

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT)
REGULATIONS 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These draft Regulations make amendments to the Community Infrastructure Levy Regulations 2010 (S.I. 2010/948 as amended by S.I. 2011/987 and 2012/2975).

- 2.2 These Regulations make provision related to Mayoral Development Corporations and neighbourhood funding. Where chargeable development takes place in an area for which there is a parish or community council, a proportion of the Community Infrastructure Levy will pass to that council. Where there is no parish or community council, the charging authority will retain the funds to spend on behalf of the community. They also provide for Mayoral Development Corporations to become, and cease being, the charging authority for an area, and make related amendments to reporting requirements.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

None.

4. **Legislative Context**

- 4.1 The Community Infrastructure Levy Regulations 2010, as amended, provide for a charge to be levied on development under Part 11 of the Planning Act 2008 (“the 2008 Act”). These draft Regulations make amendments to the operation of the Community Infrastructure Levy to implement provisions brought forward in the Localism Act 2011 (“the 2011 Act”).

- 4.2 Chapter 2 of Part 8 of, and Schedules 21 and 22 to, the 2011 Act introduced Mayoral Development Corporations. Under section 197, the Mayor of London can designate any area of land in Greater London for which there is to be a Mayoral Development Corporation. Under section 202, a Mayoral Development Corporation can be given a range of planning powers.

4.3 Paragraph 61 of Schedule 22 to the 2011 Act amended section 206 of the 2008 Act. The amendment to section 206(5) means that a Mayoral Development Corporation is a charging authority only if they exercise all of the powers under Part 2 of the Planning and Compulsory Purchase Act 2004 (local development) in respect of their area. The inserted section 206(6) allows Community Infrastructure Levy Regulations to make transitional provision for when a Mayoral Development Corporation becomes, or cease to be, a charging authority. These Regulations make that provision.

4.4 Section 115 of the 2011 Act inserted sections 216A and 216B into the 2008 Act. Section 216A allows Community Infrastructure Levy Regulations to require that a charging authority must pass a proportion of Community Infrastructure Levy funds raised to another body. These Regulations specify that a proportion of funds must be passed to the parish or community council for the area in which all or part of a chargeable development takes place. The recipient of such funds has wider spending powers than the charging authority (section 216A(2) of the 2008 Act).

4.5 Section 216B of the 2008 Act makes provision for areas not covered by regulations made under section 216A. In those areas, section 216B allows the wider spending powers to be given to the charging authority in relation to a proportion of Community Infrastructure Levy funds. These Regulations give those powers to charging authorities in relation to development that takes place in an area for which there is not a parish or community council.

4.6 Chapter 3 of Part 6 of, and Schedule 9 to, the 2011 Act provide for neighbourhood planning in England. Part 1 of Schedule 9 sets out the procedure for making Neighbourhood Development Orders (including Community Right to Build Orders) and Part 2 sets out the procedure for making Neighbourhood Development Plans.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

Nick Boles, Parliamentary Under Secretary of State (Planning) for the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Community Infrastructure Levy (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Part 11 of the Planning Act 2008 provides for regulations to allow the imposition of the Community Infrastructure Levy. The purpose of the Community Infrastructure Levy is to ensure that the costs of providing infrastructure to support the development of an area can be funded (wholly or

partly) by levying a charge on the owners or developers of land when development takes place.

7.2 The Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010 and enabled local planning authorities (and the Mayor of London) to raise a levy on new development in their area. This levy is to be used to fund infrastructure to support the development of the area where it is collected – such as roads, schools, hospitals and parks.

Mayoral Development Corporation Regulations

7.3 These regulations allow Mayoral Development Corporations to charge the Community Infrastructure Levy. Mayoral Development Corporations can be given the functions of local planning authorities and, where they do so, they will be able to charge the Community Infrastructure Levy as other local planning authorities can.

7.4 Over time, Mayoral Development Corporations will come into existence and be dissolved. The regulations make provision for when this happens. As well as making sure that Mayoral Development Corporations can get a charging schedule up and running as soon as possible, it is important to ensure that communities and charging authorities do not lose out when a Mayoral Development Corporation is created or dissolved.

7.5 These regulations:

- allow the Mayor of London, in advance of a Mayoral Development Corporation being formally established, to carry out the preparatory work for it to be able to approve a charging schedule. This will enable the Mayoral Development Corporation to start charging the Community Infrastructure Levy as soon as practical after it becomes the charging authority for its area (regulation 6(1), which inserts new regulation 11A);
- ensure that London borough councils that have granted planning permission for a development are still able to collect any Community Infrastructure Levy due in relation to that development if the actual work starts after a Mayoral Development Corporation becomes the charging authority for that area (and vice versa, where a Mayoral Development Corporation granted the planning permission);
- provide for a Mayoral Development Corporation, when it is winding down or giving up its plan making powers, to make arrangements for the collection of outstanding Community Infrastructure Levy liabilities (regulation 9(1), which inserts new regulations 63A and 63B).

Neighbourhood funding regulations

Regulation 8 - amendment to Part 7 (application of CIL)

7.6 Regulation 8(1), (3) and (5) inserts regulations 58A, 59A to 59F and 62A into the Community Infrastructure Levy Regulations. Regulation 58A sets out the definitions used in this Part.

7.7 Regulations 59A and 59B set out the requirements for charging authorities to pass a proportion of Community Infrastructure Levy receipts to parish councils in England and community councils in Wales. This will help communities to accommodate the impact of new development and strengthen the role and financial autonomy of neighbourhoods.

7.8 The Mayor of London is exempt from the neighbourhood funding requirements. This is because the London-wide Mayoral Community Infrastructure Levy is only charged for strategic transport infrastructure, which cannot be effectively provided through neighbourhood funding. However, London borough councils would be required to pass the neighbourhood funding proportion on in the same way as other charging authorities in England.

7.9 In England, in areas with a Neighbourhood Development Plan (as introduced in the Localism Act) in place charging authorities must pass on twenty five per cent of the Community Infrastructure Levy receipts related to the proportion of the development that is in that part of the parish or community council's area. We are requiring a larger, and uncapped, amount to be passed to areas with a Neighbourhood Development Plan in place because they have embraced positive planning for future development in their local area. In areas without a Neighbourhood Development Plan, this also applies where a development was granted permission by a Neighbourhood Development Order (including a Community Right to Build Order). This both rewards and incentivises neighbourhood planning. Neighbourhoods that have organised themselves to bring forward a plan or order are already positively engaged with the planning process, so it is right they are given more control over this aspect of planning for development. Offering a greater incentive for neighbourhoods taking a proactive approach to planning by adopting neighbourhood plans and orders should also help nudge others in this direction.

7.10 In Wales, and in areas in England without neighbourhood planning in place, charging authorities must pass on fifteen per cent of the Community Infrastructure Levy receipts related to the part of the development that is in that part of the parish or community council's area.

7.11 In order to prevent excessive amounts being passed on, the payments to areas without neighbourhood planning in place will be capped to £100 per council tax dwelling, per year. This amount will be indexed using the national

All-in Tender Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors.

7.12 Where a development crosses a parish or community council's boundary each parish or community council will receive a proportionate amount of the Community Infrastructure Levy payment based on how much of the development is in their area.

7.13 There could be occasions when development crosses more than one parish or community council area and where one or more of those areas has a Neighbourhood Development Plan in place (so receive twenty five per cent) and one or more areas doesn't have a Neighbourhood Development Plan in place (so receive fifteen per cent). There could also be occasions where part of a development is granted planning permission by a Neighbourhood Development Order, and part is not. In these cases the local council will receive a proportionate amount of the Community Infrastructure Levy payment based on how much development is in an area for which there is a Neighbourhood Development Plan, or was granted permission by a Neighbourhood Development Order.

7.14 Parish and community councils will retain the flexibility to receive less or even no money directly, at their own request. This is important for cases where the priority for both the charging authority and the parish or community council is some strategic infrastructure, which might not even be located in the area of the parish or community council.

7.15 Regulation 59C gives parish and community councils greater freedom over what to spend the neighbourhood funding element on. These wider spending powers are important because they allow the community to decide what they need to help mitigate the impact of development.

7.16 Regulation 59D sets out the payment periods associated with the neighbourhood funds that are passed directly to parish and community councils. The charging authority and the parish or community council have the freedom to set their own timetable for payments. However, where they do not have an agreement in place these regulations set out a default timetable. This is to ensure that payments are made in a timely manner.

7.17 Regulation 59E covers the arrangements for when the Community Infrastructure Levy has been passed to a parish or community council but then needs to be recovered by the charging authority. It is important to have these regulations in place to ensure that Community Infrastructure Levy money is applied appropriately in supporting the development of the parish or community council's area. If the parish or community council has misapplied the funds by not using them to support the development of their area within 5 years, or by using them for some other purpose, the charging authority will be able to recover this money to spend on supporting the development of that area.

7.18 Regulation 59F provides for the neighbourhood funding element in areas which do not have a parish or community council. In these places the charging authority will retain the Community Infrastructure Levy receipts. We will set out in guidance a requirement that the charging authority engages with the local community to agree how this money should be spent.

7.19 The charging authority will have the same wider spending powers as parish and community councils in relation to the neighbourhood funding element of the Community Infrastructure Levy. This allows local communities and the charging authority greater freedom over what to spend the neighbourhood funding element on.

7.20 The amount of Community Infrastructure Levy receipts that make up the neighbourhood funding element in areas without parish or community councils will be the same amounts as in areas with parish or community councils.

7.21 These Regulations also require charging authorities to report on their Community Infrastructure Levy income and expenditure more openly to ensure that their residents see and understand how the contributions are being used. This transparency will be essential if the Community Infrastructure Levy is to successfully incentivise residents to accept new development and will help ensure that councils are open and accountable to their residents for their spending decisions.

7.22 New regulation 62A sets out the arrangements for reporting by parish and community councils. To ensure transparency parish and community councils must publish each year their total Community Infrastructure Levy receipts; their total Levy expenditure; a summary of Levy expenditure including those things to which the Levy has been applied and the levy expenditure on each; and the total amount of Levy receipts retained at the end of the reported year from that year and previous years.

7.23 Parish and community councils should be able to combine reporting of the Community Infrastructure Levy with other reports they already produce. The regulation sets out where the parish or community council should publish their report and that they must send a copy of the report to the charging authority annually (when they have received Community Infrastructure Levy revenues).

Regulation 10 Amendment to Part 9 – enforcement

7.24 This regulation sets out that for the purposes of passing funds to parish or community councils, surcharges are not counted as the Community Infrastructure Levy.

Regulation 11 Amendment to Part 11 – planning obligations

7.25 This regulation ensures that the limitations on the use of planning obligations do not apply in relation to Community Infrastructure Levy

neighbourhood funding. This is because the local community could choose to spend the Community Infrastructure Levy on a wide range of things and we do not want this to restrict the way charging authorities can use section 106 planning obligations.

Regulation 12 – transitional provisions: neighbourhood funding

7.26 This regulation ensures that the neighbourhood funding provisions do not apply if a liability notice is issued in relation to a development before these regulations come into force.

8. Consultation

8.1 We consulted on these changes between October 2011 and December 2011. We received over 400 responses. Local government accounted for 43% of the responses, parish councils made up 30%, 4% of respondents identified themselves as developers and the remaining 23% of responses were from other individuals or organisations. We are grateful for those submissions and these Regulations have been developed to reflect many of the key messages in the consultation responses.

8.2 Responses on the neighbourhood funding policies were largely supportive of enabling local authorities more flexibility on an equivalent proportion of the funding where parish or community councils do not exist to benefit from the neighbourhood funding element. The responses to the amount of Community Infrastructure Levy receipts which should make up the neighbourhood funding element were mixed.

8.3 The majority of responses also supported allowing Mayoral Development Corporations to charge the Community Infrastructure Levy. The regulations set out how this will work and statutory guidance will address the details of how Mayoral Development Corporations and London borough councils will operate together once the Mayoral Development Corporation starts charging.

9. Guidance

Alongside these Regulations, the Department will issue revised guidance. Among other things, this guidance will cover how charging authorities should use the funds that regulations made under section 216B apply to (regulation 7(3), new regulation 59E).

10. Impact

10.1 The impact on business is limited to those who develop land or own land that is developed. The changes will not change the way developers or owners of land pay the Community Infrastructure Levy.

10.2 The amendments in these Regulations have no impact on charities or voluntary bodies.

10.3 We will support local authorities, parish and community councils and those with neighbourhood plans in place by providing guidance about these changes and what they mean for them.

10.4 The Department is not required to undertake a formal Impact Assessment; we have however considered impacts throughout our policy development.

11. Regulating small business

The legislation applies to small business as set out in paragraph 10.1.

12. Monitoring & review

The Community Infrastructure Levy will be reviewed in 2015; five years after the regulations enabling it came into force. The review will assess whether the Community Infrastructure Levy has increased the funds available to local authorities for infrastructure, and the extent to which this has supported development.

13. Contact

The Community Infrastructure Levy team at the Department for Communities and Local Government can answer any queries regarding this instrument.
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