

# PLANNING ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 11: Community Infrastructure Levy**

#### *Section 208: Liability and Section 209: Liability: interpretation of key terms*

334. **Section 208** makes provision about how liability to pay CIL is incurred (with section 209 providing some definitions of the terms in section 208 together with regulation-making powers to define others).
335. **Section 208(1)** expressly provides for an opportunity for any person to assume liability for CIL before the commencement of development (subsection (2)(a)), though this must be done in accordance with regulations (see subsection (2)(b)) CIL liable “development” is defined in section 209(1) as “anything done by way of or for the purpose of the creation of a new building, or anything done to or in respect of an existing building”. Section 209(2) provides a regulation making power to exclude works or changes of use from this definition of development and to provide for the creation of, or for anything done to or in respect of, a structure to fall within it. Section 209(3) provides that CIL regulations must include provision for determining when development is to be treated as commencing. Section 209(4) relates to how “development” has been defined in section 209(1) and the operation of section 209(3) there. The obligation in subsection (3) may be interpreted as requiring any definition of commencement of development to relate only to development of the sort defined by subsection (1) - something done specifically in relation to a building (or structure). Subsection (4) is intended to allow for the commencement of development to be defined by reference to other works which may be authorised by a planning permission that also authorises the building works for which there is CIL liability.
336. In default of liability not being assumed before development is commenced, or in other circumstances specified by the regulations (for example insolvency), subsection 208(4) provides that the CIL regulations must provide for an owner or developer of land to be liable for CIL. Section 209(7) defines “owner” as a person who owns an interest in the land and “developer” as a person who is wholly or partly responsible for carrying out a development. Section 209 also provides a power in subsection (8) to provide for a person to be treated or not to be treated as an “owner” or “developer”. The intention here is to allow for CIL regulations to be able to provide that certain types of interests are to be included or excluded from default liability - for example, easements and profits.
337. Under section 208(6), the extent of liability is to be determined by reference to the time when planning permission first permits the development (which is CIL liable). Section 209(6) provides connected powers. For example, in the case of those planning permissions where development is only permitted in phases, the powers allow for CIL regulations to specify that liability arises as each phase is commenced.
338. Since much of section 208 is premised on liability being incurred in connection with a planning permission, subsection (7) provides a power to deal with cases where development which requires planning permission is commenced without it. This is to

*These notes refer to the Planning Act 2008 (c.29)  
which received Royal Assent on 26 November 2008*

close a potential loop-hole where development might be unlawfully commenced to avoid CIL.

339. Finally, section 208(8) provides powers for CIL regulations to make provision for, in effect, the claw back of an exemption or reduction in CIL. This is where the description or purpose of the development in respect of which the exemption or reduction was granted subsequently changes.