



Ministry of Housing,  
Communities &  
Local Government

# Reforming developer contributions

Technical consultation on draft regulations



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# Scope of the consultation

Topic of this consultation:	<p>This consultation seeks views on draft regulations amending the Community Infrastructure Levy Regulations 2010 (as amended).</p> <p>The draft regulations primarily implement reforms consulted on in March 2018. They also introduce an exemption from the Community Infrastructure Levy for starter homes which was announced in a Written Ministerial Statement in 2015.</p>
Scope of this consultation:	<p>This consultation looks at proposed reforms to the system of developer contributions, primarily the Community Infrastructure Levy and section 106 planning obligations.</p>
Geographical scope:	<p>These proposals relate to England only.</p>
Impact Assessment:	<p>The Community Infrastructure Levy does not fall within the requirements for regulatory impact assessments.</p> <p>The responses to consultation will help to ensure that our proposed changes deliver the intended policy outcome.</p>

# Basic Information

To:	This consultation is open to everyone. We are keen to hear from a wide range of interested parties from across the public and private sectors, as well as from the general public. We are particularly interested in comments from developer contributions practitioners.
Body/bodies responsible for the consultation:	Ministry of Housing, Communities and Local Government
Duration:	This consultation is open from 20 December until 31 January.
Enquiries:	For any enquiries about the consultation please contact: <a href="mailto:DeveloperContributionsConsultation@communities.gov.uk">DeveloperContributionsConsultation@communities.gov.uk</a>
How to respond:	<p>The consultation questions are embedded in the body of the text. A copy of the draft regulations is set out in Annex A.</p> <p>Consultation responses should be submitted by online survey: <a href="https://www.surveymonkey.co.uk/r/PMPJKXJ">https://www.surveymonkey.co.uk/r/PMPJKXJ</a></p> <p>Responses should be sent via the online survey, particularly from organisations with access to online facilities such as local authorities, representative bodies and businesses.</p> <p>Consultations on planning policy receive a high level of interest across many sectors. Using the online survey greatly assists our analysis of the responses, enabling more efficient and effective consideration of the issues raised for each question.</p> <p>Should you be unable to respond online you can email your responses to: <a href="mailto:DeveloperContributionsConsultation@communities.gov.uk">DeveloperContributionsConsultation@communities.gov.uk</a></p> <p>Or send to:</p> <p>Planning Infrastructure Division Ministry of Housing, Communities and Local Government 3rd floor Fry Building 2 Marsham Street LONDON SW1P 4DF</p>

If you are responding in writing, please make it clear which questions you are responding to.

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of the organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

If you are responding on behalf of an organisation, please highlight which group you represent:

**Local Authorities** (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)  
**Neighbourhood Planning Bodies / Parish or Town Councils**  
**Private Sector Organisations** (including housebuilders, housing associations, businesses, consultants)  
**Trade Associations / Interest Groups / Voluntary or Charitable Organisations**  
**Academia / Private individual / Other**

# Introduction

1. The Government announced a package of reforms to the system of developer contributions at Autumn Budget 2017, in response to the Community Infrastructure Levy Review<sup>1</sup>. These reforms complement changes to the assessment of viability in the National Planning Policy Framework and aim to make the system of developer contributions more transparent and accountable by:

- Reducing complexity and increasing certainty for local authorities, developers and communities;
- Supporting swifter development;
- Improving the market responsiveness of the Community Infrastructure Levy;
- Increasing transparency over where developer contributions are spent; and
- Introducing a new tariff to support the development of strategic infrastructure.

2. The Government consulted on its proposals in March 2018<sup>2</sup> and published its response to the consultation in October 2018<sup>3</sup>. The Government is also introducing an exemption from the Community Infrastructure Levy for starter homes which was announced in a Written Ministerial Statement in 2015<sup>4</sup>. We are now consulting on the draft regulations which will amend the Community Infrastructure Levy Regulations 2010 (as amended). These proposals relate to England only.

3. The regulatory changes the Government are bringing forward relate to:

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<sup>1</sup> The CIL review team: A new approach to developer contributions, February 2017.

<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

<sup>2</sup> Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691182/Developer\\_Contributions\\_Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691182/Developer_Contributions_Consultation.pdf)

<sup>3</sup> Government response to supporting housing delivery through developer contributions: A summary of consultation responses and the Government's view on the way forward

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752183/Developer\\_Contributions\\_Government\\_Response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752183/Developer_Contributions_Government_Response.pdf)

<sup>4</sup> <https://publications.parliament.uk/pa/cm201415/cmhansrd/cm150302/wmstext/150302m0001.htm#1503022000006>

- Ensuring that consultation is proportionate;
  - Removing the restriction which prevent local authorities from using more than five section 106 obligations to fund a single infrastructure project (the pooling restriction);
  - Improvements to the operation of the Community Infrastructure Levy;
  - A more proportionate approach to administering exemptions;
  - Extending abatement provisions to phased planning permissions secured before the introduction of the Community Infrastructure Levy;
  - Applying indexation where a planning permission is amended;
  - Indexing Community Infrastructure Levy rates to more closely track the value of development;
  - Removing Regulation 123 restrictions and introducing Infrastructure Funding Statements;
  - Clarifying that local planning authorities can seek a sum as part of a section 106 planning obligation for monitoring planning obligations;
  - Delivering Starter Homes.
4. The purpose of the current technical consultation is to ensure that the draft regulations deliver the intended policy changes and do not give rise to unforeseen consequences. A number of the proposals consulted on in March will be addressed through guidance and these are not considered in this consultation. The Government will also bring forward guidance to support the delivery of the proposals in this consultation.
5. The Government has already introduced changes by reforming the approach to viability, which is set out in the revised National Planning Policy Framework and in associated national planning guidance. This new approach ensures that local plans clearly set out the contributions that developers are expected to make towards infrastructure and affordable housing; introduces a standard approach to establishing land value; and increases transparency and accountability through the publication of viability assessments and through improvements to the monitoring and reporting of section 106 planning obligations.

## Reducing complexity and increasing certainty

### **Ensuring that consultation is proportionate**

6. Charging authorities are currently required to undertake two rounds of consultation on proposed Community Infrastructure Levy rates (firstly on a preliminary draft schedule and then on a draft schedule) before they can

introduce or revise the Levy. The majority of charging authorities report that the initial implementation of the Levy took one to two years. Local authorities have suggested that resource constraints can affect their willingness to introduce or review charges.

7. To address concerns about the time taken to introduce or revise a charging schedule, the Government proposed to remove the current requirement for two rounds of consultation and replace it with a statement setting out how the authority had sought an appropriate level of engagement. This would then be considered as part of the examination process.
8. We have modified our proposal in light of the consultation responses. To ensure that stakeholders have the opportunity to feed into the preparation of a charging schedule, and to allow charging authorities to air and consider any issues ahead of the examination, the Government now proposes to retain the requirement for an authority to consult on their draft charging schedule. However, the statutory requirement to consult on a preliminary draft charging schedule will be removed. It will be for charging authorities to decide whether they wish to exceed the minimum consultation requirement and the details of how they wish to consult. A charging authority might, for example, decide to undertake two rounds of consultation if they are introducing the Levy for the first time. In providing authorities with greater flexibility the regulations remove requirements for publishing newspaper notices when introducing a charging schedule, aligning with the approach taken for plan-making.
9. The legislative change is set out in draft regulation 3.
10. **Question 1:** Are there any elements in regulation 3 which will prevent the Government achieving the policy intent?

**Removing the restriction which prevents local authorities using more than five section 106 obligations to fund a single infrastructure project ('the pooling restriction')**

11. Local authorities are currently prohibited from using more than five section 106 planning obligations to fund a single infrastructure project (the 'pooling restriction'). While the pooling restriction is intended to incentivise local authorities to introduce the Community Infrastructure Levy, it is recognised that it can have distortionary effects and lead to otherwise acceptable sites being refused planning permission.

12. The Government proposed to remove the restriction on local authorities using more than five section 106 obligations to fund a single infrastructure project in the following circumstances:
  - a) in areas that have adopted the Levy;
  - b) where local authorities fall under a threshold based on the tenth percentile of average new build house prices, meaning the Levy cannot feasibly be charged; or
  - c) where development is planned on several strategic sites.
  
13. The Government proposed that the pooling restriction would be maintained in all other circumstances. The Government also proposed to ensure measures are in place to incentivise uptake and continued use of the Levy.
  
14. Following the consultation, the Government has decided to lift pooling restrictions altogether. This will address the uncertainty, complexity and delay created by the restriction. It will allow all local planning authorities to seek section 106 planning obligations to fund infrastructure to help support, and bring forward, new housing, regardless of how many planning obligations have already contributed towards an item of infrastructure. This could speed up the delivery of infrastructure as local authorities will be able to raise funding from more developments, where appropriate, to pay for infrastructure.
  
15. Lifting the pooling restriction in all areas will also allow section 106 to be applied more consistently than under the proposals set out in the consultation document. It will avoid the situation where some areas have unlimited pooling while neighbouring areas still have the restriction in place. It will also create more certainty for developers and local authorities.
  
16. The regulations will allow local authorities to use both the Levy and section 106 planning obligations to fund the same item of infrastructure. Together with other reforms set out in this consultation, such as removing restrictions in regulation 123 of the Community Infrastructure Regulations 2010 (see paragraphs 48-53 below), this will give charging authorities greater flexibility for funding infrastructure. This will enable authorities to approve development that may otherwise have been refused. The Government will consider how guidance can be used to incentivise uptake and ensure that planning obligations are used effectively. In order to incentivise continued use of the Levy the Government proposes to require that, should authorities consider stopping charging the Levy, they should consult on doing so. The consultation would set out the expected impacts of ceasing to charge the Levy on funding infrastructure and how the authority intended to replace any lost funding. These proposals do not apply to the Mayor of London.

17. Section 106 planning obligations can only be used if they are necessary to make a development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These requirements, which are set out as statutory tests in the Community Infrastructure Levy Regulations 2010, will remain. By removing regulation 123 restrictions, the Levy, which is collected from a much wider number of developments including those not subject to section 106, could be used in addition to section 106 contributions necessitated by a specific development. For example, an authority could use section 106 contributions from nearby developments to fund a local school, the need for which was created by those developments, and additionally provide Levy funding towards the school (as development elsewhere in their borough could use some of the new school places it provides). The Levy could expedite the delivery of the school by addressing any remaining funding gap without risking the viability of the nearby developments that have already contributed through section 106 obligations.

18. This is set out in draft regulations 4 and 12.

19. **Question 2:** Are there any elements in regulations 4 and 12 which will prevent the Government achieving the policy intent?

### **A more proportionate approach to administering exemptions**

20. The Community Infrastructure Levy regulations allow for certain development (such as residential extensions and self-build housing) to be exempt, or gain relief, from the Levy. In most cases a developer must submit a Commencement Notice to the charging authority prior to the start of works to confirm the exemption or relief. Failure to do so results in the exemption or relief being removed. The full Levy liability then becomes due immediately, and any ability to pay the Levy in phases is removed.

21. There have been cases where developers have submitted Commencement Notices after starting work on site. They have consequently been required to pay the full Levy liability immediately. This affects smaller developers and self-builders particularly, as they tend to be less familiar with the requirements of the legislation. The Government considered that the immediate application of this penalty is disproportionate to the failure to submit a Commencement Notice on time.

22. The Government therefore proposed to introduce a 'grace period' that would allow the Commencement Notice to be served within two months of the start of

the works. If a Notice is submitted within this period, the exemption or relief would remain in place. The Government also sought views on introducing a small penalty charge for submitting a Notice within the proposed grace period.

23. Following the consultation, the Government has decided not to introduce a grace period. The response to the consultation highlighted the difficulty in understanding when the grace period would start and therefore end. It would also result in self-builders still being liable for the full Community Infrastructure Levy liability if they did not put in a Notice before it ended. The Government response therefore set out that a modified proposal would be taken forward. Changes will be made to the penalties associated with the failure to submit a Commencement Notice prior to development being started. Because it is important to understand when development is commenced in order to stop exemptions being used to 'game' the system (e.g. a developer getting an exemption as a self-builder only to then sell on the home) there will, instead, be a smaller penalty than present for not submitting a Notice. The penalty proposed mirrors that elsewhere in the Community Infrastructure Levy regulations: a surcharge equal to 20 per cent of the notional chargeable amount or £2,500, whichever is the lower amount. This will therefore always be lower than the current penalty of the full Levy liability. The Government also proposes to clarify that a Commencement Notice is not required in relation to an exemption for residential extensions.

24. This is set out in draft regulation 7.

25. **Question 3:** Are there any elements in regulation 7 which will prevent the Government achieving the policy intent?

### **Extending abatement provisions to phased planning permissions secured before the introduction of the Community Infrastructure Levy ('balancing')**

26. Where planning permission is first secured for phased development after the Levy comes into force in an area and is subsequently amended under section 73 of the Town and Country Planning Act 1990 (through a 'section 73 application'), provisions exist to offset any resulting increases in Levy liabilities in one phase against any decreases in liability in another phase ('abatement'). However, for developments first permitted before a charging authority implemented the Levy ('transitional' cases), the regulations limit the way in which such abatement can be used. A change in one phase may lead to an increase in liabilities, but this cannot be offset by a decrease in liabilities in another phase as negative liabilities are taken to be zero under the current regulations.

27. The Government proposed to allow phased development originally permitted before the Levy came into force to balance Levy liabilities between different phases of the same development.
28. Following consultation, the Government has taken this proposal forward.
29. This is set out in draft regulation 13.
30. Regulation 128AD will allow phased developments, which were originally consented before the Levy came into force in the area, to offset future Levy liabilities across different phases of the same development. This will mean that negative Levy liabilities in one phase of transitional cases can act as a potential future credit against a liability created in another phase of the development rather than reverting to zero. However, each phase will remain a separate chargeable development.
31. **Question 4:** Are there any elements in regulation 13 which will prevent the Government achieving the policy intent?

### **Applying indexation where a planning permission is amended**

32. If a section 73 application is granted in relation to a chargeable development in an area where there was a charging schedule in effect when the development was first permitted, the charging authority should first establish, following regulation 9, whether there is a difference in Levy liability between the original and the new permission (by assuming, for the purposes of comparison, that they were both calculated on the same day). If there is no difference, the original Levy liability stands. If there is a difference, then a new Levy liability must be calculated, following regulation 40, for the entire new permission. This can result in developers being charged more, because of indexation, for floorspace for which they have already paid the Levy. The Government is also aware that there is uncertainty about how these regulations should be interpreted.
33. The existing regulations are inconsistent with the change brought in through the 2018 regulations<sup>5</sup> which addressed a parallel issue for developments which were first permitted before there was a charging schedule in place, and which were subsequently amended through a section 73 permission after the charging schedule was introduced. Regulation 128A provides that in such circumstances, an indexed rate of the Levy should be charged on any change in liability, but indexation should not be charged on already permitted floorspace. The Government therefore proposed introducing a similar approach for

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<sup>5</sup> Regulation 128A.- Transitional provision: section 73 of the TCPA 1990 applications

developments first granted planning permission when the Levy was already in place.

34. Following the consultation, the Government has taken this forward by drafting provisions to enable reductions in Levy liability to be calculated at the rate that applied when the original permission was granted and increases in Levy liability to be charged at the rate that applied when the later section 73 permission was granted. In such circumstances, any increased levy would only apply to the change between the previous and latest section 73 permissions in order to avoid charging for already permitted floorspace.
35. A new calculation will ensure that any increases in liability resulting from a section 73 application are charged at the latest rate, including indexation, while previously permissioned floorspace continues to be charged at the rate/rates in place when those elements of the development were permissioned. A decrease in liability resulting from a section 73 application is calculated at the indexation rate of the original permission, while other elements of the development continue to be charged at the rate/rates in place when those elements of the development were permissioned.
36. Where a development is recommenced, the earlier liability notice, which had previously been issued for that development, should be re-issued, and a new calculation of liability should not be undertaken.
37. This is set out in draft regulation 6.
38. **Question 5:** Are there any elements in regulation 6 which will prevent the Government achieving the policy intent?

## Increasing market responsiveness

### **Indexation of Community Infrastructure Levy rates**

39. To reduce the gap that can open up over time between Levy rates being set and subsequent changes to the value of development, the Government considered linking Levy rates more closely with the value of development, rather than to the cost of building infrastructure. This would mean charging schedules would stay up to date in terms of their impact on viability.
40. The Government proposed that the Levy for residential development should be indexed to the House Prices Index. It could be indexed to either (i) the change in the seasonally adjusted house price index on a monthly or quarterly basis or (ii) the change in the local authority-level house price index on an annual basis.

41. The Government proposed that the Levy for non-residential development should be indexed to a different metric, as there is no clear link between the value of non-residential development and house price inflation. Two approaches were identified: (i) indexing to the Consumer Price Index or (ii) indexing to a combined proportion of the House Price Index and the Consumer Price Index.
42. Following the consultation, the Government has amended the proposal on indexing the Levy. For residential development, the Government proposes indexing to a three-year smoothed average of the annual local House Price Index. This addresses the risk of the volatility of House Price Index data, whilst retaining the close link with changes over time to the viability of the development. We are continuing to test the period over which the index will be averaged, to ensure that three years is the most appropriate option.
43. For non-residential indexation the Government proposes indexing to the Consumer Price Index. This is a national index, and it is proposed that there will not be any smoothing of the data.
44. To implement this, the Government proposes that authorities should set out in their Charging Schedules, or summaries of the rates that apply in their area, which index would apply to development falling within a particular rate. The proposed 'rate summaries' would also allow developers to understand the prevailing rate of the Levy, taking account of indexation changes, in any given year. The proposed changes to indexation also apply in relation to social housing relief and the neighbourhood share of the Levy (including where passed to local councils). In relation to the neighbourhood share, the cap in regulation 59(A)(7) of the Community Infrastructure Levy Regulations 2010 (as amended) has been increased to account for indexation since it was introduced. From the draft regulations coming into force the cap will be indexed to the Consumer Price Index.
45. This is set out in draft regulation 5.
46. **Question 6:** Are there any elements in regulation 5 which will prevent the Government achieving the policy intent?
47. **Question 7:** Do you have any further comments in relation to the Government's proposed approach to Community Infrastructure Levy indexation including, for residential development, the approach of using a smoothed index using local house prices.

## Improving transparency and increasing accountability

## Removing regulation 123 restrictions and introducing Infrastructure Funding Statements

48. To improve transparency and accountability around the spending of the Community Infrastructure Levy and section 106 planning obligations, the Government proposed to remove the restrictions on section 106 planning obligations in regulation 123. Regulation 123 lists (i.e. the list of infrastructure projects or types of infrastructure that a local authority intends will be, or may be, wholly or partly funded by the Levy) would be replaced with a more transparent approach to reporting by charging authorities on how they propose to use developer contributions through Infrastructure Funding Statements.
49. The Government proposed that local authorities should be required to provide an annual Infrastructure Funding Statement in an open data format. This would provide a flexible tool to set out infrastructure priorities and delivery, and could provide a framework for improving communication with local communities about delivery of section 106 planning obligations.
50. Following the consultation, the Government proposes taking this forward by introducing a requirement for all local authorities (including those that have not implemented the Levy) to publish an annual Infrastructure Funding Statement by 31 December each year. The Infrastructure Funding Statement would report 'what has happened' on revenues from developer contributions and the way in which those revenues have been applied. It would also look forward to anticipated revenues from developer contributions and how they propose to apply them in the following years. The Infrastructure Funding Statement would be available on the local authority website.
51. The Government will produce a data specification and tools to help authorities collect data for their Infrastructure Funding Statements. A draft of the data specification and prototype tools are available for review and comment [here](#).
52. This is set out in draft regulation 10.
53. **Question 8:** Are there any elements in regulation 10 which will prevent the Government achieving the policy intent?

## Monitoring fees

54. Charging authorities can use a proportion of the Community Infrastructure Levy to cover the administration of the Levy (including meeting legislative

requirements on reporting). There is uncertainty about whether section 106 planning obligations can be used in a similar way as there is no similar provision for planning obligations. To improve transparency and ensure local communities are better informed about the infrastructure and affordable housing that is being delivered, the Government sought views on whether local planning authorities should be able to seek a sum for monitoring planning obligations as part of a section 106 agreement.

55. In light of the consultation, the Government intends to clarify how section 106 planning obligations can be used for monitoring. The proposals will require reporting of developer contributions from the Community Infrastructure Levy and section 106 planning obligations through the Infrastructure Funding Statement. In order to support this, the Government proposes to specifically permit authorities to seek a monitoring fee through section 106 planning obligations. Any fee should be 'proportionate and reasonable' and reflect the actual cost of monitoring.

56. This is set out in draft regulation 11.

57. **Question 9:** Are there any elements in regulation 11 which will prevent the Government achieving the policy intent?

## Delivering Starter Homes

58. In line with the position set out in the housing White Paper *Fixing our Broken Housing Market*, the Government is committed to introducing starter homes as a new affordable home ownership product. The amended Community Infrastructure Levy Regulations include provisions which will exempt starter homes from the Levy where the dwelling is sold to individuals whose total household annual income is no more than £80,000 (£90,000 in Greater London). This is in line with other affordable housing products.

59. This is set out in draft regulation 8.

60. The Government will also be introducing regulations on the broader aspects of the starter homes policy shortly. The National Planning Policy Framework sets out a clear policy for a minimum of 10% affordable home ownership units on larger sites. It is for local areas to work with developers to agree an appropriate level of delivery of starter homes to meet local need, alongside other affordable home ownership and rented tenures. In particular, that there will be no

mandatory requirement for local authorities to deliver starter homes. Local authorities will have the flexibility to choose the appropriate affordable home ownership products to meet local need as set out in the National Planning Policy Framework.

61. **Question 10:** Are there any elements in regulation 8 which will prevent the Government achieving the policy intent?

## Other technical clarifications

62. The Government is also proposing to bring forward a small number of other clarifications in the regulations to deal with issues that were identified during and after the March 2018 consultation. These changes are proposed to ensure the Government's original policy intention can be delivered through regulations.

Regulation 40 (Calculation of chargeable amount) – clarifying the meaning of 'retained parts of in-use buildings' (K<sub>R</sub>).

63. It has been identified that the definition of K<sub>R</sub> in regulation 40 can be read in a way which could allow a section 73 application to reduce the Levy liability. This could occur by including floorspace that had been constructed under the original permission (or an earlier section 73 amendment) as 'retained parts of in-use buildings', where it has been in lawful use for a continuous period of at least six months at the point at which the latest section 73 amendment is granted. This was not the Government's policy intent. It is therefore proposed to amend the definition of 'new build' in regulation 40(11) so that it is clear that chargeable development granted planning permission under section 73 includes any new buildings and enlargements to existing buildings which were built pursuant to the original planning permission to which the new permission relates.

64. See regulation 15.

Regulation 65(12)(c) (Liability notice) – "relevant person" in relation to liability notices.

65. The Government has been made aware of an issue resulting from a change made to regulation 65(12)(c) by the 2014 Regulations<sup>6</sup> in relation to the definition of 'relevant person'. This impacts on who liability notices must be

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<sup>6</sup> Through regulation 9(3)(e) of the 2014 Regulations  
<http://www.legislation.gov.uk/ukxi/2014/385/regulation/9/made>

served on, as well as who is eligible to request a review. The 2014 amendment introduced the word 'phased' into both Regulation 65(12)(b) and (c). This could be taken to exclude planning applicants from being an interested party under Part 10 (Appeals). The Government therefore proposes to omit the word 'phased' from Regulation 65(12) (c), to clarify the policy intent.

66. See regulation 15.

Regulation 128A (Transitional provision: section 73 applications) –multiple section 73 permissions and clarifying how the transitional provisions operate in relation to reliefs and exemptions.

67. There is uncertainty about how the existing transitional provisions in regulation 128A apply in situations where a permission is given under section 73 and an earlier amendment has already been secured. This could lead to a subsequent section 73 permission creating a Levy liability for development originally permitted before the Levy came into effect in an area. There is also uncertainty about how the existing transitional provisions in regulation 128A apply in relation to reliefs and exemptions. There is a risk that Levy liabilities in transitional cases can be artificially reduced due to exemptions or reliefs (for example, social housing relief under regulation 50), being calculated on the basis of the whole of the (post-Levy adoption) section 73 permission, but not on the notional pre-Levy liability. This approach could cause perverse outcomes, such as a development increasing its market housing through a section 73 permission but receiving £0 Community Infrastructure Levy liability in regard to it.

68. The Government proposes to amend the regulations to clarify that where there is any subsequent section 73 permission, Levy liability would still fall to be determined under regulation 128A (and in cases of phased development, under new regulation 128AD). The Government also proposes to amend the regulations to clarify that any liability calculated using Regulation 128A should include all exemptions and reliefs to avoid situations where liabilities for amendments to a planning permission are offset by exemptions or reliefs that relate to already permitted floorspace.

69. See regulation 13.

Application of Regulation 128 in areas where the Mayor of London or a Combined Authority has introduced the Community Infrastructure Levy.

70. This will clarify how the Levy applies where a development is permitted where both a local level Levy and a Mayoral Levy are in place.

71. See regulations 13 and 14.

72. **Question 11:** Are there any elements in regulations 13 to 15 which will prevent the Government achieving the policy intent?

## Taking forward reforms

73. The Government is consulting now to ensure that the regulations as drafted deliver the intended policy objectives. Responses in which the draft regulations have been tested against real world developments are likely to be particularly informative. The detailed wording and approach of the regulations will be reviewed in light of the consultation responses, before they are laid in parliament in 2019. The Government will also keep under review whether further technical changes are needed before the regulations are laid in parliament.

74. The Government will also use the responses to identify what additional guidance can usefully be provided to support the implementation of the regulations.

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Government receives a request for disclosure of the information it will take full account of your explanation, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how the process can be improved please contact us via the [complaints procedure](#).

# Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

## **1. The identity of the data controller and contact details of our Data Protection Officer**

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at [dataprotection@communities.gsi.gov.uk](mailto:dataprotection@communities.gsi.gov.uk)

## **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

## **3. Our legal basis for processing your personal data**

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

## **4. With whom we will be sharing your personal data**

Your personal data will not be shared with any organisation outside of MHCLG

## **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for two years from the closure of the consultation

## **5. Your rights, e.g. access, rectification, erasure**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**6. The data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.**

**7. Your personal data will not be used for any automated decision making.**

**8. Your personal data will be stored in a secure government IT system.**

If you submit information to this consultation using Survey Monkey, it will be moved to our internal systems at a date following the consultation publication date.

# ANNEX A – Draft Regulations

*Draft Regulations laid before the House of Commons under section 222(2)(b) of the Planning Act 2008, for approval by resolution of that House.*

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## STATUTORY INSTRUMENTS

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**2019 No.**

### **COMMUNITY INFRASTRUCTURE LEVY, ENGLAND**

#### **The Community Infrastructure Levy (Amendment) (England) Regulations 2019**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

A draft of these Regulations has been laid before the House of Commons in accordance with section 222(2)(b) of the Planning Act 2008(7) and approved by resolution of that House.

The Secretary of State, in exercise of the powers conferred by sections 205(1), 208(8), 210(1) to (3), 211(3) and (5) to (7), 214(4), 215(1) and (3), 216(5) and (7), 216A(1) and (7), 217(3), 218(1), (3) and (4), 220(1) to (3), 222(1) and 223(1) of the Planning Act 2008, with the consent of Treasury, makes the following Regulations.

### **PART 1**

#### **Introduction**

##### **1.Citation, commencement and application**

—(1) These Regulations may be cited as the Community Infrastructure Levy (Amendment) (England) Regulations 2019 and come into force on [date].

These Regulations apply in relation to England only.

##### **2.Amendments to the Community Infrastructure Levy Regulations 2010**

The Community Infrastructure Levy Regulations 2010(8) are amended in accordance with the following Regulations.

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<sup>(7)</sup> 2008 c.29. Most of the functions of the Secretary of State under Part 11, in relation to Wales, were transferred to Welsh Ministers by article 44 of S.I. 2018/644.

<sup>(8)</sup> S.I. 2010/948.

## PART 2

### Charging schedules

#### 3.Charging schedules: consultation etc

—(2) In regulation 11, in the definition of “consultation bodies” for “regulation 15” substitute “regulation 16”.

In regulation 14(4) for “preliminary draft charging schedule in accordance with regulation 15” substitute “draft charging schedule in accordance with regulation 16”.

Omit regulation 15.

In regulation 16—

in paragraph (1) omit sub-paragraph (d);

after paragraph (1) insert—

“(1A) The charging authority must make such arrangements as it considers appropriate for inviting representations on the draft charging schedule.

(1B) The charging authority must take into account any representations made to it under this regulation before submitting a drafting charging schedule for examination in accordance with section 212 of PA 2008.”;

in regulation (2) after “In this regulation” insert—

“—

“consultation bodies” means—

(a) each of the following whose area is in or adjoins the charging authority's area—

(i) a local planning authority within the meaning of section 37 of PCPA 2004,

(ii) a local planning authority within the meaning of section 78 of PCPA 2004,

(iii) a county council,

(b) each parish council whose area is in the charging authority's area;

(c) the Mayor if the charging authority is a London borough council;

(d) any other person exercising the functions of a local planning authority (within the meaning of TCPA 1990) for an area within, or which adjoins, the charging authority's area;”.

In regulation 17 omit paragraph (3).

In regulation 18 omit sub-paragraph (b).

In regulation 19(4) for “regulation 15” substitute “regulation 16”.

In regulation 21(8) omit sub-paragraph (c).

In regulation 25 omit sub-paragraph (c).

In regulation 26(5)(e) omit paragraph (i).

In regulation 41(1) omit the definition of “by local advertisement”.

#### 4.Charging schedules: procedure in relation to a charging schedule ceasing to have effect

—(3) In regulation 28 omit paragraph (4).

After regulation 28 insert—

##### “Charging schedules: procedure in relation to a charging schedule ceasing to have effect

**28A.**—(1) Subject to paragraph (2), a charging authority (other than the Mayor) which proposes to make a determination under section 214(3) of PA 2008 that a charging schedule is to cease to have effect must—

(a) prepare a statement which provides—

- (i) details of the CIL receipts for the period of five years immediately preceding the date on which the statement is first published in accordance with sub-paragraph (d), or, where the charging schedule was not in effect for the whole of the five years, the period during which the charging schedule was in effect;
  - (ii) an assessment, for the period of five years beginning with the date on which it is proposed the charging schedule will cease to have effect in the area, of the potential effects of the proposal on the funding of infrastructure needs for the area; and
  - (iii) a summary of the policies (in relation to planning obligations or otherwise) the charging authority has or intends to put in place in relation to funding of infrastructure needs for the area, together with an assessment of how effective the authority considers those measures are likely to be in replacing the funding lost on the charging schedule ceasing to have effect;
- (b) make a copy of the documents referred to in sub-paragraph (a) available for inspection at its principal office;
  - (c) send a copy of those documents to the consultation bodies;
  - (d) publish on its website a statement—
    - (i) specifying that the authority proposes to determine under section 214(3) of PA 2008 that a charging schedule is to cease to have effect;
    - (ii) summarising the content of the documents referred to in sub-paragraph (a); and
    - (iii) specifying—
      - (aa) the period (being not less than four weeks) within which representations about the proposal may be made;
      - (bb) the address to which, and the name of the person (if any) to whom, representations about the proposal must be made;
      - (cc) that representations may be made in writing or by way of electronic communications;
      - (dd) that representations may be accompanied by a request to be notified at a specified address of the decision of the charging authority in relation to the proposal; and
  - (e) consider any representations made to it under this regulation.
- (2) Paragraph (1) does not apply where the determination referred to in paragraph (1) is part of a proposal under which the charging authority replaces a charging schedule (A) with a new charging schedule provided that A ceases to have effect on the same day the new charging schedule takes effect.
- (3) Where paragraph (2) applies, in addition to complying with regulation 28 in relation to the new charging schedule, a charging authority must make the new charging schedule available for inspection.
- (4) Where a charging authority makes a determination under section 214(3) of PA 2008 that a charging schedule is to cease to have effect it must—
- (a) publish a statement of that fact on its website; and
  - (b) notify the relevant consenting authorities of that fact.”.

## PART 3

### Calculation of chargeable amount

#### 5. Indexation

—(4) In regulation 12—

after sub-paragraph (b) of paragraph (2) insert—

“(bb) a statement explaining which of the following inflation indexes applies to each rate—

- (i) CPI index;
- (ii) local HPI index;”;

after paragraph (3) insert—

“(3A) In paragraph (2)(bb)—

“CPI index” means the general index of consumer prices (for all items) published from time to time by the Statistics Board;

“local HPI index” means the index for the local authority area in which the development is located in the UK house price index published from time to time by the Office for National Statistics.”

(3B) In relation to the Mayor or a MDC, the reference in the definition of “local HPI index” to the local authority area is to be treated as a reference to—

- (a) in the case of the Mayor, Greater London;
- (b) in the case of a MDC—
  - (i) where the area of the MDC includes all or part of one local authority area, that local authority area, or
  - (ii) where the area of the MDC includes all or part of more than one local authority area, the local authority area in which the MDC has the greatest area.

In regulation 40—

for paragraph (5) substitute—

“(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times Ip \times Np}{Ic \times Nc}$$

where—

A is the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

Ic is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the BCIS index for the year in which the charging schedule containing rate R took effect;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], 1;

Ip is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the BCIS index for 2019;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], 1;

Nc is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the relevant index for 2019;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], the annual index figure of the relevant index for the year in which the charging schedule containing rate R took effect;

Np is the annual index figure of the relevant index for the year in which planning permission was granted.

omit paragraph (6);

insert the following definitions in the appropriate places in paragraph (11)—

““annual index figure” means—

- (a) where the relevant index is the BCIS index—

- (i) for any year before 2023, the index figure for 1st November for the preceding year or if that index figure is not published any substituted index figure published by Royal Institution of Chartered Surveyors<sup>(9)</sup>;
- (ii) for any year from 2023 onwards, the index figure for 1st November 2022 or if that index figure is not published any substituted index figure published by Royal Institution of Chartered Surveyors;
- (b) where the relevant index is the CPI index, the index figure for September of the preceding year or if that index figure is not published any substituted index figure published by the Statistics Board;
- (c) where the relevant index is the local HPI index, the aggregate of—
  - (i) the local HPI index figure for July of the preceding year (P) (as revised by any revisions to that figure which are published on or before 1st December in P) or if that index figure is not published any substituted index figure published by Office for National Statistics, and
  - (ii) the local HPI index figures for July of the two years preceding P (as revised by any revisions to those figures which are published on or before 1st December in P) or if any of those index figures are not published any substituted index figure published by Office for National Statistics,
 divided by 3;”

““BCIS index” means the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors<sup>(10)</sup>;”

““CPI index” and “local HPI index” have the same meaning as in regulation 12;”

““relevant index” is—

- (a) the index, in relation to a particular rate, specified in the charging schedule in accordance with regulation 12(2)(bb);
- (b) where, in relation to a particular rate, an index has not been specified in the charging schedule (in accordance with regulation 12(2)(bb)), the index specified for the rate in the annual CIL rate summary in accordance with regulation 121C;
- (c) where, in relation to a particular rate, an index has neither been specified—
  - (i) in the charging schedule (in accordance with regulation 12(2)(bb)), nor
  - (i) in the annual CIL rate summary (in accordance with regulation 121C),
 BCIS index.”.

In regulation 50—

for paragraph (4) substitute—

“(4) The qualifying amount at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times Ip \times Np}{Ic \times Nc}$$

where—

A is the deemed net area chargeable at rate R;

Ic is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the BCIS index for the year in which the charging schedule containing rate R took effect;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], 1;

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<sup>(9)</sup> Registered in England and Wales RC00487.

<sup>(10)</sup> Registered in England and Wales RC00487.

Ip is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the BCIS index for 2019;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], 1;

Nc is—

- (i) where the relevant charging schedule took effect before [1st January 2020], the annual index figure of the relevant index for 2019;
- (ii) where the relevant charging schedule took effect on or after [1st January 2020], the annual index figure of the relevant index for the year in which the charging schedule containing rate R took effect;

Np is the relevant index for the year in which planning permission was granted.

omit paragraph (5);

in paragraph (8) before sub-paragraph (a) insert—

“(aa) in this regulation “annual index figure”, “BCIS index” and “relevant index” have the same meaning as in regulation 40;”.

In regulation 58A omit the definitions of “IA” and “index figure”.

In regulation 59A(7) for “£100” to the end substitute—

“

$$£139.70 \times N \times \frac{CPI}{106.6}$$

where—

“CPI” is the index figure, for September of the year immediately preceding the financial year in relation to which the payment is made, in the general index of consumer prices (for all items) published from time to time by the Statistics Board, or if that index figure is not published any substituted index figure published by the Board;

and

N is the number of dwellings in the area of the parish council.”.

## 6.Chargeable development: section 73 permissions

—(5) In regulation 9 for paragraphs (6) to (9) substitute—

“(6) Where a planning permission (B) is granted under section 73 of TCPA 1990 which changes a condition subject to which a previous planning permission (A) was granted, the following paragraphs apply to determine the chargeable development.

(7) Where the notional chargeable amount for B is larger than the notional chargeable amount for A then the chargeable development is—

- (a) the development for which B was granted if commenced, or
- (b) the development for which A was granted if that development is re-commenced.

(8) Where the notional chargeable amount for B is smaller than the notional chargeable amount for A then the chargeable development is—

- (a) the development for which B was granted if commenced, or
- (b) the development for which A was granted if that development is re-commenced.

(9) Where the notional chargeable amount in relation to B is the same as the notional chargeable amount in relation to A then the chargeable development is the development for which A was granted as if that development was commenced.

(10) For the purposes of paragraphs (7) to (9)—

- (a) the notional chargeable amount in relation to A is the amount of CIL that would be payable calculated under regulation 40, including the deduction of any relief<sup>(11)</sup> which is applicable in relation to the development for which A was granted;
- (b) the notional chargeable amount in relation to B is the amount of CIL that would be payable calculated under regulation 40, including the deduction of any relief which is applicable in relation to the development for which B was granted, (as modified by paragraph 11).

(11) For the purposes of calculating the notional chargeable amount in relation to B regulations 40 and 50 apply as if—

- (a) B first permits development on the same day as A;
- (b)  $N_p$  for B were the annual index figure for the relevant index for the year in which A was granted;
- (c) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—
  - (i) at the time A first permits development; and
  - (ii) in the area in which the development will be situated.

(12) For the purposes of paragraphs (7) and (8), chargeable development is re-commenced where—

- (a) the development for which A was granted was commenced;
- (b) work on that development is halted and development for which B was granted was commenced; and
- (c) the development for which B was granted was subsequently halted and the development for which A was granted is continued.

(13) Where, after B was granted, a new planning permission is granted in relation to the development under section 73 of TCPA 1990, this regulation applies as if any reference in paragraphs (6) to (12) to B were a reference to the new planning permission.”

In regulation 40(1) at the beginning insert “Subject to regulations 40A and 40B,”.

After regulation 40 insert—

**“Calculation of chargeable amount: section 73 permissions which increase liability**

**40A.**—(1) Where a development is chargeable development under regulation 9(7)(a), this regulation applies for determining the liability to CIL charged by a charging authority for that chargeable development.

(2) The chargeable amount shall be—

$$X - Y + Z$$

where—

X = the chargeable amount for the development for which B was granted calculated in accordance with regulation 40, including the deduction of any relief<sup>(12)</sup> which is applicable in relation to the development for which B was granted;

Y = the chargeable amount for the development for which A was granted calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the development for which A was granted, (as modified by paragraph (3));

Z = the chargeable amount for the development for which A was granted calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the development for which A was granted, (as shown on the first liability notice issued in relation to A together with any corrections to that notice which relate only to errors in that notice).

(3) For the purposes of calculating Y, regulations 40 and 50 apply as if—

- (a) A first permits development on the same day as B;
- (b)  $N_p$  for A were the annual index figure for the relevant index for the year in which B was granted;

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<sup>(11)</sup> See regulation 2 for the definition of “relief”.

<sup>(12)</sup> See regulation 2 for the definition of “relief”.

- (c) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—
  - (i) at the time B first permits development; and
  - (ii) in the area in which the development will be situated.

(4) Subject to paragraph (5), for the purposes of this regulation A and B have the same meaning as in regulation 9(6).

(5) Where, after B was granted, a new planning permission is granted in relation to the development under section 73 of TCPA 1990, this regulation applies as if any reference to B were a reference to the new planning permission.

**Calculation of chargeable amount: section 73 permissions which reduce liability**

**40B.**—(1) Where a development is chargeable development under regulation 9(8)(a), this regulation applies for determining the liability to CIL charged by a charging authority for that chargeable development.

(2) The chargeable amount shall be—

$$X - Y + Z$$

where—

X = the chargeable amount for the development for which B was granted, calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the development for which B was granted, (as modified by paragraph (3));

Y = the chargeable amount for the development for which A was granted, calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the development for which O was granted, (as modified by paragraph (4));

Z = the chargeable amount for the development for which A was granted calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the development for which A was granted, (as shown on the first liability notice issued in relation to A together with any corrections to that notice which relate only to errors in that notice),

and O is the first planning permission granted in relation to the development ignoring any planning permission granted under section 73 of TCPA 1990.

(3) For the purposes of calculating X, regulations 40 and 50 apply as if—

- (a) B first permits development on the same day as O;
- (b) Np for B were the annual index figure for the relevant index for the year in which O was granted;
- (c) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—
  - (i) at the time O first permits development; and
  - (ii) in the area in which the development will be situated.

(4) For the purposes of calculating Y, regulations 40 and 50 apply as if—

- (a) A first permits development on the same day as O;
- (b) Np for A were the annual index figure for the relevant index for the year in which O was granted;
- (c) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—
  - (i) at the time O first permits development; and
  - (ii) in the area in which the development will be situated.

(5) Subject to paragraph (6), for the purposes of this regulation, A and B have the same meaning as in regulation 9(6).

(6) Where, after B was granted, a new planning permission is granted in relation to the development under section 73 of TCPA 1990, this regulation applies as if any reference to B were a reference to the new planning permission.”.

## PART 4

### Reliefs

#### 7. Commencement notices

—(6) In regulation 42B(13)—

in paragraph (4), after “case may be)” insert “and, in relation to an exemption for residential annexes, provide an explanation of the requirements of regulation 67(1)”;

omit paragraph (6).

In regulation 47—

in paragraph (5)(b), after “relief granted” insert “and provide an explanation of the requirements of regulation 67(1)”;

omit paragraph (7).

In regulation 51—

in paragraph (5)(b), after “qualifying amount” insert “and provide an explanation of the requirements of regulation 67(1)”;

omit sub-paragraph (a) of paragraph (7).

In regulation 54B—

in paragraph (4), after “case may be)” insert “and provide an explanation of the requirements of regulation 67(1)”;

omit paragraph (6).

In regulation 57(7) after “relief granted” insert “and provide an explanation of the requirements of regulation 67(1)”.

In regulation 58(6) after “and the Mayor)” insert “and provide an explanation of the requirements of regulation 67(1)”.

In regulation 83—

at the beginning of paragraph (1) insert “Subject to paragraph (1A),”;

after paragraph (1) insert—

“(1A) Where a relevant development is commenced before the collecting authority has received a valid commencement notice in respect of the development, the collecting authority must impose a surcharge equal to 20 per cent of the notional chargeable amount or £2,500, whichever is the lower amount.”;

after paragraph (4) insert—

“(4A) In this regulation—

“notional chargeable amount” means the amount of CIL that would have been payable calculated in accordance with regulation 40 in relation to the development as if no relief had been granted;

“relevant development” means a chargeable development in relation to which a person has been granted—

- (a) an exemption for residential annexes;
- (b) an exemption for self-build housing;
- (c) charitable relief; or
- (d) social housing relief.”.

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<sup>(13)</sup> Regulations 42B and 54B were inserted by S.I. 2014/385.

## 8. Starter homes: social housing relief

—(7) In regulation 2(1)(14) in the definition of “clawback period”, after sub-paragraph (aa), insert—

“(ab) in relation to social housing relief, where condition 6 of regulation 49 is satisfied, the period beginning with the day on which the chargeable development is commenced and ending in respect of a qualifying dwelling when that qualifying dwelling is sold in accordance with that condition.”.

In regulation 49—

in paragraph (2) omit “five”; and

after paragraph (7A) insert—

“(7B) Condition 6 is that all of the following criteria are met—

- (a) the dwelling is a starter home (which has the same meaning as in section 2 of the Housing and Planning Act 2016(15)); and
- (b) the dwelling is sold to individuals whose total household income for the relevant tax year is no more than—
  - (i) £90,000, where the dwelling is located in Greater London; or
  - (ii) £80,000, where the dwelling is located outside Greater London,

where—

“relevant tax year” means the tax year immediately preceding the calendar year in which the date of sale of the dwelling falls;

“tax year” means a year beginning on 6th April and ending on the following 5th April;

“total household income” means, in relation to the individuals to whom the dwelling is sold—

- (i) if one individual buys the dwelling, the total income of that individual,
- (ii) if two individuals buy the dwelling, the sum of the total incomes of those individuals,
- (iii) if more than two individuals buy the dwelling, the sum of the two highest total incomes of the individuals; and

“total income” has the same meaning as in section 23 of the Income tax Act 2007(16).”.

## PART 5

### Enforcement, reporting, monitoring and planning obligations

## 9. Enforcement by taking away goods

—(8) In regulation 95(1) insert the following definitions in the appropriate places—

““enforcement agent” has the meaning given in Schedule 12;”;

““Schedule 12” means Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, and “the Schedule 12 procedure” means the procedure in Schedule 12;”.

For regulation 98 substitute—

### “Enforcement by taking control of goods

**98.** Where a liability order has been made, payment may be enforced by using the Schedule 12 procedure.”.

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(14) S.I. 2010/948, the definition of “clawback period” in regulation 2 was amended by S.I.s 2014/385 and 2015/836, and regulation 49 was substituted by S.I. 2014/385 and paragraph (7A) was inserted by S.I. 2015/836. There are other amendments not relevant to this instrument.

(15) 2016 c.22.

(16) 2007 c.3.

Omit regulation 99.

In regulation 100—

for sub-paragraph (b) substitute—

“(b) the authority has sought to enforce payment by use of the Schedule 12 procedure pursuant to regulation 98 and the enforcement agent reports that they were unable (for whatever reason) to find any or sufficient goods of the debtor to enforce payment; and”;

in paragraph (4) for sub-paragraph (a) substitute—

“(a) the amount outstanding (within the meaning of Schedule 12); and”;

in paragraph (7) for sub-paragraph (a) substitute—

“(a) the amount outstanding (within the meaning of Schedule 12); and”.

In regulation 101(2) for “the appropriate amount mentioned in regulation 98(3)” substitute “the amount outstanding (within the meaning of Schedule 12)”.

In regulation 102—

in paragraph (3) for “regulations 97(2) and 99(2)” substitute “regulation 97(2)”;

in paragraph (4) omit “, 99”.

## **10. Annual infrastructure funding statements and CIL rate summary**

—(9) In regulation 2(1) insert the following definitions in the appropriate places—

““acquired land” has the meaning given in regulation 73;”;

““annual infrastructure funding statement” has the meaning given in regulation 121A;”;

““CIL expenditure” includes—

- (a) the value of any acquired land on which development (within the meaning in TCPA 1990) consistent with a relevant purpose has been commenced or completed, and
- (b) CIL receipts transferred by a charging authority to another person to spend on infrastructure (including money transferred to such a person which it has not yet spent);”;

““CIL receipts” means—

(a) for a charging authority—

- (i) CIL collected by that authority (including the value of any acquired land), but does not include CIL collected on behalf of the charging authority by another public authority but which that authority has not yet paid to the charging authority; and
- (ii) CIL recovered by that authority in accordance with regulation 59E, but does not include CIL not yet paid to the charging authority by the parish council;

(b) for a parish council, CIL passed to it under regulations 59(4), 59A(2) or 59B, but does not include funds not yet paid to the parish council by the charging authority in accordance with regulation 59D;”;

““infrastructure list”—

(a) before 31st December 2019, means the list, if any, published by a charging authority of the infrastructure projects or types of infrastructure which it intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies);

(b) on or after 31st December 2019, has the meaning given in regulation 121A;”;

““relevant purpose” has the meaning given in regulation 73(13);”.

In regulation 58A omit—

““acquired land” and “relevant purpose” have the same meaning as in regulation 73 (payment in kind);” and the definitions of “CIL expenditure” and “CIL receipts”.

Omit regulations 62 and 62A.

In regulation 73A(12)(d)(17) for the definition of “relevant infrastructure” substitute—

““relevant infrastructure” means—

- (a) the infrastructure projects or the types of infrastructure listed by a charging authority on its infrastructure list; and
- (b) in relation to any time before 31st December 2019, where no such list has been published, any infrastructure.””.

After Part 10 insert—

## “PART 10A

### Reporting and monitoring on CIL and planning obligations

#### **Annual infrastructure funding statements**

**121A.**—(1) No later than 31st December in each year a contribution receiving authority must publish a document (“the annual infrastructure funding statement”) which comprises the following—

- (a) a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies) (“the infrastructure list”);
- (b) a report about CIL, in relation to the previous financial year (“the reported year”), which includes the matters specified in paragraph (3) (“CIL report”);
- (c) a report about planning obligations under section 106 of TCPA 1990, in relation to the reported year, which includes the matters specified in paragraph (5) (“section 106 report”);
- (d) a three forecast statement about CIL which includes the matters specified in paragraph (7) (“3 year CIL forecast”); and
- (e) a three forecast statement about planning obligations under section 106 of TCPA 1990 which includes the matters specified in paragraph (8) (“3 year section 106 forecast”).

(2) A contribution receiving authority must publish each annual infrastructure funding statement on its website.

(3) The matters to be included in the CIL report are—

- (a) the total value of CIL set out in all liability notices issued in the reported year;
- (b) the total CIL receipts for the reported year (including any amount of CIL collected by the authority, or by another person on its behalf, in previous reported years which has not been spent);
- (c) the total CIL expenditure for the reported year;
- (d) summary details of CIL expenditure during the reported year (other than in relation to CIL to which regulation 59E or 59F applied) including—
  - (i) the items of infrastructure to which CIL (including land payments) has been applied;
  - (ii) the amount of CIL expenditure on each item;
  - (iii) the amount of CIL applied to repay money borrowed, including any interest, with details of the infrastructure items which that money was used to provide (wholly or in part);
  - (iv) the amount of CIL applied to administrative expenses pursuant to regulation 61, and that amount expressed as a percentage of CIL collected in that year in accordance with that regulation;
- (e) the amount of CIL passed to—
  - (i) any parish council under regulation 59A or 59B; and
  - (ii) any person under regulation 59(4);

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(17) Regulation 73A was inserted by S.I. 2014/385.

- (f) summary details of the receipt and expenditure of CIL to which regulation 59E or 59F applied during the reported year including—
    - (i) the total CIL receipts that regulations 59E and 59F applied to;
    - (ii) the items to which the CIL receipts to which regulations 59E and 59F applied have been applied; and
    - (iii) the amount of expenditure on each item;
  - (g) summary details of any notices served in accordance with regulation 59E, including—
    - (i) the total value of CIL receipts requested from each parish council;
    - (ii) any funds not yet recovered from each parish council at the end of the reported year;
  - (h) the total amount of—
    - (i) CIL receipts for the reported year retained at the end of the reported year other than those to which regulation 59E or 59F applied;
    - (ii) CIL receipts from previous years retained at the end of the reported year other than those to which regulation 59E or 59F applied;
    - (iii) CIL receipts for the reported year to which regulation 59E or 59F applied retained at the end of the reported year;
    - (iv) CIL receipts from previous years to which regulation 59E or 59F applied retained at the end of the reported year;
  - (i) in relation to any infrastructure payments accepted by the authority—
    - (i) the items of infrastructure to which the infrastructure payments relate,
    - (ii) the amount of CIL to which each item of infrastructure relates.
- (4) For the purposes of paragraph (3)—
- (a) CIL collected by an authority includes land payments made in respect of CIL charged by that authority;
  - (b) CIL collected by way of a land payment has not been spent if at the end of the reported year—
    - (i) development (within the meaning in TCPA 1990) consistent with a relevant purpose has not commenced on the acquired land; or
    - (ii) the acquired land (in whole or in part) has been used or disposed of for a purpose other than a relevant purpose; and the amount deemed to be CIL by virtue of regulation 73(9) has not been spent;
  - (c) CIL collected by an authority includes infrastructure payments made in respect of CIL charged by that authority;
  - (d) CIL collected by way of an infrastructure payment has not been spent if at the end of the reported year the infrastructure to be provided has not been provided;
  - (e) the value of acquired land is the value stated in the agreement made with the charging authority in respect of that land in accordance with regulation 73(6)(d);
  - (f) the value of a part of acquired land must be determined by applying the formula in regulation 73(10) as if references to N in that provision were references to the area of the part of the acquired land whose value is being determined.
- (5) The matters to be included in the section 106 report for each reported year are—
- (a) the total monies received under any planning obligations under section 106 of TCPA 1990 during the reported year (including any amount received in previous reported years which has not been spent);
  - (b) summary details of any non-monetary contribution which will be provided under all planning obligation under section 106 of TCPA 1990 which was signed during the reported year, including details of—
    - (i) in relation to affordable housing, the total number of units which will be provided;

- (ii) in relation to educational facilities, the number of school places for pupils which will be provided, and the category of school at which they will be provided;
  - (c) summary details of any non-monetary contribution which was provided during the reported year under any planning obligations under section 106 of TCPA 1990 including details of—
    - (i) in relation to affordable housing, the total number of units which have been provided;
    - (ii) in relation to educational facilities, the number of school places for pupils which have been provided, and the category of school at which they have been provided;
  - (d) summary details of any funding or provision of infrastructure which is to be provided through a highway agreement under section 278 of the Highways Act 1980 which was signed during the reported year, and details of any funding or provision of infrastructure under a highway agreement which was provided during the reported year;
  - (e) the total monies (received under any planning obligations under section 106 of TCPA 1990) which were spent during the reported year;
  - (f) summary details of—
    - (i) the items of infrastructure to which monies (received under planning obligations under section 106 of TCPA 1990) have been applied;
    - (ii) the amount of such monies spent on each item;
    - (iii) the amount of such monies applied to repay money borrowed, including any interest, with details of the infrastructure items which that money was used to provide (wholly or in part);
    - (iv) the amount of such monies applied in respect of monitoring (including reporting under regulation 121A) in relation to the delivery of planning obligations under section 106 of TCPA 1990;
  - (g) the total monies received, under any planning obligations under section 106 of TCPA 1990 during any year, which were retained at the end of the reported year.
- (6) For the purposes of paragraph (5), a non-monetary contribution includes any land or item of infrastructure provided pursuant to a planning obligation under section 106 of TCPA 1990.
- (7) The matters to be included in the 3 year CIL forecast are the total CIL receipts the contribution receiving authority estimates should be received for the financial year in which the forecast is published together with the CIL receipts it estimates should be received for the two subsequent financial years.
- (8) The matters to be included in the 3 year section 106 forecast are the total monies the contribution receiving authority estimates should be received under planning obligations for the financial year in which the forecast is published together with the monies it estimates should be received for the two subsequent financial years.
- (9) Nothing in paragraph (1) requires a contribution receiving authority to include in its annual infrastructure funding statement—
- (a) a CIL report or 3 year CIL forecast for any year in which the authority is not a charging authority;
  - (b) any information in relation to CIL which it collects on behalf of another charging authority.
- (10) In this regulation, “contribution receiving authority” means—
- (a) any charging authority which issues a liability notice during the reported year; and
  - (b) any local planning authority (within the meaning in section 1 of the TCPA 1990 as that section has effect subject to sections 2 to 9 of that Act) which enters into any planning obligation under section 106 of TCPA 1990 during the reported year.

### **Reporting by parish councils**

**121B.**—(1) A parish council must prepare a report for any financial year (“the reported year”) in which it receives CIL receipts.

- (2) The report must include—
  - (a) the total CIL receipts for the reported year;
  - (b) the total CIL expenditure for the reported year;

- (c) summary details of CIL expenditure during the reported year including—
    - (i) the items to which CIL has been applied;
    - (ii) the amount of CIL expenditure on each item;
  - (d) details of any notices received in accordance with regulation 59E, including—
    - (i) the total value of CIL receipts subject to notices served in accordance with regulation 59E during the reported year;
    - (ii) the total value of CIL receipts subject to a notice served in accordance with regulation 59E in any year that has not been paid to the relevant charging authority by the end of the reported year;
  - (e) the total amount of—
    - (i) CIL receipts for the reported year retained at the end of the reported year;
    - (ii) CIL receipts from previous years retained at the end of the reported year.
- (3) The parish council must—
- (a) publish the report—
    - (i) on its website;
    - (ii) on the website of the charging authority for the area if the parish council does not have a website; or
    - (iii) within its area as it considers appropriate if neither the parish council nor the charging authority have a website, or the charging authority refuses to put the report on its website in accordance with paragraph (ii); and
  - (b) send a copy of the report to the charging authority from which it received CIL receipts, no later than 31st December following the reported year, unless the report is, or is to be, published on the charging authority's website.

**Annual CIL rate summary**

**121C.**—(1) Subject to paragraph (2), each year, no earlier than 2nd December and no later than 31st December, a charging authority must publish a statement (“annual CIL rate summary”) in relation to the next year ( $Y_N$ ).

(2) Where  $Y_N$  is 2020 the annual CIL rate summary must be published no later than 15th December 2019.

(3) Each annual CIL rate summary must—

- (a) state the name of the charging authority (A) to which it relates;
- (b) state the year,  $Y_N$ , to which it relates;
- (c) state the date when each charging schedule and revised charging schedule, issued by the charging authority, took effect;
- (d) specify each of the rates, taken from the charging schedule, at which CIL is chargeable in A’s area, together with a description of the development to which the rate applies;
- (e) subject to paragraph (4), specify for each rate which of the following inflation indexes applies to that rate—
  - (i) BCIS index;
  - (ii) CPI index;
  - (iii) local HPI index;
- (f) for each rate (R), specify for  $Y_N$ —
  - (i) the value of—

$$\frac{Ip}{Ic}$$

- (ii) the value of—

$$\frac{Np}{Nc}$$

(iii) the indexed rate calculated by applying the following formula—

$$\frac{R \times I_p \times N_p}{I_c \times N_c},$$

where  $I_c$ ,  $I_p$  and  $N_c$  have the same meaning as in regulation 40 and  $N_p$  is the annual index figure of the relevant index for  $Y_N$ ;

(g) where A's area is in Greater London and the Mayor has a charging schedule in effect which applies in all or part of A's area, include a statement explaining that the Mayor also charges CIL in relation to all or part of the area.

(4) Where, in relation to a rate, a charging authority has specified which inflation index applies to a rate (whether in accordance with paragraph (3) or regulation 12(2)(bb)) the authority may not change the index which applies to a particular rate otherwise than by issuing a new or revised charging schedule.

(5) The charging authority must publish each annual CIL rate summary on its website.

(6) In this regulation—

“annual index figure” and “BCIS index” have the same meaning as in regulation 40;

“CPI index” and “local HPI index” have the same meaning as in regulation 12; and

“relevant index” is—

(a) the index, in relation to a particular rate, specified in the charging schedule in accordance with regulation 12(2)(bb);

(b) where, in relation to a particular rate, an index has not been specified in the charging schedule (in accordance with regulation 12(2)(bb)), the index specified for the rate in accordance with paragraph (3)(e).”

## 11. Fees for monitoring planning obligations

In regulation 122—

at the beginning of paragraph (2) insert “Subject to paragraph (2A),”; and

after paragraph (2) insert—

“(2A) Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—

(a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and

(b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of that development.”.

## 12. Removal of pooling restrictions

Omit regulation 123.

# PART 6

## Transitional cases

## 13. Section 73 applications

For regulation 128A(18) substitute—

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<sup>(18)</sup> Regulation 128A was inserted by S.I. 2012/2975 and amended by S.I. 2018/172.

**“Transitional cases: pre-CIL permissions and section 73 of TCPA 1990**

**128A.**—(1) Where all the criteria set out in paragraph (2) are satisfied by a development, paragraphs (3) to (11) shall apply for determining the liability to CIL charged by a charging authority.

(2) The criteria are—

- (a) on the day planning permission (A) is granted in relation to the development, the development is situated in an area for which the charging authority has no charging schedule in effect;
- (b) a new planning permission (B) is later granted in relation to the development under section 73 of TCPA 1990; and
- (c) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(3) Liability to CIL shall arise in respect of the development, and the amount of CIL payable (“chargeable amount”) shall be—

$$X - Y$$

where—

X = the chargeable amount for the development for which B was granted, calculated in accordance with regulation 40, including the deduction of any relief<sup>(19)</sup> which is applicable in relation to the development for which B was granted (and Part 6 (exemptions and reliefs) of these Regulations applies as if the development for which B was granted were a chargeable development);

Y = the amount that would have been the chargeable amount for the development for which A was granted, calculated in accordance with regulation 40, including the deduction of any notional relief applied in relation to the phase of the development, (as modified by paragraph (4)).

(4) For the purposes of calculating Y—

(a) subject to paragraph (5), where the charging authority considers having regard to—

- (i) all the circumstances of the development for which A was granted;
- (ii) any requirement or calculation of relief provided for in Part 6 of these Regulations, as if the charging schedule which applies to B took effect immediately before the date when A first permits development,

that one or more type of relief<sup>(20)</sup> from liability to pay CIL should be applied, the collecting authority may deduct an amount (“notional relief”) from Y;

(b) regulations 40 and 50 apply as if—

- (i) A first permitted development on the same day as B;
- (ii) Np for A were the annual index figure for the relevant index for the year in which B was granted;
- (iii) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—
  - (aa) at the time B first permits development; and
  - (bb) in the area in which the development will be situated.

(5) Except for social housing relief, a charging authority may not apply a notional relief for A where the type of relief the authority is considering applying is not applied in relation to B.

(6) If Y is greater than or equal to X, the chargeable amount is deemed to be zero.

(7) The following provisions do not apply in relation to any notional relief for A—

- (a) regulation 42C (withdrawal of the exemption for residential annexes);
- (b) regulation 48 (withdrawal of charitable relief);
- (c) regulation 53 (withdrawal of social housing relief);

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<sup>(19)</sup> See regulation 2 for the definition of “relief”.

<sup>(20)</sup> See regulation 2 for the definition of “relief”.

- (d) regulation 54D (withdrawal of the exemption for self-build housing); and
  - (e) regulation 67(5) (acknowledgment to specify date clawback period ends).
- (8) Regulations 112, 116, 116A, 116B, 120 and 121 (appeals) apply in respect of relief granted in relation to B as if the development for which B was granted were a chargeable development.
- (9) Where after B was granted a new planning permission is granted in relation to the development under section 73 of TCPA 1990, this regulation applies as if any reference in paragraphs (1) to (8) to B were a reference to the new planning permission.
- (10) Part 11 of these Regulations (planning obligations) shall not apply in relation to the development referred to in paragraph (1).
- (11) This regulation does not apply where A is a phased planning permission.

**Transitional cases: pre-CIL phased permissions and section 73 of TCPA 1990**

**128AA.**—(1) Where all the criteria set out in paragraph (2) are satisfied by a development, paragraphs (3) to (14) shall apply for determining the liability to CIL charged by a charging authority.

(2) The criteria are—

- (a) on the day a phased planning permission (A) is granted in relation to the development, the development is situated in an area for which the charging authority has no charging schedule in effect;
- (b) a new planning permission (B) is later granted in relation to a phase of the development under section 73 of TCPA 1990 (“amended phase of the development”); and
- (c) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(3) Liability to CIL shall arise in respect of the amended phase of the development, and the amount of CIL payable (“chargeable amount”) for that phase shall be—

$$X - Y$$

where—

X = the chargeable amount for the amended phase of the development, calculated in accordance with regulation 40, including the deduction of any relief which is applicable in relation to the phase of the development for which B was granted, as if that phase of the development were a separate chargeable development;

Y = the amount that would have been the chargeable amount for the corresponding phase of the development in A, calculated in accordance with regulation 40, including the deduction of any notional relief applied in relation to the phase of the development, (as modified by paragraph (4)) as if that corresponding phase were a separate chargeable development.

(4) For the purposes of calculating Y—

- (a) subject to paragraph (5), where the authority considers having regard to—
  - (i) all the circumstances of the development for which A was granted;
  - (ii) any requirement or calculation of relief provided for in Part 6 (exemptions and reliefs) of these Regulations, as if the charging schedule which applies to B took effect immediately before the date when A first permits development,
 that one or more type of relief<sup>(21)</sup> from liability to pay CIL should be applied, the collecting authority may deduct an amount (“notional relief”) from Y;
- (b) regulation 40 and 50 as if—
  - (i) A first permitted development on the same day as B;
  - (ii) Np for A were the annual index figure for the relevant index for the year in which B was granted;

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<sup>(21)</sup> See regulation 2 for the definition of “relief”.

(iii) a reference to a relevant charging schedule were a reference to the charging schedule which was in effect—

(aa) at the time B first permits development; and

(bb) in the area in which the development will be situated.

(5) Except for social housing relief, a charging authority may not apply a notional relief for A where the type of relief the authority is considering applying is not applied in relation to B.

(6) If the chargeable amount calculated under paragraph (3) is less than zero, the chargeable amount for that phase of the development is deemed to be zero, but a phase credit may be created in accordance with the following paragraphs.

(7) Paragraph (8) applies where, in relation to any phase of the development—

(a) Y is greater than X, and

(b) development under B has commenced.

(8) Where this paragraph applies—

(a) a credit (“phase credit”) is created in relation to a phase (“the donating phase”) which is equal to—

$$Y - X$$

(b) the collecting authority must specify the amount of any phase credit on any liability notice or revised liability notice issued in relation to a donating phase; and

(c) subject to paragraph (9), all or part of a phase credit may, at the discretion of the developer, be used to reduce the amount of CIL due (and not already paid) for another phase of the development (“the receiving phase”).

(9) A developer may not request that a phase credit is applied to a receiving phase where regulation 128AC (abatement) applies to the phase but no abatement under regulation 128AC(2) has been applied.

(10) The following provisions do not apply in relation to any notional relief for A—

(a) regulation 42C (withdrawal of the exemption for residential annexes);

(b) regulation 48 (withdrawal of charitable relief);

(c) regulation 53 (withdrawal of social housing relief);

(d) regulation 54D (withdrawal of the exemption for self-build housing); and

(e) regulation 67(5) (acknowledgment to specify date clawback period ends).

(11) Regulations 112, 116, 116A, 116B, 120 and 121 (appeals) apply in respect of a relief granted in relation to B as if the development for which B was granted were a chargeable development.

(12) Subject to paragraph (13), where after B was granted a new planning permission is granted, in relation to a donating phase of the development, under section 73 of TCPA 1990, this regulation applies as if any reference in paragraphs (1) to (11) to B were a reference to the new planning permission.

(13) Where before the grant of the new planning permission referred to in paragraph (12) all or part of a phase credit from a donating phase has been applied to a receiving phase, paragraph (3) applies to the amended phase of the development for which the new planning permission was granted as if the formula in paragraph (3) were replaced with—

$$(X - Y) + CA$$

where X and Y have the meanings in paragraph (3) (with the modification in paragraph (12)) and CA is a compensating adjustment equal to the amount of any phase credit from the donating phase which has been applied in a receiving phase.

(14) In this regulation “the developer” means a person who—

(a) has assumed liability to pay CIL in respect of both the donating phase and the receiving phase; or

(b) has assumed liability to pay CIL in respect of only the receiving phase and has the written agreement, for the phase credit to be applied to the receiving phase, from the person who has assumed liability to pay CIL in respect of the donating phase.

### **Transitional cases: procedure in relation to phase credits**

**128AB.**—(1) A person who wishes to apply a phase credit from a donating phase to a receiving phase must submit a request to the collecting authority in accordance with this regulation.

(2) A person making a request must be the developer.

(4) A request under this regulation must—

- (a) be submitted to the collecting authority in writing;
- (b) be received by the collecting authority before development of the receiving phase is completed;
- (c) specify the amount of phase credit (which may be all or part of a phase credit) to be applied and the donating phase in which it was created;
- (d) specify the receiving phase to which the amount of phase credit is to be applied; and
- (e) provide evidence that the developer—
  - (i) has assumed liability to pay CIL in respect of both the donating phase and the receiving phase, or
  - (ii) has assumed liability to pay CIL in respect of the receiving phase and has the written agreement, for the phase credit to be applied to the receiving phase, from the person who has assumed liability in respect of the donating phase).

(4) Where a valid request is received by the collecting authority to apply all or part of a phase credit from a donating phase to reduce the amount of CIL due (and not already paid) for the receiving phase, the collecting authority must issue a liability notice or revised liability notice for the receiving phase giving effect to that request.

(5) In this regulation “the developer”, “donating phase”, “phase credit” and “receiving phase” have the same meanings as in regulation 128AA.

### **Transitional cases: abatements in regulation 128A cases and in regulation 128AA cases within a single phase**

**128AC.**—(1) This paragraph applies where—

- (a) CIL has been paid under regulation 128A in respect of a development, or under regulation 128AA in respect of a phase of a development;
- (b) a new planning permission is later granted, in relation to that development, or that phase of the development, under section 73 of TCPA 1990; and
- (c) the collecting authority has issued a new or revised liability notice in respect of that development, or that phase of the development, because the chargeable amount calculated under regulation 128A(3), or regulation 128AA(3), as the case may be, has changed.

(2) Where paragraph (1) applies a person liable to pay CIL for the development, or the phase of the development, may request that the charging authority credits the CIL already paid in relation to the development, or the phase, against the amount due under the new or revised liability notice.

(3) To be valid a request under paragraph (2) must be accompanied by proof of the amount of CIL that has already been paid.

(4) The charging authority must grant any valid request made under paragraph (2).

### **Transitional cases: overpayments in regulation 128A cases and in regulation 128AA cases within a single phase**

**128AD.**—(1) Where a person (P) is liable to pay CIL under regulation 128A or regulation 128AA and the amount paid by P, in relation to a development, or in relation to a phase of a development, proves to be greater than the amount for which P is liable, the collecting authority must, as soon as practicable, repay the overpayment.

(2) But the collecting authority is not required to repay an overpayment where—

- (a) it is satisfied that the amount of the overpayment is less than any reasonable administrative costs which it would incur in making the repayment; or

- (b) the overpayment is a result of a land or infrastructure payment.
- (3) Where a person is entitled to a repayment, the collecting authority must pay that person an additional amount by way of interest on the repayment at a rate which is the higher of—
  - (a) 0.5% per annum; and
  - (b) a percentage per annum equal to the Bank of England base rate less one percentage point.
- (4) Paragraph (3) does not apply where the chargeable amount in relation to the development, or in relation to the phase of the development, was calculated correctly in accordance with regulation 128A or regulation 128AA, as the case may be.

**Transitional cases: appeal in relation to notional relief under regulation 128A or 128AA**

**128AE.**—(1) An interested person who is aggrieved at the decision of a collecting authority to grant a notional relief under regulation 128A(4)(a) or regulation 128AA(4)(a), may appeal to the appointed person on the ground that the collecting authority has incorrectly determined the value of the notional relief allowed.

(2) An appeal under this regulation must be made before the end of the period of 60 days beginning with the day on which the liability notice stating the chargeable amount under regulation 128A, or 128AA, (and the amount of notional relief) was issued.

(3) Where an appeal under this regulation is allowed the appointed person may amend the amount of any notional relief granted to the appellant.

(4) Regulations 120 (appeal procedure) and 121 (costs) shall apply to an appeal under this regulation as if—

- (a) any reference to an interested party were a reference to—
    - (i) the charging authority,
    - (ii) the collecting authority (if it is not the charging authority), or
    - (iii) an interested person (other than the appellant); and
  - (b) any reference to the representations period were a reference to 14 days beginning with the date the acknowledgement of receipt is sent under regulation 120(3), or such longer period as the appointed person may in any particular case determine.
- (5) In this regulation—  
 “appointed person” means—
- (a) a valuation officer appointed under section 61 of the Local Government Finance Act 1988<sup>(22)</sup>, or
  - (b) a district valuer within the meaning of section 622 of the Housing Act 1985<sup>(23)</sup>; and
- “interested person” means the person who was granted the notional relief.”

**14. Transitional cases: consequential amendments**

- (10) In regulation 74A(1), at the beginning insert “Subject to regulation 128AC,”.
- In regulation 75(1), at the beginning insert “Subject to regulation 128AD,”.

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<sup>(22)</sup> 1988 c. 41; section 61 was amended by paragraph 69 of Schedule 13 to the Local Government Finance Act 1992 (c. 14).

<sup>(23)</sup> 1985 c. 68; the definition of “district valuer” in section 622 was substituted by S.I. 1990/434.

## PART 7

### Miscellaneous

#### 15. Miscellaneous amendments

—(11) In regulation 40(11) in the definition of “new build” at the end insert—

“, and in relation to a chargeable development granted planning permission under section 73 of TCPA 1990 (“the new permission”) includes any new buildings and enlargements to existing buildings which were built pursuant to the previous planning permission to which the new permission relates”.

In regulation 65(12)(c) omit “phased”.

In regulation 128—

for paragraphs (1) and (2) of regulation 128 substitute—

“(1) Subject to paragraph (2), liability to CIL charged by a charging authority does not arise in respect of development if, on the day planning permission is granted for that development, the authority has no charging schedule in effect.

(2) Where the planning permission referred to in paragraph (1) is granted for development by way of a relevant general consent, liability to CIL charged by a charging authority does not arise in respect of that development if—

- (a) it is commenced before 6th April 2013; or
- (b) on the day on which it is commenced, the charging authority for the area in which the development is situated has no charging schedule in effect.”.

In regulation 34(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 for “62” and “62(4)” substitute “121A(1)(b)” and “121A(3)”.

#### 16. Transitional and saving provisions

—(12) Part 3 of the 2010 Regulations continues to apply, in relation to a draft charging schedule which is published in accordance with regulation 16(1) of the 2010 Regulations before [date – day 1], as if the amendments in regulation [3] [consultation charging schedules] had not been made.

Where before [date – day 1] a charging authority has sent a preliminary charging schedule to consultation bodies in accordance with regulation 15 of the 2010 Regulations, the charging authority must take into account any representations made to it before it publishes a drafting charging schedule in accordance with regulation 16(1) of the 2010 Regulations.

Regulation [5(1) [(indexation)]] does not apply to a draft charging schedule (or a draft revision to an existing charging schedule) which is submitted for examination in accordance with section 212 of PA 2008 where the date on which the charging schedule (or the revision) is to take effect is before [date – day 1].

Regulations

- [5(2) and (3)][(indexation)],
- [6][(chargeable development: section 73 permissions)] and
- [12][(pre-CIL permissions and section 73)]

do not apply to a planning permission granted before [date – day 1] or a liability notice (whenever issued) in relation to such a planning permission.

Regulations

- [7][(commencement notices)],
- [8][(starter homes)] and
- [13][(miscellaneous amendments)]

apply in relation to a development if any liability notice or revised liability notice is issued by a collecting authority under regulation 65 of the 2010 Regulations on or after [date - day 1].

Regulation [10][(monitoring fees)] applies in relation to a planning obligation entered into on or after [date – day 1].

For the purposes of this regulation, “the 2010 Regulations” are the Community Infrastructure Levy Regulations 2010.

Signed by authority of the Secretary of State for Housing, Communities and Local Government  
*Name*  
Minister of State  
Date Ministry of Housing, Communities and Local Government

We Consent  
*Name*  
*Name*  
Date Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Community Infrastructure Levy Regulations 2010 (“the 2010 Regulations”) provide for the imposition of a charge known as the Community Infrastructure Levy (“the Levy”).

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An impact assessment was prepared for the 2010 Regulations and laid in Parliament on 10th February 2010. No formal impact assessment was produced for these Regulations as one is not required for a financial instrument.