

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010

2010 No. [Draft]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide for the imposition of a charge to be known as the Community Infrastructure Levy which is to be levied on the grant of planning permission for development.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part 11 of the Planning Act 2008 provides for the imposition of a charge to be known as Community Infrastructure Levy (CIL). It specifies who may charge CIL and includes outline provision on other aspects of the charge including how liability to pay CIL is incurred, how CIL is charged and collected, how CIL is to be spent, appeals and enforcement.

4.2 Part 11 also provides extensive regulation-making powers to implement much of the detail of CIL. These Regulations make first use of those powers.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister for Housing and Planning (Mr John Healey) has made the following statement regarding Human Rights:

In my view the provisions of the Community Infrastructure Levy Regulations 2010 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 These draft Regulations set out the detailed provisions enabling local authorities in England and Wales to introduce a Community Infrastructure Levy in their areas, and also how the levy would operate if they did so. The levy would apply to new buildings above a certain size and the revenue from the levy must be applied to infrastructure needed to support the development of the area. The Regulations also provide for the reform of the current system of developer contributions towards infrastructure ('planning obligations') so that the two regimes operate effectively alongside each other.

7.2 The lack of timely delivery of infrastructure was identified as a key barrier to delivering development and in particular new housing in the 2004 Barker Review of Housing Supply.¹ CIL is an important new tool for local authorities to use to help them deliver the growth and housing set out in their development plans. As well as raising additional revenue for infrastructure, CIL will provide greater transparency and certainty for the development industry on the level of contributions towards infrastructure that are expected and as such should reduce delays in the granting of planning permission by removing negotiations over the amounts sought. Local authorities will have an additional source of revenue that can be used more flexibly to bring forward infrastructure than the current system of planning obligations.

7.3 The changes brought about by the Regulations are of significant interest to the development industry (which includes charities and housing associations where they develop) and also local authorities.

8. Consultation outcome

8.1 A consultation exercise on the draft CIL Regulations was launched on 30 July 2009² with the aim of seeking stakeholders' views on the Government's detailed proposals for the introduction of CIL. The consultation concluded on 23 October 2009 and 394 responses from local authorities, developers, planning specialists and others were received. The summary of responses will shortly be published on the Communities and Local Government website.

8.2 After consideration of the responses, the Government has made some significant changes to its initial proposals:

- CIL will now be levied on the net additional increase in floor space as a result of the development (the Government had proposed that CIL would be levied on the gross floorspace of the new development). The Government was persuaded by consultation responses that this would improve the fairness of CIL.
- The Government originally proposed not providing a system for paying CIL in-kind due to the significant challenges involved in administering such a system. However, the majority of respondents were in favour of in-kind payments and following further consideration the Government has therefore decided to allow for payments of land (including existing buildings or structures) as an alternative to cash subject to certain conditions.
- The CIL Regulations extend the standard payment period from 28 days (as proposed in the consultation document) to 60 days and also provide for payment of CIL in instalments where liabilities exceed certain thresholds. Respondents strongly preferred this option.
- There was some opposition to Government's proposal that the use of planning obligations in the form of pooled contributions and tariffs should be restricted. However, the Government remains committed to this proposal on the basis that CIL will be a better vehicle to achieve the objective of addressing the cumulative impacts of developments. The CIL Regulations now permit some limited pooling of planning obligations in response to comments from consultees and prevent authorities from seeking the same contribution towards infrastructure through planning obligations and CIL.
- The charity sector raised a number of concerns on the proposals for charity relief. The Government has therefore widened this relief, in particular by ensuring the mandatory exemption can be claimed in a broader range of circumstances.
- Overall, most respondents supported some form of relief from CIL for non-charitable social housing to complement the exemption provided to the charitable social housing sector. As a result of comments made concerning the need to ensure a 'level playing field'

¹ http://www.hm-treasury.gov.uk/barker_review_of_housing_supply_recommendations.htm

² <http://www.communities.gov.uk/archived/publications/planningandbuilding/communitylevyconsultation>

for social housing provided by charities and non-charities, the CIL regulations now give a 100% CIL exemption to developments which will be used as social housing.

- Responses were mixed about whether the Regulations should provide a procedure for offering relief to schemes which, in exceptional circumstances, have difficulty in paying the set rate of CIL. However, respondents from the industry sector were strongly in favour and the final Regulations permit local authorities to establish such a procedure to help ensure that CIL facilitates as much development as possible.
- In response to comments from the local government community, the Government has amended the CIL Regulations to permit CIL charging and collecting authorities to finance the costs of establishing and running a CIL regime from CIL receipts, subject to the caps stipulated in the Regulations. This provision will incentivise local authorities to introduce a CIL.
- The majority of respondents to the consultation agreed that the proposed 1 October deadline for reporting on CIL was reasonable. However, some respondents suggested that the timescale should be extended to allow the existing Annual Monitoring Report to be used for reporting and the Government has decided to change the deadline to 31st December to permit this.
- The CIL Regulations do not require warnings for late payment surcharges to be issued by collecting authorities in advance despite the majority view of respondents that they should. The Government is keen not to over-engineer CIL procedures and believes that sufficient warning of late payment surcharges is contained in the liability notice that must be issued to CIL liable parties.

9. Guidance

9.1 Subject to the affirmative resolution of the House of Commons, the CIL Regulations will come into effect on 6 April 2010. The CIL Regulations set out the full CIL regime. Communities and Local Government will draft practical guidance for local authorities to assist them with the implementation of CIL and will engage with practitioners in preparing this guidance where necessary.

10. Impact

10.1 The impact on business. Although any party will be able to assume liability for paying CIL, it will often be developers who do so and who pay CIL as a result. However in practice, the liability for CIL will usually fall on landowners because developers will typically negotiate a discounted value for land when they buy it to offset their CIL liability. Developers will benefit from CIL since revenues will assist public authorities to deliver the infrastructure vital to support and unlock development. Furthermore, since CIL is a fixed and known charge, it reduces risk for developers by providing them with upfront certainty about their potential liability, thereby helping them to better plan their investment strategies. The CIL Regulations provide for a mandatory exemption for charities where a development is used for charitable purposes and for additional discretionary relief where a charity will use a development as an investment. These reliefs will minimise the impact of CIL on charities which choose to develop for their charitable purpose and potentially for other purposes.

10.2 The impact on the public sector. Public authorities will benefit from CIL since it provides them with a discretionary tool to help them unlock additional funding to support the infrastructure underpinning the delivery of the development plan for their area. CIL will enable local authorities to forecast better the amount of funding they expect from developer contributions, and hence better plan their infrastructure delivery. Local authorities that choose to introduce a CIL will incur set-up costs (related to the costs of consulting on a charging schedule and the CIL examination) and ongoing costs connected with billing, collecting, enforcing, monitoring and reporting on CIL.

As noted above, the CIL Regulations now allow public authorities to finance the costs of implementing and running a CIL system from CIL receipts. As under the current system of planning obligations, development by the public sector will also make contributions towards infrastructure under CIL.

10.3 An Impact Assessment which includes revenue forecasts is attached to this memorandum.

11. Regulating small business

11.1 This legislation applies to small businesses in the same way that it applies to larger businesses. Almost all development has some impact on the need for infrastructure and it is right that the majority of development, whether by small or large businesses, makes a contribution. At present, only 6% of planning permissions in England make any contribution under the planning obligations regime.³ These permissions generally relate to the larger developments with smaller schemes rarely making any contribution at all.

11.2 However, to minimise the impact of the requirements on firms employing up to 20 people, and indeed on all developers, the Government has sought to create an instrument that helps developers to manage their cash flows and investment strategies. As a fixed, upfront charge, CIL offers certainty and predictability to developers, while the flexibility to pay CIL in instalments will assist with cash flow. While it is not necessarily the case that smaller firms deliver only small developments, the 100 square metre threshold for CIL liability will minimise the impact of CIL on developers delivering smaller schemes.

11.3 The basis for the final decision on what action to take to assist small business reflects the Government's ongoing liaison with the development community in designing the CIL regime and the outcomes of the CIL consultation exercise. Respondents from the small business sector specifically asked the Government to ease cash flow difficulties when designing CIL and the regulations have been amended to provide that payment becomes due in instalments depending on the amount owed.

12. Monitoring & review

12.1 The Government will be continuing to work closely with industry and local government to ensure CIL is implemented effectively. The CIL Regulations require that authorities that decide to establish a CIL must report certain information to their local communities in order to ensure that local communities and developers can hold authorities to account on the way that CIL receipts are used to support the growth of their area. The primary legislation has been framed in a way that, subject to the affirmative resolution of the House of Commons, permits the CIL Regulations to be changed as practice amongst local authorities in England and Wales evolves over time.

13. Contact

Steve Woolley at the Department for Communities and Local Government (Tel: 0303 444 1674 or steve.woolley@communities.gsi.gov.uk) can answer any queries regarding the instrument.

³ Valuing Planning Obligations in England: Update Study for 2005-06, University of Sheffield, 2008 (<http://www.communities.gov.uk/publications/planningandbuilding/obligationsupdatestudy>)

Ministerial Sign-off Final:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date: 10 February 2010

Summary: Analysis & Evidence

| | |
|-----------------------|---|
| Policy Option: | Description: Implement Community Infrastructure Levy (CIL) |
|-----------------------|---|

| | | | | | | |
|---|---|------------|--|--|--|------------------------|
| COSTS | ANNUAL COSTS | Yrs | | <p>Description and scale of key monetised costs by 'main affected groups' 10 year LA set up costs: £50m to £60m. 10 year LA ongoing costs: £200m to £240m based on assumptions regarding LA take-up. 10 year costs to those paying CIL: £4100m to £6000m</p> <p>Note the revenues generated are themselves a cost to those paying the charge, but a benefit to the LAs who receive CIL. In net terms, CIL therefore represents a transfer and not a net cost.</p> | | |
| | One-off (Transition) | | | | | £ |
| | Average Annual Cost (excluding one-off) | | | | | £ 520 to 750 m |
| | 10 | | | | | Total Cost (PV) |
| <p>Other key non-monetised costs by 'main affected groups' CIL will impose costs on those developers that choose to participate in the consultation process for establishing CIL charges and of submitting evidence to the public examination. But, note the non-monetised benefits below.</p> | | | | | | |

| | | | | | | |
|---|--|------------|--|---|--|---------------------------|
| BENEFITS | ANNUAL BENEFITS | Yrs | | <p>Description and scale of key monetised benefits by 'main affected groups' 10 year net additional revenue for infrastructure: £4100m to £6000m. This is based on the assumption that 65% to 78% of authorities take up CIL.</p> <p>Illustration of 10 year economic benefits arising from unlocking growth: £1400m to £2800m</p> | | |
| | One-off | | | | | £ |
| | Average Annual Benefit (excluding one-off) | | | | | £ 660 to 1100 m |
| | 10 | | | | | Total Benefit (PV) |
| <p>Other key non-monetised benefits by 'main affected groups' CIL offers developers greater certainty and predictability about their potential contributions and should speed up the development process. Critically, increased transparency and better coordination of developer contributions will ensure funding for vital infrastructure projects for communities that might otherwise not be delivered.</p> | | | | | | |

Key Assumptions/Sensitivities/Risks The estimated CIL receipts reported here assume that authorities will choose to set a CIL, at £5,000 per dwelling, if 90% or 95% of potential sites could afford to pay that level of charge (see discussion in Evidence Base). In reality, authorities may set charges at varying levels. Sensitivity testing of assumptions on future housebuilding levels is also presented in the Evidence Base. A further illustrative assumption is that CIL unlocks an additional 2500-5000 dwellings per annum in net terms. See also discussion of Risks in Evidence Base.

| | | | |
|-------------------------|-------------------------|---|---|
| Price Base Year 2008 | Time Period Years 10 | Net Benefit Range (NPV) £ 1150 m to £ 2500 m | NET BENEFIT (NPV Best estimate) £ 1825 m |
|-------------------------|-------------------------|---|---|

| | | | | |
|---|----------------------|-------|--------|-------|
| What is the geographic coverage of the policy/option? | England & Wales | | | |
| On what date will the policy be implemented? | 6 April 2010 | | | |
| Which organisation(s) will enforce the policy? | Charging authorities | | | |
| What is the total annual cost of enforcement for these organisations? | See Evidence Base | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | N/A | | | |
| What is the value of the proposed offsetting measure per year? | £ N/A | | | |
| What is the value of changes in greenhouse gas emissions? | £ N/A | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | No | No | No | No |

| | | | |
|---|---------------|-------------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact | £ |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

The Housing Green Paper, published in July 2007⁴, set out a number of options for reforming the existing system of developer contributions, to inform discussions with the development industry and local government. As a consequence of engagement with these parties during summer 2007, the Government announced its decision to proceed with the Community Infrastructure Levy (CIL) at the Pre Budget Report in October 2007. Part 11 of the Planning Act 2008 establishes the legislative framework for CIL, and the detail of the levy will be set out in secondary legislation. Partial Impact Assessments were published in December 2008 and July 2009 to accompany Royal Assent of the Planning Act and the publication of the draft CIL Regulations respectively⁵. This Final Impact Assessment is being published to accompany the laying of the draft CIL regulations in Parliament. The modelling estimates have been updated to reflect the latest policy developments on CIL and latest market conditions. CIL Regulations are expected to come into force on 6 April 2010.

Rationale for intervention

The 'do nothing' option would be to continue to rely on the current system of planning obligations (also known as section 106 agreements), which allow local authorities to seek a contribution from developments to mitigate their impact. The requirement for a contribution should meet all the tests set out in Government Circular 5/05 "Planning Obligations". In particular, a contribution to the cost of a piece of infrastructure can be sought only if it is necessary to make a development acceptable in planning terms and has a direct relationship to a particular development. Planning obligations are negotiated agreements and can cause substantial delay and cost to developers and impose a significant resource burden on local planning authorities. The system also lacks transparency and certainty, as it is usually based on ad hoc negotiations conducted in private.

Research commissioned by CLG⁶ also shows that the burden of funding is unfair, as it is borne primarily by major developers. In 2005/06, only 14% of residential planning permissions, and 7% of office and light industry planning permissions made some form of contribution through planning obligations. The larger a scheme, the more likely it is to be making a developer contribution. The site-by-site negotiated nature of planning obligations means that it is also difficult to secure them from smaller sites in a cost effective way. This limits the contributions that can be raised from planning obligations to fund infrastructure delivery, despite the fact that smaller developments also have impacts on local infrastructure and services.

CIL will offer several advantages over the current system of planning obligations:

- **Simplicity:** CIL will take the form of fixed standard charges, levied as pounds per square metre of floorspace.
- **Predictability:** CIL charging schedules will be published, and developers will be able to readily predict the size of their potential liability, perhaps months or years in advance of development. This is important for helping developers to plan ahead. It will also speed up the planning process.
- **Transparency:** Draft CIL charging schedules will be subject to consultation with local stakeholders and developers, and they can be adopted only after a CIL charging schedule examination, involving independent testing by an examiner with appropriate qualifications and experience. CIL charging schedules will provide greater transparency

⁴ <http://www.communities.gov.uk/publications/housing/homesforfuture>

⁵ <http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevyvia>

⁶ *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University 2008
<http://www.communities.gov.uk/publications/planningandbuilding/obligationsupdatestudy>

over the amount that different developers are required to pay. CIL charging authorities will also be required to monitor the use of CIL and provide regular reports to ensure that people can understand how contributions from developers are helping to make their local communities more sustainable and that developers can see how their contributions through CIL are being used to support the development of the area. These measures will increase community involvement, contrasting with planning obligations where developers and local authorities negotiate agreements behind closed doors.

- **Fairness:** CIL will be levied on most types of new development in a local authority area, thus broadening the range of developments being asked to contribute something towards local infrastructure. The Government believes it is fair to ask those receiving a benefit from development to share some of that gain with the wider community. By broadening the range of developments asked to contribute, the flow of contributions to a local authority becomes less 'lumpy' and much more predictable over time.
- **Efficiency:** Infrastructure typically has the characteristics of a public good, so that if infrastructure is available for consumption by one person, it is very difficult to exclude another person from consuming the same infrastructure. This creates an incentive for consumers to try to free-ride, by not contributing any funding for infrastructure, resulting in under-provision of infrastructure without government intervention. This problem arises with planning obligations, where it is often difficult to demonstrate the cumulative impact that individual developments impose, resulting in under-funding of larger items of infrastructure. Local authorities have been seeking more legal certainty in this area to address the pooling failure that is linked to the public good characteristics of larger items of infrastructure. CIL will make it easier for charging authorities to address the cumulative impact of developments, ensuring developers cannot free-ride on others in the community, but rather make a fair contribution towards larger items of infrastructure.

Description of the proposal

CIL will be a new, discretionary charge which local authorities will be empowered to charge on most types of new development in their area. CIL charges will be based on a formula which relates the charge to the size of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.

CIL is a new flexible instrument for local authorities, helping them to deliver better public services to support the development of their areas and promote economic growth. CIL's discretionary nature means that local authorities can decide whether or not to set a CIL depending upon their local economic circumstances.

An important feature of CIL is that, compared with planning obligations, CIL loosens the relationship between a development and the amount charged, since the charge is by definition an average cost distributed evenly across a number of developments. This loosening enables contributions to be sought to fund the development of an area, rather than to support the specific development that is seeking planning permission. CIL therefore offers local authorities a more flexible tool, helping them to secure the finances needed to deliver their infrastructure priorities. CIL will make it easier for local authorities to coordinate contributions towards larger infrastructure items that contribute to the wider development of their local area, including larger sub-regional infrastructure, which might not be provided otherwise.

Charging authorities wishing to introduce a CIL will be required to demonstrate that their proposed charges will support the development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area, when setting their CIL rates, as that evidence will inform estimates of the quantum and type of infrastructure required, and the size of any funding shortfall for infrastructure. Charging authorities will use that evidence in striking an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL upon the economic viability of

development across their area. Charging schedules may also include differential rates of CIL, where they can be justified either on the basis of the economic viability of development in different parts of the authority's area, or by reference to the economic viability of different types of development within their area.

Charging authorities will be required to consult local stakeholders on their charging schedule, including by subjecting it to a CIL charging schedule examination by an independent examiner. The examiner will be able to accept, modify or reject any proposed CIL charges to ensure that they support, and do not place at serious risk, the development of an area. The examiner's recommendations will be binding.

Planning obligations will continue to exist after the introduction of CIL, as they can be a useful tool for mitigating the site-specific impacts of a development to make acceptable development which would otherwise be unacceptable in planning terms and facilitate the granting of planning permission. Planning obligations will also continue to be used to secure affordable housing contributions, because the provision of affordable housing in-kind and on the development site is important for securing mixed communities. However, the Government will scale back planning obligations following the introduction of CIL to encourage CIL to become the primary means of funding local infrastructure through developer contributions.

COSTS AND BENEFITS OF THE PROPOSAL

1. Costs

Landowners and Developers

Although any party interested in land will be able to assume liability for CIL, it will often be developers who pay CIL in the first instance. Ultimately, it is expected that the liability for CIL will fall on landowners, because developers would negotiate a discounted value for land when they buy it to offset their CIL liability.

The process by which developers (or another interested party) can assume liability for CIL will be kept as simple and as integrated as possible with existing requirements on developers, in line with the requirements of the Hampton Review. CIL will result in a minor administrative burden for those developers that choose to participate in the consultation process for establishing CIL charges and to submit evidence to the CIL charging schedule examination. But there will be no requirement for a developer to engage in these activities, so any costs will be optional. We expect that any additional upfront costs on developers should be offset by the benefits associated with greater certainty and predictability about potential liability, although we have not quantified these effects in this impact assessment, because of the absence of data. In addition, the scaling back of planning obligations will reduce the administrative burden on developers. This impact assessment therefore assumes that there will be a neutral effect overall in terms of the administrative burdens on developers.

Local Authorities

Charging authorities that choose to introduce a CIL will incur some initial set-up costs, which will include the costs of consultation on the draft charging schedule, including a CIL charging schedule examination. Once the system is implemented, there will be ongoing costs connected with advising developers of their CIL liability, collecting, monitoring, reporting and enforcing CIL. New mechanisms and systems necessary for CIL should be designed to minimise duplication with existing systems to make CIL as efficient a mechanism as possible.

Local authorities will have the option of undertaking the preparation and public examination of their core strategy at the same time as the preparation and examination of their draft CIL

charging schedule, where it is appropriate to their situation. Depending on how advanced local authorities are in consulting on their core strategies, some local authorities will have more scope than others to do this in the early years of CIL. Joint working should increase efficiency, for example, by allowing local authorities in assessing the viability of development in their area to draw upon the same information to underpin both processes.

Assumptions made in estimating costs

Set-up costs

- The costs of assessing viability of development for CIL purposes are assumed to be similar to the costs of work testing the viability of affordable housing under 'Planning Policy Statement 3: Housing', which underpins the delivery of the Government's strategic housing policy objectives. Estimates of rates charged by the Valuation Office Agency (VOA) and by consultants suggest that the costs could range between £25,000 and £70,000 depending on the complexity of the work (which will depend on the degree of variation in land values and the complexity of the charging schedule).
- The cost of consulting on a Development Plan Document provides a proxy for the costs of publicly consulting on a charging schedule. Estimates from local planning authorities suggest a range of £10,000 to £20,000.
- The costs of the examination by an independent person are estimated using the daily rate currently charged by PINS for independent examination of Development Plan Documents, which is £993. PINS have also provided indicative durations for the costs of undertaking public examinations of Area Action Plans (AAPs), which we consider provides a reasonable initial proxy for the cost of a CIL public examination. The total costs of public examinations for AAPs vary between £29,790 for a 2 day hearing (30 days total duration), and £42,203 for a 5 day hearing (42.5 total duration). We expect a 2 day hearing for a CIL examination to be the norm, but a 5 day hearing might be needed for larger local authorities with more diverse land values and more complex charging schedules.
- Printing costs are minimised due to bias towards online publication. The costs for individual local authorities are assumed to be between £500 and £1500.
- It is assumed that those LAs that decide to take up CIL will do so in the first three years after CIL comes into force, with a third of those authorities adopting a CIL in each of those three years. In practice, the Government expects a phased take-up of CIL by local authorities in the first few years after regulations come into force.
- We estimate that 72 per cent of local authorities will have core strategies that are subject to public examination during 2010 - 11 and 2011 - 12. In estimating the costs, it is assumed that 30 per cent of those authorities which take up CIL will opt for a joint examination of their CIL charging schedule with their core strategy which will lead to a 20 per cent reduction in the set-up costs for those authorities.
- For illustrative purposes, the cost estimates assume that all set-up costs recur every five years. However, the Government has not set a timescale for when charging authorities will need to update their charging schedules. The modelling takes a cautious approach and assumes the cost saving of 20% of the set-up costs for authorities undertaking combined examinations only arises the first time that an authority establishes a CIL charging schedule.

In Table 1 below, set-up costs are calculated by taking the central estimate of per-authority costs from the ranges above. Estimates of take-up by local authorities from the revenue modelling (see below) are multiplied by per-authority costs to derive total set-up costs over the 10 years.

On-going costs

There will also be ongoing administration costs for local authorities that implement a CIL, including the costs associated with advising developers on their CIL liability, and collecting and enforcing the payment of CIL. The ongoing costs also include an estimate for the costs of enforcement activities. The scope of enforcement includes issuing fines, serving a stop notice, debt recovery measures (including asset or land seizure) and prosecuting a party for persistent non-payment.

The costs estimates have been updated to reflect the latest policy decisions to allow: CIL to be levied on a net basis; payment by instalments; the use of payments in-kind; the provision of an optional exceptional circumstances procedure; and the provision of relief from CIL for the development of social housing.

Table 1 shows the discounted costs to local authorities of implementing CIL over ten years, from 2010 to 2019, under the scenarios used in the modelling of revenues described below. This assumes that set up costs occur for an individual local authority in the first and sixth years of implementing a CIL charge and therefore that annual costs in these years are larger. We have shown an illustrative range of costs in Table 1, because the costs will vary depending on the level of take-up by local authorities.

| From revenue modelling | | | NPV of total costs over 10 years (£ million) | | |
|---|------------------------------|--------------------------|--|----------------|--------------------|
| CIL charging scenario | Percentage LAs taking up CIL | No. of LAs taking up CIL | Set-up costs | On-going costs | Total costs to LAs |
| £5,000 per dwelling, affordable on 90% of potential sites | 78% | 281 | 60 | 240 | 300 |
| £5,000 per dwelling, affordable on 95% of potential sites | 65% | 234 | 50 | 200 | 250 |

The Government's requirements for monitoring and reporting by local authorities implementing a CIL are based on a proportionate approach, which balances the need to ensure transparency and accountability, whilst avoiding imposing excessive burdens on local authorities. The Government will encourage charging authorities, as far as possible, to build on their existing accounting arrangements.

In response to comments from the local government community, the Government has amended the CIL Regulations to permit CIL charging and collecting authorities to finance the costs of establishing and running a CIL regime from CIL receipts, subject to the caps stipulated in the regulations. This provision will incentivise local authorities to introduce a CIL.

2. Benefits

Developers

The decision to introduce a CIL in November 2007 followed extensive discussion with key stakeholders from the development industry, and the Government has continued to liaise closely with and listen to developers in developing the design of CIL. CIL responds to the concerns that developers previously raised about the current system of planning obligations. As explained above, CIL will simplify the process of negotiating developer contributions through simple standard charges, which will speed up the development process. Critically, CIL reduces risk for developers, by providing them with upfront certainty about their potential liability. This certainty is particularly important in the current and likely future economic circumstances, as it will help developers to make more efficient choices in planning future development, and reduces the cost of financing projects. We do not quantify the benefits of increased certainty in this impact assessment, because of the absence of available data.

Local Authorities

CIL will benefit local authorities, because it provides them with a discretionary mechanism to help them to unlock additional funding to support the infrastructure that underpins the delivery of the development plan for their area. Moreover, CIL will enable local authorities to forecast better the amount of funding they expect from developer contributions, and hence better plan their infrastructure delivery.

Modelling Assumptions

Economic modelling has been used to estimate potential CIL revenues. The modelling estimates the impact of different levels of CIL on local authority take-up and the revenues that might be generated.

Development of land is usually associated with an increase in the value of land, and CIL captures part of that increase to fund local infrastructure. Valuation Office Agency (VOA) data gives average land values for local authorities, but does not provide a distribution (i.e. the variation) of land values within local authority areas. For residential development, distributions are therefore estimated by applying the distribution of house prices for new dwellings (from the Land Registry) to the VOA land value data. This provides a distribution of developed residential land values within a local authority area. The model then deducts the value for the current use of land from the developed land value distribution. The values for brownfield sites are based on mixed industrial existing use values, and those for greenfield sites are based on agricultural existing use values. This provides an estimate of the 'available land value uplift' which is the increase in the value of land arising from development (and its associated change in land use). The modelling is done on a per dwelling basis. In practice, the charge will be levied on a metre square basis.

The Government proposes that charging authorities will be able to set differential rates in their areas based on geographic variation in the economic viability of development. In the absence of data on geographic areas below the charging authority area level, the modelling includes a proxy assessment of the impact of differential rates by creating two distributions of land values within each local authority, covering greenfield and brownfield sites. The modelling assumes that where charging authorities can afford to levy a specified charge on both greenfield and brownfield sites, they will do so, but where charging authorities can only afford to levy the charge on high value sites, they will do this instead.

The modelling then deducts wider costs from the available land value uplift distribution, to provide an estimate of the increase in the value of land that might be available to fund CIL. The wider costs that were deducted were: planning obligations other than affordable housing (based

on the 2005/06 figures from the latest research, but adjusted to reflect a scaling back of three-quarters of those contributions towards items other than affordable housing)⁷; the costs of achieving a 25% improvement in energy efficiency building standards from 2010; Capital Gains Tax at 18%; and landowner profits. No deduction was made for the cost of affordable housing contributions, because the VOA estimates already allow for this where present.

The modelling has been updated since the preparation of the last Partial Impact Assessment (published July 2009). It includes latest land value estimates from VOA (July 2009 figures), which have fallen as a result of the recession, leading to some reduction in CIL revenue estimates. It is assumed that land values return to their previous peak by 2016, and then continue to grow at the long-run rate of house price inflation. The modelling underpinning this impact assessment is based on local authority level data for England. However, the geographical scope of CIL covers England and Wales. The qualitative analysis in the impact assessment of the costs, benefits and overall impact of the policy relates to both England and Wales.

The modelling estimates revenues from a CIL set at £5,000 or £10,000 per dwelling⁸ where the charge is implemented if affordable on either 90 per cent or 95 per cent of potential sites within a local authority area. This approach is used to estimate the number of local authorities that might take up CIL under different scenarios. For those authorities expected to take up CIL, the revenue is estimated by multiplying the CIL charge by the number of new homes expected in the locality. The estimate of the number of new homes expected in a local authority was derived by taking the local authority's share of new housing projections from Regional Spatial Strategies, and then applying this share to a national housing trajectory (Communities and Local Government internal projections) rising to 240,000 net additions in 2016. Individual revenue estimates for local authorities expected to take up CIL, are then aggregated to give a total CIL revenue estimate under different charging scenarios.

In practice, we would expect authorities to set charges at different levels – some may set charges that are higher, or for some parts of their areas, charges that are lower. But setting assumptions at £5,000 or £10,000, and including an allowance for differential rates within areas, as explained above, is a simple proxy for modelling purposes. For simplicity, the costs associated with administering CIL (see the section on 'Costs' above) have not been netted off the revenue estimates.

It would be more complex to apply the approach described above to estimating revenues in the commercial sector, because of the variation in both the types of commercial development (e.g. offices, retail and warehouses) and their size. To provide a simple approximation, the revenue estimates from residential development were therefore scaled up by 10 per cent to reflect expected revenues from commercial development. The 10 per cent figure was chosen to reflect recent trends in the split of commercial and residential floorspace for new development, based on VOA data for commercial floorspace, and the English Housing Condition Survey for residential floorspace. The modelling also makes a downward adjustment to revenues to reflect an estimate of the effect of the Government's proposal to exempt social housing development from paying CIL. However the difficulty of obtaining reliable data, means it does not include revenue loss from charities qualifying for CIL relief but not developing social housing. The revenue estimates in Table 2 below take account of these two assumptions.

In the Pre-Budget Report 2009, the Government confirmed that it would scale back planning obligations following the introduction of CIL. The scale back comprises two elements. Firstly, the policy tests governing the use of planning obligations are being placed into law to create a

⁷ *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University 2008
<http://www.communities.gov.uk/publications/planningandbuilding/obligationsupdatestudy>

⁸ For reference, the modelling estimates an average uplift in England of £57,000 per dwelling, based on land values in July 2008.

stronger basis for ensuring their appropriate use. Secondly, when a local authority adopts CIL, or nationally after a transitional period of 4 years, the use of planning obligations will be restricted to ensure that individual developments are not charged for the same infrastructure items under both planning obligations and CIL, and the use of pooled contributions from planning obligations will be limited.

Table 2 below shows estimates of the potential additional revenues expected by 2016 following the introduction of CIL and the scaling back of planning obligations. The modelling takes account of the impact on local viability of the cost to developers of making contributions towards items other than affordable housing from planning obligations. As explained above, the latest research by Sheffield University estimated that the cost of these planning obligations was £1.5bn in 2005 - 06⁹. This figure has been up-rated to reflect long-run house price inflation, and reduced by seventy-five per cent, as a proxy for the effect of scaling back planning obligations.

In practice, the scaling back of planning obligations will have a number of effects. Firstly, some local authorities will be incentivised to take up CIL who would otherwise not have done so. Secondly, some local authorities will be able to generate higher revenues from CIL by charging a higher rate. Thirdly, the introduction of CIL alongside the scaling back of planning obligations will provide developers with more upfront certainty about the size of developer contributions, and this should unlock additional development, generating additional revenue from both planning obligations and CIL.

The revenue modelling does not capture all of these effects, because of data limitations and inherent uncertainties. In practice, the situation in each local authority is different, so we cannot estimate the precise mix of planning obligations and CIL revenues.

Affordable housing will still be funded from planning obligations, because the on-site provision of affordable housing is important for generating mixed communities. The Government does not anticipate a reduction in the level of affordable housing as a result of the introduction of CIL and will monitor the situation closely. Should monitoring reveal an adverse impact on affordable housing, the Planning Act 2008 contains provision to allow CIL Regulations to permit CIL revenues to be used to fund affordable housing.

Potential CIL revenues can be affected by regulatory costs which developers have to bear, for example costs of improving energy or water efficiency standards. The revenue estimates contained in Table 2 below take account of the costs of achieving a 25% improvement in energy efficiency building standards from 2010 but not the further changes to the requirements to take place in 2013 and 2016. The Government is committed to achieving the zero carbon standard, which means that there could be significant impact on potential CIL revenues in the period after 2016. But some elements that bear on the overall cost to the developer, such as the structuring of renewable energy incentives and the allowable solutions for reaching the zero carbon standard, remain the subject of detailed work. Progress made by industry in reducing the costs of achieving higher environmental standards would further affect costs.

Estimates of Additional Revenues from CIL

| Table 2: Modelling Estimates for 2016 | | |
|--|---------------------------|------------------------------|
| CIL charge | Revenue raised, £m | Take-up rates for LAs |
| £10,000 per dwelling, affordable on 90% of potential sites | 837 | 52% |
| £10,000 per dwelling, affordable on 95% of potential sites | 562 | 39% |
| £5,000 per dwelling, affordable on 90% of potential sites | 831 | 78% |
| £5,000 per dwelling, affordable on 95% of potential sites | 564 | 65% |

⁹ *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University 2008
<http://www.communities.gov.uk/publications/planningandbuilding/obligationsupdatestudy>

Table 2 above shows the modelling results under different scenarios. If a CIL charge was set at £5,000 per dwelling in those authorities where this would be affordable on 95 per cent of potential local sites, 65 per cent of local authorities would take up CIL, generating £564m of revenues a year by 2016. If the same £5,000 per dwelling charge was set in those authorities where this would be affordable on 90 per cent of potential local sites, local authority take-up would increase to 78 per cent, generating revenues of £831m a year. These two scenarios for a £5,000 per dwelling charge have been taken as the basis for the cost and revenue estimates in this impact assessment, and as the baseline for the sensitivity analysis below.

It should be noted that the distributions of land values and of new dwellings within a local authority area are likely to be different, with development being concentrated on more valuable land. Therefore, the results in Table 2 should **not** be taken to imply that a £5,000 or £10,000 per dwelling charge set at a level that would be affordable for 95 per cent of potential sites, would risk rendering 5 per cent of development unviable in a local area.

Our modelling assumes that any development which cannot pay CIL at the rate shown pays nothing, or does not proceed. Following the CIL consultation exercise, the CIL Regulations now provide for a procedure where schemes can, in exceptional circumstances and with the agreement of the charging authority, be granted relief from CIL to enable the development to proceed, thereby ensuring that CIL supports the development of the area. Authorities will have the choice about whether to offer this exceptional circumstances relief in their area. Given the voluntary nature of the procedure and the fact that it will only apply in exceptional circumstances, the effect on overall CIL revenue is likely to be marginal.

Sensitivity testing

The revenue estimates reflect the Government's housing supply target of providing 240,000 net additional homes per annum from 2016, and a corresponding recovery in land values. There are uncertainties around future levels of housebuilding, and that could have an impact on CIL take-up rates and revenues. Table 3 shows estimates of potential CIL revenues (in current prices) under alternative assumptions about housebuilding levels, ranging from 190,000 to 290,000 net additional new homes in 2016.

| Table 3: Sensitivity testing of 2016 housebuilding assumptions | | | | |
|---|---|------------------------------|---|------------------------------|
| | £5,000 per dwelling, affordable on 90% potential sites | | £5,000 per dwelling, affordable on 95% potential sites | |
| | <i>Revenue raised, £m</i> | <i>Take-up rates for LAs</i> | <i>Revenue raised, £m</i> | <i>Take-up rates for LAs</i> |
| <i>Net additional new homes:</i> | | | | |
| Headline estimate: 240,000 | 831 | 78% | 564 | 65% |
| Low estimate: 190,000 | 659 | 78% | 446 | 65% |
| High estimate: 290,000 | 1005 | 78% | 681 | 65% |

Societal benefits

The Government is committed to ensuring that local communities benefit from development and are able to obtain the necessary resources to finance the infrastructure needed to support it. CIL will enable local authorities to raise more funding to support development, and is expected to generate additional housing, even after allowing for the possibility of CIL rendering a very small amount of potential development unviable. In order to illustrate the magnitude of this effect, the economic benefit of facilitating 2500 to 5000 additional residential housing completions per year has been estimated. We assumed that each dwelling is associated with an uplift of £57,000 (based on the average uplift across England in July 2008 from the modelling described above, and adjusted in each year to reflect the long-run rate of house price inflation),

and used this per dwelling uplift to estimate the economic value of the new development, which when grossed up amounts to £1400m to £2800m discounted over 10 years.

Risks

The main risk from introducing a CIL centres around the level at which any charge is set. Setting a CIL at too low a level may lead to much needed infrastructure projects being delayed or not going ahead, thus potentially jeopardising further development. Conversely, setting a CIL at too high a level could, at the margin, risk some land not coming forward for development, for example, some brownfield sites that require substantial remediation.

The Government has therefore built safeguards into the design of CIL. Local authorities can set differential rates of CIL so that CIL is more responsive to local economic circumstances. Also, as explained above, authorities will need to subject their proposed charging schedules to a public examination by an independent examiner. The examiner will test whether the proposed charging schedule supports, and does not place at serious risk, the development of the area, and if necessary, can make binding recommendations requiring the charging authority to set a lower level of CIL.

Monitoring and Evaluation

The Government and Welsh Ministers will continue to work closely with local government and industry to ensure that CIL is implemented effectively and will be providing guidance and support for local authorities seeking to introduce CIL. This implementation programme will keep under review the effectiveness of CIL as a means of securing developer contributions and its impact on the wider planning system, including on affordable housing delivery. The primary legislation has been framed in a way that, subject to affirmative resolution of the House of Commons, the CIL Regulations can be changed as practice amongst local authorities in England and Wales evolves over time.

A formal evaluation of CIL will be held 5 years after regulations come into force. It will focus on the increased provision of infrastructure and the extent to which this has facilitated development. Evaluation will build on existing evidence from three 'Valuing Planning Obligations' surveys and information about the revenues generated through CIL.

The CIL Regulations require that authorities that decide to establish a CIL must report certain information to their local communities in order to ensure that local communities and developers can hold authorities to account on the way that CIL receipts are used to support the growth of their area. This will be a source of data for monitoring the implementation of CIL.

SPECIFIC IMPACT TESTS

Competition Assessment

We do not anticipate this policy proposal having an adverse impact upon fair and open business competition. Conversely, CIL charging schedules by making costs clear upfront, will reduce the distortions associated with the existing system of planning obligations, which may be regarded as rewarding developers' ability to negotiate.

Small Firms' Impact Test

Currently, developers and authorities negotiate individual planning obligations for each new project. However, given the high associated administrative costs, only a minority of (typically larger) developments contribute to the infrastructure needed to support growth. At present, only 6% of planning permissions in England make any contribution under the planning obligations regime. Under CIL, we anticipate contributions would be extracted from a broader range of developments – including smaller sites. While it does not necessarily follow that all large developments are undertaken by big firms, it is possible that for some smaller firms, CIL might be their first experience of paying developer contributions. However, we would ultimately expect these costs, for small and big businesses alike, to be passed back to landowners through reduced prices for land. CIL might also result in a minor administrative burden on developers, for example, through their engagement in consultation on and examination of the CIL charging schedule, although such engagement is discretionary, so any costs will be optional. Furthermore, the scaling back of planning obligations will reduce the burden on developers. This impact assessment therefore assumes that there will be a neutral effect overall in terms of the administrative burdens on developers.

The Government is committed to making the system simple and flexible to ease the burden on all businesses. CIL will be based on set formulae which relate the size of the charge to the size of the development. As a charge set upfront, CIL will simplify the process for developers, giving them greater certainty about their role and contribution, helping them to plan their investment strategies. The Government has also introduced some new design features to CIL to reflect issues raised by the development community through the consultation process. Firstly, it has extended the standard payment period from 28 days to 60 days and introduced a system of instalments for payments over £10,000, which will ease the cash flow pressure on small developers. Secondly, to ensure that charging on a net basis does not impact disproportionately on small firms, it has introduced a £50 threshold for CIL liability, below which firms will not be charged CIL. Finally, while it is not necessarily the case that smaller firms deliver only small developments, the 100 square metre threshold for CIL liability will minimise the impact of CIL on developers delivering smaller schemes.

Legal Aid Impact Test

There will be no adverse impact on legal aid flowing from the CIL enforcement procedures proposed in this Bill. This position has been confirmed by the Ministry of Justice.

Sustainable Development, Carbon Assessment, other Environment

We do not anticipate that CIL will have an adverse impact on sustainable development, carbon emissions or other environmental matters. It could be argued that growth and increased development has a negative impact on the environment and increases levels of carbon emissions. However, CIL presents significant opportunities to offset this. As a tool to help local authorities create more accessible and sustainable communities, infrastructure provided

through CIL could help to encourage more sustainable patterns of travel, for example, by providing the infrastructure to facilitate more journeys by foot or cycle. Similarly, by providing additional resource for infrastructure, CIL could lead to better provision of public transport, and so reduce the need for private modes of transport. Also CIL monies could be used to support flood defences, as well as open spaces which enhance the local environment.

Health Impact Assessment

It is not anticipated that this proposal will have an adverse impact on health. We are of the view that CIL can benefit the health of residents by providing additional resources for authorities to deliver the infrastructure and services required to create sustainable communities. For instance, CIL monies might support local medical facilities, sports facilities or open spaces and playgrounds, all of which enhance the health and well-being of communities.

Race, Disability, Gender and Other Equality

We do not think that CIL will have an adverse impact on any social group. By making communities more sustainable, CIL will facilitate economic growth and liveability and so create opportunity for all. The infrastructure and services that CIL will provide (such as medical and community facilities and transport networks) will enhance accessibility and liveability for all sectors of society, and could help to deliver new infrastructure that serves different needs within the community, for example, by increasing mobility and accessibility.

Human Rights

This proposal will not have an adverse impact on human rights.

Rural Proofing

The infrastructure needs and economic circumstances of a small rural community are likely to differ from those of an urban borough, and it is our view that CIL, through its flexible design and discretionary nature, can be effective in rural and urban communities alike.

Because CIL is a discretionary tool, it will be for individual authorities to decide whether to introduce the charge. Therefore, important decisions, such as when to introduce the charge and which projects benefit from CIL funds, will be made locally by authorities who we believe are best placed to make decisions for their communities. In this way, decisions about CIL and infrastructure provision will reflect local needs and local economic circumstances, enabling the policy to work without bias against rural communities.

The Taylor Review of Rural Economy and Affordable Housing recommended that the Government should review with the Homes and Communities Agency, the role that CIL can have in supporting the development of community extensions, which might include forward-funding of infrastructure, and creating community funds to underpin the long-term maintenance costs of public realm. The Government has considered this and concluded that CIL receipts should be spent to deliver the necessary infrastructure to support the development of an area, including community extensions, to support growth. CIL is not an appropriate vehicle to provide funding to underpin maintenance costs, but the regulations do permit CIL receipts to support forward-funding initiatives.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes | No |
| Small Firms Impact Test | Yes | No |
| Legal Aid | Yes | No |
| Sustainable Development | Yes | No |
| Carbon Assessment | Yes | No |
| Other Environment | Yes | No |
| Health Impact Assessment | Yes | No |
| Race Equality | Yes | No |
| Disability Equality | Yes | No |
| Gender Equality | Yes | No |
| Human Rights | Yes | No |
| Rural Proofing | Yes | No |