

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

DRAFT STATUTORY INSTRUMENTS

2011 No.

**COMMUNITY INFRASTRUCTURE
LEVY, ENGLAND AND WALES**

**The Community Infrastructure Levy
(Amendment) Regulations 2011**

Made - - - - *****
Coming into force - - *6th April 2011*

A draft of these Regulations has been laid before the House of Commons in accordance with section 222(2)(b) of the Planning Act 2008⁽¹⁾ and approved by resolution of that House.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 205(1), 208(4), 209(2)(a) and (6), 210(2)(b), 215(1) and (3)(b), 217(1) and (2)(b), 218(1), (3) and (4)(e) and (g), 220(1), 220(2)(e), (h)-(j) and (s), 220(3), 222(1)(c) and 223(1)(a) of the Planning Act 2008, and with the consent of the Treasury, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Community Infrastructure Levy (Amendment) Regulations 2011 and shall come into force on 6th April 2011.

Amendment of the Community Infrastructure Levy Regulations 2010

2. The Community Infrastructure Levy Regulations 2010⁽²⁾ are amended in accordance with the following regulations.

Amendment to Part 1 – introductory

3. In regulation 2(1) (interpretation)—
- (a) in the definition of “demand notice” after “regulation 69” insert “or 69A”;
 - (b) before the definition of “land payment” insert—

(1) 2008 c. 29.
(2) S.I. 2010/948.

““instalment policy” means a document issued under regulation 69B(1) or (4).”; and
(c) for the definition of “relevant land” substitute—

““relevant land” means—

- (a) where planning permission is granted for development by way of a general consent, the land identified in the plan submitted to the collecting authority in accordance with regulation 64(4)(a),
- (b) where planning permission is granted for development by way of a general consent, and no notice of chargeable development is submitted under regulation 64(2), the land identified in the plan prepared by the collecting authority and served in accordance with regulation 64A(3),
- (c) where outline planning permission is granted which permits development to be implemented in phases, the land to which the phase relates, and
- (d) in all other cases, the land to which the planning permission relates.”

Amendment to Part 2 - definition of key terms

4.—(1) For regulation 6(1) (meaning of “development”), substitute—

“(1) The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)—

- (a) anything done by way of, or for the purpose of, the creation of a building of a kind mentioned in paragraph (2);
- (b) the carrying out of any work to, or in respect of, an existing building if, after the carrying out of that work, it is still a building of a kind mentioned in paragraph (2);
- (c) the carrying out of any work to, or in respect of, an existing building for which planning permission is required only because of provision made under section 55(2A) of TCPA 1990(3); and
- (d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses.”

(2) For regulation 8(7) (time at which planning permission first permits development), substitute—

“(7) In the case of a general consent, planning permission first permits development—

- (a) on the day on which the collecting authority receives a notice of chargeable development submitted to it in accordance with regulation 64 in respect of that development; or
- (b) if no notice of chargeable development is submitted in accordance with regulation 64, the day on which the last person is served with a notice of chargeable development in accordance with regulation 64A(3).”

(3) In regulation 9(3) (meaning of “chargeable development”), after “regulation 64” insert—

“, or prepared by the collecting authority in accordance with regulation 64A.”

Amendment to Part 3 - charging schedules

5. For regulation 19(4) (submission of documents and information to the examiner), substitute—

“(4) Where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, the charging authority must—

(3) Section 55(2A) was inserted by section 49 of the Planning and Compulsory Purchase Act 2004.

- (a) send a copy of the statement of modifications to each of the consultation bodies invited to make representations under regulation 15; and
 - (b) publish the statement of modifications on its website.
- (5) The charging authority must comply with paragraph (4) before submitting to the examiner the documents mentioned in paragraph (1).”

Amendment to Part 4 - liability

6. For regulation 34(4) (apportionment of liability), substitute—
- “(4) For the purposes of paragraph (2)—
- (a) the value of a material interest is the price that it might reasonably be expected to obtain if sold on the open market on the day the apportionment takes place; and
 - (b) the valuation shall assume that the chargeable development has been completed on the day before the apportionment takes place.”

Amendment to Part 5 – chargeable amount

7.—(1) In regulation 40(6) (calculation of chargeable amount), for the definition of C_R , substitute—

“ C_R = the gross internal area of the part of the chargeable development chargeable at rate R, less an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which —

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
 - (b) will be part of the chargeable development upon completion; and
 - (c) will be chargeable at rate R.”
- (2) After regulation 40(11), insert—
- “(12) In this regulation “new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.”

Amendment to Part 6 - exemptions and relief

8. In regulation 42 (exemption for minor development)—
- (a) in paragraph (1), delete “chargeable”;
 - (b) in paragraph (2), delete “chargeable”; and
 - (c) in paragraph (3), delete “chargeable”.

Amendment to Part 8 - administration

- 9.—(1) After regulation 64(1) (notice of chargeable development), insert —
- “(1A) Paragraph (2) does not apply to a development—
- (a) to which regulation 42 applies; or
 - (b) in relation to which the chargeable amount, calculated under regulation 40, is zero.
- (2) For regulation 64(4), substitute—
- “(4) The notice must be accompanied by a plan which identifies —

- (a) the land to which the notice relates;
 - (b) any buildings in use on that land which are to be demolished before the completion of the chargeable development;
 - (c) any buildings in use on that land which will be part of the chargeable development on completion, and
 - (d) the development which is the subject of the notice.”
- (3) Paragraphs (5) and (6) of regulation 64 are omitted.
- (4) In regulation 64(9), after “submitted”, insert—
- “, or on the day the last person who is to be served with a notice of chargeable development under regulation 64A(3) is served, whichever is the later.”
- (5) After regulation 64, insert—

“Preparation and service of notice of chargeable development by collecting authority

- 64A.**—(1) This regulation applies where—
- (a) planning permission for a development is granted by way of a general consent;
 - (b) no notice of chargeable development has been submitted to the collecting authority under regulation 64(2) in respect of that development; and
 - (c) the collecting authority is of the view that—
 - (i) the development has been commenced; and
 - (ii) the exemption conferred by regulation 42 does not apply in relation to the development.
- (2) The collecting authority must prepare a notice of chargeable development which—
- (a) is in writing on a form published by the Secretary of State (or a form to substantially the same effect);
 - (b) includes the particulars specified or referred to in the form; and
 - (c) is accompanied by a plan which identifies—
 - (i) the land to which the notice relates;
 - (ii) the building which is the subject of the notice;
 - (iii) where the collecting authority has sufficient information to do so, any buildings in use on that land which are to be demolished before the completion of the chargeable development; and
 - (iv) where the collecting authority has sufficient information to do so, any buildings in use on that land which will be part of the chargeable development upon completion.
- (3) The collecting authority must serve the notice of chargeable development on each person known to the authority as an owner of the relevant land, together with the liability notice served under regulation 65(3).”
- (6) After regulation 65(2)(d) (liability notice), insert—
- “(da) where the chargeable amount may be paid by way of instalments(4), include a copy of the charging authority’s current instalment policy (if any);”
- (7) For regulation 65(4), substitute—

(4) See regulation 70.

- “(4) The collecting authority must issue a revised liability notice in respect of a chargeable development if—
- (a) the chargeable amount or any of the particulars mentioned in paragraph 2(e) or (f) change (whether on appeal or otherwise); or
 - (b) the charging authority issue a new instalment policy which changes the instalment arrangements which relate to the chargeable development.”
- (8) After regulation 67(1) (commencement notice), insert—
- “(1A) This regulation does not apply to a development—
- (a) to which regulation 42 applies; or
 - (b) in relation to which the chargeable amount, calculated under regulation 40, is zero.
- (9) In regulation 69(2)(f) (demand notice), after “payable is to” insert “be”.
- (10) After regulation 69, insert—

“Suspension of demand notice

69A.—(1) A person (P) who has been served with a demand notice under regulation 69(1) may request the collecting authority to make a declaration that P is not required to pay the amount of CIL stated in the demand notice until works which are part of the chargeable development are commenced on the land in which P has a material interest.

(2) A request under paragraph (1) must be made in writing and include sufficient particulars to enable the collecting authority to decide whether it is satisfied as to the matters described in paragraph (3)(a) to (e).

(3) The collecting authority must make a declaration under paragraph (1) if it is satisfied that—

- (a) P’s liability under the demand notice arises because that liability has been apportioned to P under regulation 33(2) or 36(4)(b);
 - (b) no works which are part of the chargeable development have been commenced on the land in which P has a material interest;
 - (c) P has not agreed that any works which are part of the chargeable development may be commenced on the land in which P has a material interest;
 - (d) P has not agreed, in a contract enforceable under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989⁽⁵⁾, to transfer all or any part of P’s material interest in the land to any other person; and
 - (e) in all the circumstances of the case it is reasonable that P is not required to pay the amount of CIL stated in the demand notice until works which are part of the chargeable development are commenced on the land in which P has a material interest.
- (4) Where a declaration is made under paragraph (1)—
- (a) P shall not be liable for any late interest payment under regulation 87 (late payment interest);
 - (b) no measures to recover CIL under Chapter 3 of Part 9 (recovery of CIL) may be taken against P; and
 - (c) no measures to recover CIL under Chapter 4 of Part 9 (other enforcement provisions) may be taken against P’s executor or administrator,

(5) 1989 c. 34.

until a demand notice is issued under paragraph (6) or (7).

(5) Where—

- (a) a declaration is made under paragraph (1); and
- (b) works which are part of the chargeable development are subsequently commenced on the land in which P has a material interest,

P must notify the collecting authority in writing no later than the day before the day on which the works are commenced that the works are being commenced.

(6) Where a collecting authority —

- (a) receives notice under paragraph (5), or
- (b) has not received notice under paragraph (5), but is of the view that works which are part of the chargeable development have been commenced on the land,

it must serve a demand notice on P.

(7) Where a collecting authority is of the view that P has agreed, in a contract enforceable under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, to transfer all or any part of P’s material interest in the land to any other person, it must serve a demand notice on that person.

(8) Where a collecting authority serves a demand notice on P under paragraph (6)(b), the charging authority may impose a surcharge equal to 20 per cent of the chargeable amount payable by P or £2500, whichever is the lower amount.

(9) A demand notice served under paragraph (6) or (7) must comply with the requirements of regulation 69(2).”

(11) For regulation 70, substitute—

“Instalment policies

69B.—(1) A charging authority which wishes to allow persons liable to pay CIL to do so by instalments must publish on its website an instalment policy containing only the information described in paragraph (2) (“the instalment policy”).

(2) The instalment policy must state—

- (a) the date on which it takes effect, which must be no earlier than the day after the instalment policy is published on the website;
- (b) the number of instalment payments;
- (c) the amount or proportion of CIL payable in any instalment;
- (d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and
- (e) any minimum amount of CIL below which CIL may not be paid by instalment.

(3) The charging authority must—

- (a) make the instalment policy available for inspection—
 - (i) at its principal office, and
 - (ii) at such other places within its area as it considers appropriate; and
- (b) send a copy of the instalment policy to the collecting authority (if it is not the charging authority).

(4) Subject to paragraph (5), a charging authority may bring into effect a new instalment policy at any time; any new instalment policy must comply with paragraphs (1) to (3).

(5) A new instalment policy may not take effect earlier than the period of 28 days beginning with the date on which the previous instalment policy took effect.

(6) A charging authority which no longer wishes to have an instalment policy must—

(a) publish on its website a notice stating the date on which the instalment policy shall cease to have effect;

(b) make the notice available for inspection—

(i) at its principal office, and

(ii) at such other places within its area as it considers appropriate; and

(c) send a copy of the notice to the collecting authority (if it is not the charging authority).

(7) The date mentioned in paragraph (6)(a) must be no earlier than the period of 28 days beginning with the date on which the instalment policy came into effect.

Payment periods

70.—(1) This regulation applies where—

(a) a person has assumed liability to pay CIL in respect of a chargeable development (D);

(b) the collecting authority has received a commencement notice in respect of D; and

(c) the collecting authority has not determined a deemed commencement date for D.

(2) The amount of CIL payable (A) to all charging authorities in respect of D is payable in accordance with the following paragraphs.

(3) Where—

(a) A is charged by both the Mayor of London and a London borough council; and

(b) the London borough council has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),

A is payable in accordance with that instalment policy.

(4) Where—

(a) A is charged by both the Mayor of London and a London borough council;

(b) the London borough council has not issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b); and

(c) the Mayor of London has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),

A is payable in accordance with the Mayor's instalment policy.

(5) Where—

(a) A is charged by a London borough council but not by the Mayor of London; and

(b) the London borough council has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),

A is payable in accordance with that instalment policy.

(6) Where—

(a) A is charged by a charging authority other than the Mayor of London or a London borough council; and

- (b) the charging authority has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),

A is payable in accordance with that instalment policy.

(7) In all other cases, A is payable in full at the end of the period of 60 days beginning with the intended commencement date of D.

(8) Where an amount payable in accordance with this regulation is not received in full on or before the day on which it is due—

- (a) the unpaid balance of A becomes payable in full immediately; and
- (b) the collecting authority must send a copy of any demand notice which it serves as a result of the non-payment to each person known to the authority as an owner of the relevant land.”

(12) Omit paragraph (6)(a) of regulation 73 (payment in kind).

(13) In regulation 74(5) (payment in kind: further provision), for “70(6)” substitute “70(8)”.

Amendment to Part 9 – enforcement

10.—(1) After regulation 108 (outstanding liabilities on death), insert—

“Power to require information

108A. A collecting authority may require any owner of a material interest in any relevant land to provide it with such further information, documents or materials as the collecting authority considers relevant to assist it to ascertain whether a notice of chargeable development must be submitted under regulation 64(2).”

(2) In regulation 109(1) (powers of entry)—

- (a) in sub-paragraph (d), delete “or”;
- (b) after sub-paragraph (e), insert “or”;
- (c) after (e), insert—

“(f) where no notice of chargeable development has been submitted, for the purposes of gathering information required by the collecting authority in order for it to ascertain whether a notice of chargeable development must be submitted under regulation 64(2).”

(3) After regulation 109(3), insert—

“(3A) A person may not enter the relevant land for the purpose mentioned in paragraph (1)(f) unless the collecting authority has first requested the information referred to in that paragraph in accordance with regulation 108A.”

(4) In regulation 110(1), after “in a material respect to” insert “a charging authority or”.

Amendment to Part 10 - appeals

11.—(1) In regulation 112(1) (interpretation of Part 10), for the definition of “representations period” substitute—

““representations period” means, in any appeal under this Part, 14 days beginning with the date the acknowledgement of receipt is sent under regulation 120(3), or such longer period as the appointed person may in any particular case determine.”

(2) For regulation 112(2)(a), substitute—

- “(a) in the case of a request for review under regulation 113 or an appeal under regulation 114, the person is—
- (i) the person who has assumed liability to pay CIL in respect of the chargeable development;
 - (ii) the relevant person within the meaning of regulation 65(12); or
 - (iii) a person who has been served with a notice of chargeable development in accordance with regulation 64A(3).”

Amendment to Part 11 - planning obligations

12.—(1) In regulation 122(3) (limitation on use of planning obligations), in the definition of “relevant determination”—

- (a) after “section 70,” insert “73,”;
- (b) omit—
 - (i) “which is not an application to which section 73 of TCPA 1990 applies”, and
 - (ii) “where the application which gives rise to the appeal is not one to which section 73 of TCPA 1990 applies”.

(2) In regulation 123(3) (further limitation on use of planning obligations), for “before the date that obligation A was entered into” substitute “on or after 6th April 2010”.

(3) In regulation 123(4), in the definition of “determination”—

- (a) after “section 70,” insert “73,”;
- (b) omit—
 - (i) “which is not an application to which section 73 of TCPA 1990 applies”, and
 - (ii) “where the application which gives rise to the appeal is not one to which section 73 of TCPA 1990 applies”.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local
Government

We consent

Date

Name 1
Name 2
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 11 of the Planning Act 2008 provides for the imposition of a charge known as the Community Infrastructure Levy (“CIL”). The Community Infrastructure Levy Regulations 2010⁽⁶⁾ (“the CIL Regulations”) implement the detail of CIL. These Regulations amend the CIL Regulations.

The CIL Regulations and these Regulations apply in relation to England and Wales only.

The main changes to the CIL regulations are:

- A power for charging authorities to set an instalment policy for CIL payments (regulations 3(b), 9(6), (7) and (11) (substituted regulation 69B)).
- Amendment so that no notice of chargeable development or commencement notice is required for minor developments which are exempt from CIL. Collecting authorities are able to investigate cases where a notice of chargeable development should have been filed, and if necessary to issue a deemed notice of chargeable development (regulations 3(c), 4(2) and (3), 9(1), (5) and (8), 10(1), (2) and (3)).
- Removal of the minimum threshold of £50,000 for payments in kind (regulation 9(12)).
- Clarification of how apportionment of liability is to be calculated (regulation 6).
- Where liability has been apportioned to landowners because the developer has not assumed liability or has defaulted, providing a power for collecting authorities not to enforce against those landowners where no development has been commenced upon their land and enforcement would be unreasonable in the circumstances (regulation 9(10)).
- Removal of the exemption for applications to which section 73 of the Town and Country Planning Act 1990 applies from the limitations on the use of planning obligations imposed by regulations 122 and 123 (regulation 12(1) and (3)).
- The setting of a time limit (6th April 2010) beyond which charging authorities do not have to go back when determining whether five or more planning obligations have already contributed to the infrastructure project or type of infrastructure (regulation 12(2)).

An impact assessment has been prepared in respect of these Regulations and also amendments to CIL contained in the Localism Bill⁽⁷⁾. This assessment is available at: <http://www.communities.gov.uk/documents/localgovernment/pdf/1829714.pdf>, and copies may be obtained from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU.

⁽⁶⁾ S.I. 2010/948.

⁽⁷⁾ Bill 126/2010.