

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT)
REGULATIONS 2014

2014 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**

These draft Regulations amend the operation of the Community Infrastructure Levy, a levy on new development. They also introduce new exemptions for certain residential development, and restrictions on the ability of local planning authorities to require developers to enter into highways agreements where the levy applies.

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

None.

- 4. Legislative Context**

4.1 The Community Infrastructure Levy Regulations 2010 (“the principal Regulations”), as amended, provide for a charge to be levied on development under Part 11 of the Planning Act 2008.

4.2 Section 278 of the Highways Act 1980, as substituted by section 23 of the New Roads and Street Works Act 1991, provides for highways agreements. These are agreements between the highway authority and any person for that person to fund works to the highway. The bodies that are highway authorities are set out in section 1 of that Act.

- 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 2014 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 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. The principal Regulations 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.

7.2 The purpose of these Regulations is to improve the administration of the levy and make its application fairer and more transparent. The following paragraphs explain the changes made by these draft amendment Regulations.

Rate setting

7.3 In order to ensure transparency and rigour in the process of setting levy rates, regulation 5(3)(a) requires a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across its area.

7.4 Regulation 5(2) amends the provisions on setting differential rates to enable these to be set by reference to the scale of development. This is intended to give authorities greater flexibility in setting rates to reflect local circumstances and the impact of the levy on the viability of development.

7.5 Regulation 13 applies transitional measures so that changes related to the charge setting process will not apply to authorities who have already published a draft charging schedule.

Planning obligations and highway agreements

7.6 Regulation 5(1) and (3)(b) ensures that if the charging authority makes a draft list of the infrastructure that they intend to fund through the Levy, it must be used to inform their charging schedule. This is to increase transparency in how it is intended to raise infrastructure contributions from developers, and in particular what will continue to be funded through planning obligations.

7.7 Regulation 12(d)(iv) extends the transition period for further limitations on the use of pooled planning obligations from April 2014 to April 2015 to allow charging authorities more time to take into account both the reforms set out in these Regulations and changes the Government has already introduced.

7.8 Regulation 12(a) and (b) also ensure that agreements under section 278 of the Highways Act 1980 (highway agreements) cannot be used to fund infrastructure for which the levy is earmarked, in order to ensure developers do not contribute twice to the same infrastructure. It is proposed that this measure will not however restrict the use of section 278 agreements by the Highways Agency, Transport for London or Welsh Ministers.

Payment of the Levy

7.9 In order to ensure value for money and provide certainty of delivery of infrastructure, regulation 9(6) provides a basis for giving charging authorities the option to accept payments in kind through the provision of infrastructure either on-site or off-site for the whole or part of the levy payable on a development.

7.10 Regulation 4 extends the provisions for phasing of levy payments to all types of planning permission to deal fairly with more complex developments. In order to provide additional certainty, regulation 4 amends the date from which the levy liability is calculated in relation to full planning permissions.

7.11 Regulation 6 changes the test applied to existing buildings making it easier for developers to bring vacant buildings back into use without incurring a liability to pay levy charges. It also allows credit for existing buildings to be transferred to later phases of phased permissions.

7.12 Regulation 9(9) ensures that levy charges paid in relation to development that has begun but not been completed can be credited against alternative development on the same site in order to ensure developers are not charged twice for the impact of the development on infrastructure.

Reliefs and exemptions

7.13 In order to help support the Government's objectives for affordable housing, regulation 7(4) substitutes regulation 49 of the principal Regulations to ensure social housing relief is applicable for certain rental housing that is provided at no more than 80% of market rent. Regulation 7(5) extends social housing relief to give charging authorities the discretion to apply social housing relief to discounted market sales in their areas. Regulation 7(5) also enables relevant communal development to benefit from social housing relief.

7.14 Regulation 7(11) provides charging authorities with greater flexibility to apply exceptional circumstances relief provisions, in order to address local concerns about impact on development viability, by removing the requirement that this can only be granted where there is a section 106 agreement in place that imposes a higher contribution to infrastructure costs than the levy payment.

7.15 In order to make it easier for people to build or extend their own homes, regulation 7(10) introduces an exemption for self builders from the levy, and regulation 7(1) introduces an exemption for residential annexes and extensions.

Appeals

- 7.16 To ensure fairness where planning permission is obtained for a development after it has been commenced, regulation 11(2) provides for reviews and appeals of the chargeable amount in certain cases after development has commenced.

8. Consultation outcome

8.1 A consultation exercise seeking interested parties' views on the proposed further regulatory reforms to the Community Infrastructure Levy took place between 15 April 2013 and 28 May 2013. A total of 289 responses

were received from a range of local planning authorities, private developers, planning specialists and others.

8.2 Overall there was broad support for the consultation propositions and the objectives of making the levy operate more effectively, flexibly and with greater transparency without the need for further major reform. The proposed changes to rate setting, payment of the levy and appeals were broadly supported by respondents across the sector.

8.4 The proposed updates to existing reliefs for affordable housing providers were generally supported by respondents. There was a more balanced response to the proposed relief for self build housing between those welcoming the relief and those expressing concern that this could lead to an unfair advantage for self builders. Some also raised the issue of whether extensions to properties and annexes should be exempted. Having considered the consultation responses the Government is minded to make it easier for people to build their own homes by introducing exemptions for self build housing and for extensions and annexes.

8.5 A summary of the consultation responses and the government response has been published on the Government website and can be found at: www.gov.uk/government/consultations/community-infrastructure-levy-further-reforms.

9. Guidance

Revised Community Infrastructure Levy guidance will be published alongside the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those who develop land or own land that is developed. The changes improve flexibility and fairness in the application of the levy and update and add to both discretionary and mandatory reliefs from the levy.

10.2 The impact on the public sector is to give local authorities further flexibility in the application of the levy, to improve consultation measures and provide for greater clarity and transparency in the levy rate setting process and in the interaction between the levy and other measures which require developers to provide for infrastructure.

10.3 An impact assessment was prepared for the Community Infrastructure Levy Regulations 2010 and laid in Parliament on 10 February 2010. No formal impact assessment was produced for these Regulations.

11. Regulating small business

These Regulations apply to small businesses as set out in paragraph 10.1.

12. Monitoring & review

The Community Infrastructure Levy will be reviewed in 2015. This will assess whether the levy has increased the funding available to local planning authorities for infrastructure, the level of infrastructure provided, and the extent to which this has supported development. The exemption for self build housing will be reviewed three years after these Regulations come into force.

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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