
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 11 of the Planning Act 2008 provides for the imposition of a charge known as the Community Infrastructure Levy (“the Levy”). The Community Infrastructure Levy Regulations 2010(1) (“the CIL Regulations”) implement the detail of the Levy. These Regulations amend the CIL Regulations. The CIL Regulations and these Regulations apply in relation to England and Wales only.

The changes made by these Regulations can be grouped into five broad categories: the setting of the Levy; calculation and payment of the Levy; reliefs and exemptions from the Levy; the relationship between the Levy and planning obligations and highway agreements; and appeals. The main amendments are detailed below.

Setting the Levy

Regulation 5(2) allows charging authorities to set differential rates by reference to the intended floorspace of development, or the intended number of units or dwellings.

Regulation 5(3)(a) amends the test for setting Levy rates.

Regulation 5(3)(b) provides for a charging authority’s draft list of the infrastructure it intends to fund through the Levy to be used to inform the drafting of its charging schedule.

Calculating and paying the Levy

Regulation 4 ensures that if any planning permission is phased, then each phase will be a different chargeable amount. Currently, this only applies in relation to outline planning permissions. Regulation 4 also changes the date at which the CIL liability is calculated for non-phased permissions. The date will now be when the permission was granted, rather than when the pre-commencement conditions are discharged.

Regulation 6 substitutes the existing regulation 40, to extend the range of existing buildings in relation to which a credit against the Levy can be given. Rather than part of a building having to be in use for a six month period in the previous 12 months, it will have to be in use for a six month period in the previous 3 years. A building will also be able to get credit where planning permission would not be required for the building to be used in the same way as the completed development will be used. The substituted regulation 40 also provides for certain credit for existing buildings that are demolished in one phase to be carried over into future phases.

Regulation 9(7) allows the Levy to be paid through the provision of infrastructure. Such an arrangement must be made in accordance with the charging authority’s published policy.

Regulation 9(9) applies if the Levy is paid in relation to a building that is not finished. The amount of Levy paid can be credited against the CIL due in relation to a revised scheme on the same site.

Exemptions and reliefs

Regulation 7(4) substitutes the existing regulation 49, to ensure that rental housing provided at no more than 80% of market rent will be eligible for social housing relief.

(1) [S.I. 2010/948](#) as amended by [S.I. 2011/987](#), [2012/2975](#) and [2013/982](#).

Regulation 7(5) provides for communal development, such as stairs, common rooms and car parking, to benefit from social housing relief. This is done on a proportional basis where the communal area will be used by the occupants of qualifying dwellings and other relevant development.

Regulation 7(5) also introduces a new discretionary social housing relief for certain discount market sale housing. In order to qualify, this housing must be allocated in accordance with the charging authority's published policy.

Regulation 7(7)(a)(i) and (c) allows a developer to apply to the collecting authority for a recalculation of their liability if the provision of social housing in a development changes after commencement of that development.

Regulation 7(6) substitutes the existing regulation 50, to ensure that the calculations for social housing relief are consistent with the changes to the calculations under regulation 40.

Regulation 7(11) amends the requirements relating to the discretionary relief for exceptional circumstances. There will no longer be a requirement for the cost of complying with the linked planning obligation to be greater than the relevant chargeable amount.

Regulation 7(10) introduces a new mandatory exemption for self-build housing, including communal development. This also includes a three year clawback period starting from certification of completion. Regulation 7(1) introduces new mandatory exemptions for residential annexes and extensions.

Highway agreements and planning obligations

Regulation 12(a) and (b) restricts the use of highway agreements under section 278 of the Highways Act 1980. A local planning authority will not be able to use its planning powers to require a developer to enter into such an agreement in relation to infrastructure that the charging authority intends to fund through the Levy. This will operate by reference to the list produced by the charging authority for the purposes of regulation 123.

Regulation 12(d)(iv) delays by a year the date that the pooling restrictions on planning obligations will apply nationally.

Appeals

Regulation 11(2) and (3) allows applications to review and appeal the chargeable amount to be made after development has commenced if planning permission for that development was only granted after commencement.

Regulation 11(5) changes the time in which parties must comment on each other's representations. These Regulations also make some minor amendments to improve the drafting of the CIL Regulations, and consequential on the main amendments highlighted above. They also make related transitional provisions.

The Department is not required to produce an impact assessment in relation to the community infrastructure levy as it is a financial instrument.