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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Community Infrastructure Levy Regulations 2010**

**PART 3**

**CHARGING SCHEDULES**

**Interpretation and application of Part 3**

**11.**—(1) In this Part—

“consultation bodies” has the meaning given in regulation 15;

“differential rate” has the meaning given in regulation 13;

“independent person” means—

- (a) an examiner appointed under section 212(1) of PA 2008, or
- (b) a person appointed under section 212(3) of PA 2008 to assist an examiner;

“relevant consenting authorities” means—

- (a) the Secretary of State,
- (b) the Infrastructure Planning Commission<sup>(1)</sup>,
- (c) the Mayor, if the charging schedule has been approved by a London borough council,
- (d) each London borough council, if the charging schedule has been approved by the Mayor,
- (e) each county council whose area includes any part of the area to which the charging schedule applies, and
- (f) any other body exercising the functions of a local planning authority (within the meaning of TCPA 1990) in the area to which the charging schedule applies;

“relevant evidence” means evidence which is readily available and which, in the opinion of the charging authority, has informed its preparation of the draft charging schedule;

“statement of modifications” means a document which—

- (a) sets out the modifications which the charging authority has made to the draft charging schedule since it was published in accordance with regulation 16, and
- (b) includes a statement specifying that a request to be heard by the examiner on those modifications may be made to the charging authority within the period of four weeks beginning with the day on which the draft charging schedule is submitted to the examiner; and

“zone” means a part of a charging authority’s area.

(2) The provisions of this Part apply to a revision of a charging schedule as they apply to the preparation of a charging schedule.

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(1) The Infrastructure Planning Commission was established by section 1 of the Planning Act 2008.

### **Format and content of charging schedules**

**12.**—(1) Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.

(2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—

- (a) the name of the charging authority;
- (b) the rates (set at pounds per square metre) at which CIL is to be chargeable in the authority's area;
- (c) where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—
  - (i) identifies the location and boundaries of the zones,
  - (ii) is reproduced from, or based on, an Ordnance Survey map,
  - (iii) shows National Grid lines and reference numbers, and
  - (iv) includes an explanation of any symbol or notation which it uses; and
- (d) an explanation of how the chargeable amount will be calculated.

(3) A charging schedule approved by a charging authority must, in addition to the contents mentioned in paragraph (2), contain—

- (a) the date on which the charging schedule was approved;
- (b) the date on which the charging schedule takes effect; and
- (c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008.

(4) In paragraph (2)(c)(ii) “Ordnance Survey map” means a map produced by Ordnance Survey or a map on a similar base at a registered scale.

### **Differential rates**

**13.**—(1) A charging authority may set differential rates—

- (a) for different zones in which development would be situated;
- (b) by reference to different intended uses of development.

(2) In setting differential rates, a charging authority may set supplementary charges, nil rates, increased rates or reductions.

### **Setting rates**

**14.**—(1) In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—

- (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

(2) In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61.

(3) In having regard to the potential effects of the imposition of CIL on the economic viability of development (in accordance with paragraph (1)(b)), a London borough council must take into account the rates set by the Mayor.

(4) For the purposes of paragraph (3), the rates set by the Mayor are the rates in the most recent charging schedule approved by the Mayor before the London borough council begins consultation on its preliminary draft charging schedule in accordance with regulation 15.

### **Consultation on a preliminary draft charging schedule**

**15.**—(1) A charging authority which proposes to issue or revise a charging schedule must prepare a preliminary draft charging schedule for consultation.

(2) The charging authority must—

- (a) send a copy of the preliminary draft to each of the consultation bodies; and
- (b) invite each of those bodies to make representations on the preliminary draft.

(3) For a charging authority in England, the consultation bodies are—

- (a) each of the following whose area is in or adjoins the charging authority's area—
  - (i) a local planning authority within the meaning of section 37 of PCPA 2004<sup>(2)</sup>,
  - (ii) a local planning authority within the meaning of section 78 of PCPA 2004,
  - (iii) a county council,
  - (iv) a responsible regional authority;
- (b) each parish council whose area is in the charging authority's area;
- (c) the Mayor if the charging authority is a London borough council;
- (d) any other person exercising the functions of a local planning authority (within the meaning of TCPA 1990) for an area within, or which adjoins, the charging authority's area.

(4) For a charging authority in Wales, the consultation bodies are—

- (a) each of the following whose area is in or adjoins the charging authority's area—
  - (i) a local planning authority within the meaning of section 78 of PCPA 2004,
  - (ii) a local planning authority within the meaning of section 37 of PCPA 2004;
- (b) any other person exercising the functions of a local planning authority (within the meaning of TCPA 1990) for an area within, or which adjoins, the charging authority's area; and
- (c) the Welsh Ministers.

(5) The charging authority must also invite representations on the preliminary draft from—

- (a) persons who are resident or carrying on business in its area; and
- (b) such of the following as the charging authority consider appropriate—
  - (i) voluntary bodies some or all of whose activities benefit the charging authority's area, and
  - (ii) bodies which represent the interests of persons carrying on business in the charging authority's area.

(6) The charging authority must make such arrangements as it considers appropriate for inviting representations under paragraph (5).

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(2) Relevant amendments were made to section 37 by paragraph 81 of Schedule 8 to the Housing and Regeneration Act 2008.

(7) The charging authority must take into account any representations made to it under this regulation before it publishes a draft of the charging schedule for examination in accordance with section 212 of PA 2008.

(8) In this regulation “responsible regional authority” must be construed in accordance with Part 5 of the Local Democracy, Economic Development and Construction Act 2009(3).

### **Publication of a draft charging schedule**

**16.**—(1) Before submitting a draft charging schedule for examination in accordance with section 212 of PA 2008, the charging authority must—

- (a) make a copy of the draft charging schedule, the relevant evidence and a statement of the representations procedure available for inspection—
  - (i) at its principal office, and
  - (ii) at such other places within its area as it considers appropriate;
- (b) publish on its website—
  - (i) the draft charging schedule,
  - (ii) the relevant evidence (to the extent that it is practicable to do so),
  - (iii) a statement of the representations procedure, and
  - (iv) a statement of the fact that the draft charging schedule and relevant evidence are available for inspection and of the places at which they can be inspected;
- (c) send to each of the consultation bodies—
  - (i) a copy of the draft charging schedule, and
  - (ii) a statement of the representations procedure; and
- (d) give by local advertisement notice which sets out—
  - (i) a statement of the representations procedure, and
  - (ii) a statement of the fact that the draft charging schedule and relevant evidence are available for inspection and of the places at which they can be inspected.

(2) In this regulation “statement of the representations procedure” means a statement specifying—

- (a) the period within which representations about the draft charging schedule must be made in accordance with regulation 17(2)(a);
- (b) the address to which, and the name of the person (if any) to whom, representations about the draft charging schedule must be made in accordance with regulation 17(2)(b);
- (c) that representations may be made in writing or by way of electronic communications;
- (d) that persons making representations may request the right to be heard by the examiner; and
- (e) that representations may be accompanied by a request to be notified at a specified address of any of the following—
  - (i) that the draft charging schedule has been submitted to the examiner in accordance with section 212 of PA 2008,
  - (ii) the publication of the recommendations of the examiner and the reasons for those recommendations, and
  - (iii) the approval of the charging schedule by the charging authority.

### **Representations relating to a draft charging schedule**

17.—(1) Any person may make representations about a draft charging schedule which a charging authority proposes to submit to the examiner.

(2) Any such representations must be—

- (a) made within the period which the charging authority specifies for the purposes of this paragraph; and
- (b) sent to the address, and if the charging authority think it appropriate to specify a person, the person, which the charging authority specifies for the purposes of this paragraph.

(3) The period which the charging authority specifies for the purposes of paragraph (2) must be a period of not less than four weeks starting on the day on which notice given pursuant to regulation 16(1)(d) is first published.

(4) A person who has made representations about a draft charging schedule may withdraw those representations at any time by giving notice in writing to the charging authority.

### **Withdrawal of a draft charging schedule**

18. Where a charging authority withdraws a draft charging schedule under section 212(11) of PA 2008 it must, as soon as practicable after it is withdrawn—

- (a) publish a statement of that fact on its website;
- (b) give notice of that fact by local advertisement;
- (c) notify any person that was invited to make representations on the draft charging schedule of that fact; and
- (d) remove from its website and from the places at which they were made available any copies, documents, evidence and statements made available or published under regulation 16(1) (a) or (b).

### **Submission of documents and information to the examiner**

19.—(1) The charging authority must submit the following to the examiner (in addition to the declaration required under section 212(4) of PA 2008)—

- (a) the draft charging schedule;
  - (b) a statement setting out—
    - (i) if representations were made in accordance with regulation 17, the number of representations made and a summary of the main issues raised by the representations, or
    - (ii) that no such representations were made;
  - (c) copies of any representations made in accordance with regulation 17;
  - (d) where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, a statement of modifications; and
  - (e) copies of the relevant evidence.
- (2) Of the documents and statements mentioned in paragraph (1)—
- (a) a copy of each must be sent in paper form; and
  - (b) a copy of those mentioned in paragraph (1)(a), (b) and (d) and, to the extent that it is practicable to do so, of those mentioned in paragraph (1)(c) and (e), must be sent electronically.

(3) As soon as practicable after a charging authority submits a draft charging schedule to the examiner it must—

- (a) make available at the places where the documents mentioned in regulation 16(1)(a) were made available, a copy of the draft charging schedule and of each of the documents mentioned in paragraph (1);
- (b) publish on its website—
  - (i) the draft charging schedule and the documents mentioned in paragraph (1)(a), (b) and (d),
  - (ii) any of the documents mentioned in paragraph (1)(c) and (e) which it is practicable to so publish, and
  - (iii) a statement of the fact that a copy of the draft charging schedule and of each of the documents mentioned in paragraph (1) are available for inspection and of the places at which they can be inspected; and
- (c) give notice to those persons who requested to be notified of the submission of the draft charging schedule to the examiner that the draft has been so submitted.

(4) Where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, the charging authority must send a copy of the statement of modifications to each of the persons invited to make representations under regulation 15.

#### **Consideration of representations by examiner**

**20.** The examiner must consider any representations made in accordance with regulation 17 before complying with section 212(7) of PA 2008.

#### **CIL examination: right to be heard**

**21.—**(1) A person who makes representations about a draft charging schedule in accordance with regulation 17 must (if the person so requests) be heard by the examiner.

(2) A request under paragraph (1) must be submitted to the charging authority in writing before the end of the period the charging authority specifies for the purposes of regulation 17(2).

(3) Where a charging authority modifies a draft charging schedule after it is published in accordance with regulation 16, any person may request to be heard by the examiner in relation to those modifications.

(4) The right to be heard under paragraph (3) applies only in relation to the modifications made to the draft charging schedule as set out in the statement of modifications.

(5) A request under paragraph (3) must—

- (a) be submitted to the charging authority in writing before the end of the period of four weeks beginning with the day on which the draft charging schedule is submitted to the examiner in accordance with regulation 19(1); and
- (b) include details of the modifications (by reference to the statement of modifications) on which the person wishes to be heard.

(6) The charging authority must submit a copy of each request it receives under paragraph (3) to the examiner as soon as practicable after the end of the period mentioned in paragraph (5)(a).

(7) A person who has made a request to be heard under paragraph (3) may withdraw that request at any time before the opening of the examination by giving notice in writing to the charging authority.

(8) Where a person has submitted a request to be heard by the examiner, the charging authority must—

- (a) publish the matters mentioned in paragraph (9) on its website;
  - (b) notify the following of those matters—
    - (i) any person who has made a representation in accordance with regulation 17, and not withdrawn that representation, of those matters,
    - (ii) any person who has made a request to be heard under paragraph (3); and
  - (c) give notice by local advertisement of those matters.
- (9) The matters referred to in paragraph (8) are—
- (a) the time and place at which the examination is to be held; and
  - (b) the name of the examiner.
- (10) Subject to paragraph (11), the charging authority must comply with the requirements set out in paragraph (8) at least four weeks before the opening of the examination.
- (11) Where a person has made a request to be heard by the examiner under paragraph (3), the charging authority must comply with the requirements in paragraph (8) at least two weeks before the opening of the examination.
- (12) Without prejudice to section 212(9) of PA 2008—
- (a) it is for the examiner to decide how the hearing is to be conducted;
  - (b) the examiner may, in particular, decide the amount of time to be allowed at an examination for the hearing of representations;
  - (c) the examiner may refuse to allow representations to be made at the hearing if the examiner considers that the representations are irrelevant, frivolous, vexatious or repetitious.

### **Joint examinations**

- 22.**—(1) Two or more charging schedules may be examined as part of the same examination if the charging authorities who prepared the draft charging schedules all agree.
- (2) Examination of a charging schedule may be carried out jointly with—
- (a) an examination of a development plan document under section 20 of PCPA 2004 (independent examination); or
  - (b) an examination of a local development plan under section 64 of PCPA 2004 (independent examination).
- (3) In relation to Greater London, examination of a charging schedule prepared by the Mayor may be carried out jointly with an examination in public of the spatial development strategy under section 338 of the Greater London Authority Act 1999<sup>(4)</sup> (examination in public).
- (4) Where a joint examination is carried out under paragraph (3), any other charging schedule prepared by a London borough may be examined as part of the same examination.
- (5) The charging authority and Secretary of State must agree to a joint examination under paragraph (2)(a) or (3).
- (6) The charging authority and the Welsh Ministers must agree to a joint examination under paragraph (2)(b).
- (7) A joint examination under paragraph (2) may only be carried out in relation to one or more charging schedules and one development plan document or one local development plan (as the case may be).

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(4) 1999 c. 29; section 338 was amended by paragraph 52 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

### **Publication of the examiner's recommendations**

**23.**—(1) The examiner's recommendations and reasons for those recommendations must be submitted in writing to the charging authority.

(2) The charging authority must comply with section 212(8) of PA 2008 (publication of recommendations and reasons) as soon as practicable after the day on which it receives the recommendations and reasons.

(3) When the charging authority complies with section 212(8) of PA 2008 it must—

- (a) make the recommendations and reasons available for inspection at the places at which the documents mentioned in regulation 16(1)(a) were made available;
- (b) publish the recommendations and reasons on its website; and
- (c) give notice to those persons who requested to be notified of the publication of the examiner's recommendations and reasons that they have been so published.

### **Correction of errors in examiner's recommendations**

**24.**—(1) This regulation applies if—

- (a) the document recording the examiner's recommendations and reasons contains a correctable error; and
- (b) the draft charging schedule in respect of which the recommendations were made has not been approved by the charging authority in accordance with section 213 of PA 2008.

(2) The examiner may correct the error—

- (a) of the examiner's own volition; or
- (b) if requested to do so in writing by the charging authority.

(3) If a correction is made under this regulation—

- (a) the examiner's original recommendations and reasons cease to have effect;
- (b) the charging authority must give notice of the correction to those persons who requested to be notified of the publication of the examiner's recommendations and reasons;
- (c) the revised recommendations and reasons must be published in accordance with regulation 23; and
- (d) the revised recommendations and reasons have effect on the day they are received by the charging authority.

(4) In paragraph (1) "correctable error" means an error which—

- (a) does not alter the substance of the recommendations or reasons; or
- (b) must be corrected to make the recommendations consistent with the reasons given for those recommendations.

### **Approval and publication of a charging schedule**

**25.** As soon as practicable after the charging authority approves a charging schedule in accordance with section 213 of PA 2008 it must—

- (a) publish the charging schedule on its website;
- (b) make the charging schedule available for inspection at the places at which the documents mentioned in regulation 16(1)(a) were made available;
- (c) give notice by local advertisement of the approval of the charging schedule, that a copy of the charging schedule is available for inspection, and of the places at which it can be inspected;



- (d) give notice to those persons who requested to be notified of the approval of the charging schedule that it has been so approved; and
- (e) send a copy of the charging schedule to each of the relevant consenting authorities.

### **Correction of errors in a charging schedule**

**26.**—(1) This regulation applies if a charging schedule approved by a charging authority contains a correctable error.

- (2) A correctable error is an error which if corrected—
  - (a) would have no effect on the amount of CIL chargeable in respect of any given chargeable development in the charging authority’s area; or
  - (b) would have the effect mentioned in paragraph (2)(a), but the correction is required in order to give effect to the modifications to the draft charging schedule recommended by the examiner.
- (3) The charging authority must correct the error either—
  - (a) of its own volition; or
  - (b) if it is requested to do so in writing by any person.

(4) But the charging authority may not correct the error after the end of the period of six months beginning with the day on which the charging schedule was approved under section 213 of PA 2008.

(5) If an error is corrected in pursuance of this regulation the charging authority must, as soon as practicable after making the correction—

- (a) issue a notice in writing (a “correction notice”) which specifies the correction of the error;
- (b) where the correction was requested in accordance with paragraph (3)(b), send a copy of the correction notice to the person who requested the correction;
- (c) publish the corrected charging schedule and correction notice on its website;
- (d) make the corrected charging schedule and correction notice available for inspection at the places at which the documents mentioned in regulation 16(1)(a) were made available; and
- (e) where the error is one to which paragraph (2)(b) applies—
  - (i) give notice by local advertisement of the correction, that a copy of the corrected charging schedule and correction notice is available for inspection, and of the places at which they can be inspected,
  - (ii) send a copy of the correction notice to those persons who requested to be notified of the approval of the charging schedule, and
  - (iii) send a copy of the correction notice to the relevant consenting authorities.

### **Effect of correction of a charging schedule**

**27.**—(1) Where a correction is made to a charging schedule in accordance with regulation 26, the charging schedule continues to have effect and is treated as corrected as specified in the correction notice issued under regulation 26(5)(a) with effect from the date that notice is issued.

- (2) Paragraph (3) applies where—
  - (a) the error corrected is one to which regulation 26(2)(b) applies; and
  - (b) as a result of the error, the chargeable amount payable in respect of a chargeable development (D) decreases.
- (3) The collecting authority must—
  - (a) notify the affected persons in writing of the correction; and

- (b) recalculate—
  - (i) the chargeable amount payable in respect of D, and
  - (ii) where relief has been granted in respect of D, the amount of relief granted.
- (4) For the purposes of paragraph (3)(a) the affected persons are—
  - (a) where D has been commenced, the persons liable to pay CIL in respect of D;
  - (b) where D has not commenced, the persons on whom the collecting authority is required to serve a liability notice in respect of D(5).
- (5) For the purposes of paragraph (3)(b), the amount of any relief must be recalculated by reference to the corrected charging schedule, but must otherwise be calculated on the same basis as when originally calculated and using the information available to the collecting authority at that time.

### **Charging schedule: effect**

- 28.**—(1) A charging schedule takes effect at the beginning of the day specified for that purpose in the charging schedule.
- (2) A charging schedule may not take effect any earlier than the day after the day on which it is published.
- (3) A charging schedule issued by a charging authority has effect until—
  - (a) the beginning of the day on which that charging authority determines that it should cease to have effect; or
  - (b) the end of the day before the day a revised charging schedule issued by that charging authority takes effect.
- (4) If a charging authority determines (in accordance with section 214(3) of PA 2008) that a charging schedule is to cease to have effect it must—
  - (a) publish a statement of that fact on its website;
  - (b) give notice of that fact by local advertisement; and
  - (c) notify the relevant consenting authorities of that fact.

### **Payment of fees and expenses of independent persons**

- 29.**—(1) Subject to paragraph (2), a charging authority which appoints an independent person for the purposes of an examination must defray the fees and expenses of that person.
- (2) Where two or more draft charging schedules are examined at the same examination, the fees and expenses of an independent person must be defrayed by each of the charging authorities whose draft charging schedules are the subjects of the examination.
- (3) This regulation does not apply where the fees and expenses of the independent person are paid by the Secretary of State and recoverable by the Secretary of State in accordance with regulation 30.

### **Recovery of costs incurred by the Secretary of State**

- 30.**—(1) The Secretary of State may require a charging authority whose draft charging schedule is the subject of an examination to pay the whole or any part of the costs incurred by the Secretary of State in relation to that examination.
- (2) The costs that may be recovered by the Secretary of State under this regulation include, in particular—

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(5) As to the requirements relating to service of a liability notice, see regulation 65.

- (a) costs attributable to the remuneration, fees and expenses of an independent person; and
- (b) administrative costs and overheads incurred by the Secretary of State in relation to the examination.

(3) Where two or more draft charging schedules are examined at the same examination, any costs recovered by the Secretary of State in relation to that examination must be recovered from each of the charging authorities whose draft charging schedules are the subject of the examination.

(4) Where a joint examination is carried out in accordance with regulation 22(2) or (3), the costs incurred by the Secretary of State in relation to the examination of a charging schedule at that examination may be recovered by the Secretary of State in accordance with this regulation to the extent that those costs are not recoverable under—

- (a) section 303A(1A) of TCPA 1990(6) (responsibility of local planning authorities for costs of holding certain inquiries); or
- (b) section 338(9) of the Greater London Authority Act 1999.

(5) The costs incurred by the Secretary of State in relation to an examination which does not take place may be recovered by the Secretary of State from the charging authorities from which they would have been recoverable had the examination taken place.

(6) The Secretary of State may cause the amount of any costs recoverable in accordance with this regulation to be certified; and any amount so certified and required to be paid by a charging authority is recoverable from that authority as a civil debt.

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(6) Section 303A was inserted by section 1(1) of the Town and Country Planning (Costs of Inquiries etc) Act 1995 (c. 49) and amended by paragraph 11 of Schedule 6 to the Planning and Compulsory Purchase Act 2004.