



Department for
Communities and
Local Government

Consultation on Community Infrastructure Levy further reforms

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Introduction

Overview of the Community Infrastructure Levy

1. The Community Infrastructure Levy (the levy) was introduced in 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed to support the development of the area.
2. The Government wants to get the economy growing by supporting locally-led sustainable development. The levy provides funding for infrastructure that the council, local community, neighbourhoods and delivery partners have identified is needed to support development and mitigate its impact.
3. The levy is intended to provide developers and landowners with much more certainty 'up front' about how much money they will be expected to contribute towards infrastructure, which in turn encourages greater confidence and higher levels of inward investment. The levy also aims to ensure greater transparency for local people because it enables them to understand how new development is contributing to their community.
4. The money raised through the levy will be used to support communities and enable development through contributing to funding the provision, improvement, replacement, operation and maintenance of infrastructure and by mitigating the impact of development. The levy is starting to roll out and many local authorities are in the process of adopting it or have already done so.
5. The levy applies to most new buildings that involve an increase in floor space and charges are based on the size and type of the new development. Local planning authorities in England and Wales as well as the Broads Authority, the Council of the Isles of Scilly and the Mayor of London can charge and spend the levy. These bodies are known as "charging authorities".
6. Charging authorities must produce a "charging schedule". This sets out the rate or rates they will charge and must be supported by evidence, particularly concerning the impact of the levy on the economic viability of new development and by evidence on the costs of the infrastructure needed to support development in the area. The charging authorities are required to consult with their residents and other interested parties in setting their levy rates. Charging schedules are then considered at an examination in public led by an independent examiner who establishes compliance with the legislation and consistency with statutory guidance.
7. Charging authorities may spend the receipts themselves, pass funds to other bodies and fund infrastructure outside their area. Charging schedules should be consistent with and support the implementation of up-to-date Local Plans in England, the Local Development Plan in Wales, and the London Plan in London. Collectively these are referred to in this document as a "relevant Plan".

8. The guidance published in December 2012 clarifies the relationship between the levy and planning obligations.¹ Planning obligations secured under the Town and Country Planning Act 1990 (“section 106 agreements”) continue to exist in a scaled back form where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They should be for matters that are directly related to a specific site and are not set out in a regulation 123 infrastructure list. The levy will be a main source of funding for new or improved infrastructure that serves the wider area - such as new roads and transport, local amenities such as parks, community centres, schools and health facilities.

Amendments to the Community Infrastructure Levy Regulations

9. The Government is committed to the levy and to ensuring that it is workable and effective. The primary legislation implementing the levy was designed to permit a flexible and evolutionary approach, and since the levy came into force, the Government has listened carefully to issues being raised in the light of early experience. We have already reformed the levy through the Localism Act which introduced new powers to require a proportion of levy receipts be passed to the local council² where development takes place; by amendment regulations in 2011 and 2012, which clarify and improve the operation of the levy; and by issuing revised guidance in 2012 which clarifies what the regulations require and what the Government expects from those areas adopting the levy.
10. There are some changes which we think we still need to make to clarify Part 11 of the Community Infrastructure Levy Regulations 2010, which restricts the use of planning obligations agreed under section 106 of the Town and Country Planning Act 1990.
11. Currently, the wording in regulations 122 and 123 is slightly different, and we understand that this is causing some confusion. Regulation 122(2) says “[a] planning obligation may only constitute a reason for granting planning permission for the development if”. Regulation 123(2) and (3) expresses the same intention using negative language: “[a] planning obligation may not constitute a reason for granting planning for the development to the extent that”. It was not our intention for there to be a substantive difference between the positive and negative forms of drafting. Similarly, regulation 123(3)(a) refers to “infrastructure project or type of infrastructure”. There is a comma in the equivalent terminology in regulation 123(3)(b)(ii), so it reads “that project, or type of infrastructure”. This has led some people to suggest that the meaning of the two phrases is different, when that was never our intention; both are intended to apply to the same range of infrastructure. We will be making amendments to provide greater clarity and consistency between these two regulations.
12. In addition, this consultation seeks views on further regulatory reforms. By making these changes we expect the levy will operate and roll out more effectively without the need for further major amendments. The consultation covers a range of amendments to the regulations related particularly to rate setting and the operation of the levy in practice. These include:

¹ <https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>

² Parish councils in England or Community councils in Wales

- Requiring a charging authority to demonstrate that it has struck an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on economic viability of development across its area (see question 1);
- Amending the provisions on setting differential rates (see question 2);
- Extending the consultation period on the draft charging schedule (see question 3);
- The role of the list of infrastructure and procedures for reviewing it (see questions 4 and 5);
- Extending the transition period for further limitations on the use of pooled planning obligations from April 2014 to April 2015 to allow charging authorities more time to take into account the reforms we have already introduced and those proposed in this consultation (see question 6);
- Amending the relationship between the levy and section 278 agreements (see question 7);
- Allowing charging authorities the choice to accept payments in kind through provision of both land and infrastructure either on-site or off-site for the whole or part of the levy payable on a development (see questions 8 to 10);
- Extending the provisions for phasing of levy payments to all types of planning permission to deal fairly with more complex developments (see questions 11 to 14);
- Allowing existing floorspace to be credited against the levy liability provided the use has not been abandoned (see question 15);
- Ensuring multiple liability provisions work effectively so that new applications that bring forward changes but do not increase floorspace on permitted, but not completed, schemes will not trigger an additional liability (see question 16);
- Giving charging authorities the discretion to apply social housing relief to discounted market sales in their areas and ensuring that ancillary and communal areas are reflected (see questions 17 to 19);
- Making it easier to apply exceptional circumstances relief provisions (see question 20);
- Introducing relief from the levy for self-build homes (see questions 21 and 22);
- Modifying the appeals procedures and allowing appeals in certain cases after development has commenced (see questions 23 and 24);
- Introducing transitional measures so that changes related to the charge setting process should not apply to authorities who have already published a draft charging schedule (question 25).

13. This consultation document sets out the main proposed changes and does not seek to list the detailed consequential amendments to specific regulations that will be required to bring these changes into effect.

Scope of the consultation

Topic of this consultation:	<p>The Planning Act 2008 established powers to create a Community Infrastructure Levy (the levy) in England and Wales. The Community Infrastructure Levy regulations 2010 that made the first use of these powers came into effect in April 2010 and have been subject to changes in 2011 and 2012. The regulations allow a charging authority to levy a charge on the owners or developers of land and buildings that are developed so that they contribute to the costs of providing the infrastructure needed to support the development of the area.</p> <p>The proposed changes in this consultation document are aimed at providing more clarity over how the charge is set, its relationship with section 106 obligations and greater local choice over how to implement the levy to reflect local conditions.</p>
Scope of this consultation:	<p>The aim of this consultation is to set out the details of possible changes to the regulations and to seek views.</p>
Geographical scope:	<p>England and Wales</p>

Basic Information

To:	<p>This consultation is aimed primarily at: local authorities, house builders, landowners, developers and key delivery partners with an interest in development and infrastructure provision and the Community Infrastructure Levy.</p>
Body responsible for the consultation:	<p>This consultation is being run by the Community Infrastructure Levy team within the Department for Communities and Local Government.</p>
Duration:	<p>This consultation will run for 6 weeks. It will begin on 15 April and end on 28 May 2013.</p>
Enquiries:	<p>cil@communities.gsi.gov.uk</p>
How to respond:	<p>We are seeking your views directly on the proposals. There is a response form at Annex A. Please send responses by email or by post:</p> <p>Email responses to: cil@communities.gsi.gov.uk</p>

Written responses to:
CIL Team
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**After the
consultation:**

Following full consideration of the responses the
Department will make any necessary regulatory changes.

SECTION ONE: RATE SETTING AND EVIDENCE

14. Community Infrastructure Levy rates are set based on economic viability and the need for infrastructure.
15. Charging authorities are required to identify at the start of the rate setting process the infrastructure or types of project required to support the development of their area, and their net costs, having regard to other potential sources of funding. This is to show that there is a funding gap for infrastructure across the area which the levy may, in part, fund. The levy cannot be expected to pay for all the infrastructure required, but it is expected to make a significant contribution.
16. The Community Infrastructure Levy guidance³ is clear that the funds raised in recent years through planning obligations and similar contributions should be included in the evidence that charging authorities use to set their levy rate(s).
17. During the examination of the draft charging schedule the role of the examiner is to establish whether the charging authority has complied with the legislation (including having regard to statutory guidance) in drafting the charging schedule.
18. Under regulation 14⁴ the charging authority “must aim to strike what appears to the charging authority” to be an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy rates on the economic viability of development across its area. The authority must use “appropriate available evidence” to inform this decision.⁵
19. To assist the examiner in reaching a view as to whether the correct balance has been reached, we propose to make this a more evidence-based test by requiring the charging authority to strike an appropriate balance that they will need to justify through evidence at the examination. That evidence should also show and explain how the proposed levy rates will contribute towards the implementation of their relevant Plan⁶ and support the development of their area.

Question 1 - We are proposing to require a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across the area.

Do you agree with this proposed change?

20. Currently regulation 13 allows charging authorities to set different levy rates within their area. This can be done by reference to “zones” (regulation 13(1)(a)) and “different intended uses of development” (regulation 13(1)(b)). The revised Community

³ <https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>

⁴ All reference to regulation numbers in this document refer to the Community Infrastructure Levy Regulations 2010 (as amended)

⁵ See section 211(7A) of the Planning Act 2008, as inserted by the Localism Act 2011. Section 211(7A) replicates the requirement in section 212(4)(b), which the Localism Act also revoked

⁶ “Relevant Plan” means Local Plans in England, Local Development Plans in Wales and the London Plan in London

Infrastructure Levy guidance has clarified that “uses” does not have the same meaning as “use class”.

21. However, differential rates cannot currently be set in relation to the size of a development. We consider that allowing scale to be taken into account will support local authorities when assessing the impact of their rates against the need to deliver their relevant Plan.
22. We propose to amend the regulations to allow different rates to be applied to both different uses and scales of development e.g. small shops, retail warehouses and supermarkets; small and large business units - where local market and viability evidence exists to justify differential rates related to scale.
23. In all cases, differential rates will need to be set in such a way so as not to give rise to notifiable State aid – one element of which is selective advantage. Authorities who choose to differentiate rates by scale will still need to ensure they have consistent evidence relating to economic viability that constitutes the basis for any such differences in treatment.

Question 2 - We are proposing to allow charging authorities to set differential rates by reference to *both* the intended use and the scale of development.

Do you agree with the proposed change?

24. Currently under regulation 17(3) the consultation period during which the public have an opportunity to comment on a draft charging schedule must be “at least 4 weeks” starting on the day that the public are notified that the draft has been issued.
25. As other changes we are proposing in this consultation may lead to more evidence being available setting out how the rates have been reached, and in order to ensure that interested parties have sufficient time to assess schedules and prepare representations, we are proposing that the timescale should be extended to at least six weeks. This will also bring the consultation period on the levy in line with the consultation period for most planning policy documents.

Question 3 - Should the period of consultation on the draft charging schedule be extended from “*at least 4 weeks*” to “*at least 6 weeks*”?

SECTION TWO: THE INFRASTRUCTURE LIST

26. Under regulation 123 charging authorities are currently encouraged, but not required, to produce a list of infrastructure projects which are intended to be wholly or partly funded by the levy. The purpose of regulation 123 is to ensure that local authorities cannot seek contributions for infrastructure through planning obligations when the levy is already expected to fund that same infrastructure. The regulation 123 list does not need to be exhaustive, and does not form part of the charging schedule under regulation 12; and there is no requirement under regulations 15 or 16 to publish it with the preliminary or draft charging schedules, although it may form part of the evidence base at the examination. Current arrangements also mean the list can be amended at any time. However (depending on what it contains) the regulation 123 list could potentially have a significant downward impact on the cost of planning obligations, which in turn could allow levy rates to rise. To ensure that the consequences of the regulation 123 list for levy rates are fully understood at the time that levy rates are set, we are proposing two changes to the way the infrastructure list is compiled and used.
27. We believe that the best way to ensure better and more consistent evidence to support the setting of the levy rates is for the draft regulation 123 list to be made public at an early stage.
28. It has never been the Government's intention to restrict charging authorities to only be able to spend the levy on items included in their list, and we are not proposing to remove this important flexibility now. We do, however, wish to ensure there is greater clarity about what infrastructure will not be funded through section 106 in order to inform the consideration of proposed levy rates by the charging authority, the community and those liable to pay the levy.
29. We are proposing to use guidance to set a clear expectation that the draft regulation 123 list would be published for information at the same time as the preliminary draft charging schedule.
30. To maintain this transparency we would expect the regulation 123 list to be available during the rate setting process. We are proposing that the list should be part of the appropriate available evidence to inform consideration of the draft charging schedule at examination.

Question 4 - Should the regulation 123 list form part of the relevant evidence under section 211(7A) and (7B) so that it is available during the rate setting process, including at the examination?

31. Secondly, we want to provide an opportunity for interested parties to comment on any changes to the list. We consider it important that charging authorities can respond quickly to changing circumstances. The levy is a long term instrument and infrastructure priorities can change as frequently as the development proposals they support. However, it is also important that interested parties understand what restrictions charging authorities expect to impose upon the use of planning obligations at any given time through the regulation 123 list and have an opportunity to comment on these.
32. We therefore propose to require proportionate consultation if the charging authority wants to bring forward a replacement list at any stage after the levy has come into force in an area.

33. We do not intend to prescribe how charging authorities should carry out this consultation, which for minor changes could be very light touch. We also do not intend to prescribe who they should consult with beyond those persons set out in regulation 15 whom the charging authority considers appropriate.

Question 5 - We propose to amend the regulations so that a new infrastructure list can only be brought forward after proportionate consultation with interested parties.

Do you agree that this approach provides an appropriate balance between transparency and flexibility?

SECTION THREE: THE RELATIONSHIP BETWEEN THE COMMUNITY INFRASTRUCTURE LEVY, SECTION 106 PLANNING OBLIGATIONS AND SECTION 278 HIGHWAYS AGREEMENTS

34. Regulation 123 restricts the use of planning obligations made under section 106 of the Town and Country Planning Act 1990. Regulation 123(2) restricts the use of planning obligations to infrastructure that is not included in the Community Infrastructure Levy list (the “Regulation 123 list”). Regulation 123(3) prevents the use of planning obligations where five or more separate planning obligations relating to that project, or type of infrastructure within the area of the charging authority, have been entered into since 6 April 2010.
35. The Community Infrastructure Levy guidance is clear that the definition of “planning obligation” in the regulations is a planning obligation made under section 106 of the Town and Country Planning Act 1990 and includes a proposed planning obligation. An agreement entered into for the purposes of section 106 may contain more than one planning obligation to which regulation 123 relates.
36. The definition of “relevant determination” in regulation 123 ensures that on the local adoption of the levy, or nationally by 6 April 2014, local authorities are restricted in their use of planning obligations for pooled contributions. Pooled contributions may be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The limit of five applies to types of general infrastructure contributions, such as education and transport. This is to incentivise places to adopt the levy (as the Government’s preferred vehicle for developer contributions).
37. Whilst the Government is wholly committed to the levy, in view of recent regulatory changes and the changes that could result from this consultation, we are proposing to move the date for transition to the levy from April 2014 to April 2015, to allow charging authorities sufficient time to reflect the proposed changes in their approach.

Question 6 - We are proposing to move the date from when further limitations on the use of pooled planning obligations will apply (to areas that have not adopted the levy) from April 2014 to April 2015.

Do you agree?

Section 278 Agreements

38. Section 278 agreements under the Highways Act are legally binding agreements between the Local Highway Authority and the developer to ensure delivery of necessary highway works. Currently, the limitations on planning obligations in regulation 123 do not apply to section 278 agreements. Authorities can combine both section 278 and the levy to fund improvements to the road network and local authorities can enter into unlimited section 278 agreements for the same piece of road infrastructure. There are no current arrangements for the relationship between section 278 agreements and the levy to be visible or regulated in the same way as planning obligations.

39. We are considering whether it is right for section 278 agreements to be required for projects which are included on the list of infrastructure and intended to be funded through the levy, and whether this could result in unreasonable requirements on developers.

Question 7 - Do you agree that regulation 123 (excluding regulation 123(3)) should be extended to include section 278 agreements so that they cannot be used to fund infrastructure for which the levy is earmarked?

SECTION FOUR: COMMUNITY INFRASTRUCTURE LEVY PAYMENTS

Payment in Kind – Land and Infrastructure

40. Currently regulation 73(1) allows charging authorities to accept one or more land payments in satisfaction of the whole or part of the levy due in respect of a chargeable development. Under regulation 73(3) the amount of the levy paid is an amount equal to the value of the acquired land.
41. Circumstances may arise where it is sensible for a developer to provide infrastructure either as well as land or instead of land. For instance, it may be a priority for a charging authority to ensure the delivery of certain on-site or off-site infrastructure to bring forward a particular development. Where this is the case, the developer may be best placed to deliver that infrastructure in a timely and cost effective way.
42. We are proposing to give charging authorities the choice to accept a combination of land payments and/or provision of infrastructure, provided that they have published a policy to this effect on their website (as required for exceptional circumstances relief). This choice would only apply to that infrastructure which the charging authority has listed as part of its policy. This is to ensure there is clarity and transparency about what infrastructure the charging authority may be willing to consider as payment “in kind”. This will also ensure the local community are clear that the infrastructure needed is still being delivered, but that, in these cases, it is being delivered in kind rather than through levy receipts. Only infrastructure that the developer is not separately required to provide, for example as the result of a section 106 or 278 agreement, could be accepted as payment in kind. Regulation 73 makes provision for the authority and the developer to enter into “land agreements” to ensure the transfer of land and to protect the long term use of the land for the purposes for which it is intended. The decision to accept a land agreement is at the discretion of the charging authority. We intend that this discretion will also apply to any in kind payments of infrastructure. We intend to make it clear through guidance that in kind payments of infrastructure should only be accepted where the charging authority considers that it would bring cost savings and/or timing or other benefits compared to the procurement of the infrastructure through levy funds. We propose to make provisions in the regulations for agreements that could include any infrastructure (provided directly by a developer or by a third party on their behalf) as well as land transferred to the local authority or a nominated third party.

Question 8 - Do you agree that, where appropriate and acceptable to the charging authority, the levy liability should be able to be paid (in whole or in part) through the provision of both land *and/or* on-site or off-site infrastructure?

43. If we made this change it would be important that regulations set out how the charging authority and the developer would agree the sum by which the amount of levy payable would be reduced to reflect the payment in kind of the infrastructure provided.
44. For reasons of practicality, simplicity and transparency, we intend that the relevant reduction in the levy charge should reflect the cost of providing the infrastructure.
45. This would allow the authority to agree a detailed specification or description of the required infrastructure, which the developer would use to prepare the detailed design

and cost estimates which would be used in calculating the reduction in the relevant levy charge.

46. The developer and the charging authority would bear their own administrative, legal and other related costs in relation to any in kind payments that did not go ahead i.e. they would not be included in the calculation for the costs of any infrastructure that was accepted as an in kind payment. The delivery of the infrastructure would be secured through an agreement between the charging authority and the developer, in whatever form they both agree is appropriate, and delivery would normally be secured by a bond or other relevant form of guarantee. Alongside the regulations, we intend to publish guidance setting out some of this detail.
47. Once the construction of the item of infrastructure is complete, the developer would provide evidence of the actual design and construction costs and design related fees, to the satisfaction of the charging authority. Where costs were less than anticipated, we will make provision for balancing payments to be made to the charging authority. This is important to ensure developers do not pay less than the full levy liability.

Question 9 - Do you agree that actual construction costs and fees related to the design of the infrastructure should be used to calculate the sum by which the amount of levy payable will be reduced, when the levy is paid by providing infrastructure in kind?

48. In all cases, payment in kind by means of infrastructure must be done in a way so as not to give rise to notifiable State aid – one element of which is selective advantage. The procedure would need to ensure that the infrastructure is being delivered at the right cost, for example by reference to cost benchmarks or by appointing independent cost consultants, and not offer the developer any specific advantage (for example in terms of cash flow).
49. The charging authority will also need to ensure that, if relevant, the delivery of the infrastructure has been through appropriate procurement procedures. The delivery of infrastructure in kind may include work on the design of that infrastructure (“services”) in addition to the construction of the infrastructure (“works”). Under EU procurement rules there are capital value thresholds above which a local authority cannot procure goods and services and works without going through a competitive tendering process. At present (until 31 Dec 2013) these thresholds are £173,934 for goods and services and £4,348,350 for works. These thresholds relate to the costs of provision in the same way as we are proposing that the infrastructure should be valued for the purposes of the levy. This would ensure that only a single valuation is required.
50. If whatever the developer proposes to deliver as part or full settlement of the levy liability would ordinarily have been subject to a full EU tender process, they will need to ensure that they comply with both the EU and charging authority’s usual procurement protocols. To prevent procurement challenges delaying development, we are considering limiting “in kind” payments to the EU procurement thresholds.

Question 10 - Should the payment in kind provisions be limited to the capital value ceilings as set out in the EU procurement rules – currently thresholds of £173,934 for goods and services and £4,348,350 for works?

Phased Payments

51. Regulations 8 and 9 make provision in relation to outline planning permissions. Regulation 8(4) provides that planning permission first permits development on the day the last reserved matter is approved. Regulations 9(4) and 8(5) provide for the phasing of levy payments.
52. Many applications, especially for more complex and phased developments, are submitted as 'hybrid' applications (i.e. part full application and part outline application). As the regulations currently differentiate between the two types of applications, this may cause confusion when applying the regulations.
53. We propose to allow all types of planning permissions (both full and outline) to be capable of being considered as multi-phase schemes comprising separate chargeable developments. We are also considering clarifying the test so that the full or outline permission must require or expressly permit development to be carried out in phases, for example in relation to large scale schemes or tall buildings. This is in contrast to the current wording in regulation 8(4) which only refers to outline planning permission that "permits development to be implemented in phases". This should provide additional certainty as to how this provision operates.

Question 11 - Should all planning permissions (outline and full) be capable of being treated as phased development with each phase a new chargeable development?

54. This would link the payment of the levy to the commencement of different phases of the development. This would not reduce the amount of levy payable but would provide for it to be paid in phases in accordance with the planning permission.

Commencement of Development

55. We are also considering the provisions around the point when development is deemed to have commenced, which determines when the levy is payable.
56. Currently under regulation 7, development commences when any "material operation" begins to be carried out on the relevant land. "Material operation" is a planning term and includes demolition of buildings and other site preparation works.
57. There may be exceptional circumstances, such as the redevelopment of a large and heavily contaminated site, where this could cause difficulties. Under the current regulations the start of development and the liability to pay the levy would be triggered when the material operation (i.e. site decontamination) is started. A long decontamination / site preparation phase could lead to significant delays to the start of construction on site and thus when income is received, affecting scheme viability.
58. We consider that it would be best not to modify the widely used standard definition of "material operation" to produce another definition for the Community Infrastructure Levy. Doing that could also place additional monitoring costs on charging authorities.
59. When planning permission permits development to be implemented in phases, one or more of those phases could relate solely to site preparation. Under the proposals above, this phase would then be liable to the levy separately to those that involve building the development. This would in effect mean that the site preparation could be completed without incurring any levy liability. The levy liability would only arise when a

phase that involves erecting buildings commences. We consider that this is sufficient to provide for those developments where site preparation is a concern.

Question 12 - Do you agree that the phasing of levy payments will make adequate provision in relation to site preparation?

60. We are considering providing for a recalculation of levy liability when the provision of affordable housing on a site is varied by agreement between the developer and the local planning authority. This is particularly relevant to major schemes incorporating social and affordable housing where it is often the case that part of the site is transferred to a registered provider, such as a housing association, before the precise nature and mix of the affordable housing is known. This transfer can occur after development has commenced on another part of the site and the levy liability triggered. In these circumstances under the current regulations it is necessary to calculate levy liability based on an estimate of the level of social housing relief. It is not possible to appeal this assessment after development has commenced.

Question 13 - Do you agree that the regulations should make it possible for a charging authority to re-calculate the levy liability of a development when the provision of affordable housing is varied?

61. The date on which planning permission first permits development under regulation 8 is the date at which liability for the Community Infrastructure Levy is calculated; the rates used are those in the charging schedule that is in place on that date. However you could be granted planning permission (and so fix the amount of liability) but not commence development until much later due to finalising reserved matters. We therefore propose to amend the regulations so that for all planning applications the date of the final approval of the last reserved matters associated with the permission or phase triggers liability, i.e. we propose substituting this for the need to clear the pre-commencement conditions.

Question 14 - Should we amend the regulations so that the date at which planning permission first permits development is the date of the final approval of the last reserved matter associated with the permission or phase?

Vacancy period

62. Currently regulation 40 includes a vacancy period test for calculating the levy liability so that vacant floorspace can be offset in certain circumstances. This means that where a building has not been in use for a continuous period of at least six months within a period of 12 months, ending on the day planning permission first permits the chargeable development, the floorspace may not be offset. This is because if a building has been in recent use the infrastructure should be in place to support the development, however if a building has been vacant for a longer period and then brought back into use it may have an impact on the need for infrastructure to support that development.

63. We are aware that for certain developments (particularly those that require a building to be emptied, demolished and re-built), the vacancy test is preventing the offsetting of vacant floorspace and requiring payment of the levy even when the floorspace is not increasing. In other similar refurbishment cases, where floorspace is increasing, the

whole development is being charged the levy, rather than just the increased floorspace.

64. The test was designed because it was felt that where development has an impact on infrastructure need the levy should be paid. However we are aware that the current test may not be working effectively and may be difficult to enforce. Therefore we are considering changing regulation 40(10).
65. Planning law provides a right for buildings to be re-occupied for their lawful use, even if they have been vacant for some time, provided that use has not been “abandoned”. Abandonment occurs when planning permission would be required to resume the use of the buildings.
66. We are considering removing the vacancy test from regulation 40. The effect of this change would be that the levy would not generally be paid on buildings that are refurbished or redeveloped and would only be payable on any increases in floorspace in refurbishment and redevelopment schemes. On the one hand, this will simplify levy calculations in such circumstances and will ensure that development is not disincentivised by the need to pay the levy for redeveloped floorspace. On the other hand, levy revenues are likely to be reduced. However the levy would be payable in full (i.e. on the entire floorspace for which planning permission was sought) if the previous uses of the site had been abandoned.

Question 15 - Should we change the regulations to remove the vacancy test, meaning the levy would generally only be payable on any increases in floorspace in refurbishment and redevelopment schemes, provided that the use of the buildings on site had not been abandoned?

Abatement Provisions for Earlier Payments

67. Regulation 74A of the Community Infrastructure Levy regulations⁷ ensures that multiple levy payments / liabilities are not triggered for the same development proposals by allowing credit for previous payments. However these provisions only relate to planning permissions granted under section 73 of the Town and Country Planning Act - applications to develop land without compliance with planning conditions attached to the original permission.
68. We intend to extend the abatement provisions for previous payments of the levy so they apply to new planning permissions which are brought forward under a new, stand alone, planning application to make changes to an existing scheme prior to or during its construction. This would be subject to agreement with the charging authority that the relevant application does change a permitted and commenced development on which the levy charge liability has been triggered. The new permission, if implemented, would be the liable permission and any previous levy payments would be offset against this liability.

Question 16 - We are proposing to amend the regulations so that new applications bringing forward design changes, but not increasing floorspace (other than section 73 applications), would trigger an additional liability to pay

⁷ Regulation 74A was inserted by the Community Infrastructure Levy (Amendment) Regulations 2012 (S.I. 2012/2975).

the levy but the amount payable would be reduced by the levy already paid under the earlier permission.

Do you agree with the proposed change?

SECTION FIVE: EXEMPTIONS AND RELIEFS

Social Housing Relief

69. The European Commission recognises the importance of State support for social housing which is deemed to be a service of general economic interest meaning that relief from a tax or levy can be granted without breaching the State aid rules. However, to fit within the exemption, any housing benefiting from the State aid (relief) must meet three criteria:

- Entrustment - legislative provision, a contract or other legally binding method to ensure that the housing is used in a certain way;
- The housing must be for those people whose needs are not met by the market - “disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions”; and
- The total aid must not exceed the cost of providing the social housing.

70. Currently, alongside providing grant funding for affordable housing, the Government provides for social housing relief from the Community Infrastructure Levy, recognising the social benefit that such housing provides. That relief only extends to social housing for rent or shared ownership.

71. There are also other innovative forms of affordable housing being provided through intermediate tenures, including homes for sale provided at a cost below market levels, provided to eligible households whose needs are not met by the market.

72. In line with wider Government policy on affordable housing, we propose giving local authorities the freedom to extend social housing relief to include homes for sale at a cost below market levels. Local policies, published on a charging authority website in the same way as for exceptional circumstances relief, would need to comply with the European Commission criteria set out above and fit within a national framework for exemptions provided by the Levy regulations.

Question 17 - Would you support giving charging authorities the discretion to apply social housing relief for discount market sales within their local area, subject to meeting European and national criteria?

Question 18 - If the social housing relief was to be extended, do you agree the key national criteria for defining the types of affordable housing provided through intermediate tenures, to which social housing relief could apply, should be that:

1. The housing is provided at an affordable rent / price (at least 20% below open market levels);
2. The housing is meeting the needs of those whose needs are not being met by the market, having regard to local income levels and local house prices (either rent or sales prices); and
3. The housing should either remain at an affordable price for future eligible households or, if not, the subsidy (amount of social housing relief)

should be recycled for alternative affordable housing provision?

73. We are proposing to clarify the amount of social housing relief payable in buildings and developments that contain a mixture of both social housing and housing for sale. This is because the social housing relief applies to qualifying dwellings and the regulations do not currently provide for apportionment of social housing relief to the communal areas which are in joint use, or ancillary uses such as car parking for the shared or sole use of the occupiers of the social housing.

Question 19 - Do you agree that we should amend regulation 49 so that the areas taken into account when assessing eligibility for social housing relief include the gross internal area of all communal areas (including stairs and corridors) and communal ancillary areas (such as car parking) which are wholly used by - or fairly apportioned to - people occupying social housing?

Discretionary Relief for Exceptional Circumstances

74. Regulations 55 to 58 allow charging authorities to set discretionary relief for exceptional circumstances. The charging authority must publish a statement on their website giving notice that such relief is available in their area and there are notification procedures if they no longer wish this relief to be available.

75. The regulations currently allow for differential or zero rates to be applied within a charging authority's area (if the economic viability evidence supports this). Use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable.

76. Under regulation 55(3)(b), exceptional circumstances relief is only allowed after the signing of a section 106 agreement and only in cases where three preconditions are met: the amount payable under the agreement is higher than the levy liability; the amount of levy payable would have an unacceptable impact on the economic viability of the scheme; and grant of levy relief would not constitute notifiable State aid.

77. In practice these tests have meant that exceptional circumstances relief has not been used. We are therefore considering removing or adjusting the requirement for there to be a section 106 agreement which is higher than the levy liability, given there may be exceptional circumstances where this is not the case. This will allow greater discretion to the charging authority to grant exceptional circumstance relief; they would, however, still need to be satisfied that the granting of the exceptional relief would not constitute a notifiable State aid.

Question 20 - Which of the following options do you prefer (a) remove the requirement for a planning obligation which is greater than the value of the CIL charge to be in place, before discretionary relief in exceptional circumstances can be provided, or (b) change the requirement so that the relevant planning obligation must be greater than a set percentage of the value of the CIL charge (for example, 80%), or (c) keep the existing requirement?

Self-build housing

78. Although Government accepts that self-build housing has an impact on local infrastructure the Government also wants to give many more people the chance to benefit from building their own home.

79. Self-builders are private individuals who typically self-finance their own projects and cannot easily offset costs. They are often at a disadvantage because of budget constraints, or of cashflow limitations because they are often not able to benefit from large discounts on material costs which might be available to established builders through their suppliers. Neither are they generally able to absorb costs in profit margins or pass on costs to a home buyer. Many self-builders therefore consider the levy to undermine the viability of their projects.
80. The Government considers that a relief from the levy for self-builders would make it easier for more people to build homes for their own occupation, in turn stimulating the growth of housing supply and the self-build housing sector, promoting economic growth, enabling local job creation and helping to diversify the home building sector.
81. We are therefore proposing to introduce a relief from paying the levy for all self-build housing. The definition of self-build housing would be closely defined in the regulations to ensure only genuine self-builders could access the relief. However we are clear that the relief will cover homes built or commissioned by individuals or groups of individuals for their own use, either by building the home on their own or working with builders.
82. The application for relief would involve a two-stage process. Before commencing development an application for the self build relief would need to be made by the person who applied for planning permission. The applicant would be required to self-certify that the development proposed is a self-build project within the strict definitions in the regulations and that the person benefiting from the relief would occupy the self-built residential building as their principal home. The applicant would also need to confirm that the total amount of State aid from all sources they receive would not exceed the de minimus limit for State aids (currently 200,000 Euros over a three year period for most purposes). A record will have to be kept of the aid granted in this way. This aid will then be repayable if the self-build conditions are not met.
83. On completion of the development, the self-builder would need to produce documentary evidence that the house was a self-build project and will be owner occupied. Details of acceptable evidence would be set out in regulations but we would expect this to include a completion certificate, self-build or custom-build warranties, proof of VAT refunds or valid contracts for commissioned building works for the whole of the building, title deeds/proof of freehold ownership, self-build mortgage details (where available) and evidence of occupation. Should the applicant decide at any point that the development is not going to be a self-build project, they should inform the charging authority and pay the levy.
84. If this proposed regulatory change is implemented we will keep it under review to ensure that it continues to achieve the desired effects.

Question 21 - Should we introduce a relief from the payment of the levy for self-build homes for individuals as set out above?

Question 22 - We are proposing to amend the regulations to reflect the above process and the evidence self-builders would need to provide to qualify for relief from the levy, including provisions to avoid misuse by non-self-builders.

Do you agree that this approach provides a suitable framework to provide relief for genuine self-builders?

SECTION SIX: APPEALS

85. Regulation 120 sets out the appeal procedures when sending an appeal to an appointed person. Appeals have to be made by written representations, which are circulated by the appointed person to all interested parties, who are given 14 days in which to send their comments. Determining when comments were 'sent' is both administratively difficult to monitor and open to questioning by third parties. There is no provision in the regulations for this period to be varied by the appointed person in particular cases.

Question 23 - Should we change regulation 120 so that any comments must be *received* within 14 days and allow discretion for the appointed person to extend the representations period in any particular case?

86. Under the regulations there is no right to request a review or appeal against the chargeable amount once development has commenced. This could raise issues where a planning permission is granted after the commencement of development, so no appeal is available against the chargeable amount. This could relate to planning applications to vary a commenced scheme, applications to vary planning conditions under section 73 or retrospective planning applications under section 73A of the Town and Country Planning Act 1990.

Question 24 - Should we amend the regulations to allow for the review or appeal of the chargeable amount in relation to planning permissions granted after development has commenced?

SECTION SEVEN: TRANSITIONAL MEASURES

87. It remains the Government's ambition that local planning authorities adopt the Community Infrastructure Levy as swiftly as possible, as it remains the Government's preferred vehicle for collecting contributions to mitigate the impacts of development.
88. Given the substantial changes to the Community Infrastructure Levy regulations considered in this document, the Government intends to apply transitional measures to ensure that charging authorities who have completed a substantial volume of work on their charging schedule do not have to significantly delay or revise their charging schedules.
89. A number of the changes set out above – on reliefs and exemptions, for instance – would apply to all charging authorities (including those who have adopted charging schedules). In relation to these changes, we will include general transitional provisions to ensure that the regulations do not have a retrospective effect or cause unfairness.
90. We are considering whether changes related to the charge setting process and examination should not apply to those authorities who have published a draft charging schedule in accordance with regulation 16. Those authorities would not then have to use additional resources and time to redo that work.

Question 25 - Do you agree that changes related to the charge setting process and examination should not apply to authorities who have already published a draft charging schedule?

ANNEX A: Consultation questions – response form

We are seeking your views to the following questions on the proposals to amend the CIL Regulations 2010 (as amended).

How to respond:

The closing date for responses is 28 May 2013

This response form is saved separately on the DCLG website.

Responses should be sent preferably by email:

Email response to cil@communities.gsi.gov.uk

Written response to:

CIL Team
Department for Communities and Local Government
Zone 1/H6 Eland House
Bressenden Place
London SW1E 5DU

About you

i) Your details:

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

iii) Please tick the box which best describes you or your organisation:

District Council

Metropolitan district council

London borough council

Unitary authority/county council/county borough council

Parish council

Community council

Non-Departmental Public Body (NDPB)

Planner

Professional trade association

Land owner

Private developer/house builder

Developer association

Voluntary sector/charity

Other

(please comment):	
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iv) What is your main area of expertise or interest in this work (please tick one box)?

Chief Executive

Planner

Developer

Surveyor

Member of professional or trade association

Councillor

Planning policy/implementation

Environmental protection

Other

(please comment):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

v) Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question 1 - We are proposing to require a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across the area.

Do you agree with this proposed change?

Yes No

Comments

Question 2 - We are proposing to allow charging authorities to set differential rates by reference to *both* the intended use and the scale of development.

Do you agree with the proposed change?

Yes No

Comments

Question 3 - Should the period of consultation on the draft charging schedule be extended from "*at least 4 weeks*" to "*at least 6 weeks*"?

Yes No

Comments

Question 4 - Should the regulation 123 list form part of the relevant evidence under section 211(7A) and (7B) so that it is available during the rate setting process, including at the examination?

Yes No

Comments

Question 5 - We propose to amend the regulations so that a new infrastructure list can only be brought forward after proportionate consultation with interested parties.

Do you agree that this approach provides an appropriate balance between transparency and flexibility?

Yes No

Comments

Question 6 - We are proposing to move the date from when further limitations on the use of pooled planning obligations will apply (to areas that have not adopted the levy) from April 2014 to April 2015.

Do you agree?

Yes No

Comments

Question 7 - Do you agree that regulation 123 (excluding regulation 123(3)) should be extended to include section 278 agreements so that they cannot be used to fund infrastructure for which the levy is earmarked?

Yes No

Comments

Question 8 - Do you agree that, where appropriate and acceptable to the charging authority, the levy liability should be able to be paid (in whole or in part) through the provision of both land *and/or* on-site or off-site infrastructure?

Yes No

Comments

Question 9 - Do you agree that actual construction costs and fees related to the design of the infrastructure should be used to calculate the sum by which the amount of levy payable will be reduced, when the levy is paid by providing infrastructure in kind?

Yes No

Comments

Question 10 - Should the payment in kind provisions be limited to the capital value ceilings as set out in the EU procurement rules – currently thresholds of £173,934 for goods and services and £4,348,350 for works?

Yes No

Comments

Question 11 - Should all planning permissions (outline and full) be capable of being treated as phased development with each phase a new chargeable development?

Yes No

Comments

Question 12 - Do you agree that the phasing of levy payments will make adequate provision in relation to site preparation?

Yes No

Comments

Question 13 - Do you agree that the regulations should make it possible for a charging authority to re-calculate the levy liability of a development when the provision of affordable housing is varied?

Yes No

Comments

Question 14 - Should we amend the regulations so that the date at which planning permission first permits development is the date of the final approval of the last reserved matter associated with the permission or phase?

Yes No

Comments

Question 15 - Should we change the regulations to remove the vacancy test, meaning the levy would generally only be payable on any increases in floorspace in refurbishment and redevelopment schemes, provided that the use of the buildings on site had not been abandoned?

Yes No

Comments

Question 16 - We are proposing to amend the regulations so that new applications bringing forward design changes, but not increasing floorspace (other than section 73 applications) would trigger an additional liability to pay the levy but the amount payable would be reduced by the levy already paid under the earlier permission.

Do you agree with the proposed change?

Yes No

Comments

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Comments

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- The housing is meeting the needs of those whose needs are not being met by the market, having regard to local income levels and local house prices (either rent or sales prices); and
- The housing should either remain at an affordable price for future eligible households or, if not, the subsidy (amount of social housing relief) should be recycled for alternative affordable housing provision?

Yes No

Comments

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Comments

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Option a) Option b) Option c)

Comments

Question 21 - Should we introduce a relief from the payment of the levy for self-build homes for individuals as set out above?

Yes No

Comments

Question 22 - We are proposing to amend the regulations to reflect the above process and the evidence self-builders would need to provide to qualify for relief from the levy, including provisions to avoid misuse by non-self-builders.

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Comments

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Comments

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Comments

Question 25 - Do you agree that changes related to the charge setting process and examination should not apply to authorities who have already published a draft charging schedule?

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Comments