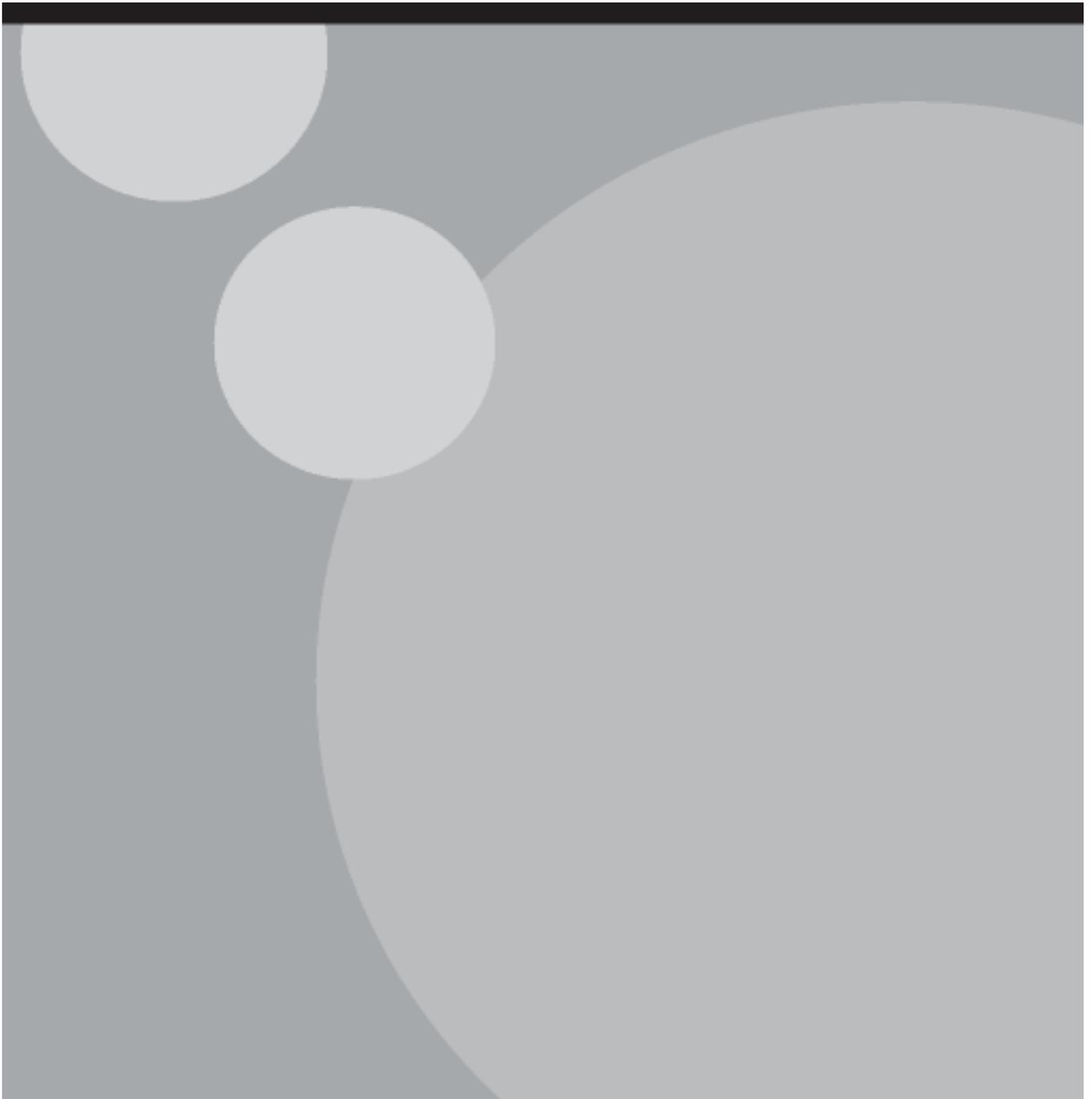




Community Infrastructure Levy – collection and enforcement

Information document



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This document is issued for information only.

It is not guidance issued under s. 221 of the Planning Act 2008 and local authorities are not required to have regard to it. It explains how the Community Infrastructure Levy collection and enforcement regulations work in practice. It should be read alongside a copy of Parts 4, 8, 9 and 10 of the Community Infrastructure Levy Regulations 2010 (as amended by the Community Infrastructure Levy (Amendment) Regulations 2011).

Chapter 1

Introduction

- 1.1 The Community Infrastructure Levy Regulations make provision for the effective collection of money and, where necessary, enforcement of collection of money. The provisions on collection arrangements are covered in Part 8 of the Regulations, and the enforcement provisions in Part 9. The provisions on liability to pay the Community Infrastructure Levy are in Part 4 of the Regulations.
- 1.2 It is vital that local authorities who are adopting the Community Infrastructure Levy understand and follow the correct collection and enforcement process. This information document is aimed at explaining the key process steps.
- 1.3 In summary, the collection process steps are:
- details of planning permission(s) must be shared between charging and collecting authorities (or teams within authorities) to determine whether development is chargeable
 - where planning permission is granted for development by way of a general consent, a notice of chargeable development from the developer or landowner must be submitted (unless the development is less than 100 square metres, or the chargeable amount is zero)
 - where planning permission has been granted or permission has been granted for development by way of a general consent, the collecting authority will expect to receive an assumption of liability from the developer, landowner or another interested party
 - the collecting authority then issues a liability notice to the developer, which sets out the charge due and details of the payment procedure
 - the relevant person(s) may assume liability to pay, and then submit a notice to the collecting authority setting out when development is going to start - a commencement notice
 - the collecting authority issues a demand notice to the developer, which sets out the payment due dates in line with the payment procedure

- it is then expected that on commencement of the development, the developer would follow the correct payment procedure
 - the collecting authority must then issue a receipt for each payment received, and transfer the funds to the charging authority (where that is different to the collecting authority).
- 1.4 The enforcement regulations are aimed at ensuring that the collection process runs smoothly, by giving collecting authorities the power to issue a range of surcharges, stop notices, and if necessary to recover funds by appropriate legal action.
- 1.5 It follows that collection and enforcement arrangements are supported by the right to appeal certain decisions.

Chapter 2

Collection

Planning permission information – regulations 77 and 78

- 2.1 When a local planning authority grants planning permission for what it considers to be a chargeable development, it must pass over details to the collecting authority. Regulations require that planning permission details are passed over within 14 days of granting permission. In most cases, outside of London and two-tier areas, the charging authority and the collecting authority will be the same. So the duty to supply information is not relevant. It is simply an internal matter of the team that granted planning permission handing the details over to the team responsible for collection.
- 2.2 If a local planning authority is unsure whether a planning permission is chargeable or not, they may wish to send over, or at least discuss, details of the permission with the collecting authority or team.
- 2.3 Collecting authorities also have the power to request relevant information from charging authorities, local planning authorities, the Secretary of State or the Infrastructure Planning Commission. Collecting authorities can also use any other information obtained under any other enactment to determine the correct charge, as long as it was not obtained by a committee of the authority in its capacity as a policy authority, or obtained by the authority in its capacity as an employer.
- 2.4 The details of the planning permission and any other relevant information may form an important part of the collecting authority's decisions as to whether development is chargeable or not.

Notice of chargeable development – regulations 64 and 64A

- 2.5 Most new buildings will be liable to pay the levy. This includes from 6 April 2013 new buildings that are granted permission by way of a general consent, such as via the General Permitted Development Order or through a Local Development Order.

- 2.6 Where development is granted by way of a general consent, the regulations require the person(s) liable to pay to consider whether their proposed development is chargeable, and to issue the collecting authority (who will usually be the local planning authority) a notice of chargeable development. This requirement does not apply if the chargeable amount is zero, or where the development is less than 100 square metres.
- 2.7 The purpose of the notice, alongside the details of the planning permission, is to give the collecting authority enough information from which to calculate the amount of the charge due.
- 2.8 Applicants must use the 'Notice of Chargeable Development' form published by the Secretary of State (or a form substantially to the same effect). This can be found on the Planning Portal. The detail to accompany the form is set out in regulation 64 (amended by the Community Infrastructure Levy (Amendment) Regulations 2011).
- 2.9 Where an authority does not receive a notice of chargeable development but is aware that development has started, then the collecting authority must prepare the notice themselves and serve it on each person known to the authority as an owner of land – regulation 64A covers this situation.
- 2.10 Liability to pay the levy does not arise in respect of development granted by a development order, a local development order, or an enterprise zone scheme (under section 32 of the Local Government, Planning and Land Act 1980) if that development is commenced before 6 April 2013.

Liability to pay – regulations 31 - 39

- 2.11 Once planning permission has been granted, the regulations allow any single party to come forward and assume liability – this may, for instance, be the developer who has applied for planning permission or the development's major landowner.
- 2.12 The regulations are designed to encourage the assumption of liability before development commences. If no party assumes liability to pay the levy before development commences, under regulation 33 the owners of land will be liable to pay the levy and will not enjoy facilities such as any instalment regime the authority may have in place.

- 2.13 If a party wishes to assume liability, they must submit the 'Assumption of Liability' form published by the Secretary of State (or a form substantially to the same effect) to the collecting authority. The form can be found on the Planning Portal.
- 2.14 Once the form has been received, the liable person(s) must be sent an acknowledgement.
- 2.15 If no party comes forward to assume liability, collecting authorities may wish to contact potential person(s) who may wish to assume liability and bring to their attention the benefits of assuming of liability.
- 2.16 Where no-one has assumed liability to pay and the collecting authority is aware that development has started, then the liability defaults to the owner(s) of any material interest in the land ("material interest" is defined in regulation 4). Where it is one person, then they are responsible for all payments. Where it is more than one person, then the authority must apportion liability following the formula set out in regulation 34(2).
- 2.17 Under Regulation 35, collecting authorities can require any relevant information from owners of a material interest in the land in order to determine how to apportion liability.
- 2.18 Where a party has assumed liability yet failed to pay all its charge (despite the collecting authority making all reasonable efforts), the collecting authority may issue a default liability notice to the owners of any material interest in the land within the chargeable development (this is covered in more detail in the enforcement section).
- 2.19 It is possible to transfer liability to pay at any time up to the day before the date when final payment is due. This is done by submitting a 'Transfer of Assumed Liability form' (published by the Secretary of State) to the collecting authority. This form must be used (or a form substantially to the same effect). It can be found on the Planning Portal. This form must be acknowledged by the collecting authority, and acknowledgement must be sent to both the person liable to pay, and the person applying for the transfer of liability.

Liability notices – regulation 65

- 2.20 Once a collecting authority has determined the amount due – based on information in the planning permission documents or the notice of chargeable development, they are required to issue a liability notice to the parties that are liable to pay the charge.

- 2.21 Collecting authorities must use the ‘Liability Notice’ template published by the Secretary of State (or a form to substantially the same effect). This can be found on the Planning Portal. The details required in the notice are set out in regulation 65.
- 2.22 The liability notice must be served on the person(s) who have assumed liability to pay. This may be the person who applied for the planning permission or the person who submitted the notice of chargeable development. In addition, the collecting authority must issue the liability notice to the owners of any material interest in the relevant land.
- 2.23 Regulation 65 covers the processes for issuing revised liability notices or withdrawing a notice. A collecting authority must issue a revised liability notice where circumstances relating to the development or the chargeable amount change and must give appropriate notice of any intention to withdraw a notice. This provides collecting authorities with scope to correct details of a charge if it becomes necessary to do so. Where a collecting authority issues a revised liability notice the regulations provide that any previous notice is automatically rescinded.

Commencement notices – regulations 67 and 68

- 2.24 Once the liability notice has been issued by the collecting authority to the parties liable to pay the charge, the next step is for the parties to submit a commencement notice. The purpose of the commencement notice is to inform the collecting authority about the start date of the development.
- 2.25 Applicants must use the ‘Commencement Notice’ form published by the Secretary of State (or a form substantially to the same effect). This can be found on the Planning Portal. Parties must submit the notice to collecting authorities at least a day before development is due to commence. Regulation 67 sets out the detailed requirements for parties who must submit a commencement notice.
- 2.26 Having received the commencement notice, the collecting authority must acknowledge the receipt of a commencement notice.
- 2.27 Where a collecting authority knows development has commenced, but has not received a commencement notice – or has received a notice, but consider that the development began earlier, regulation 68 requires the authority to determine when the development commenced. This is known as “*the deemed commencement date*”.

Demand notices and suspension of demand notices – regulations 69 and 69A

- 2.28 The next stage in the process is for the collecting authority to issue a demand notice. This is a reminder to liable parties of how much they owe and by when. A collecting authority must serve a demand notice following the receipt of a commencement notice, or a decision by the collecting authority to deem that development has commenced.
- 2.29 Collecting authorities must use the ‘Demand Notice’ template published by the Secretary of State (or a form substantially to the same effect). This can be found on the Planning Portal. Regulation 69 sets out in detail what this notice must cover.
- 2.30 A revised demand notice must be served where the commencement date, levy amount or instalment options subsequently change.
- 2.31 The planning system in England and Wales allows persons to apply for planning permission regardless of whether they own the land in question, and without the consent of the actual owner(s). Under the regulations landowners are liable to pay the levy where no one has assumed liability before development commences. This means that it is possible that landowners could find themselves liable to pay the levy because planning permission for a development which includes their land has been obtained and work commenced on nearby land, and no-one has assumed liability (or the person who assumed liability has defaulted).
- 2.32 To address this situation, regulation 69A allows a person who has been served with a demand notice to ask their collecting authority to suspend their demand notice. The person requesting the suspension of the demand notice must own a material interest in the land. The effect of suspending a demand notice is that no levy is due under that notice until development is commenced upon that person’s land.
- 2.33 The authority may only agree to a request for suspension if it is satisfied that the strict conditions set out in regulation 69A(3) are met. These conditions are that:
- no development has commenced on the part of the chargeable development owned by the person requesting the suspension, and

- the person has not agreed to transfer ownership of his/her material interest to another party
- it is reasonable that the person requesting the suspension is not required to pay the levy until development commences on the land that the person owns.

Payment and instalments – regulations 69B, 70, 71 and 72

- 2.34 A key requirement of the demand notice is to explain the payment periods. Where an authority wishes to allow payment by instalments, they must also have published an instalment policy on their website (regulation 69B). It has freedom to decide the number of payments, the amount and the time due. It can revise or withdraw the policy as appropriate.
- 2.35 Regulation 70 provides for payment by instalment where an instalment policy is in place. The situation in London depends on whether the Mayor, or London Boroughs, or both have an instalment policy in place. The Mayor and London Boroughs will wish to look in detail at the rules in regulation 70.
- 2.36 Where no instalment policy is in place, then payment is due in full at the end of 60 days after development has started.
- 2.37 If instalment terms are broken, or payment is not made after 60 days where this is no instalment policy, then the authority must issue a demand notice requiring the full amount of money immediately.
- 2.38 Where liability has not been assumed, or where a commencement notice is not received and an authority has to set “*the deemed commencement date*” then under regulation 71 the demand notice must require the full amount of money immediately.
- 2.39 Collecting authorities must acknowledge receipt of any money received.

Payment in kind – regulations 73 and 74

- 2.40 In place of cash, payment of the levy may be made by transferring land to the charging authority where both the liable party and charging authority agree. This is an agreement to be negotiated between the charging authority and the collecting authority. Authorities must refer

back to the relevant regulations when dealing with a proposal to transfer land, but the key rules are that:

- The charging authority must aim to use that land for a relevant purpose (infrastructure provision), or be satisfied that the person acquiring it intends to do so. If acquired land is in fact used for a purpose other than a relevant purpose, the charging authority must deem an appropriate amount that it holds to replace the land
- The value of the land must be determined by an independent person
- The land can only be given by a person who has assumed liability to pay the charge
- The agreement must be entered into before the chargeable development is commenced
- The agreement cannot form part of a planning obligation (Section 106 Agreement).

2.41 Land may be given to charging authorities in instalments, in the same way as cash can be given in instalments. The rules on payment periods set out above apply.

Overpayment – regulation 75

2.42 Authorities are required to repay any overpayments unless they are so small that it would cost more in administrative costs, or the overpayment is the result of a land payment. Where a person is entitled to a repayment, then the authority must pay interest at the rate higher of either 0.5 per cent per annum or a percentage equal to the Bank of England base rate less one percentage point.

Payments to charging authorities – regulation 76

2.43 In most cases the charging authority and the collecting authority will be the same authority. The exception will usually only apply in London, where local authorities are collecting the money for a charge put in place separately by the Mayor.

2.44 In all circumstances where the charging authority and collecting authority are different, then the collecting authority must transfer the money received by the end of the relevant financial quarter in which the money is received, but is allowed to retain some of it to cover administrative expenses. The amounts that may be retained for administrative expenses are covered in regulation 61.

Chapter 3

Enforcement

Surcharges – regulations 80 - 86

3.1 Collecting authorities are able to impose a range of financial penalties (surcharges) on person(s) when the liability, collection and/or payment processes outlined above have not been followed correctly. These penalties are designed to ensure that authorities do not lose out financially by having to carry out additional tasks. Authorities can charge:

- A £50 surcharge on each person liable to pay the levy in the event that liability is not assumed before development commences
- An additional £500 to each person with a material interest in land where the authority has to apportion liability
- An amount equal to 20 per cent of the chargeable amount, or £2,500 (whichever is the lower) where development starts without the authority having received a notice of chargeable development
- An amount equal to 20 per cent of the chargeable amount, or £2,500 (whichever is the lower) where development starts without the authority having received a commencement notice
- Five per cent of any payment due, or £200 (whichever is the greater), where that payment is not received after the end of 30 days beginning with the day that payment is due. An authority may then impose a further 5 per cent charge if payment is still not received after six months, and a further 5 per cent after 12 months
- Twenty per cent of the chargeable amount, or £1000 (whichever is the lower) where a person(s) fails to provide further relevant information as requested by a collecting authority.

Late payment interest – regulation 87

- 3.2 In addition to the surcharge for late payment, a collecting authority must charge interest on any late payments. Regulation 87 sets out how this is calculated.

Stop notices – regulations 89 - 94

- 3.3 Where development has started, the levy has not been paid and the authority thinks it expedient to stop the development from progressing any further until payment is made, it may issue a stop notice.
- 3.4 If this course of action is chosen, then the authority must issue a warning notice warning of its intention to impose a stop notice. The notice must be sent to relevant person(s) and contain certain information – including details of how to make payment. Full information requirements for the notice are set out in regulation 89.
- 3.5 Where a warning notice has been issued, then the person(s) have the opportunity to pay in line with the terms in the notice. If they do not, a stop notice can be served. This must be sent to relevant person(s) and contain certain information – including details of when it takes effect, and give a final chance to make full payment. A copy of the notice must be displayed on site.
- 3.6 When the date in the stop notice is reached without payment, then no further specified activity must take place (works necessary in the interest of health and safety may not be the subject of a stop notice). It is an offence to contravene the notice (regulation 93), with the potential for a fine of up to £20,000 (or more on indictment). An authority may also apply to the Courts for an injunction if necessary to enforce a stop notice.
- 3.7 An authority must withdraw a stop notice if payment is made, or can withdraw it for other reasons. A copy of the withdrawal notice must be displayed on site.
- 3.8 Stop notices must also be registered under section 188 of the Town and Country Planning Act 1990. Full details of the registration requirements are in regulation 92.

Recovery of Community Infrastructure Levy – regulations 96 - 107

- 3.9 These regulations set out mechanisms available to collecting authorities to recover charges that are due. These mechanisms can be used alongside ‘stop’ notices, but can also be used separately – for example, where development has finished.
- 3.10 Collecting authorities who wish to use these mechanisms to recover charges due must first issue a liability reminder to the relevant person(s). This must clearly state the amount due.
- 3.11 At the end of a 7 day period after the reminder has been issued, the authority may then apply to the Magistrates Court for a liability order against the relevant person(s). This is done by complaining to the justice of the peace and requesting that a Court summons is sent to the person(s) asking them to attend Court to explain why they have not paid the relevant amount.
- 3.12 Authorities may wish to note two important rules. First, an application for an order cannot be made after 6 years from the date the amount becomes due. Second, and in cases where the amount is paid after the order has been applied for but before it is made, the Court must, if requested by the authority, to make the order in respect of the reasonable costs of the application.
- 3.13 Once the Court is satisfied that the amount is payable, they must make the liability order. The authority can then proceed to recover the amount due through the distress and sale of goods. Authorities must follow the correct approach to doing so, set out within regulation 98. In particular, the debtor can still make full payment right up to the point before goods are sold.
- 3.14 Alternatively, where a liability order is made and more than £2000 is still owed, then an authority can ask the Court to serve a charging order on relevant person(s). The purpose of this order is to ask the debtor(s) to secure the outstanding amount. The authority must, in these cases, follow the processes outlined in regulations 103 and 104. These regulations also set out what the Court needs to do to ensure the process is fair.

- 3.15 It is likely that most cases of outstanding charges authorities will wish to secure payment by way of a charge over the land, especially where development has been stopped, so it will not be necessary to resort to distress of goods or a charging order against an individual. Under regulation 107 authorities can ask the Court to enforce a local land charge
- 3.16 Where an authority is unable to recover the amounts due, they may ask the Court to commit the debtor to prison. This is likely to be a very rare situation, but an authority who has exhausted other routes may proceed to consider the steps outlined in regulations 100 and 101.

Chapter 4

Relevant appeals

- 4.1 The range of collection and enforcement powers are supported in regulations by the ability for person(s) connected with the payment of the levy to make various appeals in connection with decisions by the collecting authority. Appeals connected with the calculation of the chargeable amount and charitable relief will be considered by independent valuation agency officers, and appeals related to enforcement will be considered by the Planning Inspectorate.
- 4.2 The appeal process allows a liable person to request a review of the chargeable amount, which must be done within 28 days from the date on which the liability notice (that outlines the chargeable amount) has been issued. The collecting authority is required to review the calculation and it must be carried out by someone who is senior to the person who made the original calculation, and who had no involvement in that original calculation. A decision must be issued within 14 days, and this decision cannot be reviewed again.
- 4.3 All appeals must be made using the forms that are published by the Secretary of State (or forms substantially to the same effect). These can all be found on the Planning Portal.
- 4.4 The relevant appeals are:
- An appeal of the calculation of the chargeable amount following a review as described in paragraph 67
 - If an owner of a material interest in land disagrees with an authority who has apportioned liability to pay the charge, then that person may appeal. The appeal must be made within 28 days
 - A relevant person can appeal any of the surcharges covered set out above. It can be appealed on the basis that it was calculated incorrectly, that a liability notice was not served or if the breach simply did not occur. The appeal must be made within 28 days
 - A relevant person can appeal a deemed commencement date if that person considers that the date has been determined incorrectly. An appeal must be made within 28 days

- A relevant person can appeal against a stop notice. They can do so if a warning notice was not issued or the development has not yet commenced. An appeal must be made within 60 days
- A person aggrieved by the levy of, or an attempt to levy, distress can appeal to the Magistrates Court. The Court must consider the case and can order the authority to pay compensation.