



# Community Infrastructure Levy Relief Information document



# Community Infrastructure Levy Relief

## Information document

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

© Crown Copyright, 2011

*Copyright in the typographical arrangement rests with the Crown.*

*This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

If you require this publication in an alternative format please email [alternativeformats@communities.gsi.gov.uk](mailto:alternativeformats@communities.gsi.gov.uk)

DCLG Publications  
Tel: 030 0123 1124  
Fax: 030 0123 1125

Email: [product@communities.gsi.gov.uk](mailto:product@communities.gsi.gov.uk)  
Online via the website: [www.communities.gov.uk](http://www.communities.gov.uk)

May 2011

ISBN: 978 1 4098 2967 6

# Contents

Introduction .....	4
Charitable relief .....	6
Overview of charitable relief .....	6
Detail on eligibility requirements .....	8
Operation of a discretionary relief policy .....	11
Charitable relief procedure .....	12
Withdrawal and clawback of charitable relief .....	13
Charitable relief appeals .....	14
State aid .....	14
Default of liability .....	14
Social housing relief .....	16
Overview of social housing relief .....	16
Qualifying dwellings .....	16
Social housing relief procedure .....	16
Disposal of land – identifying the new beneficiary .....	19
Withdrawal of social housing relief .....	20
State aid .....	21
Default of liability .....	21
Exceptional circumstances relief .....	22
Overview .....	22
Offering and withdrawing exceptional circumstances relief .....	22
Eligibility criteria .....	23
Eligibility considerations .....	23
Procedures .....	24
Disqualifying events .....	26
State aid .....	27
State aid .....	28
What is state aid? .....	28
How should state aid be identified? .....	29
Payment of state aid through block exemption regulations .....	30
Guidance on state aid .....	35
Annex A: Model letter .....	36

*This document is not guidance issued by the Secretary of State, but explains how the Community Infrastructure Levy Relief Regulations work in practice.*

## Introduction

1. The Community Infrastructure Levy Regulations make a number of provisions, some compulsory, others non compulsory, for charging authorities to give relief from the levy. ‘Community Infrastructure Levy relief’ means any exemption or reduction in liability to pay the levy. In each case it can only be granted in respect of the chargeable development.
2. No relief from the levy is applicable unless the claimant is an “owner of a material interest in the relevant land”. A ‘material interest’ is a freehold interest or a leasehold interest the term of which expires more than seven years after the date on which planning permission first permits development. The “relevant land” in which such an interest must be owned is the land which will be developed when building the chargeable development. Specifically:
  - general consents: the land which is identified in the plan submitted to the collecting authority as part of the Notification of Chargeable Development
  - outline planning permissions: the land to which the phase relates
  - other cases: the land to which the planning permission relates
3. In addition, and subject to the conditions which apply:
  - where a charitable institution is the owner of the material interest and the chargeable development will be used wholly or mainly for charitable purposes, it is exempt from its Community Infrastructure Levy liability (applies to charitable institution’s share of the charge only)
  - a collecting authority must give full relief from paying the levy on the portions of the chargeable development intended for social housing (in line with calculation under Regulation 50)
  - a collecting authority may give relief from the levy where:
    - a charitable institution is the claimant and the whole or the greater part of the chargeable development will be held as a charitable investment (applies to charitable institution’s share of the charge only) or
    - a charitable institution has been refused a mandatory charitable exemption on state aid grounds, but to grant relief would not

constitute a notifiable state aid (applies to charitable institution's share of the charge only) and

- a charging authority may give relief from the levy where a specific scheme cannot afford to pay the levy in exceptional circumstances
4. Many of the regulations governing relief have been modelled on business rates. Therefore, those who deal with business rates should be familiar with some elements of this document. However, there are some differences between exemptions and reliefs offered by the levy and reliefs offered by business rates.
  5. The following sections set out information for charging and collecting authorities about giving relief for charities, social housing and in exceptional circumstances.

# Charitable relief

## Overview of charitable relief

6. Charitable relief is the collective term for all Community Infrastructure Levy relief offered to charities under the Community Infrastructure Levy Regulations 2010. There are differing requirements for each of the three reliefs offered as charitable relief, but a number of requirements common to all three.
7. There is a difference between a mandatory exemption offered via Regulation 43 and discretionary relief offered via Regulations 44 and 45. If a claimant meets the criteria in Regulation 43(1) and (2), a collecting authority must grant that claimant an exemption on its share of the land. Whereas a charging authority has the choice to make discretionary charitable relief available in its area. Also if it decides to make discretionary charitable relief available, it has the discretion to set the terms on which the relief will be granted.
8. Please note that this chapter is not intended to be a comprehensive guide to the workings of charities and their activities. Please refer to the Charity Commission website – [www.charitycommission.gov.uk/](http://www.charitycommission.gov.uk/) – for more detailed information on these issues.

## Common requirements for charitable relief

9. To qualify for any charitable relief, the following criteria must be fulfilled:
  - the claimant must be a charitable institution
  - the claimant must own a material interest in the relevant land and
  - the claimant must not own this interest jointly with a person who is not a charitable institution
10. Charitable relief is only ever granted to an owner of a material interest in the relevant land and applies only to that owner's apportioned share of the charge. The worked example overleaf illustrates how this would work:

### **Worked example**

A chargeable development liable to a levy of £1,000 qualifies for a mandatory charitable exemption. A charitable institution owns one of the material interests in the relevant land, which is valued at 50 per cent of the total land value. The charitable institution submits a claim for relief and an apportionment assessment and is successful, meaning it pays none of its £500 portion of the charge. The remaining £500 portion of the charge must be paid either by the party which assumed liability, where one exists, or by the remaining owners of material interests in the relevant land. Alternatively, if the charitable institution had qualified for a reduction of, say, 75 per cent through discretionary relief, the remaining charge would be £625. Again this could be paid by the party which had assumed liability or by each of the material interests in the relevant land. In the latter situation, the charitable institution would pay £125 (25 per cent) of its portion of the charge.

11. Relief is not limited to only one charitable institution. Where charitable relief conditions are met, every charitable institution owning a material interest in the relevant land can benefit from relief from their portion of the charge.

### **Specific requirements**

12. The following requirements must be met to claim charitable relief. Note these apply alongside any procedural requirements.

13. To qualify for a mandatory charitable exemption under Regulation 43 the following criteria must be met:

- the chargeable development will be used wholly or mainly for charitable purposes (whether of the claimant or of the claimant and other charitable institutions) and
- that part of the chargeable development to be used for charitable purposes will be occupied by, or under the control of, a charitable institution and
- the exemption must not constitute a state aid

14. To be considered for discretionary charitable investment relief under Regulation 44 the following criteria must be met:

- the charging authority has given notice that discretionary charitable investment relief is available in the area where the development is situated and
- the whole or greater part of the chargeable development will be held by the claimant, or by the claimant and other charitable institutions, as an

investment from which the profits will be applied for charitable purposes (whether of the claimant or of the claimant and other charitable institutions)

- that portion of the chargeable development to be held as an investment and will not be occupied by the claimant for ineligible trading activities and
- relief must not constitute a notifiable state aid

15. To be considered for discretionary charitable relief under Regulation 45, the following criteria must be fulfilled:

- exempting the charitable institution from liability to pay the levy would be a state aid
- the charitable institution would otherwise qualify for a mandatory charitable exemption under Regulation 43
- the charging authority has given notice that discretionary relief is available in the area where the development is situated; and
- relief must not constitute a notifiable state aid

### **Detail on eligibility requirements**

16. Charitable reliefs apply only to 'charitable institutions'. This is defined in the Regulations as either:

- a charity (defined as "any person or trust established for charitable purposes only")
- a trust of which all the beneficiaries are charities or
- a unit trust scheme in which all the unit holders are charities

17. Charitable purposes has the meaning given in section 2 of the Charities Act 2006. More detailed information on charitable purposes can be found on the Charity Commission website.

18. In practice there are three main groups of charities to which relief from the levy will be applicable:

- registered charities: charities which are registered with the Charity Commission
- exempt charities: charities which cannot register under the Charities Act 2006 and are not subject to the Charity Commission's supervisory

powers. They are listed in Schedule 2 of the 1993 Charities Act and include some educational institutions, and most universities and national museums

- **excepted charities:** charities excepted from the need to register but which are still supervised by the Charity Commission. Excepted charities with an income over £100,000 will have a duty to register when the relevant part of the Charities Act 2006 comes into force

19. Bodies which do not fall into these categories may still be eligible for relief where they are established for charitable purposes only. A body which has a Her Majesty's Revenue and Customs charity reference number will usually meet this requirement. Charging and collecting authorities must treat EU charities in the same way as UK charities for the purposes of charitable relief or be in breach of European law. The Regulations do not preclude non-UK charities from the definition so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.
20. Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of this type are collective investment schemes – for example, unit trusts and common investment funds. The Claiming Exemption and Relief form will require a claimant to indicate whether it qualifies for relief in this context – in particular whether all beneficiaries or unit holders are charities – and supply detail on the type of organisation that it is. It is then for the collecting authority to determine whether the claimant is a qualifying body.
21. The Claiming Exemption and Relief form requires the claimant to demonstrate what its charitable purposes are – for example through production of its constitution or articles of association.
22. All charitable relief is subject to land ownership requirements. A charity must own a material interest in the relevant land (see explanation above) and cannot own this interest jointly with a non-charitable institution. This “joint” ownership of an interest in the relevant land should not be confused with a scenario where there are a number of material interests in the relevant land each of which has a different owner. For example, relief can be given to a charitable institution which solely owns a freehold interest in the relevant land and has sold long leases on that land to non-charities.

### **Mandatory charitable exemptions**

23. Under the mandatory charitable exemption, the chargeable development must be used wholly or mainly for charitable purposes once it is completed. This is a similar formulation to that used for business rates charitable relief. There is no statutory definition of this requirement, however the courts have held ‘mainly’ to mean ‘more than half.’ The use of the chargeable development must directly facilitate the carrying out of the charitable institution’s charitable purposes – or those of itself and other

charitable institutions. Use of a chargeable development for trading could qualify, but is unlikely where the link to furthering charitable purposes is purely through raising money. Qualifying use could also include a charity using the chargeable development to house its employees, under certain circumstances. Under Regulation 43(3) use of a chargeable development for charitable purposes includes leaving it unoccupied.

24. A mandatory charitable exemption cannot apply where the part of a chargeable development used for charitable purposes is not occupied by, or under the control of, a charitable institution. In practice a charitable institution is likely to have control over a portion of a development where it has a right of entry to that portion. Neither can it apply where relief would constitute a state aid. However a charging authority may decide to make discretionary relief under Regulation 45 available in its area – see below.

### **Discretionary charitable investment relief**

25. A charging authority may decide to operate a policy for giving discretionary charitable investment relief. To be considered for relief, the whole or greater part of the chargeable development must be held as an investment from which the profits will be applied for charitable purposes. Fifty-one per cent or more of the monetary value of the chargeable development is likely to constitute its “greater part”. Secondly, the chargeable development must be held by the claimant or the claimant and other charitable institutions. Thirdly, the charitable purposes the profits are applied to must be those of the claimant or the claimant and other charitable institutions. Only charitable investment activities are eligible for relief. Regulation 44 specifies that relief cannot apply where a charity intends to occupy the greater part of the chargeable development and use it for any trading activity, other than to sell donated goods to use the proceeds for its charitable purposes.

26. A charging authority may choose to further narrow the scope of this relief through its relief policy.

### **Discretionary charitable relief under Regulation 45**

27. A charging authority may decide to operate a policy for giving discretionary relief where a claimant would otherwise be eligible for a mandatory charitable exemption but for relief constituting state aid. Further information on the operation of this relief can be found in section 7 and in the state aid chapter of this document.

## Operation of a discretionary relief policy

28. A charging authority that decides to introduce or revise a discretionary charitable relief policy must publish a document to that effect and make it publicly available. The document is not part of the charging schedule. The charging authority may publish the relief policy separately and at a different time to the publication of the charging schedule. The document must:

- give notice that discretionary relief is available in its area (or is available under a revised policy), and whether it is available under Regulation 44, 45 or both
- state the dates the collecting authority will begin accepting claims for relief under its latest policy and
- include a policy statement setting out the circumstances in which discretionary charitable relief will be granted in its area. This may be similar to any policy a charging authority has for the giving of discretionary relief under business rates

29. It is at the discretion of the charging authority to decide what percentage of relief from the levy it will provide. The charging authority also has the flexibility to develop the criteria it considers suitable to assess discretionary relief eligibility. Examples could include:

- the benefit the charitable institution gives to the local community
- the annual income of the charitable institution
- the annual rent payable on the charitable investment (a minimum threshold may protect against abuse)

30. In London, where the Mayor and a London borough have opted to charge the levy, both bodies could legitimately have policies for giving discretionary charitable relief. It is for the collecting authority (in most cases the London borough) to apply each policy to the appropriate portion of the claimant's charge. The claimant's share – of either the Mayor or borough's levy – will be the same percentage as its overall share of the charge. The worked example below illustrates how such a situation would work.

### **Worked example**

The Mayor of London and a London borough council both charge the levy, and both offer 100 per cent discretionary charitable investment relief, but have slightly different relief policies. A planning permission is granted for a chargeable development in the borough council's area and a charge of £1,000 is calculated for it. Of this £1,000, £250 is the Mayor's levy and £750 is the borough's levy. A charitable institution submits a claim for relief on this chargeable development and assesses its proportion of the liability as 50 per cent; an assessment accepted by the London borough. This means the charitable institution's apportioned share of the Mayor and borough parts of the total charge is also 50 per cent. The London borough next assesses the claim against its own and the Mayor's relief policies. Relief can be granted for borough, Mayor or both parts, depending on which body's relief policies have been satisfied. There are four possible outcomes: zero relief from the levy; relief only on the Mayor's levy (£125); relief only on the borough's levy (£375); or relief on both levies (£500).

31. Where no document is issued stating a policy on discretionary charitable relief, the charging authority is deemed not to offer that form of relief. The collecting authority must not consider claims for discretionary charitable relief where the charging authority has no policy on offering such relief. A charging authority wishing to withdraw discretionary relief must publicise the last date on which it will accept claims for relief.

### **Charitable relief procedure**

32. A claim for relief must be submitted by the charitable institution wishing to claim relief - either on the form published by the Secretary of State or a form to substantially the same effect. Such a claim could accompany the planning application or notification of chargeable development. A claim for relief will lapse, however, where works are commenced on the chargeable development before the collecting authority has notified the claimant of its decision.

33. If there is more than one material interest in the relevant land, the claimant must submit an apportionment assessment alongside its claim. This applies even where all these interests are charities. An apportionment assessment calculates how liability to pay the levy on the chargeable development should be apportioned between each material interest in the relevant land. It is the means by which the claimant identifies what its liability to pay the levy is, and how much of the residual charge remains to be paid by non-claimants. Apportionment must be carried out in accordance with Regulation 34.

34. Collecting authorities will decide on the accuracy of such apportionment assessments. If they find an assessment to be incorrect they will revise it accordingly. A claimant must inform the collecting authority if a disqualifying event (as defined in Regulation 48(1)) occurs prior to

commencement of the chargeable development. Where there are multiple claimants on one site, the claimants may decide to work together to carry out one apportionment assessment. However, the regulations require that each claimant must submit a copy of this joint assessment with their claim.

35. Upon determining a claim for relief, the collecting authority must inform the claimant in writing of its decision, and the reasons for it, and the amount of relief granted.
36. A commencement notice must be submitted for chargeable developments granted charitable relief. The date of commencement determines when the seven-year clawback period expires. Where a commencement notice is not issued, the claimant is no longer eligible for relief from the levy and the full charge plus any surcharge is immediately payable. The claimant may be eligible to pay its portion of the charge plus any surcharge where no party has assumed liability (see Community Infrastructure Levy Information on collection and enforcement for more details).

### **Withdrawal and clawback of charitable relief**

37. A charitable relief claimant must inform the collecting authority where an event happens that disqualifies them from eligibility for relief up to seven years after commencement of development (the “clawback period”). This must be done within 14 days of the day on which the disqualifying event occurred. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied. A disqualifying event occurs where one or more of the following events has occurred:
  - change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use
  - change of ownership: The whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief or
  - change of leasehold: The interest in the land in which relief was given is a lease and is terminated before the end of its term and the owner of the reversion is not eligible for charitable relief
38. Where a disqualifying event happens before commencement, the relief is cancelled and the full charge once more applies, unless a new claim by the charitable institution relief is submitted. If the disqualifying event occurs after commencement, the claimant’s share of the charge becomes due. In either instance, a revised liability notice must be issued showing what is payable and a demand notice must be served to collect the clawed back relief.

39. Despite the threat of surcharge, a minority of claimants may not inform the collecting authority of a disqualifying event within the 14 day period. In such cases the charitable relief along with the surcharge is payable immediately by the claimant.

### **Charitable relief appeals**

40. A charitable relief claimant, or the assumed liable party for the chargeable development, may appeal to the Valuation Office Agency that the collecting authority has incorrectly determined the value of the charity's interest in the land. An appeal must be submitted within 28 days of the date of the collecting authority's decision on the claim. Any appeal will lapse where the chargeable development is commenced prior to the Valuation Office Agency making its decision. At appeal the Valuation Office Agency may increase or reduce the amount of relief given to the claimant. Where the Valuation Office Agency amends the claimant's share, the collecting authority must serve a revised liability notice. The liability notice will detail the new value of charitable relief.

41. There is no right to appeal to an external body on any other grounds for charitable relief. Collecting authorities may decide to allow claimants to request a review of decisions made on their claim by a different official to the official that decided the claim.

### **State aid**

42. The regulations prohibit the giving of a mandatory charitable exemption where it would constitute a state aid. However, if a mandatory charitable exemption would otherwise have been allowed, and such a policy on discretionary charitable relief under Regulation 45 existed, a charitable institution could benefit from relief which was not a notifiable state aid. Charging authorities may wish to formulate policies which automatically ensure that mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45. Discretionary charitable investment relief can similarly be given where relief is not a notifiable state aid. More detail on this and the de minimis block exemption can be found in the state aid chapter.

### **Default of liability**

43. Where a party assuming liability fails to pay the full amount of the levy owing, the regulations allow the collecting authority to default liability to the owners of the relevant land within the chargeable development. A collecting authority may only default liability after it has taken all reasonable efforts to recover the outstanding amount, using one or more of the provisions set out within the regulations (please see the Collection and Enforcement Information for further details).

44. Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the

relevant land. A charity benefiting from discretionary charitable relief may be liable to pay a share of the outstanding amount based on its material interest in the land. Charities are expected to manage the risk of a default of liability by another party. It is expected that they will carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

45. A charity receiving a mandatory charitable exemption (under Regulation 43) will continue to be exempt from any liability to pay the outstanding charge.

# Social housing relief

## Overview of social housing relief

46. The regulations give full relief from paying the levy on the portions of the chargeable development intended for social housing (in line with the calculation under Regulation 50). To qualify for relief, the claimant must own a material interest in the relevant land (the area granted planning permission) and have assumed liability to pay the levy for the whole chargeable development. However, the claimant does not need to own either some or all of the land intended for social housing. Furthermore, unlike charitable relief, social housing relief automatically applies against the charge for the whole chargeable development, rather than just the portion of the charge payable by the claimant.

## Qualifying dwellings

47. Social housing relief is formulated to benefit most social rented (including intermediate rented) and low cost home ownership dwellings. Regulation 49 states that social housing relief applies where at least one of two conditions are met:

- condition 1 (for social rented dwellings): The dwelling will be let by a private registered provider of social housing, a registered social landlord or a local housing authority. Specified tenancies must be used for relief to apply as set out within Regulation 49
- condition 2 (for low cost home ownership dwellings): The dwelling will be occupied according to statutory shared ownership arrangements, the initial share in the dwelling will not exceed 75 per cent of the total value, the rent payable will be no more than 3 per cent of the unsold interest and the rise in annual rent will be limited to the rate of inflation plus 0.5 per cent

48. When applying for relief, a claimant must provide evidence that the chargeable development qualifies for social housing relief. The Regulations provide that dwellings no longer meeting these requirements must pay the levy.

## Social housing relief procedure

49. As with charitable relief, the collecting authority handles claims for social housing relief. A claim must be submitted by an owner of a material interest in the relevant land— either on the form published by the Secretary of State or a form to substantially the same effect. To qualify for relief the claimant must have assumed liability to pay the levy on the chargeable

development. As part of providing evidence that the chargeable development qualifies for social housing relief, the Claiming for Exemption and Relief form requires that the claimant must identify where on the chargeable development qualifying dwellings will be built through the use of a map.

50. Social housing relief is calculated according to three formulae in Regulation 50 of the regulations – these are used in reverse order as set out below:

- the third formula calculates the deemed net area of the part of the chargeable development which will be qualifying dwellings (N)
- the second formula uses N to calculate the deemed net area of qualifying dwellings for each rate of the levy applying to the chargeable development (NR). Please note this formula only needs to be used if there are two or more different rates within the chargeable development's area
- the first formula uses the rate of the levy (R) multiplied by NR and by the index for the year of planning permission (IP). This figure is then divided by the index for the year the charging schedule took effect (IC). The value of the charge for qualifying dwellings at each rate of the levy is calculated and totalled to determine the relief. What remains to be paid is calculated by subtracting the total relief from the total charge for the levy had there been no relief

51. The 'index' used in the 'first formula' is the national All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors. The figure for a given year is the figure for 1 November of the preceding year. In the event that the index ceases to be published, the Retail Prices Index must be used instead.

52. To assist collecting authorities and claimants for social housing relief, the Planning Advisory Service has published a social housing relief calculator on its website – see [www.pas.gov.uk](http://www.pas.gov.uk) for more information.

### Worked example

Planning permission is granted for a chargeable development with a gross internal area of 30,000m<sup>2</sup> (C) on relevant land with 10,000 m<sup>2</sup> of existing buildings in lawful use and to be demolished (E). Half the site will be charged at £10 per m<sup>2</sup> and half the site will be charged at £15 per m<sup>2</sup>. The index at planning permission (IP) was 2 and 1.8 when the charging schedule took effect (IC). The levy payable on the area charged £15 m<sup>2</sup> is £166,666 and the levy payable on the area charged £10 m<sup>2</sup> is £111,111. The total liability before relief is £277,777.

A claim for 5,000m<sup>2</sup> of qualifying dwellings (Q) is submitted. 3,000 m<sup>2</sup> of the qualifying dwellings is on the part of the site charged £15 m<sup>2</sup> and the other 2,000 m<sup>2</sup> is on the other part of the site charged £10 m<sup>2</sup>.

Social housing relief is calculated in the following way:

**First find “N”:**

$$5,000 - (5,000 \times 10,000/30,000) = 3333.33 \text{ (N)}$$

**Second, find “NR”:**

$$(3,000 \times 3333.33)/5,000 = 2000 \text{ (NR1)}$$

$$(2,000 \times 3333.33)/5,000 = 1333 \text{ (NR2)}$$

**Third calculate the total relief:**

$$(15 \times 2000 \times 2)/1.8 = £33,333$$

$$(10 \times 1333 \times 2)/1.8 = £14,811$$

$$£33,333 + £14,811 = £48,144 \text{ (total social housing relief)}$$

**Fourth, calculate the remaining charge:**

$$£277,777 - £48,144 = £229,633 \text{ (remaining charge)}$$

53. A claimant must submit a “relief assessment” with its claim. The format of this assessment is laid out in the forms specified by the Secretary of State. If the collecting authority decides the assessment is inaccurate, they may revise the assessment and/or, under Regulation 54, serve an information notice on the claimant to assist it in deciding whether to give relief and how much relief to provide.

54. The collecting authority must inform the claimant in writing of its decision, the reasons for it, and the amount of relief granted. A valid commencement notice must be submitted for chargeable developments granted social housing relief. The date of commencement determines when the seven-year clawback period expires. Where a commencement notice is not issued, the claimant is no longer eligible for relief from the levy and the full charge plus any surcharge is immediately payable.

55. A claim for relief will also lapse if development commences on the chargeable development before the collecting authority has notified the claimant of its decision.

## **Disposal of land – identifying the new beneficiary**

56. The effective enforcement of social housing relief is reliant on identifying the beneficiary or beneficiaries of that relief. Initially the beneficiary of all relief on a chargeable development is the claimant – regardless of whether he or she owns some or all of the land on which the social housing will be situated. However the relief attaching to each qualifying dwelling will transfer whenever the land on which they sit, or are to sit, is sold before they are made available for occupation. The relief for those dwellings is calculated and transferred from the old to the new beneficiary.

57. The seller must notify the collecting authority in writing of the sale, copying this to the buyer and the previous beneficiary of relief for those dwellings (if this is not the seller). As the claimant may only own one of the material interests in the relevant land, the seller of the land might not be the current beneficiary of relief. He or she will in most cases know about the social housing relief attached to that land, however, through the liability notice. The notification must give details of:

- the gross internal area of the qualifying dwellings which will be situated on the land being sold
- the location of those dwellings through a map or plan and
- the name and address of the seller, the buyer and the former beneficiary of relief from those dwellings (if not the seller)

58. The new owner's relief is then calculated, as is the revised relief (if any) of the former beneficiary. Under Regulation 54, a collecting authority may serve an information notice on the claimant to enable it to calculate this. After calculation, an updated liability notice must be served which identifies all social housing relief beneficiaries and what relief they benefit from. The charging authority can choose to include within the liability notice a map demonstrating where the beneficiaries' qualifying dwellings sit within the chargeable development.

59. Once a qualifying dwelling is made available for occupation, the beneficiary of relief on that dwelling immediately before this happens remains the beneficiary, regardless of future land ownership arrangements.

### **Worked example**

Planning permission is granted for a 30,000m<sup>2</sup> chargeable development on a site with 10,000 m<sup>2</sup> of existing buildings which will be demolished. The whole site will be charged at £10 per m<sup>2</sup>. The index at planning permission was 2 and 1.8 when the charging schedule took effect. Social housing relief on 5,000m<sup>2</sup> (50 social housing units) was granted on the site, worth £37,037.04. The freeholder of the land is the sole claimant of relief. Prior to occupation, the freeholder sells five units (500m<sup>2</sup>) to a registered social landlord, meaning 45 units remain on land owned by the claimant. The freeholder informs the collecting authority of the sale. The collecting authority calculates the value of the relief for the five units as £3703.70. A new liability notice is issued adding the registered social landlord as a beneficiary and transferring to it £3703.70 of relief from the value of the freeholder's relief (new value £33,333.34).

### **Withdrawal of social housing relief**

60. Social housing relief can be withdrawn for any qualifying dwelling where a disqualifying event occurs up to seven years from the commencement of development (the “clawback period”). The relief for that dwelling must be repaid by the beneficiary of relief. The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation. Where a disqualifying event occurs prior to the commencement of development, social housing relief will cease to apply.
61. A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief. However the sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on a qualifying dwelling. Transferring the sale proceeds to the Secretary of State, the Welsh Ministers, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Welsh Ministers or the Regulator of Social Housing.
62. Where a disqualifying event occurs, the beneficiary of relief on the dwelling concerned must inform the collecting authority in writing within 14 days. Where this is not done, a surcharge equal to the lesser amount of 20 per cent of the chargeable amount or £2,500 may be applied. The notification must include the area of floorspace which is no longer eligible and a map locating its position in the chargeable development. The collecting authority must calculate what clawback is payable, and notify the beneficiary in writing of the withdrawn amount and how this was calculated. Alongside this, a new liability notice must be issued and a demand notice must be served to collect the clawed back relief. This must be done even if the development is complete.

## **State aid**

63. The UK Government considers that the provision of social housing is a Service of a General Economic Interest. Relief from the levy for social housing has been designed so that it complies with the requirements of the EU Block Exemption for Services of a General Economic Interest. Charging and collecting authorities will need to be aware of this block exemption when implementing these regulations. Please see the section on state aid for more information.

## **Default of liability**

64. Where a party assuming liability fails to pay the full amount of the levy owing, the regulations allow the collecting authority to default liability to the owners of the relevant land. However, a collecting authority may only default liability after it has pursued all reasonable efforts to recover the outstanding amount using one or more of the enforcement provisions set out within the regulations (please see the Collection and Enforcement Information for further details).

65. Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land. A person or organisation building or owning social housing within the development will still be required to pay a share of the amount based on its material interest in the land. Social housing providers are expected to manage the risk of a default of liability by another party. It is expected that they will carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

# Exceptional circumstances relief

## Overview

66. The Community Infrastructure Levy has been designed with safeguards and checks to ensure that the rates set out in an authority's charging schedule are affordable. However there may be exceptional circumstances where a specific scheme cannot be brought into viability if it pays the full Community Infrastructure Levy charge. The regulations provide a procedure for giving discretionary exceptional circumstances relief in respect of chargeable development, where the charging authority has decided to make this available and provided that a set of tightly drawn conditions can be met.

## Offering and withdrawing exceptional circumstances relief

67. If it wishes to activate the exceptional circumstances procedure for its area, the charging authority must decide that it will consider granting relief from a specified date. The powers to offer relief can be activated and deactivated at any point in time after the charging schedule is approved. If a charging authority wishes to offer exceptional circumstances relief, they must follow the procedure for offering relief set out within regulations.

68. A charging authority wishing to offer or withdraw relief must first publicise the fact on its website, and through a statement which can be viewed at one of its offices and other locations it considers appropriate. It must send a copy of the statement to the collecting authority (in cases where the charging authority is not the collecting e.g. Mayor of London). The public statement must indicate the day on which claims will first be considered, or cease to be considered.

69. Where a charging authority chooses to stop giving relief for exceptional circumstances, it must consider any claims it receives on or before the published date for ceasing to consider claims for relief. The date for withdrawal must be at least 14 days after the statement giving notice of withdrawal has been published on its website.

70. The decision to offer or withdraw exceptional circumstances relief is not part of the legal process of developing a charging schedule. The charging authority may publicise its decision to offer or withdraw exceptional circumstances relief separate to the publication of the charging schedule.

## **Eligibility criteria**

71. The charging authority can only give exceptional circumstances relief where the eligibility criteria are fulfilled:

- the charging authority has made exceptional circumstances relief available in its area
- the claimant owns a material interest in the relevant land
- a section 106 agreement has been entered into in respect of the planning permission which permits the chargeable development
- the charging authority considers that:
  - the cost of complying with the section 106 agreement is greater than the charge from the levy payable on the chargeable development
  - requiring payment of the charge would have an unacceptable impact on the economic viability of the chargeable development and
  - granting relief would not constitute a notifiable state aid (for further information please see state aid section)

72. In addition to the above criteria, the charging authority may only give exceptional circumstances relief where the following criteria are met:

- an exceptional circumstances claim has not already been previously granted to bring the development back into viability
- the independent person undertaking the viability assessment has suitable qualifications and has been appointed by the claimant with the agreement of the charging authority and
- (where the Mayor of London wishes to consider a claim) the claim has been referred to the Mayor of London by a London borough according to the correct procedures

## **Eligibility considerations**

73. A charging authority cannot give relief unless it deems it to be sufficient to make acceptable the impact of the levy on the economic viability of the development. However, there is no statutory definition of what constitutes the economic viability of a development. The charging authority will have discretion to make judgements about the viability of the scheme in economic terms.

74. Relief is granted for a chargeable development. This can mean the whole development, where there is full planning permission or a part of a scheme

where an outline permission proceeds in phases of chargeable developments.

75. Failure to commence the chargeable development within one year of the granting of relief is a disqualifying event (see paragraph 78).

76. Finally, in London, any relief offered by the Mayor and London borough can be combined to make sufficient the relief granted to return a development to viability (see paragraphs 74-77).

## **Procedures**

### **GENERAL**

77. A charging authority can only accept claims when it has publicised that it will offer exceptional circumstances relief. Exceptional circumstances relief is only ever granted by the charging authority. Claimants must agree with charging authorities a suitably qualified independent person to carry out an economic viability assessment for the chargeable development. The claim for relief must be submitted by an owner of a material interest in the relevant land - either on the form published by the Secretary of State or a form to substantially the same effect with the following documentation:

- an independent assessment of the cost of complying with the section 106 agreement
- an independent assessment of the economic viability of the chargeable development
- an explanation of why, in the opinion of the claimant, paying the levy would have an unacceptable impact of the economic viability of the development
- where there is more than one material interest in the land, an apportionment assessment

78. The claim must be received by the charging authority before the commencement of the chargeable development. Copies of the completed form and the documents above must be sent to any other owners of material interests in the land (if any). The claim for relief will require a claimant to make a declaration that this has happened.

79. Relief is granted in respect of the chargeable development. It is not applied solely to the claimant's material interest. Where a person has assumed liability, the relief would be deducted from the total liability for the whole chargeable development. Where no one has assumed liability, the relief granted would be deducted from each land owner's individual liability. The level of relief apportioned to each landowner would be in proportion to the value of their material interest in the land.

80. A charging authority must make its decision on whether to grant relief as soon as practicable and inform the claimant in writing of its decision and the amount of relief granted (if any). Where relief is granted, the charging authority must copy this written notification to the collecting authority (where it is not the charging authority .e.g. an Urban Development Corporation). If the person by whom the section 106 agreement is enforceable is not the charging or collecting authority, a copy of the notification must also be sent to that person.

#### **IN LONDON**

81. London boroughs and the Mayor of London will be able to charge the levy and similarly both will be able to offer exceptional circumstances relief. There are necessary additional requirements for the operation of this relief in London but only where the Mayor has decided to make it available on his levy. Where only the borough offers relief, the above general procedure applies.

82. All claims for exceptional circumstances relief in London must be made to the borough. Where the Mayor has made relief available but not the borough, the borough must refer the claim and supporting documentation to the Mayor as soon as practicable. Where both the borough and the Mayor have made relief available the borough must first consider whether to offer relief and if so how much. It need only refer the claim to the Mayor where the relief it proposes to give does not make acceptable the impact of the levy on the economic viability of the development.

83. In either situation, where a claim is referred, the Mayor must determine whether to give relief and if so how much to give, and inform the borough of its decision as soon as practicable. The borough is not bound to any proposal it originally made to the Mayor on how much relief it may grant. It could, for instance, increase its offer to ensure the total relief given by the borough and the Mayor returns the development to an acceptable level of viability. The borough could withdraw its offer if the Mayor is not willing to offer sufficient relief along with the borough's proposed relief to bring the scheme back into viability.

84. In all cases the borough must inform the claimant in writing of the decision on whether and how much relief is granted. This includes, where relevant, details and amounts of any separate decisions on relief taken by itself or the Mayor. A copy of this decision must be copied to the Mayor and the collecting authority (where different to the charging authority .e.g. an Urban Development Corporation). If the person by whom the section 106 agreement is enforceable is not the charging or collecting authority, a copy of the notification must also be sent to that person.

### **Worked example**

A charging authority decides to start offering exceptional circumstances relief in its area and publishes a statement to that effect on its website. A prospective claimant asks for the charging authority's agreement to a specific independent person carrying out the relevant assessments. The charging authority agrees and a claim is submitted. There are four material interests in the relevant land. Interest A is the claimant for exceptional circumstances relief, apportioning her share of the levy at 40 per cent. Interests B, C and D have apportioned shares of 20 per cent each. The overall charge is £10,000 so Interest A's share is £4,000 and B, C and D's is £2,000 each. The charging authority assesses the evidence and uses its judgment to determine that relief should apply. It calculates that a reduction in the overall charge of £1,800 will make acceptable the impact of the levy on the economic viability of the development and issues a new liability notice and demand notice to that effect.

If Interest A assumes liability then she would now be liable to pay £8,200 charge remaining for the whole chargeable development.

If no party has assumed liability, then the level of relief Interest A, B, C and D receive will be proportionate to the value of their material interest in the land. Interest A would receive 40% of the relief, because her interest is valued at 40 per cent. Therefore, she would pay her charge, less relief granted to her individual interest (£4,000-£720 = £3,280). Likewise, each of the other interests would receive 20 per cent of the relief, because their respective interests are valued at 20 per cent. Therefore, Interests B, C and D would each pay their charge, less the relief granted to their individual interests (£2000-£360 = £1,640).

### **Disqualifying events**

85. A claim for exceptional circumstances relief ceases to apply where prior to commencement of development:

- the development is granted charitable or social housing relief
- an owner of a material interest in the relevant land sells the freehold or a lease of seven years or more on the whole of that interest or
- the chargeable development has not been commenced one year after the granting of relief

86. The owner of the material interest in the relevant land must notify the charging authority of a disqualifying event in writing within 14 days. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied to the claimant. A copy of the notification must be sent to all owners of material interests in the relevant land. When it receives this notification, the charging authority

must copy it to the collecting authority, if this is not the charging authority. If the person by whom the section 106 agreement is enforceable is not the charging or collecting authority, a copy of the notification must also be sent to that person.

### **State aid**

87. The regulations prohibit the giving of exceptional circumstances relief from the levy where it would constitute a notifiable state aid. Please see the section on state aid for more information.

# State aid

88. This chapter is not intended to be a comprehensive guide to workings of state aid. Please consult the individual European Commission documents cited. It is the responsibility of aid givers to reassure themselves that the actions they take are state aid compliant.

## What is state aid?

89. State aid is a member state's support to undertakings which meets all the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (Lisbon Treaty 2009). Article 107(1) declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is incompatible with the common market, unless the Treaty allows otherwise. A copy of the most recent advice on state aid can be found at: [www.bis.gov.uk/policies/business-law/state-aid](http://www.bis.gov.uk/policies/business-law/state-aid)

90. Four criteria must all be satisfied for aid to constitute state aid:

- Criterion 1: It is granted by the state or through state resources. State resources include public funds administered by the Member State through central, regional, local authorities or other public or private bodies designated or controlled by the State. It includes indirect benefits such as tax exemptions that affect the public budget.
- Criterion 2: It favours certain undertakings or production of certain goods. In other words it provides a selective aid to certain entities engaged in an economic activity (an "undertaking"). Economic activity is the putting of goods or services on a given market. It can include voluntary and non profit-making public or private bodies such as charities or universities when they engage in activities on a market. It includes self-employed/sole traders, but generally not employees as long as the aid does not benefit the employers, private individuals or households.
- Criterion 3: It distorts or threatens to distort competition. It potentially or actually strengthens the position of the recipient in relation to competitors. Almost all selective aid will have potential to distort competition - regardless of the scale of potential distortion or market share of the aid recipient.
- Criterion 4: It affects trade between Member States. This includes potential effects. Most products and services are traded between Member States and therefore aid for almost any selected business or economic activity is capable of affecting trade between States. This applies even if the aided business itself does not directly trade with Member States. The only likely exceptions are single businesses. For

example, hairdressers or dry cleaners with a purely local market not close to a Member State border. The case law also demonstrates that even very small amounts of aid can affect trade.

### **How should state aid be identified?**

91. All relief from the levy must be given in accordance with state aid rules. For charitable exemptions, discretionary charitable relief and exceptional circumstances relief this means a collecting or charging authority must determine whether or not giving the exemption or relief constitutes a state aid.
92. The state aid criteria need to be considered carefully when deciding whether an exemption or relief is a state aid. The collecting authority must bear the following in mind for each of the state aid criteria:
- Criterion 1: Is the relief granted by the state or through state resources? Relief from the levy will always be granted by the State and therefore this criterion is always met.
  - Criterion 2: Does the relief favour certain undertakings or the production of certain goods? Charging and collecting authorities should determine whether the claimant is an entity engaged in economic activity i.e. the putting of goods or services on a given market.
  - Criterion 3: Does relief distort or threaten to distort competition? Relief from the levy is by its nature a selective aid and will invariably have the potential to distort competition where a body is engaged in economic activity. Where criterion 2 is met it is likely that this criterion is also met.
  - Criterion 4: Does relief affect trade between Member States? Again, where criterion 2 is met, it is likely that this will also be met. It may be possible to argue that aid will not affect trade between Member States, as the organisation's activities are purely local, but charging and collecting authorities will need to manage this risk. While the European Commission's interpretation of this test is broad and the legal threshold low there are examples of Commission decisions which identify certain economic activities as local. They include small scale businesses serving the local community only such as local garages, retail shops, hairdressers, childcare facilities and cafes. Local small scale cultural or heritage venues are also considered not to affect trade between Member States. However, it is rare to find a good or service that is traded that is purely local. A charity, for example, is most likely not to be operating as an undertaking at all where its activities are purely local.

93. The Claiming Exemption or Relief form contains a questionnaire designed to elicit information that will help the charging or collecting authority in identifying state aid. The information will not always provide a clear indication of relief constituting state aid. The collecting authority may need to ask the claimant for further information.

### **Payment of state aid through block exemption regulations**

94. If a public authority wants to give an identified state aid it must usually notify the European Commission and obtain its prior approval before giving the aid. This is not permissible for relief from the levy. A mandatory charitable exemption cannot be given at all where relief would constitute a notifiable state aid. Meanwhile discretionary charitable relief and exceptional circumstances relief, can only be given where relief would not need to be notified to, and approved by the European Commission. State aid in these situations is not notifiable because it uses block exemption regulations designed for this purpose. These block exemptions have specific requirements. Charging authorities using them must be careful to ensure these requirements are met.

### **The de minimis block exemption**

95. This is only a summary of the requirements of the de minimis block exemption. A copy of the current de minimis regulation can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:EN:PDF>

### **Which relief systems is de minimis applicable to?**

96. This block exemption make relief permissible in the following circumstances:

- discretionary relief under Regulation 45 (where a mandatory charitable exemption is prohibited because it would constitute a state aid)
- discretionary charitable investment relief where this would constitute a state aid and
- discretionary exceptional circumstances relief where this would constitute a state aid

97. Charging authorities may formulate policies which automatically ensure mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45.

### **What is the de minimis block exemption and how does it work?**

98. De minimis is a generic term for small amounts of public funding to a single recipient. De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 (€100,000 for undertakings active in the road transport sector) over a rolling three fiscal year period. The threshold is gross, applying before the deduction of tax or any other charge. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects. The block exemption does not apply in certain sectors, including fisheries and coal sector, certain agriculture and transport activities.

### **What sources of aid should be considered as part of the threshold?**

99. All de minimis aid for any purpose, including relief from the levy, must be cumulated. The requirements of de minimis are that recipients must be informed of the de minimis nature of any aid they have previously received. For example this could include business rates relief to charitable institutions.

### **What must an authority do to comply with this block exemption?**

100. European Commission guidance requires public bodies giving de minimis relief to do three things:

- inform the recipient in writing of the prospective amount of aid and of its de minimis character, referring to the de minimis Regulation
- obtain from the recipient full information about any other de minimis aid received during the previous two fiscal years and the current fiscal year and
- only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the undertaking during the relevant period of three years to a level above the permitted ceiling

101. Charging or collecting authorities wishing to apply the de minimis block exemption to relief from the levy must write to the claimant asking what de minimis aid it has already received. Once the claimant has responded with the information requested, the charging or collecting authority can calculate the relief which can be given (if any) to ensure the relevant threshold is not breached. It must inform the claimant that relief is de minimis aid. The form of words in the model letter in Annex A is recommended.

102. The letter must state the value of the de minimis relief in £ sterling and euros. The exchange rate to be used for the conversion of £ sterling to

Euros is the rate published in the Official Journal on the day the offer is made to the claimant. The daily exchange rate can be found on the European Commission's web page, under section C302 (Information and Notices): <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>

### **What records must be kept?**

103. The de minimis regulation requires member states to record information necessary to demonstrate that the de minimis Regulation has been complied with. Records of all de minimis aid paid must be retained for ten years from the last payment.
104. On written request, Member States must provide the European Commission with all the information that the Commission considers necessary for assessing whether the conditions of the de minimis regulation have been complied with. This must be provided within 20 working days, or within a longer period fixed in the request. The Department for Communities and Local Government would co-ordinate any such request in relation to the Community Infrastructure Levy. Charging and collecting authorities must therefore ensure that information on all de minimis relief granted is readily available at short notice.

### **Worked example**

A charitable institution applies for a mandatory charitable exemption during the 2010-11 financial year. It assesses its portion of the Community Infrastructure Levy liability as 75 per cent of the charge. The collecting authority assesses the claim but identifies that paying the relief would constitute a State aid. It consults the charging authority's policy for using the de minimis block exemption under Regulation 45 and finds that the claim does qualify for relief. It writes to the charitable institution seeking information about qualifying sources of State aid it has received in each of the last three fiscal years and uses this information to calculate what it can give. The relief is worth the equivalent of €7,500 but the charitable institution has so far received aid totalling €195,000 over the 2008-09, 2009-10 and 2010-11 financial years. Relief is therefore reduced to €5,000.

### **The Service of a General Economic Interest Block Exemption**

105. This is only a summary of the requirements of the Service of a General Economic Interest Block Exemption. A copy of the full Service of a General Economic Interest Block Exemption requirements can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:312:0067:0073:EN:PDF>

106. Charging and collecting authorities should familiarise themselves with the terms of the Service of a General Economic Interest Block Exemption before using it.

### **Which relief systems is the Service of a General Economic Interest Block Exemption applicable to?**

107. The Service of a General Economic Interest Block Exemption is used to give social housing relief from the levy. As social housing relief is mandatory, it is applied automatically. The relief procedures and documentation have been designed to comply with this block exemption but charging and collecting authorities must still be aware of their responsibilities (see below). The Service of a General Economic Interest Block Exemption could be used in the event that housing provided by charities cannot qualify for social housing relief. Where such housing qualified for discretionary charitable relief under Regulation 45, a collecting authority could use the Service of a General Economic Interest Block Exemption to give relief beyond the de minimis block exemption.

### **What is the Service of a General Economic Interest Block Exemption?**

108. A Service of a General Economic Interest is usually a service which the market does not provide or does not provide to the extent or at the quality which the state requires. It must also be in the general and not the particular interest. This means that the beneficiaries of the service should be the community at large and not a specific sector of industry. Social housing is a well established example of a Service of a General Economic Interest. Three criteria need to be fulfilled for the Service of a General Economic Interest Block Exemption to be complied with:

- the undertaking must have been 'entrusted' to perform this public service obligation
- the state aid may compensate the undertaking for the costs of performing this public service obligation, allowing for a reasonable profit and
- it cannot however overcompensate for these costs and where it does, arrangements must exist for the repayment of this overcompensation

### **How does the Service of a General Economic Interest Block Exemption work in relation to social housing relief?**

109. The Community Infrastructure Levy's social housing regime is designed to comply with the requirements of the Service of a General Economic Interest Block Exemption. A claimant will be informed through the liability notice that it has a public service obligation to deliver where it chooses to build out the planning permission. The public service obligation is the building of the quantity of social housing for which it has been given relief

from the levy. This 'entrustment' is updated to include all future beneficiaries of social housing relief on that chargeable development. The charge arising from the levy on its own will never be sufficient to exceed the costs of building the development. However, total aid could potentially exceed those costs where social housing grant, or other state assistance, has also been claimed. The Homes and Communities Agency will take into account the value of relief from the levy and other state assistance when giving social housing grant and will adjust the amount of grant accordingly.

### **What must an authority do to comply with this block exemption?**

110. No additional action is necessary from collecting authorities to comply with the Service of a General Economic Interest Block Exemption when giving social housing relief itself. However, collecting authorities must ensure they rigorously administer and enforce the terms of social housing relief. Where the claimant of relief changes, or there are additional claimants, the liability notice must be updated to reflect this and ensure these beneficiaries are entrusted to provide that housing. Clawback must be enforced properly so that no one benefits from relief for buildings which are not social housing units. Finally a thorough monitoring regime is advisable to guard against the misuse of relief in a way that creates unfairness and deprives authorities of funding for infrastructure.

### **What records must be kept?**

111. As with the de minimis block exemption, collecting authorities should keep accurate records of all relief given under the Service of a General Economic Interest Block Exemption – in practice, all social housing relief from the levy. These records must be retained for 10 years from the payment of relief. The UK Government is required to report every three years on the sources and quantities of aid paid through the Service of a General Economic Interest Block Exemption. The next report is due on 19 December 2011 and the Department for Communities and Local Government will co-ordinate the return relating to the levy. The Department of Communities and Local Government will contact all charging authorities closer to the time requesting a return on how much social housing relief has granted in their areas. Charging and collecting authorities must therefore ensure that this information is readily available at short notice.

### **What is the Financial Transparency Directive and why is it relevant to Service of a General Economic Interest Block Exemption relief?**

112. The European Commission's Financial Transparency Directive has a number of requirements. One of these relates to public or private bodies engaged in commercial activities and in receipt of certain aid from public authorities for carrying out services of general economic interest. Such

bodies must ensure that their management accounts are sufficiently separate to distinguish between these activities. The directive underpins the state aid regime by requiring Service of a General Economic Interest aid to be made transparent. Without such transparency, there is a risk that legitimate state support may seep into an organisation's commercial activities, thereby cross-subsidising those areas with public funds. It is essential the directive is complied with when giving aid under Service of a General Economic Interest. Consequently, no social housing relief can be given to an organisation which does not keep separate accounts for its public service and commercial activities. Claimants are asked to confirm they comply with directive when they apply for relief but collecting authorities should request further evidence if necessary.

### **Guidance on state aid**

113. A copy of the most recent guidance on state aid is available at:

<http://www.bis.gov.uk/policies/europe/state-aid>

Department for Business Innovation and Skill's State Aid Branch can be contacted at:

State Aid Branch  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

E-mail: [sapu@BIS.gsi.gov](mailto:sapu@BIS.gsi.gov)  
Website <http://www.BIS.gov.uk/>

## Annex A: Model letter

### **Model letter for notification of state aid given under the de minimis block exemption**

[Date relief is granted]

Dear

Thank you for your claim for Community Infrastructure Levy [state specific relief] dated [xxxx]. Your claim has been accepted and although payment of relief is deemed to be a state aid. We have determined that you will benefit from Community Infrastructure Levy relief to the value of £[xxxxx] or €[xxxxx].

Under European Commission Regulation 1998/2006 (De Minimis Regulation), this award constitutes de minimis funding. There is a ceiling of €200,000 for all de minimis funding provided to any single recipient undertaking over a rolling, three, fiscal year period. De minimis funding awarded to you under this offer letter will be relevant if you wish to apply, or have applied, for any other de minimis funding.

You must retain this letter for 10 years from the date on this letter and produce it on any request by the UK public authorities or the European Commission.

Yours faithfully

X

Department for Communities and Local Government  
© Crown Copyright, May 2011

**ISBN: 978 1 4098 2967 6**