulation 9A requires the refund of a planning application fee in relation to any planning application which is not determined within 26 weeks from the date of a valid application. The requirement to refund the planning fee does not apply in certain circumstances, these include where there is a written agreement with the applicant that the application will be determined in a longer period of time.

6.8 Regulation 6 of these Regulations amends regulation 9A of the 2012 Regulations to reduce the Planning Guarantee period for when an applicant may obtain a refund of the planning fee for applications for non-major development, as defined by article 34(2)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595), from 26 weeks to 16 weeks. For other planning applications (including those validly made before these Regulations come into force), the Planning Guarantee period will remain at 26 weeks.

New fee for prior approval for development of closed defence sites by the Crown

6.9 The Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) ("the General Permitted Development Order") grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a "permitted development right". The effect is that an application for planning permission does not need to be made to the local planning authority for development within the scope of a permitted development right, although in some cases permitted development rights require the local planning authority to approve certain key planning matters before development can proceed. This is known as "prior approval" for which a fee can be charged.

6.10 The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No.3) Order 2021 (S.I. 2021/1464) ("the 2021 Order") amended Schedule 2 of the General Permitted Development Order by inserting a new Class TA permitted development right in Part 19 of that Schedule to allow the Ministry of Defence (MOD) to both extend and alter existing buildings and erect additional buildings on the Defence estate, within the perimeter of a site, subject to certain limitations and conditions. The 2021 Order was laid on 20 December 2021 and the provisions in relation to the Class TA permitted development right came into force on 11 January 2022.

6.11 Regulation 10(2)(f) of these Regulations amends regulation 14 of the 2012 Regulations to provide a fee of £120 for applications for prior approval in relation to the Class TA permitted development right.

7. Policy background

What is being done and why?

7.1 All users of the planning system should experience a quality and timely planning service. It is therefore essential that local planning authorities have the resources they need to deliver a service that people expect as well as meeting our ambitions for planning reform.

7.2 Planning application fees provide local planning authorities with an income which contributes towards the costs of providing a planning service. However, the overall cost of the planning application (development management) service is more than the income received from planning fees, with local planning authorities relying mainly on the wider council budget, principally funded through the taxpayer to fund the difference, potentially leading to budget reductions for other council services. The government wants to reduce this funding shortfall and create greater financial sustainability for all local planning authorities, but also wants local planning authorities to be more efficient and to lower the costs of delivering the planning application service.

National fees increase and Indexation

7.3 These Regulations increase planning fees by 35% for applications for major development and 25% for all other applications so that the planning application service is principally funded by landowners and developers, who benefit from a grant of planning permission, rather than the taxpayer.

7.4 Major applications are defined in Article 2(1) of the Town and Country Planning (Development Management Procedure) Order 2015 (S.I 2015/595) as residential development of 10 dwellings or more, or a site area of over 0.5 hectares if the number of dwellings is not known, development of a floorspace of 1,000 square meters or more or a site area of 1 hectare or more, or applications in relation to minerals extraction and waste development.

7.5 Overall, the funding shortfall for the planning application (development management) service is estimated to be approximately £225 million annually (approximately 33%). Whilst there will always be a small element of cross subsidy in fees paid for individual applications and the costs of determining them, overall the fees received by local planning authority departments must not exceed the costs of delivering the planning application service.

7.6 It is estimated that the proposed fee increase will provide approximately an additional £65 million annually for local planning authorities. This will help address the continuing gap on cost-recovery for planning application fees and help local planning authorities to deliver a more efficient planning service. It is estimated that there will remain a funding shortfall of approximately £160 million annually. However, it is not considered appropriate to ask applicants to bear a rise equivalent to the full shortfall. Instead, it is proposed to introduce a more modest and manageable increase which will be set centrally. This provides the right balance between providing additional resources for local authorities without deterring development.

7.7 The proposed increase in planning fees would apply to all applicants, unless existing exemptions apply. A higher fee increase is proposed for applications for major development compared to all other applications. This is considered to represent a proportionate approach that provides additional income for local planning authorities whilst not unfairly introducing disproportionately high fee increases for householders and small businesses who may be more sensitive to charges than other groups.

7.8 The fee increase will provide the opportunity for local planning authorities to consider whether they are adequately resourcing their planning application service and whether the fee increase will provide an opportunity to employ more local authority officers or access more specialist advice and services.

7.9 Planning fees have not kept up with inflation because they have only been made at irregular intervals, when new regulations were made. The last increase was in January 2018, the first since November 2012. Increasing fees in this ad hoc way does not provide financial sustainability for local planning authorities. To help local planning authorities better manage their costs, these Regulations introduce an indexation mechanism, similar to that for Nationally Significant Infrastructure Project (NSIP) application fees, where all planning fees are adjusted annually in line with inflation, based on the Consumer Price Index or, if lower, 10%.

Removal of exemptions allowing a 'free-go' for repeat applications

7.10 Currently, where a previous application has been approved, refused or withdrawn, no fee is payable for a repeat application as long as the proposed development is of the same character and on the same site as the earlier application, submitted by the same applicant and is submitted within 12 months of the earlier decision or the received date in the case of a withdrawn application.

7.11 There remains a cost to local planning authorities to determine repeat applications, but no fee is received. In addition, a free-go can be used by applicants as a substitute for pre-application engagement by utilising the earlier application to test lower quality or substandard schemes. In order to contribute towards the costs incurred by local planning authorities when repeat applications are submitted, the government considers that it is appropriate to remove the current exemptions allowing a free-go for repeat applications. This should also encourage applicants to engage in pre-application discussions where available and submit high-quality applications first time round.

7.12 The government is keen to encourage applicants to undertake as much preparation as possible on planning proposals, including at an early stage with the local planning authority, before a planning application is submitted. This is to reduce wasted time and resources for both the applicant and the local planning authority on ill-conceived projects. Local planning authorities are able to charge for such advice under section 93 of the Local Government Act 2003 which provides a general power to authorities to charge for discretionary activities.

Reducing the 'Planning Guarantee' period for non-major applications

7.13 The national planning fees increase introduced by these Regulations will increase resources for local planning authorities to determine planning applications in good time. The Planning Guarantee allows for an applicant to obtain a refund of the planning fee from the local planning authority where a decision on the planning application has not been made within 26 weeks, subject to certain exceptions. The exceptions include cases where there is a written agreement that the period for determination of the application is to be extended beyond 26 weeks.

7.14 The Planning Guarantee period of 26 weeks applies to all planning applications even though the statutory determination period for applications for non-major development (8 weeks) is less than that for applications for major development (13 weeks, or 16 weeks if the application is accompanied by an Environmental Impact Assessment). In order to reflect these different statutory determination periods and support the more timely decision-making of applications for non-major development, which in most instances have a lesser resource impact for local planning authorities, the government considers it appropriate to reduce the Planning Guarantee for applications for non-major development from 26 weeks to 16 weeks.

7.15 It is recognised that there may be exceptional instances where there are good reasons why an extension to the statutory determination period may be necessary. As such the existing exemptions which disapply the Planning Guarantee when an extension of time has been agreed with the applicant will remain.

Prior approval fee for development by the Crown on a closed defence site

7.16 The Class TA permitted development right, introduced in December 2021, allows the MOD to extend, alter and erect new single living accommodation and offices, workshops and other buildings across the Defence estate within the perimeter of a Defence site, subject to certain limitations and conditions. This enables the MOD to achieve its infrastructure development plans faster and with more certainty as well as giving Defence the agility to adjust plans to meet changes in requirement as the capability needs in defence change.

7.17 The Class TA permitted development right sets out circumstances when an applicant must apply to the local planning authority for prior approval. Prior approval is

required in regard to: (a) siting and scale where the total footprint of buildings added to the site (via extension or erection) exceeds, or would as a result of the proposed development exceed, 4,000 square metres; (b) external appearance where the development height is above 10 metres, visible from the highway and where the new erection or extension for single living accommodation will be higher than the highest existing single living accommodation on the site, or for a non-residential building which will be higher than the highest existing non-residential building on the site; or (c) cases where both circumstances apply (under a and b) and prior approval is then required in relation to siting, scale and external appearance.

7.18 The Class TA permitted development right makes explicit reference to a fee payable for an application for prior approval and it is therefore necessary to introduce a new prior approval fee through these Regulations. A £120 fee (inclusive of the 25% fee increase) would contribute towards the administrative costs to local planning authorities in assessing these types of applications. A fee of £120 is considered an appropriate fee to charge as this is the same level as the fee for other applications for prior approval where a similarly limited number of additional matters are required to be considered by the local planning authority.

Transitional Provision and Commencement

7.19 The increased and new fees introduced by this instrument will be payable in respect of valid applications submitted to a local planning authority on or after the date this instrument comes into force. It will have no retrospective effect. Regulation 1 of these Regulations makes provision for a 28-day period after this instrument is made before it comes into force which is intended to provide time for local planning authorities to put the mechanisms and communications in place for applicants to be aware of and pay the new fees. We will notify local planning authorities to inform them when this instrument is made and the date when the new fees can be charged.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The 2012 Regulations consolidated 12 statutory instruments dating back to 1989. This is the eighth amending instrument to the 2012 Regulations. There are no current plans for a consolidation.

10. Consultation outcome

10.1 The proposals for all provisions in these Regulations were consulted on in the consultation *'Stronger performance of local planning authorities though an increase in planning fees'* which ran from 28 February to 25 April 2023. There were 495 responses to the consultation in total, of which 226 responses were from local planning authorities and 172 responses were from developers and landowners, other businesses and planning professionals. A summary of the responses to the consultation and the government's response will be available at: https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation

National fees increase and indexation

10.2 There were 453 responses in relation to the 35% fee increase for major applications, 429 responses in relation to the 25% fee increase for householder applications and 432 responses in relation to the 25% fee increase for all other applications. In all cases, there was strong support for the proposed fee increases, often citing concerns about resourcing in local planning authorities. Support was strongest amongst local planning authorities but there was also considerable support from developers and landowners, other businesses and planning professionals so long as increased fees lead to performance improvements in local planning authorities. There was also strong support among the 453 responses from local planning authorities, developers and landowners and other businesses to the introduction of an indexation mechanism for planning fees.

10.3 Only a limited number of respondents did not support the proposed fee increases, with 89 of those considering the proposed increase of 35% to be too high and 17 respondents considering the proposed increase of 25% for minor applications (excluding householders) to be too high. A total of 70 respondents considered that fees for major applications should either be increased by a higher amount or set at full cost recovery. 16 respondents, including the Local Government Association, considered that fees should be set locally by local planning authorities.

10.4 As set out above, the proposed fee increase is considered to represent a proportionate and measured approach to provide additional income to local planning authorities without significantly impacting on applicants, particularly small businesses and householders. It is considered appropriate to continue to set planning fees centrally as this provides much needed certainty and consistency for all local planning authorities and applicants.

Removal of exemptions allowing a 'free-go' for repeat applications

10.5 160 of the 418 responses to the proposal to remove exemptions allowing a free-go for repeat applications supported the proposal, with a further 74 respondents favouring a reduced fee. There was strong support from local planning authorities for the removal of the free go on the basis that such applications still have the same resource burden. 143 respondents did not support the removal of the free-go, the majority of which were developers and landowners, and planning professionals who highlighted the benefits of the free-go in enabling negotiations with local planning authorities and allowing schemes to be withdrawn and resubmitted without facing an additional fee.

10.6 Whilst the government recognises that a free-go does enable applicants and local planning authorities to facilitate amendments and improvements to schemes, it is considered that this is best undertaken at a pre-application stage to ensure that high-quality schemes are submitted first time round. If an applicant wishes to submit a repeat application, it is considered appropriate for the application to attract the same fee as the earlier application in recognition of the similar resource requirements it would have of the local planning authority.

Reducing the 'Planning Guarantee' period for non-major applications

10.7 Of the 402 responses to the proposal to reduce the Planning Guarantee period to 16 weeks for non-major applications, there was a broadly equal number of respondents in support and not in support of the proposal. The majority of respondents in support of reducing the Planning Guarantee period represented applicants who considered that

mirroring the statutory determination periods was sensible and could encourage more timely decision-making. The majority of respondents not in support of reducing the Planning Guarantee period were local planning authorities, on the basis that it remained challenging to determine applications within the reduced Planning Guarantee period due to a lack of resources.

10.8 The national planning fees increase introduced by these Regulations will increase resources for local planning authorities to determine planning applications in good time. The government therefore considers that it is right that the Planning Guarantee period should be reduced for non-major applications to more closely reflect the shorter statutory determination period and to encourage more timely decision-making.

Prior approval fee for development by the Crown on a closed defence site

10.9 There was majority cross-sector support from the 364 responses to the proposed new £120 fee for applications for prior approval for development by the Crown on a closed defence site, chiefly on the grounds of fairness in order to bring the Crown and Defence applications in line with other prior approval applications.

10.10 A limited number of respondents suggested the prior approval fee should be higher than £120 to be more representative of the work required by local planning authorities. However, a fee of £120 is considered to meet the right balance between encouraging development and contributing towards the costs to local planning authorities in determining such applications.

11. Guidance

11.1 The Government has published guidance on Fees for Planning Applications at: https://www.gov.uk/guidance/fees-for-planning-applications. This will be updated and made available following the coming into force of this instrument.

12. Impact

12.1 A full Impact Assessment of the national fees increase and indexation, including removal of the free-go for repeat applications and reduction of the Planning Guarantee for non-major applications is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The impact of the new £120 prior approval fee for applications for prior approval for development by the Crown on a closed defence site has not been monetised as this measure represents a within government transfer and has no business impact.

12.2 Whilst there is an impact on business, charities or voluntary bodies through increased fees, this is not considered to be significant. Nationally set planning application fees have not been increased since 2018 and the level of increase is estimated to represent a small proportion, less than 1%, of overall development costs. The £120 fee for applications for prior approval for development by the Crown on a closed defence site is a new cost to the Crown, but one that negates the need to submit a planning application. The removal of the free-go for repeat applications could impact on business or charities who otherwise would have been entitled to an exemption, but does not impact on the fee that should be paid with an earlier application. The reduction of the Planning Guarantee for non-major applications would have a positive impact for applicants who would be eligible for a refund if applications were not determined within 16 weeks, unless an extension of time has been agreed.

12.3 In relation to the impacts on the public sector, there will be a benefit through increased planning fees and the removal of exemptions allowing a free-go for repeat applications as this will provide additional resource for local planning authorities. Local planning authorities will also benefit from the introduction of a new £120 fee for applications for prior approval for development by the Crown on a closed defence site which will contribute towards the cost to local planning authorities to process these applications. Currently, there is no fee for such applications. The reduction of the Planning Guarantee may have an impact on local planning authorities through a loss of income if more refunds of the planning fee are necessary. However, this would only apply if the local planning authority does not determine an application within the required 16-week time period and no extension of time has been agreed.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the decision for no specific action is that the fee increase of 25% for all other applications, compared to 35% for applications for major development, will minimise the impact on small businesses. It is not anticipated that the increased fees or the other provisions in these Regulations will have a significant effect on the costs for business.

14. Monitoring & review

14.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2015 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. A review of the 2012 Regulations was undertaken in December 2017 and concluded that the objectives of the 2012 Regulations remained appropriate and were best met within a framework of a national fee regime. The published review can be found at: https://www.legislation.gov.uk/uksi/2012/2920/pdfs/uksiod_20122920_en.pdf

14.2 The Government continues to keep under review the planning system and associated fees and maintains discussion with local planning authorities and users of the planning system.

15. Contact

15.1 Stephen Gee at the Department for Levelling Up, Housing and Communities. Telephone: 0303 444 0013 or email stephen.gee@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lucy Hargreaves, Deputy Director for Planning Development Management, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, Minister of State for Housing and Planning at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.