

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

**2011 No. 987**

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.
2. **Purpose of the instrument**
  - 2.1 These Regulations make amendments to the Community Infrastructure Regulations 2010 (S.I. 2010/948), which provide for the imposition of a charge called the Community Infrastructure Levy on new development.
  - 2.2 Amendments include allowing councils to set their own flexible payment deadlines and offer developers the option to pay the Community Infrastructure Levy by instalments, and removing the £50,000 minimum threshold for payments in kind, so charging authorities can accept a payment in kind in respect of any liability payable to them. Other amendments reduce administrative burdens on councils and developers, and make minor changes to clarify and correct the operation of the regulations. These are explained in more detail below.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The Community Infrastructure Levy Regulations 2010 made the first use of powers under Part 11 of the Planning Act 2008. The purpose of these amendment regulations is to create more flexibility for local authorities to decide their own Community Infrastructure Levy payment policies, to reduce administrative burdens and to make other minor amendments to clarify the operation of the Community Infrastructure Levy Regulations 2010.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
  - 6.1 The Minister for Decentralisation has made the following statement regarding Human Rights:

In my view the provisions of the Community Infrastructure Levy (Amendment) Regulations 2011 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 policy purpose 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 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.

7.2 The Government announced its intention to retain and reform the Community Infrastructure Levy on 18 November 2010<sup>1</sup>. The Minister for Decentralisation set out proposals to give councils and communities more control over how new infrastructure is funded, and to ensure that more of the money directly benefits the neighbourhoods where new developments are built. These amendment regulations form part of a package of measures to deliver these reforms.

7.3 Other changes to reform the Community Infrastructure Levy require primary legislation. Clauses in the Localism Bill (Bill 126) include provision to:

- provide for regulations to set out the evidence a charging authority is to consider in preparing their charging schedule, which is the instrument that sets Community Infrastructure Levy charges within an area, and how that evidence is to be used (see clause 94 (2));
- rebalance the relationship between a charging authority and the independent examiner. Examiners will still be responsible for checking that councils have complied with the law and councils will be required to correct any non-compliance that the examiner identifies, but the council will have discretion over how this is done (see clause 94(3)-(8));
- clarify the general purpose of the Community Infrastructure Levy, confirming that it may be spent on the ongoing costs of providing infrastructure (clause 95(2)), and provide for regulations to set out the maintenance, operational and promotional activities that may or may not be funded by the Community Infrastructure Levy (clause 95(3)); and
- provide for regulations to direct charging authorities to pass funds raised through the Community Infrastructure Levy to other bodies to spend on infrastructure (clause 95(4)).

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<sup>1</sup> The announcement is available at:

<http://www.communities.gov.uk/news/corporate/176860911>

7.4 The following paragraphs explain the changes made by these amendment regulations.

#### **Regulations 4(1) – definition of key terms, and 7 – chargeable amount**

7.5 Regulations 4(1) and 7 make clarificatory amendments to ensure the regulations deliver the policy intention that any development that affects only the interior of an existing building is not subject to a Community Infrastructure Levy charge.

7.6 The purpose of these amendments is to ensure equal treatment of any development to the interior of buildings. It is already clear that most internal only development is not liable to the Community Infrastructure Levy, as it does not require planning permission (as defined by regulation 5 of the Community Infrastructure Levy Regulations 2010).

#### **Regulations 3 - introductory, 4(2)-(3) - definition of key terms, 8 – exemptions and relief, 9(5) - administration, and 10 – enforcement**

7.7 Regulations 3, 4(2)-(3), 8, 9(5) and 10 together strengthen the powers of collecting authorities to enforce Community Infrastructure Levy liabilities where a notice of chargeable development should have been submitted but was not. Collecting authorities may request information about a development commenced where they have not received prior notification about the development. If that information is not provided, the collecting authority may then enter the development to gather the necessary information. If the collecting authority determines that a Community Infrastructure Levy is due, it may issue a notice of chargeable development setting out the amount due.

#### **Regulation 5 – charging schedules**

7.8 This regulation reduces the administrative burden on charging authorities. The change requires them to send any modifications they make to the draft charging schedule (the document that sets out how they propose to charge the Community Infrastructure Levy in their area) to the bodies they are required to consult, removing a requirement to send a copy to everyone they invited to make representations. The regulation instead requires the authority publish the modifications on their website. The change is made because an authority must invite every resident in its area to make representations and a requirement to notify each and every one of these people of any subsequent change was unnecessarily onerous.

#### **Regulation 6 – liability**

7.9 Regulation 6 clarifies how the value of a material interest in land is to be assessed for the purpose of calculating an owner's liability to pay.

#### **Regulation 9 – administration**

7.10 Regulations 9(1)-(4) and (8)-(9) simplify the administration and enforcement of the Community Infrastructure Levy and make minor changes to ensure it operates correctly. Firstly, they ensure that developers do not have to submit notices of chargeable development or commencement notices where development is minor and will consequently not result in a charge. Secondly, they reduce the amount of information that developers must submit before commencing development under general consent.

7.11 Regulation 9(10) allows a landowner to request a suspension of their Community Infrastructure Levy demand notice in specified situations. Planning law allows developers to apply for planning permission on land they do not own. The Community Infrastructure Levy Regulations 2010, however, do not currently allow any resulting liability to be suspended. This may result in unfairness for landowners in circumstances where planning permission is granted in respect of their land, but they do not agree to any development taking place. The amendment allows such landowners to request a suspension of their liability. The collecting authority, where they are satisfied the criteria set out in the regulation are met, must grant the request. Once granted, a suspension notice remains in force until the development commences or the land is transferred to another owner.

7.12 Regulations 9(6)-(7), (11) and (13), provide Community Infrastructure Levy charging authorities the power to set a policy to allow the payment of liabilities by instalment. Where a charging authority chooses to set such a policy the regulations require that they publish the instalment policy, allow them to alter a published policy and set out requirements to notify interested parties of the policy and changes to it. The purpose of the change is to give greater flexibility to authorities in how they choose to collect Community Infrastructure Levy liabilities, whilst at the same time ensuring that any policy is transparent, available to interested parties and that it is applied openly and fairly to all parties liable to pay a charge.

7.13 Regulation 9(12) removes a restriction on payments in kind and allows charging authorities to accept land as a payment in respect of any level of Community Infrastructure Levy liability. Previously they could only accept such payments in kind for development that gave rise to a liability greater than £50,000.

### **Regulation 11 – appeals**

7.15 This change provides the person hearing an appeal made under the regulations with the flexibility to extend the period in which the parties can make representations. This flexibility will be useful in cases that are more complex.

### **Regulation 12 – planning obligations**

7.16 Regulation 12 clarifies that planning permission granted under Section 73 of the Town and Country Planning Act 1990 is not exempt from the limitations on the use of planning obligations imposed by the Community

Infrastructure Regulations 2010. Section 73 of the Act allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission.

7.17 Charging authorities are able to pool funds from up to five planning obligations for a piece of infrastructure. Regulation 12(2) clarifies that only planning obligations made from 6 April 2010 onwards have to be considered in determining how many planning obligations have already contributed to a piece of infrastructure.

## **8. Consultation outcome**

8.1 The Community Infrastructure Levy Regulations which came into force on 6 April 2010 were consulted on formally. These amendment regulations deal with a number of matters that were highlighted to us subsequent to the consultation and we have drawn on those responses in drawing up these amendment regulations. In addition, we have consulted key interested parties on these amendment regulations and have taken their views into account in finalising them, for example making minor changes to the amendments to the calculation of liabilities (regulation 7) and to the new provisions to allow the suspension of liabilities (regulation 9(10)) to improve their clarity.

## **9. Guidance**

9.1 The Government has published guidance on charge-setting procedures for the Community Infrastructure Levy, which it will review and update when the amendment regulations come into force. The Government has also published two information documents: “The Community Infrastructure Levy: an overview”<sup>2</sup> and “The Community Infrastructure Levy Summary”<sup>3</sup>.

## **10. Impact**

10.1 The impact of these changes on business is limited to those who develop land or own land that is developed. The changes reduce administrative requirements for minor development and allow local authorities to offer business the option to pay by instalments.

10.2 These amendment regulations have no impact on charities.

10.3 The regulations will impact on the public sector. Local authorities will be given more freedom to set instalment policies to suit their local area, and to accept payments in-kind at a level they deem appropriate. The changes reduce administrative burdens on local authorities, for example by removing requirements: for formal notices to be made to them in respect of minor development; to notify all residents of modifications to a draft charging

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<sup>2</sup> The Community Infrastructure Levy: An overview is available at:  
<http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy1>.

<sup>3</sup> The Community Infrastructure Levy Summary is available at:  
<http://www.communities.gov.uk/publications/planningandbuilding/cilsummary>

schedule; and to examine retrospective planning obligations back to 1990 in determining whether or not they can accept a further contribution to an infrastructure project through a planning obligation.

10.4 An Impact Assessment was prepared for the Community Infrastructure Levy Regulations 2010 and laid in Parliament on 10 February 2010. A further Impact Assessment has been prepared in respect of these Regulations and also the reforms to the Community Infrastructure Levy set out at paragraph 7.3 to this memorandum. This Impact Assessment was published on 31 January 2011<sup>4</sup> and copies may be obtained from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU.

## **11. Regulating small business**

11.1 The legislation applies to small business as described at paragraph 10.1

## **12. Monitoring & review**

12.1 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**

13.1 Paul Kirk at the Department of Communities and Local Government Tel: 030 3444 2892 or email: [paul.kirk@communities.gsi.gov.uk](mailto:paul.kirk@communities.gsi.gov.uk) can answer any queries regarding the instrument.

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<sup>4</sup> Localism Bill: Community Infrastructure Levy Impact Assessment:  
<http://www.communities.gov.uk/documents/localgovernment/pdf/1829714.pdf>