

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) REGULATIONS
2018

2018 No. 172

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government¹ and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Community Infrastructure Levy Regulations 2010 (“the 2010 Regulations”). They make a number of clarificatory changes to regulation 128A of the 2010 Regulations, which deal with the treatment of planning permissions granted under section 73 of the Town and Country Planning Act 1990 (“the 1990 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.
- 3.4 The Department has reached this view because it considers the primary purpose of the instrument relates to local taxation, which is within the devolved legislative competence of the Scottish Parliament and Northern Ireland Assembly. The primary purpose of the subject matter of the instrument is excepted from Schedule 5 of the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act). Further it is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

4. Legislative Context

- 4.1 The 2010 Regulations, as amended, which operate under the powers in Part 11 of the Planning Act 2008, provide that a charge may be levied on development in an area.

¹ After the laying of the draft instrument in Parliament, but before the instrument was signed, the Department’s name was changed to Ministry of Housing, Communities and Local Government.

Development is liable to the community infrastructure levy (CIL) where a charging schedule is in effect in the area on the date the planning permission for that development is granted. It is common practice, particularly in relation to large developments, for minor changes to be made to a development, for example adjustments to the plans or drawings. These changes are usually given effect by the granting of a new planning permission with amended conditions under section 73 of the Town and Country Planning Act 1990. Where a section 73 permission is granted in relation to a development the CIL (if it has been adopted in the area) must be recalculated. Regulation 128A of the 2010 Regulations applies where a planning permission for the development was granted when no CIL was in force in the area but a levy was brought into force before a later section 73 permission was granted for the development.

5. Extent and Territorial Application

- 5.1 The instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Alok Sharma, Minister of State for the Department for Communities and Local Government has made the following statement regarding Human Rights:
“In my view the provisions of the Community Infrastructure Levy (Amendment) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Part 11 of the Planning Act 2008 provides for regulations to allow the imposition of CIL in areas which wish to adopt it. The purpose of CIL is to ensure that the costs of providing infrastructure to support the development of an area can be funded (wholly or partly) by levying a charge on the owners or developers of land when development takes place.
- 7.2 The 2010 Regulations came into force on 6th April 2010 and enabled local planning authorities (and the Mayor of London) to raise a levy on new development in their area. This levy is to be used to fund infrastructure to support the development of the area where it is collected – such as roads, schools, hospitals and parks.
- 7.3 Rates of CIL in charging schedules are indexed annually to the BCIS All-In Tender Price index.
- 7.4 These Regulations will amend Regulation 128A of the 2010 Regulations. Regulation 128A applies where a planning permission was granted before the community infrastructure levy was in force in an area but a later section 73 permission is granted for the development after the levy has been introduced.
- 7.5 It has come to our attention that there is not sufficient clarity in a calculation required by Regulation 128A. This calculation is used to assess what additional CIL is incurred by the developer (or owner of the land) as a result of any changes introduced through a section 73 permission. To do this, it compares the CIL charge for the section 73 development with the hypothetical CIL charge that the original planning permission

would have been subject to. The CIL liability is the difference between these two figures.

- 7.6 This amendment will clarify how indexation figures should be used as part of the calculation, to ensure that an appropriate comparison is made. The amendment sets out that the index figure required by the calculation should be the same for both the previous planning permission and the new section 73 permission. The Regulations further clarify that the index figure used should be the index figure for the relevant section 73 permission. Amending the 2010 Regulations will make clear that a like-for-like comparison should be undertaken to determine the amount of CIL payable on the development. In doing so it will ensure the levy is only charged for the additional liability introduced through the section 73 permission.

Consolidation

- 7.7 There are no plans to consolidate the 2010 Regulations.

8. Consultation outcome

- 8.1 These changes are clarificatory. They have not been subject to a full public consultation, but we have engaged with a number of key interested parties in preparing these Regulations to ensure they operate correctly. Their constructive comments and feedback have been taken into account in these Regulations

9. Guidance

- 9.1 Alongside these Regulations, the Department will update existing planning practice guidance (<https://www.gov.uk/government/collections/planning-practice-guidance>).

10. Impact

- 10.1 The impact on business is limited to those who develop land or own land that is developed. The changes improve the operation of CIL and are intended to clarify existing regulations, which should help those liable to pay CIL.
- 10.2 There is no impact on charities or voluntary bodies.
- 10.3 These changes improve the operation of CIL and are intended to clarify existing regulations, so should help those charging and collecting CIL.
- 10.4 As this is a financial instrument the Department is not required to undertake a formal Impact Assessment however we have considered impacts throughout our policy development.

11. Regulating small business

- 11.1 The legislation applies to small business as set out in paragraph 10.1.

12. Monitoring & review

- 12.1 The community infrastructure levy is a local taxation measure and as such no review of the Regulations is required under the Small Business, Enterprise and Employment Act 2015.

13. Contact

- 13.1 The CIL team at the Department for Communities and Local Government can answer any queries regarding this instrument. Email: cil@communities.gsi.gov.uk