



Ministry of Housing,  
Communities &  
Local Government

# Government response to reforming developer contributions

A summary of responses to the technical consultation on draft regulations and the Government's view on the way forward



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# Foreword

The Government is committed to delivering 300,000 new homes a year by the mid-2020s. This must be supported by infrastructure to create places where people want to live and to secure the support of local communities for development. Delivery of these homes is being supported by an ambitious programme of reforms to the planning system, including the new National Planning Policy Framework and Planning Practice Guidance, the Housing Delivery Test and changes to the standard method for assessing housing need. The Government has also provided increased revenue, ring fenced for resourcing local authority planning departments, by increasing planning application fees by 20%.

Contributions from developers play an important role in delivering the infrastructure that these new homes, and local economies, require. The mechanisms for securing these contributions are section 106 planning obligations and the Community Infrastructure Levy (CIL). Planning obligations are agreements negotiated between planning authorities and developers, which secure the contributions necessary to make a development acceptable, such as affordable housing and infrastructure including parks and new schools. The Levy allows planning authorities to charge a fixed rate per square metre of development to fund infrastructure which addresses the cumulative impact of development in their area. Together, these mechanisms levy £6 billion a year.

The reforms that the Government is taking forward will make the existing system of developer contributions less complex and more transparent. It will be easier for local areas to introduce the Community Infrastructure Levy and local authorities will have more flexibility to amend their charging schedules to take account of changes in viability and local housing market conditions. Levy receipts and contributions through planning obligations will be able to address infrastructure funding requirements more effectively, while removing existing restrictions on the pooling of planning obligations towards a single piece of infrastructure will address barriers that could otherwise prevent development. Alongside this, the introduction of annual infrastructure funding statements will increase transparency for communities and developers, clearly showing how contributions are being used.

The reporting and monitoring of planning obligations will be supported by enabling authorities to collect a fee towards monitoring, and the provision of new digital tools.

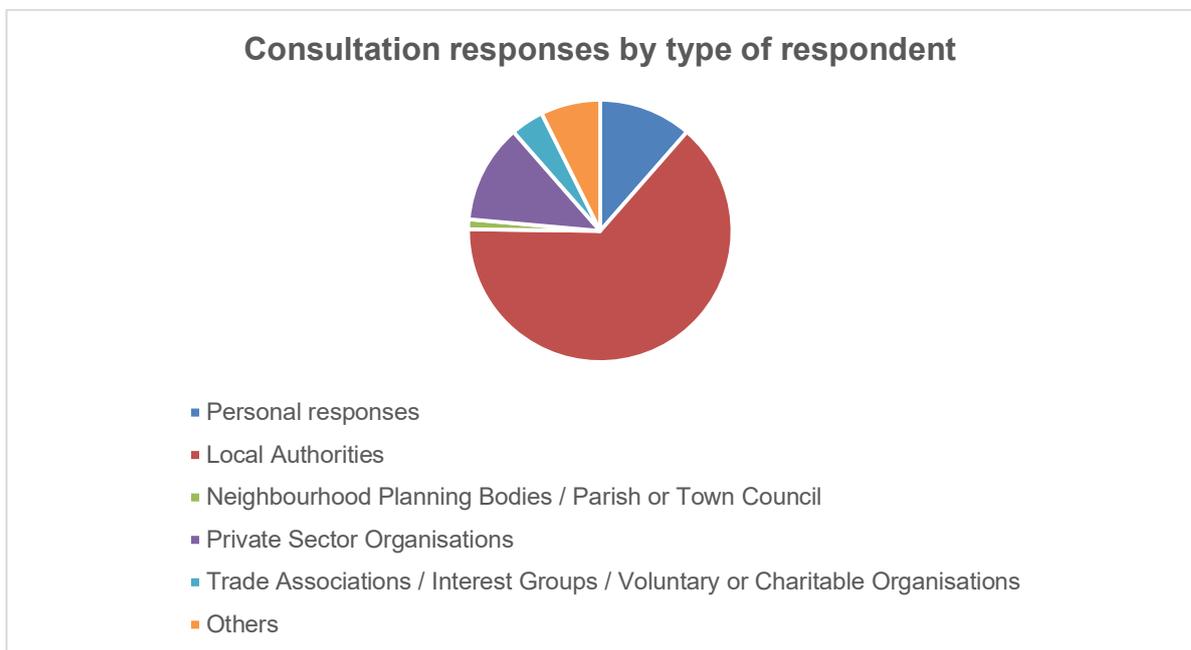
Where an authority proposes to stop charging the Levy they will need to be clear with local communities and developers about the potential impacts of doing so, setting out how they will address any shortfall in funding local infrastructure that results from this.

The reforms will also make the Community Infrastructure Levy fairer – removing disproportionate penalties that particularly affect smaller developers and householders. They will ensure that when planning permissions are amended any new Levy liabilities are calculated more fairly, taking account of development already permitted while making sure new development is subject to the Levy at the latest rate.

Together these changes will make the Levy and section 106 planning obligations more effective, fairer and more transparent to local communities and developers.

# Overview

1. The Government consulted on proposals to reform the system of developer contributions in Spring 2018<sup>1</sup>, and published its response to the consultation, setting out how reforms were to be taken forward, in Autumn of that year<sup>2</sup>. In line with the approach set out in this response, a further technical consultation was published on 20 December 2018, seeking views on whether draft regulations would deliver the Government’s intended policy outcomes without giving rise to unintended consequences. This consultation, *Reforming developer contributions: Technical consultation on draft regulations* (‘the technical consultation’), ran until 31 January 2019.
2. Officials also held eight meetings before and during the public consultation period with practitioners who work with the Community Infrastructure Levy (the ‘Levy’) regulations on a regular basis (‘expert group meetings’). During the consultation period, the Planning Advisory Service hosted three consultation events on digital tools to support transparency measures. Officials also attended a number of other stakeholder events.
3. There were 246 responses to the technical consultation.<sup>3</sup> The chart and table below provide a breakdown of the responses to the public consultation by type of respondent.



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<sup>1</sup> Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure, 2018 <https://www.gov.uk/government/consultations/supporting-housing-delivery-through-developer-contributions>

<sup>2</sup> Government response to supporting housing delivery through developer contributions: a summary of consultation responses and the Government’s view on the way forward, 2018 <https://www.gov.uk/government/consultations/supporting-housing-delivery-through-developer-contributions>

<sup>3</sup> This excludes a small number of blank and duplicate responses which were received

Type of respondent	Total responses
Personal responses	28
Local Authorities (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)	157
Neighbourhood Planning Bodies / Parish or Town Councils	3
Private Sector Organisations (including housebuilders, housing associations, businesses, consultants)	30
Trade Associations / Interest Groups / Voluntary or Charitable Organisations	10
Others	18

4. This document provides a summary of the consultation responses received, the views of event attendees and views expressed at other events and meetings during the consultation period. It does not attempt to capture every point made.<sup>4</sup> This document sets out the key changes the Government has made to regulations in response to points raised during the consultation, and where the Government will consider further changes, including to Planning Practice Guidance.
5. The policy proposals were previously subject to consultation, including in Spring 2018 through *Supporting housing delivery through developer contributions*, and through consultation on the National Planning Policy Framework. Where responses to the technical consultation raised no new issues, responses to previous consultations should be read. The Government has had regard to its responsibilities under the Equality Act 2010 in considering the proposed reforms.
6. The Government introduced new regulations to deliver these reforms in June 2019. The regulations will be debated in the House of Commons under the affirmative resolution procedure.
7. The consultation sought comments on a draft regulation intended to exempt starter homes from the Levy (see paragraphs 75-81 below). The Government intends to lay the secondary legislation which will enable the delivery of starter homes later this year. Therefore, the Government also intends to introduce the regulations for the exemption of starter homes from the Levy later in the year.

## Reducing complexity and increasing certainty

### Ensuring that consultation is appropriate

8. Charging authorities are currently required to undertake two rounds of consultation on proposed Community Infrastructure Levy rates before they can introduce or revise the Levy. The majority of charging authorities report that the initial

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<sup>4</sup> The number of responses from trade and voluntary organisations, Neighbourhood Planning Bodies and 'other respondents' to some questions was relatively small. In these circumstances the number of responses to closed questions has not been reported, however comments made in response to these questions have been noted and taken into account.

implementation of the Levy took one to two years, and local authorities have suggested that resource constraints can affect their willingness to introduce or review charges.

9. In the technical consultation the Government proposed to reduce the statutory requirement to a single round of consultation, while allowing authorities to exceed the minimum where they consider it to be appropriate. The Government also proposed to remove requirements for charging authorities to publish newspaper notices when introducing a charging schedule, to align with the approach taken for plan making.

**Question 1: Are there any elements in regulation 3 which will prevent the Government achieving the policy intent?**

10. The Government received 176 responses to this question.<sup>5</sup> Of those that answered the closed question, 84% believed there were no elements in regulation 3 which will prevent the Government achieving the policy intent. This included 89% of local authorities and 67% of private sector organisations.
11. 62 local authorities, five private sector respondents and four other respondents used the opportunity of responding to this consultation question to specifically state their support for the changes to regulation 3. 14 local authorities stated the changes to regulation 3 would provide greater flexibility, however two stated the amendments introduce uncertainty. Eight local authorities, seven other respondents and half of the private sector respondents and trade and voluntary organisations<sup>6</sup> requested more clarity on issues including: the process of amending a charging schedule; the requirements for inviting representations on the draft charging schedule; and setting out how representations have been taken into account. A number of respondents requested that the regulations include provisions for consulting specific groups – an issue also raised in expert group discussions. A small number of respondents requested more guidance.
12. A small number of local authorities, private sector organisations, trade organisations and other respondents suggested a minimum consultation period should be retained, and one Neighbourhood Planning Body<sup>7</sup> responded that consultation requirements should not be left to the discretion of the charging authority. A small number of private sector respondents and trade and voluntary organisations suggested consultation requirements for charging schedules should be better aligned with Local Plan regulations. One local authority considered that the proposed changes will bring the process more in line with local plan making. It was also suggested that Neighbourhood Forums should be consulted on draft charging schedules, as they are for Local Plans.

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<sup>5</sup> Each consultation question included both a closed (yes/no) question and an open free text section, and respondents were not required to answer both elements. Throughout this document, we report on the number of respondents who answered either element of the question.

<sup>6</sup> Throughout this document, 'Trade and Voluntary Organisations' refers to those respondents that specified that they are Trade Associations / Interest Groups / Voluntary or Charitable Organisations

<sup>7</sup> Throughout this document 'Neighbourhood Planning Body' refers to those respondents that specified that they are Neighbourhood Planning Bodies / Parish or Town Councils.

13. To improve clarity, the Government has set out in regulations that charging authorities must make clear how consultation responses have been taken into account. Neighbourhood Forums have been added to the list of consultation bodies in order to align with Local Plan consultation requirements, and regulations now make clear that authorities should consider consulting businesses, residents and representative and voluntary organisations. Government considered further changes. However, on balance, it was decided that it was more important that local authorities have a flexible approach to consultation, in order to speed up and streamline the introduction of the Levy. Therefore, a minimum time period for consultation has not been included in the regulations. The Government considers that guidance on this matter can provide a better balance between flexibility for charging authorities to speed up introduction of the Levy and certainty for local stakeholders.
14. The Government will also prepare planning guidance on consultation requirements, taking consultation responses into account when doing so, including areas where respondents requested additional clarity. Guidance will make clear that a minimum four-week period is encouraged for any substantive change, and statutory guidance will also be provided for Examiners, to ensure they consider whether the charging authority has undertaken appropriate levels of consultation.

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

15. Local authorities are currently prohibited from using more than five section 106 planning obligations to fund a single infrastructure project ('the pooling restriction'). This can have distortionary effects, generate uncertainty and delay, and lead to otherwise acceptable planning applications being refused planning permission.
16. In the technical consultation, the Government proposed to lift the pooling restriction in all areas. In addition, to incentivise continued use of the Levy, the Government proposed that authorities should consult on the impacts of ceasing to charge the Levy.

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

17. The Government received 195 responses to this question. Of those that answered the closed question, 83% believed there were no elements in regulations 4 and 12 which will prevent the Government achieving the policy intent. This included 85% of local authorities and 80% of trade and voluntary organisations, and a smaller majority of private sector organisations (54%).
18. Of the 112 local authorities that responded to the open question, 41 used the opportunity to underline that removing the restriction would improve flexibility and/or improve certainty. Three private sector organisations, and eight other respondents made the same point. However, nine respondents stated that the new regulations undermine the purpose of the Levy or could add complexity. Eight of the 21 private

sector organisations that responded to the open question, together with two trade and voluntary organisations, and two other respondents, stated that removal of the pooling restriction should not allow the Levy and section 106 planning obligations to be charged for the same piece of infrastructure. A small number of respondents (ten local authorities, one private sector respondent and one other respondent) requested that the Government provide additional clarity on how historic section 106 agreements should be treated.

19. A small number of local authorities (eight), one private sector respondent and one trade and voluntary organisation expressed concern over requirements for local authorities to consult before ceasing to charge the Levy. Five local authorities and three private sector organisations thought that the regulations could affect further uptake or undermine the purpose of the Levy.
20. The Government welcomes the broad support for the removal of the pooling restriction raised in response to the earlier policy consultation,<sup>8</sup> and through the technical consultation. In particular, the Government recognises that 83% of respondents believed there were no elements in regulations 4 and 12 which will prevent the Government achieving the policy intent, and a third of the respondents that provided comments underlined that removing the restriction would improve flexibility and/or improve certainty.
21. The Government acknowledges that 12 respondents expressed an opinion that using funds from section 106 and the Levy for the same piece of infrastructure ('double dipping') should not be allowed. This is dealt with in more detail in the response to Question 8. However, lifting the pooling restriction will address the uncertainty, complexity and delay that the restriction creates. Alongside the changes to regulation 123 lists, described in Question 8, it will allow authorities to use funds from both section 106 planning obligations and the Levy to pay for the same piece of infrastructure, regardless of how many planning obligations have already contributed towards an item of infrastructure. This will enable more flexible and faster infrastructure and housing delivery. Meanwhile, the introduction of infrastructure funding statements will increase transparency to ensure that it is clear how local authorities have spent funds secured through section 106 planning obligations and the Levy. The Government will not retain the existing regulatory barriers under regulation 123, as it considers that improved transparency is a better mechanism for addressing concerns over the interaction of the Levy and section 106 planning obligations. Guidance will also be provided on how changes to regulations affect historic section 106 planning obligations.
22. The Government acknowledges the concerns raised over the proposal that a charging authority should be required to consult before it can cease charging the Levy. The Government has weighed the requirement for this approach with the need for transparency and believes the new requirements are fair and reasonable. As set out in the technical consultation, the Government will also consider how

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<sup>8</sup> Government response to supporting housing delivery through developer contributions, October 2018 ([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))

guidance can be used to incentivise uptake and ensure that planning obligations are used effectively.

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

23. 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 as this determines the start of the clawback period, during which an exemption can be removed if a disqualifying event occurs. Failure to do so results in the exemption or relief being removed, and the full chargeable amount becoming payable.
24. In the technical consultation, the Government proposed to introduce a more proportionate penalty: whichever was lower of a surcharge of 20% of the chargeable amount, or £2,500. The Government also proposed to clarify that a commencement notice is not required in relation to an exemption for residential extensions.

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

25. The Government received 161 responses to this question. Of those that answered the closed question, 70% believed there were no elements in regulation 7 which will prevent the Government achieving the policy intent. This included 76% of local authorities and 62% of private sector organisations.
26. The vast majority of local authorities and private sector organisations that responded to the open question supported the replacement of the existing penalty (under which the relief or exemption is removed) with a more proportionate surcharge. However, nine of the local authorities that supported the proposal stated that the new penalty (under which a developer would be charged whichever is lower of 20% of the chargeable amount or £2500) is too small to incentivise developers to issue a commencement notice. Seven local authorities did not support the proposals, one authority commenting that the proposal represented a weakening of requirements compared to the earlier proposal for a grace period. One Neighbourhood Planning Body and a number of other respondents considered that the surcharge could have a disproportionate impact on small developers in particular.
27. Seven local authorities, two private sector organisations and one trade and voluntary organisation commented that making the surcharge mandatory would remove their ability to be flexible when issuing the surcharge. Some local authorities suggested that this could give rise to significant costs in pursuing payment. A small number of respondents suggested alternative approaches, including removing the requirement for a commencement notice from all exemptions, and extending exemptions to other uses. A number of respondents commented on other issues relating to exemptions, including the impact of amendments to a planning permission.

28. 14 personal views were made in response to question 3. Seven of these argued that the regulatory changes should apply retrospectively, with charging authorities reimbursing individuals or developers that have faced charges.
29. The Government acknowledges the support for the proposal. For many exemptions, commencement notices continue to be required, as they determine the start of the clawback period, in which an exemption can be removed if a disqualifying event occurs. In considering the amount of the surcharge, the Government considers it has struck the right balance between incentivising the submission of a commencement notice and a more proportionate approach to administering exemptions. The surcharge reflects similar penalties in relation to other Levy requirements, such as the failure to submit a notice of chargeable development, or a commencement notice where a development is not exempt.
30. The Government notes the comments about the application of the penalty being mandatory. The Government considers a mandatory penalty ensures fairness. However, it acknowledges concerns that pursuing payment could give rise to significant costs for charging authorities. The regulations have therefore been amended so that charging authorities do not have to impose the surcharge where there would be disproportionate costs in doing so.
31. The Government acknowledges comments suggesting that the regulations should apply retrospectively. The Government has made its position on the existing regulations clear, that a commencement notice is not required for a residential extension, through Planning Practice Guidance and in a letter from the Chief Planner to all charging authorities. However, the Planning Act 2008 does not provide powers to make regulations in relation to the Levy retrospective.
32. Changes to regulations have also been made in response to comments raised about how exemptions are treated when amendments to a planning permission are made under section 73 of the Town and Country Planning Act 1990. At present, if development has commenced, an amendment to a planning permission may not be able to benefit from an exemption or relief that applied to the original permission. The changes to regulations will ensure that, where a planning permission benefits from exemption or relief, this can be carried over into an amended permission.

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

33. Where planning permission is first secured for a 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 decreases in liability in another phase ('abatement').
34. In the technical consultation the Government proposed a mechanism to allow for the balancing of liabilities between phases for developments which were first permitted before the Levy came into force in an area and are then subsequently amended ('transitional cases'). These developments are not within the scope of the abatement provisions in the existing regulations.

**Question 4: Are there any elements in regulation 13 which will prevent the Government achieving the policy intent?**

35. The Government received 138 responses to this question. Of those that answered the closed question, 78% believed there were no elements in regulations 4 and 12 which will prevent the Government achieving the policy intent. This included 83% of local authorities and 73% of private sector organisations, and 63% of other respondents.
36. Of the 74 local authorities that responded, 63 commented on the open question. Most local authorities agreed with the Government's approach. Of the 15 private sector organisations that responded to the question, five disagreed that the regulations would deliver the policy intent. Complexity was also raised as an issue by a number of respondents. 20 local authorities considered that the regulations were too complex or complicated. The Neighbourhood Planning Body that responded to the open question also queried whether the provisions were in accordance with the aim of reducing complexity.
37. One private sector organisation questioned the effect on viability where a site was purchased before the Levy came into effect and the land had not been priced to reflect the costs of the Levy. Three respondents (a trade association, a local authority and one 'other' consultee), commented that the risk of a local planning authority having to repay the Levy on later phases could discourage them from spending Levy receipts on infrastructure necessary for their local area.
38. A number of respondents, in particular expert group members, and trade and voluntary organisations, raised a number of technical issues about the regulations. This included the way that exemptions and reliefs are taken into account between the pre-Levy permission (where exemptions and reliefs may not have been considered) and the amended permission.
39. The Government recognises concerns about the additional complexity that the amendments to the regulations could create. This regulation will only apply in a limited range of circumstances (developments which were first permitted before the Levy came into force in an area and are then amended after a charging schedule is in effect). The Government has sought to simplify the text in the regulation as much as possible to make it easier to understand what is required. The Government will consider how best to address concerns about complexity through guidance, including worked examples where possible.
40. The Government has made amendments to address a number of the technical issues raised about the operation of the regulations. This includes additional clarity on how to implement the regulations where there is insufficient information for the local authority to determine the notional liability for the original permission. In these situations, the first section 73 amending permission should be treated as the first planning permission, with any subsequent amendments being dealt with as transitional cases. Where this results in no Levy liability arising, it would be appropriate for the local planning authority to pursue contributions through section 106 agreements. In relation to concerns raised about ensuring 'phase credits' are

not used more than once, the Government will provide additional guidance to ensure charging authorities keep a good audit trail to minimise this risk. The regulations also limit the risk of repaying funds because of balancing by only enabling credits to reduce the amount due in any given phase, and not to be repaid in a later phase.

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

41. 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 current regulations result in the new liability for the entire floorspace of the development being calculated at the latest indexed rate. 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.
42. In the technical consultation the Government proposed a mechanism to enable reductions in the Levy liability to be calculated at the rate that applied when the original permission was granted and increases in the Levy liability to be charged at the rate that applied when the later section 73 permission was granted.

### **Question 5: Are there any elements in regulation 6 which will prevent the Government achieving the policy intent?**

43. The Government received 131 responses to this question. Of those that answered the closed question, 78% believed there were no elements in regulation 6 which will prevent the Government achieving the policy intent. This included 84% of local authorities and 60% of other respondents, together with two of the three trade and voluntary organisations that responded. 54% of private sector organisations believed there were no elements in regulation 6 which will prevent the Government achieving the policy intent.
44. Nine local authorities and one private sector organisation requested worked examples, particularly in relation to how reliefs should be taken into account. Two other respondents commented on complexity and another questioned whether existing software packages would work. A number of respondents (in particular local authorities and expert group members) questioned how the regulation would work in certain complex scenarios.
45. Some local authority respondents and private sector organisations suggested alternative ways of calculating the new liability, and when reliefs and exemptions should be taken into account. Some respondents (in particular local authorities, and private sector organisations) suggested alternative policy approaches, including the use of the current index to calculate abatement, limiting the application of the regulation, or regular updating of charging schedules instead of applying indexation to amendments through section 73 permissions.
46. The Government disagrees that the alternative approaches proposed by respondents would deliver the policy objective more effectively than provided for in the draft regulations. The regulations seek to avoid a new liability for the entire

floorspace of the development being calculated at the latest indexed rate where a section 73 application is granted. The regulations 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.

47. However, the Government acknowledges concerns raised about complexity. This regulation will only apply in a limited range of circumstances (for example, where developments which are liable for the Levy are subsequently amended). A number of amendments to regulations have been made to improve clarity. Guidance will also be produced to provide further clarity about the operation of this regulation.

### **Further reducing complexity**

48. In response to a number of consultation questions, and through the expert group, a number of respondents expressed concern about the usability of the regulations. A key concern was that the regulations have been amended multiple times,<sup>9</sup> and the changes proposed in the technical consultation would again amend existing regulations. Respondents were concerned that successive amendments have made the Community Infrastructure Levy Regulations difficult to read and could result in difficulty implementing the reforms.
49. The Government recognises that unconsolidated regulations can be challenging to understand, and that this challenge can be particularly acute when calculating Levy liabilities. To increase usability the Government has consolidated all regulations relating to the calculation of Levy liabilities into a single schedule. The Government will consider fully consolidating the regulations when any further regulatory amendments are made.

## **Increasing market responsiveness**

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

50. 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 the cost of building infrastructure. This would make Levy rates more responsive to market changes in the value of development.
51. In the technical consultation the Government proposed indexing the Levy to publicly accessible data – the House Prices Index for residential development, and the Consumer Price Index for non-residential development. To further improve transparency, the Government proposed that authorities should publish annual ‘rate summaries’, in which their indexed rates would be set out. Reflecting concerns

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<sup>9</sup> Including CIL amendment regulations in 2011, 2012, 2013, 2014, 2015 and 2017.

raised over the complexity of this approach in an earlier consultation, the Government also requested comments on the policy approach (Question 7).

**Question 6: Are there any elements in regulation 5 which will prevent the Government achieving the policy intent?**

**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?**

52. The Government received 137 responses to question 6. 117 respondents made comments in relation to question 7, including 87 local authorities and 18 private sector organisations. Of those that answered the closed part of question 6, 63% believed there were no elements in regulation 5 which will prevent the Government achieving the policy intent. However local authorities were more supportive, with 69% believing there were no elements in regulations 5 which will prevent the Government achieving the policy intent, compared to 25% of private sector organisations.
53. In response to question 6, nine local authorities, seven private sector organisations and three other respondents believed that changes to regulations would not reflect changes to the cost of building infrastructure. Eight local authorities, nine private sector organisations and two trade and voluntary organisations responding to question 7 believed the indexation metric should reflect the cost of providing infrastructure, rather than being linked to the value of development. However, 11 authorities specifically supported the move to link Levy changes over time more closely to the value of development. Two private sector organisations and one other organisation also welcomed the proposal to require rate summaries to be produced.
54. A number of respondents to question 7 commented that changing how Levy rates are indexed as proposed could affect the viability of developments (including a small number of local authorities and trade or voluntary organisations, with proportionately more private sector organisations and other respondents raising this issue). Some respondents commented that the proposed changes could lead to a shortfall in funding for infrastructure (in particular local authorities and private sector organisations). It was noted that the proposed approach in areas such as Mayoral Development Corporations, where the charging authority area crosses local authority boundaries, could raise particular issues.
55. Some respondents and expert group members suggested alternative ways of improving the market responsiveness of the Levy, including changes to the date at which the index is set for a phased planning permission. This could ensure that Levy rates are indexed to take account of the fact some phases of a development can come forward some time after the original permission is granted. Some respondents suggested that encouraging reviews of charging schedules would provide a better approach to ensure Levy rates are market responsive. Other respondents raised technical issues about the operation of existing regulations.

56. Across both questions, local authorities, trade and voluntary organisations, private sector organisations and other respondents raised concern about the complexity created by the proposal. Around a third of those that responded to question 7 raised increased complexity as an issue. This was also raised as a significant concern in expert group meetings. Concerns raised included the increased risk of legal challenge for local authorities (which would need to decide which of the indexation methods to apply in certain circumstances) and the likely risk averse behaviours they would display and the complexity of applying different methods of indexation. The use of more than one index was raised as a particular issue by a number of respondents, including, in response to question 7, ten local authorities and three private sector organisations. A number of local authorities, private sector organisations and other respondents requested clear guidance, including worked examples.
57. The Government acknowledges the concerns raised about the complexity of the draft regulations. Following consultation, the Government has decided not to pursue its proposed changes on indexation, which would use more than one index.
58. However, the Government remains committed to improving market responsiveness. When charging authorities set Levy rates, they will take account of the value of development through an assessment of viability, and the need to contribute towards infrastructure need. The Community Infrastructure Levy Review found that the Levy is only collecting a small proportion of the funding needed to address local infrastructure need. The Government will therefore consider how to bring forward changes to indexation to improve the market responsiveness of the Levy and will consult in due course.
59. The Regulations have instead been amended to improve the transparency around indexation, while retaining the existing approach by indexing the Levy to the Building Cost Information Service's (BCIS) All-in Tender Prices Index. The Government has asked the Royal Institution of Chartered Surveyors to produce a bespoke index for the Levy, based on BCIS. This will be produced annually and be made publicly available. The index will not change through the year, as BCIS forecasts can at present. The Government will review guidance to improve clarity, including making clear that from 1 January each year, the latest index figure produced by the Institution should apply. The Government also proposes to retain the proposal for charging authorities to produce annual rate summaries, which will further improve transparency, in particular for smaller developers. The changes to regulations will address several issues raised during consultation regarding how the existing approach to indexation is implemented.

## Improving transparency and increasing accountability

### **Removing regulation 123 restrictions and introducing Infrastructure Funding Statements**

60. To improve transparency and accountability around the spending of the Levy and section 106 planning obligations, the Government proposed in its technical consultation to remove all restrictions on section 106 planning obligations in

regulation 123. Regulation 123 lists, which set out the infrastructure projects and types of infrastructure that a local authority intends to fund through the Levy, would be replaced with an annual infrastructure funding statement. However, the existing restrictions that apply to infrastructure included on regulation 123 lists would not apply to infrastructure identified in the funding statements.

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

61. The Government received 175 responses to question 8. Of those that answered the closed question, 65% believed there were no elements in regulation 10 which will prevent the Government achieving the policy intent. This included 63% of local authorities, 83% of private sector organisations and 78% of other respondents. Of the five trade and voluntary organisations that responded one believed there were no elements in regulation 10 which will prevent the Government achieving the policy intent.

62. 31 local authorities, 10 private sector organisations, six trade and voluntary organisations and six other respondents welcomed the proposed infrastructure funding statements because of the additional transparency they will provide. 49 local authorities, three trade and voluntary organisations and three other respondents expressed concern about needing additional resources and capacity to monitor developer contributions and produce an infrastructure funding statement. In addition, 12 of these 49 local authorities expressed concern that the proposal to require the first infrastructure funding statement to be produced by 31 December 2019 is too soon. This concern was also raised in expert group meetings, at Planning Advisory Service digital meetings and at a meeting with local authority officials. One Neighbourhood Planning Body responded to the question, calling for more real time reporting rather than an annual report. Two private sector organisations sought penalties for local authorities should statements not be produced.

63. Local authorities also raised questions about producing the infrastructure funding statements, with a number seeking additional clarity through guidance, or commenting that additional monitoring, beyond existing practice, would be challenging. 25 expressed concern about the proposal to require authorities to produce a forecast of future levels of developer contributions. Authorities said that a lack of historic data, as well as difficulties in predicting future levels of development and contributions, would make forecasting challenging. This concern was also raised by local authorities in other fora including events organised by the Department and the Planning Officers' Society. Seven authorities flagged the complexity of monitoring developer contributions over time caused by amended applications or section 106 agreements, inflation and indexation, and differences between Levy demand and liability notices. A number of respondents (nine local authorities and two trade and voluntary organisations) called for more clarity on how contributions securing the direct provision of infrastructure ('in kind') should be reported.

64. 35 local authorities, two private sector organisations, two trade and voluntary organisations and five other respondents welcomed the removal of regulation 123

lists and restrictions because of the additional flexibility to fund and deliver infrastructure that this will provide. However, three private sector organisations expressed concern that removing regulation 123 restrictions would allow the Levy and planning obligations to fund the same piece of infrastructure ('double dipping'). Four local authorities called for guidance to clarify the position on this issue.

65. A number of comments were received about the role of county councils. 21 local authorities and one other respondent called for more clarification as to how monitoring developer contributions would work in two-tier areas and whether county councils should be required to produce an infrastructure funding statement, which one private sector respondent called for. Linked to this, three authorities queried the role of highway authorities and whether reporting on agreements made under section 278 of the Highways Act 1980 ('section 278 agreements') is feasible.
66. The Government acknowledges the comments made highlighting the challenges of producing infrastructure funding statements. The Regulations have been amended to move the implementation date for funding statements from 31 December 2019 to 31 December 2020. This will give local authorities a full year to collect data in the format required by the Regulations before having to produce their first funding statement. The Regulations allow local authorities to use up to 5% of the Levy for the administration (including monitoring and reporting) of the Levy and to use section 106 agreements to secure fees to monitor and report on the planning obligations contained within those agreements. The Government will provide detailed guidance on this issue. Amended Regulations also define the 'contribution receiving authority' as any charging authority that issues a liability notice and any local authority to which a sum is required to be paid under a planning obligation or which will receive a non-monetary contribution under the obligation. This means that county councils are required to produce an infrastructure funding statement for contributions they have received. At this stage the Government does not consider it is necessary to introduce penalties for authorities that fail to produce statements but will keep the matter under review if it looks like local authorities are not preparing statements annually.
67. To assist local authorities, the Regulations have been amended to clarify what authorities will be required to report in their infrastructure funding statements. This includes removing the requirement to provide a forecast of anticipated future income from the Levy and planning obligations. To assist with the reporting of in-kind contributions, the Regulations have been amended to allow for the reporting of contributions that secure either a financial sum and/or direct provision of infrastructure. Amendments have also been made to allow authorities to report estimated figures where there is uncertainty at the point of reporting. The requirement for authorities to report on the delivery and provision of infrastructure has also been removed, as this information may be held by third parties. However, the Government will continue to encourage this reporting through guidance and will enable 'predicted receipts' to be recorded in the template. The Government will keep the approach under review and will consider bringing forward further changes if local authorities are not producing infrastructure funding statements and therefore not fulfilling the aim of providing transparency. The Government will use guidance to assist local authorities to produce their infrastructure funding statement and will encourage authorities to provide an estimate of anticipated future income if they are

able to do so. The Regulations have also been amended to say that authorities 'may' rather than 'must' report on section 278 agreements. Furthermore, the Government is continuing to work towards introducing a common data standard and digital tools. This will improve consistency of reporting across local authorities and enable authorities to collate data in the format required to produce their funding statements.

68. The Regulations will allow authorities to use funds from both the Levy and planning obligations to pay for the same piece of infrastructure, regardless of how many planning obligations have already contributed towards it. The Government acknowledges the comments made about the use of the Levy and section 106 planning obligations in this way. The Government considers that this will enable more flexible and faster infrastructure and housing delivery. The introduction of infrastructure funding statements will increase transparency to ensure that it is clear how the Levy and planning obligations have been spent. The Government considers that these reforms to increase transparency provide a more appropriate mechanism for considering how the Levy and planning obligations are used together than the regulatory restrictions which were found to create barriers to development.<sup>10</sup> Guidance will also be provided on this issue.

## Monitoring Fees

69. In the technical consultation, the Government proposed to permit local authorities to seek a proportionate and reasonable contribution towards the monitoring and reporting of planning obligations through section 106 agreements.

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

70. The Government received 154 responses to this question. Of those that answered the closed question, 75% believed there were no elements in regulation 11 which will prevent the Government achieving the policy intent. This included 80% of local authorities and 58% of private sector organisations.

71. Five private sector organisations, four local authorities and one of the three trade and voluntary organisations expressed concerns over linking monitoring costs to the 'scale of development' rather than the 'scale of the obligation'. The one Neighbourhood Planning Body to comment queried the wording 'proportionate and reasonable' to describe monitoring costs. A number of respondents (27 local authorities, four private sector organisations, two trade and voluntary organisations and two other respondents) requested further guidance on what constitutes 'fair and reasonable' and on how to calculate monitoring costs. Ten local authorities sought further advice on whether county councils and/or two-tier authorities were able to charge or share the monitoring fee. This view was also expressed by two other respondents and one private sector respondent and trade or voluntary organisation.

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<sup>10</sup> 'A new approach to developer contributions', CIL review team, October 2016, paragraph 3.5.1

72. However, eight local authorities and a small number of other respondents (one private sector organisations, one trade or voluntary organisation and one other respondent) thought the Regulations would improve transparency and help flexibility.
73. The Government acknowledges these comments and will provide guidance on different methods that could be used to calculate monitoring costs. The Regulations have been amended to clarify that the monitoring fee should not exceed the authority's estimate of its cost of monitoring the planning obligation. This will help to ensure monitoring fees are both fair and reasonable and sufficient to cover monitoring of any obligations that extend beyond the completion of the development.
74. Where the county council is the local planning authority (e.g. for county land development, schools, waste and minerals) the county council is entitled to enter into a section 106 agreement and this can include a monitoring fee for the county council. For obligations entered into by a district or borough council where the district or borough council is the local planning authority, but where the obligations will require monitoring by the county council, the Government considers that it is a matter for agreement between the district and county councils as to how the monitoring fee will be shared.

## Delivering starter homes

75. In line with the position set out in the housing White Paper *Fixing Our Broken Housing Market*, the Government proposed in the technical consultation to exempt starter homes from the Levy. The Government intends to lay the secondary legislation which will enable the delivery of starter homes later this year. Therefore, the Government also intends to introduce regulations for the exemption of starter homes from the Levy later in the year.

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

76. The Government received 140 responses to this question. Of those that answered the closed question, 64% believed there were no elements in regulation 8 which will prevent the Government achieving the policy intent. This included 70% of local authorities. Of the 12 private sector organisations that responded four believed there were no elements in regulation 8 which will prevent the Government achieving the policy intent.
77. 21 local authorities commented in support of the proposals to exempt starter homes from the Levy, however some local authorities believed that the exemption could create an extra burden on funding local infrastructure. 5 private sector organisations and one trade and voluntary organisation questioned why starter homes are being given an exemption and not other forms of affordable home ownership, such as discounted market sales. A number of respondents made general comments about the Government's proposed starter homes scheme.

78. 19 local authorities, five private sector organisations and one trade or voluntary organisation and a number of other respondents questioned how the income thresholds for purchasers of starter homes would be monitored and enforced. 15 local authorities, two private sector organisations and one trade or voluntary organisation believe that the income caps in the regulations are set too high for local need, with one other respondent questioning whether the income thresholds should allow for changes over time. 13 local authorities and two private sector organisations commented on the clawback period for starter homes, noting it does not operate on a time-limited basis in line with other affordable housing.
79. The Government acknowledges the comments made. Through the starter homes scheme the Government is requiring developers to sell properties at a price lower than they could achieve on the open market. Starter homes are a nationally-defined product and the Government intends that they should be exempt from the Levy in line with other nationally-defined affordable home ownership products, such as Shared Ownership. Affordable housing products that are not nationally defined vary locally. The Community Infrastructure Levy Regulations offer discretionary relief from the Levy which local authorities can introduce to support delivery of these other products, such as discounted market sale. The Government believes that discretionary relief is more appropriate in these circumstances, as it supports local authorities to meet the specific needs of their local area.
80. The criteria for a property to be defined as a starter home are set out in the Housing and Planning Act 2016 and will be further refined in the regulations required by this Act. For a home to be sold as a starter home it must be sold to a qualifying first-time buyer – as defined in the Act and the forthcoming regulations. The Government intends to commission a network of agents to ensure that potential buyers meet the necessary criteria. In the meantime, the Government will continue to work with the industry to ensure the system works as the starter homes scheme is developed. The Government intends to develop guidance to support local authorities in implementing starter homes and the application of the Levy. This will include model section 106 clauses and charge documents, which local authorities will be able to modify to suit their circumstances, as well as general Planning Practice Guidance.
81. The income caps for starter homes have been set in line with other affordable home ownership products, such as shared ownership. This is a cap on the income of the whole household, not individual buyers. Setting income caps in the legislation also does not, in itself, prevent local authorities from setting lower income caps through planning obligations (subject to the statutory tests) if this meets local need. In the case of starter homes, as will be made clear in the forthcoming regulations, they are only sold as a starter home the first time they are bought by a qualifying first time buyer. Subsequent sales will be made at full market value with no restrictions (although the seller will need to pay some money back, depending on how long they have lived in the property). As such, there is no clawback of the Levy after the home has initially been sold as a starter home.

## Other technical clarifications

82. In the technical consultation, the Government set out a series of technical clarifications in the Regulations. The Government proposed:

- a) to clarify the meaning of 'retained parts of in-use buildings', as set out in regulation 40 of the current regulations;
- b) to clarify the meaning of 'relevant person' in regulation 65 of the current regulations;
- c) to clarify how multiple section 73 applications should be treated under regulation 128A, and how transitional provisions operate in relation to reliefs and exemptions;
- d) to clarify the application of regulation 128 in areas where the Mayor of London or a Combined Authority has introduced the Levy.

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

83. The Government received 90 responses to this question. Of those that answered the closed question, 81% believed there were no elements in regulations 13 to 15 which will prevent the Government achieving the policy intent. This included 83% of local authorities and 70% of private sector organisations.
84. Of those respondents that commented, four local authorities, one trade association and one private sector organisation expressed concern about increased complexity. Seven local authorities and one private sector organisation commented that the regulations should be consolidated.
85. A number of technical issues were raised by respondents to the consultation and the expert group. Five local authorities commented on the provisions on 'retained parts of in-use buildings' and in particular supported the clarifications. A number of responses to the consultation included questions extending beyond the scope of the draft regulations including the handling of situations where a pre-Levy permission included demolition of an existing building that could have been deemed as 'in-use' for Levy purposes in relation to transitional section 73 cases (developments which were first permitted before the Levy came into force in an area, and are then subsequently amended). One respondent sought a reference in the regulations to linking the new Levy to the Local Plan process.
86. The Government is bringing forward the changes set out in the consultation draft of the regulations. To reduce complexity and to consolidate the regulations in part, all the provisions which provide equations to calculate Levy liability have been moved to a new Schedule. In particular, in light of the consultation responses, the Government has significantly simplified the regulations dealing with transitional cases. These are now set out in Parts 4 and 5 of the new Schedule 1. They make it clearer that reliefs that have been agreed in the pre-Levy permission should be taken into account when calculating the chargeable amount for a section 73 permission which is granted after a charging schedule has come into force in the area. The regulations are also clearer about how local authorities should calculate the chargeable amount for a development where an outline planning permission was granted before a charging schedule came into effect and a section 73 permission is then granted before reserved matters have been agreed but after a charging schedule is in effect.