EXPLANATORY MEMORANDUM TO

THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) (ENGLAND) (NO. 2) REGULATIONS 2019

2019 No.

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry for Housing, 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 amend the operation of the Community Infrastructure Levy ("CIL"), a levy which local authorities can impose on the new development of land. They remove the restriction on pooling more than five developer contributions to fund a single infrastructure project, reduce the penalties for failure to submit a notice before commencing building, and address issues with the existing implementation of indexation. They make amendments in relation to the calculation of CIL where planning permission has been 'amended', including providing for credits to be moved between phases of planning permissions. They also introduce Infrastructure Funding Statements, requiring local authorities to report on developer contributions received and allocated, and increase transparency over the indexation of CIL rates.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies only to England.

3.3 In the view of the Ministry, for the purposes of Standing Order 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Minister of State for Housing and Planning, Kit Malthouse, has made the following statement regarding Human Rights:

"In my view the provisions of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations"), which were made under Part 11 of the Planning Act 2008, provide that a charge may be levied on development of land in an area. Development is liable to CIL where a charging schedule is in effect in the area on the date the planning permission for that development is granted. There are a number of exemptions from CIL, including for social housing.

7. Policy background

What is being done and why

7.1 The purpose of CIL is to ensure that the costs of providing infrastructure to support 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. CIL was first introduced in 2010 and is adopted voluntarily by local authorities, with 161 (47%) charging it as of March 2019. In 2016 an independent review of CIL was undertaken. Following this, the Government consulted on reforms in 2018, in *Supporting housing delivery through developer contributions*, and in 2019, in *Reforming developer contributions: technical consultation on draft regulations*.

7.2 The purpose of this instrument is to make developer contributions through CIL and planning obligations (under section 106 of the Town and Country Planning Act 1990) fairer and more effective, as well as to make their application more transparent. It makes changes which were widely welcomed during consultation, such as lifting the 'pooling restriction' and reducing the penalty for failing to submit commencement notices. The following paragraphs explain the changes made by this instrument.

Charging schedules

7.3 This instrument reduces from two to one the minimum number of rounds of consultation which charging authorities must undertake when introducing, or revising the rates of, CIL. In 2016, the Community Infrastructure Levy Review found that the majority of charging authorities took one to two years to implement CIL initially, and with significant associated costs.

7.4 Initial Government proposals were to remove the requirement to consult and to replace it with a statement setting out how the authority had sought an appropriate level of engagement. Following consultation, the Government modified its proposals to ensure that stakeholders have the opportunity to feed into the preparation of charging schedules before they go to examination. Charging authorities will now be obliged to conduct one round of consultation, anything above this minimum is at the authority's discretion. This change will reduce the time and resource burden on local authorities, while preserving the right of stakeholders to be consulted.

7.5 This instrument introduces a requirement for authorities to conduct a consultation if they are considering stopping charging CIL, in order to increase transparency to communities. This consultation must set out the expected impacts of ceasing to charge CIL on funding infrastructure and how the authority intended to replace any lost funding. This new consultation requirement does not apply to the Mayor of London as the Mayoral Community Infrastructure Levy has more restrictions on how it may be used.

Calculation of CIL

7.6 This instrument makes the application of indexation to CIL liabilities fairer. It prevents developers from being charged more through indexation, when they amend their planning permission, for floorspace which has already been permitted. Regulation 128A (introduced by The Community Infrastructure Levy (Amendment) Regulations 2018) ensured this was the case for developments which were first permitted before there was a charging schedule in place, but which were subsequently 'amended' through a section 73 permission. These regulations make provision for cases where developments were first permitted after a charging schedule was introduced. They do this by introducing a new calculation that ensures any increase in liability is charged at the latest rate, including indexation, while any decrease in liability is calculated at the indexation rate of the original permission.

Reliefs and exemptions from CIL

7.7 The 2010 Regulations allow for certain development (such as residential extensions and self-build housing) to be exempt, or to gain relief, from CIL. In most cases a developer must submit a Commencement Notice to the charging authority prior to the start of works so as not to lose the exemption or relief. Failure to do so results in the exemption or relief being lost, and the full CIL liability becoming due immediately. This particularly affects smaller developers and self-builders, as they tend to be less familiar with the requirements of the legislation. The Government considers that the immediate application of this penalty is disproportionate to the failure to submit a Commencement Notice on time.

7.8 Under this instrument the penalty for a late Commencement Notice will be reduced from the removal of the exemption or relief to a surcharge equal to 20% of the notional chargeable amount or £2,500, whichever is the lower amount; this mirrors surcharges elsewhere in the 2010 Regulations. This will therefore always be lower than the current penalty of the full CIL liability. This instrument also clarifies that a Commencement Notice is not required at all in relation to an exemption for residential extensions.

Enforcement, reporting, monitoring and planning obligations

7.9 This instrument amends the 2010 Regulations to replace the 'distress' provisions for recovering CIL with the procedure for taking control of goods set out in Schedule 12 to the Tribunals Courts and Enforcement Act 2007.

7.10 This instrument seeks to improve transparency and accountability around the spending of CIL and planning obligations by introducing annual Infrastructure Funding Statements which replace regulation 123 lists. Infrastructure Funding Statements will be required to be published by contribution receiving authorities once a year reporting on CIL and planning obligations revenue received and allocated. Infrastructure Funding Statements must be published on local authority websites.

7.11 This instrument also introduces a requirement that each charging authority must publish details of its indexed CIL rates for the coming year (no later than 31st December in the year beforehand). This "annual CIL rate summary" will increase certainty for developers over the rates that they will be charged.

7.12 Charging authorities can use a proportion of CIL to cover the administration of CIL (including meeting legislative requirements on reporting). Under this instrument it is also made clear that charging authorities may charge a monitoring fee through section 106 planning obligations. This monitoring fee should be "proportionate and reasonable" and reflect the authority's estimate of the cost of monitoring.

7.13 This instrument removes the restriction which prevents local authorities from using more than five section 106 planning obligations to fund a single infrastructure project (the 'pooling restriction'). The 'pooling restriction' was intended to incentivise local authorities to introduce CIL, as a more effective means of addressing the cumulative impacts of developments than planning obligations. However, in 2016 the Community Infrastructure Levy Review found it can have distortionary effects which lead to otherwise acceptable sites being refused planning permission.

7.14 This instrument lifts the 'pooling restriction' altogether. This will address the uncertainty, complexity and delay created by the restriction. It will give local authorities flexibility in how to fund required infrastructure by allowing them to use funding from more developments, which could speed up delivery.

Transitional cases

7.15 It is common practice, particularly in relation to larger developments, for minor changes to be made to a development, for example adjustments to the layout of buildings through amendment of 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. CIL is not payable in relation to planning permission granted before a CIL charging schedule is introduced in an area. Where such a pre-CIL permission is 'amended' (by a section 73 permission) at a time when there is now a charging schedule in effect in the area then without a transitional provision CIL will be payable in full on that section 73 permission. As a matter of policy this was considered to be unfair so regulation 128A was introduced to provide that in this scenario CIL is payable on the difference between the pre-CIL permission and the section 73 permission.

7.16 In relation to these transitional cases this instrument makes provision for a credit in one phase of a development where the liability is increased to be offset against another phase where the liability has decreased. This will ensure that for phased developments, which were originally consented before CIL came into force in an area, their CIL liability fairly reflects the total type and area of floorspace that was developed across all phases of the development.

7.17 Another change clarifies how transitional provisions operate in relation to reliefs and exemptions, ensuring that CIL liabilities are not artificially reduced due to exemptions or reliefs being calculated on the basis of the whole of the (in-CIL) section 73 permission but not on the notional pre-CIL liability.

Miscellaneous

7.18 This instrument makes a small number of other clarifications in the regulations to deal with issues identified during and after the March 2018 consultation.

7.19 This includes clarifying the meaning of 'retained parts of in-use buildings' to prevent section 73 applications potentially reducing CIL liability by including parts of a building as 'retained' which were built under the original permission.

7.20 A further change clarifies that planning applicants are included in the definition of 'relevant person' found in regulation 65 on 'liability notices'. This impacts on who liability notices must be served on, as well as who is eligible to request a review.

7.21 A separate change clarifies how regulation 128 of CIL applies where a development is permitted and both a local CIL and a Mayoral CIL are in place.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government has consolidated all regulations relating to the calculation of CIL liabilities into Schedule 1 to the Regulations This is intended to make it easier for local planning authorities and developers to use the Regulations in the calculation of CIL liabilities. Within Schedule 1, paragraphs 1 and 6 largely copy existing regulations 40 and 50, paragraphs 3 and 7 copy existing regulation 9 and 128A with modifications, while paragraphs 2, 4, 5, 8 and 9 contain wholly new provisions.

9.2 The Government intends to fully consolidate the Community Infrastructure Levy Regulations 2010 when a suitable opportunity arises.

10. Consultation outcome

10.1 A public consultation on the policy changes provided for in this instrument was undertaken between 5 March 2018 and 10 May 2018 on the initial policy, titled *Supporting housing delivery through developer contributions*; and between 20 December 2018 and 31 January 2019 on the technical regulatory changes themselves, titled *Reforming developer contributions: technical consultation on draft regulations*.

10.2 A total of 246 responses were received to the technical consultation, as set out in the *Government response to reforming developer contributions*: 28 personal responses (11%), 157 from local authorities (64%), 3 from neighbourhood planning bodies / parish or town councils (1%), 30 private sector organisations (12%), 10 trade associations / interest groups / voluntary or charitable organisations (4%), and 18 others (7%).

10.3 The majority of respondents to the policy consultation supported most of the proposals put forward by the Government. The main objections were to changes on how CIL rates are set and indexed - which the Government has decided not to take forward in the form originally proposed. The technical consultation sought views on whether the draft regulations would achieve the Government's policy intent. The majority of respondents did not believe there were any elements in the regulations that would prevent the Government achieving its policy intent. A number made comments on

how the regulations would work in practice, which the government has taken into account in subsequently amending the draft regulations.

10.4 The main objections were on changing the indexation of CIL rates to increase market responsiveness. 63% of respondents responded that the draft regulation achieved the policy intent. However, several concerns were raised regarding the Government's proposed approach to indexation, particularly the use of more than one index (raised by 10 local authorities and 3 private sector organisations). Considering the complexity of the regulations the Government is not taking this proposal forward, and it is not included in this instrument.

10.5 Respondents also raised concerns about the removal of regulation 123 restrictions and the introduction of Infrastructure Funding Statements. 65% of respondents responded that the draft regulation would achieve the policy intent of improving transparency and increasing accountability. However, a variety of concerns were raised about the challenge of producing Infrastructure Funding Statements. The Government acknowledges these concerns. The implementation date for Statements has been moved from 31 December 2019 to 31 December 2020. This will give local authorities a full year to collect the data in the required format before having to produce their first Statement. 21 local authorities and one other respondent called for clarification on the role of county councils. Following this, the draft Regulations have been amended. This instrument defines the 'contribution receiving authority' as any charging authority that issues a liability notice and any local authority to which a sum is required to be paid under a planning obligation or which will receive a non-monetary contribution under the obligation. This means that county councils are required to produce an Infrastructure Funding Statement for contributions they have received. 35 local authorities, two private sector organisations, two trade and voluntary organisations and five other respondents welcomed the removal of regulation 123 lists and restrictions due to the additional flexibility to fund and deliver infrastructure that this will provide. However, three private sector organisations expressed concern that this would allow CIL and planning obligations to fund the same piece of infrastructure ('double dipping'). The Government considers that the increased transparency provided by Infrastructure Funding Statements will be a more appropriate mechanism for considering how CIL and planning obligations are used together than the regulatory restrictions which were found to create barriers to development.

10.6 Further information on the changes under these regulations can be found in the Annex to this memorandum.

11. Guidance

11.1 Revised Community Infrastructure Levy planning practice guidance will be published when the Regulations come into force. Current guidance on the Community Infrastructure Levy can be found online. A new digital data format and tools will support authorities with the implementation of the regulation.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to those who develop land or own land that is developed. The instrument improves transparency and fairness in relation to the application of CIL.

12.2 The main impact on the public sector is to give local authorities further flexibility in the application of CIL, to streamline consultation procedures and to provide for greater clarity and transparency.

12.3 As this is a financial instrument the Ministry is not required to undertake a formal Impact Assessment. However, we have considered impacts throughout policy development, and have tested proposals with industry and local authority practitioners. The measures will ensure that developers do not receive CIL liabilities on floorspace that has already been permissioned when they amend a planning permission. This will reduce unfair charges on developers. Proposals on extending abatement provisions to transitional developments will ensure that developers can offset increases in liability in one phase against decreases in another phase of development. Again, this will reduce unfair charges in these circumstances.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The main effect of the instrument is positive as stated in paragraph 7.7 and 7.8. This instrument ensures that the penalty for failing to submit a Commencement Notice are proportionate, and such failures do not result in a full CIL liability becoming payable. No other specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The decision to bring forward this instrument was informed by the various consultations outlined above. To understand and reduce the impact of the requirements on small business we assessed the burden placed on small developers. We have concluded that the burden on small developers does not reach a threshold that requires specific Government intervention.

14. Monitoring & review

14.1 This instrument amends the operation of a levy (a financial measure) therefore the duty in the Small Business, Enterprise and Employment Act 2015 to review does not apply.

14.2 A review of CIL was carried out in 2016. Going forward, the Government committed in the 2019 Spring Statement to "evolving the 'existing' system of developer contributions" further.

15. Contact

15.1 Tom Simpson at the Ministry for Housing, Communities and Local Government (telephone: 0303 444 1704 or email: cil@communities.gov.uk) can answer any queries regarding the instrument.

15.2 Jenny Preece, Deputy Director at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

ANNEX

Further information on the draft Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

Introduction

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 will amend the Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations") which were introduced through the Planning Act 2008[1].

This annex provides further background information on the policy intention of each regulation and explains how the 2010 Regulations are amended to achieve the policy change. It is intended to aid parliamentarians in the scrutiny of the draft regulations and to support local authorities and other stakeholders who will use them. It is recommended that this note is read alongside the draft regulations.

The purpose of the current amending regulations is to address a number of issues that have arisen in relation to the application of the 2010 Regulations in recent years. In particular, the Government is looking to make the system of developer contributions more efficient, transparent and accountable by:

- Reducing complexity and increasing certainty by:
    - ensuring that consultation on draft charging schedules is proportionate and requiring authorities to make clear how consultation responses were taken into account;
    - removing the restriction on the number of section 106 planning obligations that can be used to fund a single infrastructure project;
    - introducing a more proportionate approach to administering exemptions from the Levy, including introducing a surcharge where exempt development is commenced before a notice of commencement has been sent to the authority (rather than as is currently the case, the whole exemption or ability to pay by instalments is lost);
    - introducing a mechanism to allow for the balancing of liability between phases where a phased planning permission is granted before a charging schedule is introduced in an area and is subsequently amended through a section 73 permission after a charging schedule has come into effect;
    - applying indexation where a planning permission is amended through a section 73 permission so that only the change in liability is subject to the latest index for inflation;
    - increasing the usability of the regulations by consolidating all the regulations relating to the calculation of the Levy into a single schedule.
- Improving transparency and increasing accountability by:
    - introducing the requirement for authorities to publish Infrastructure Funding Statements annually setting out infrastructure priorities in their area and how funds secured through planning obligations and the Levy have been spent;

[1] The 2010 Regulations have previously been amended by statutory instruments: 2011/987, 2012/635, 2012/666, 2012/702, 2012/2975, 2013/982, 2014/385, 2015/377, 2015/664, 2015/836 and 2018/172.

- permitting local authorities to seek a proportionate and reasonable contribution towards the monitoring of, and reporting on, planning obligations.

The draft regulations have been prepared following two rounds of public consultation and detailed discussions with CIL practitioners.

Regulation 3. Charging schedules: consultation etc.

Issue

Charging authorities are currently required to undertake two rounds of consultation on their proposed Community Infrastructure Levy ("the Levy") rates (firstly on a preliminary draft schedule and then on a draft schedule) before they can introduce or revise the Levy. As a result, the initial implementation of the Levy can take one to two years. Local authorities have suggested that resource constraints can affect their willingness to introduce or review charges. In some cases, local authorities might want to make very minor changes to their charging schedules, such as changing the boundaries between CIL zones where they run diagonally through a site and a proposed building, which can create considerable administrative complexity, and could drive perverse design decisions.

Regulation 3 amends the 2010 regulations to remove the requirement to consult on the preliminary draft charging schedule but leaves it to charging authorities to decide whether they wish to exceed the minimum consultation requirement and the details of how they wish to consult. A charging authority might, for example, decide to undertake two rounds of consultation if they are introducing the Levy for the first time.

The Regulation removes the minimum period for the local authority to seek representations when preparing a draft charging schedule. This is to provide flexibility for local authorities when making minor adjustments. Guidance will set out an expectation that for substantive changes a minimum four-week consultation would be undertaken. Through statutory guidance, examiners will be advised that they must have regard to guidance for charging authorities on the length of consultation and consider whether adequate time has been given for the consideration of a draft charging schedule, particularly for consultations of less than four weeks, taking into account the scale and complexity of the change proposed.

The Regulation also removes the requirement to advertise in a local newspaper at various stages during the preparation and withdrawal of a charging schedule. This aligns with the procedure for local plan preparation. Any person who makes representations in relation to a draft charging schedule continues to be entitled to request to be notified when the draft has been submitted for examination, at publication of the examiner's recommendations and at approval of the charging schedule by the charging authority (see regulation 16(2) of the 2010 Regulations).

How the regulation works

The regulation removes the requirement for charging authorities to consult on a preliminary charging schedule by deleting regulation 15 (Consultation on a preliminary draft charging schedule).

Regulation 16 (Publication of a draft charging schedule) is amended to require charging authorities to invite representations on the draft charging schedule as they consider appropriate, from persons who are resident or carrying on business in its area; voluntary

bodies some or all of whose activities benefit the charging authority's area; and bodies which represent the interests of persons carrying on business in the charging authority's area. It also introduces a definition for consultation bodies. Neighbourhood forums have been added to the list of consultation bodies in order to align with Local Plan consultation requirements.

Regulation 17 (Representations relating to a draft charging schedule) is amended to remove the four-week minimum time period for charging authorities to seek representations and requires that any representations received must be taken into account.

The requirement to advertise in a local newspaper has been omitted from regulation 16 (Publication of a draft charging schedule), regulation 18 (Withdrawal of a draft charging schedule), regulation 21 (CIL examination: right to be heard), regulation 25 (Approval and publication of a charging schedule) and regulation 26 (Correction of errors in a charging schedule).

Regulation 4. Charging schedules: procedure in relation to a charging schedule ceasing to have effect

Issue
A key objective of the reforms is to improve transparency and increase accountability. To incentivise the continued use of the Levy by local authorities, where an authority chooses to stop charging the Levy, they will need to be clear with local communities and developers about the impacts of doing so, setting out how they will address any shortfall in funding local infrastructure that results.

How the regulation works
There is a two-stage approach.

Firstly, regulation 28 (Charging schedule: effect) is amended to remove the steps that a charging authority must currently follow when a charging schedule is to cease to have effect. This currently requires the local authority to publish a statement of that fact on its website; give notice by local advertisement; and notify the relevant consenting authorities.

Secondly, a new regulation 28A (Charging schedules: procedure in relation to a charging schedule ceasing to have effect) is inserted which changes the procedure for stopping CIL – requiring an explanation of the revenue that has been received, the effects of stopping the Levy and the measures proposed to cover any shortfall.

Regulation 5. Chargeable development and chargeable amount

Issue
Developers can amend a condition attached to a planning consent, under section 73 of the Town and Country Planning Act 1990. Currently, if the section 73 permission does not change the liability to the Levy, only the original consent will be liable. Where there is a change in liability, the new liability for the whole development is charged at the latest rate taking account of indexation for inflation. The changes being brought forward through the 2019 Regulations seek to increase fairness by charging the latest indexed rate on only the change in liability, while the previously permitted floorspace will continue to be charged at the rate that was in place at the time it was permitted (for more details see the guidance on Schedule 1 below).

It is recognised that changes to the calculations make the regulations more complicated to use, especially as some of the elements are spread across a number of amending regulations. To assist with implementation, all the calculations have been consolidated into a single Schedule.

How the regulation works

The main effect of regulation 5 is to introduce a new Schedule 1 which contains all the calculations for determining the chargeable amount. It moves the calculations currently in regulation 40 (Calculation of chargeable amount); regulation 50 (Social housing relief: qualifying amount) and regulation 128A (Transitional provision: section 73 of TCPA 1990 applications) – with some amendments as described below - to the new schedule and introduces new calculations for dealing with increases and decreases in liability and transitional cases (i.e. where a development was granted before CIL came into effect in an area and is subsequently amended through a section 73 permission after CIL came into effect). The move is designed to assist with the implementation of the CIL regulations by bringing all of the regulations together. It also makes consequential changes to a number of regulations to apply Schedule 1 - as explained below.

The calculations currently in regulation 40 (Calculation of chargeable amount) are now contained in paragraph (1) of Schedule 1. The only change to the provision is to the definition of "new build" now in sub-paragraph (10). This has been amended to clarify that where a development is amended through a section 73 planning permission, any floorspace that has been constructed under the original permission, or an earlier section 73 amendment, should be considered as "new build" and not as "in-use" for the purposes of calculating the chargeable amount.

Regulation 50 (Social housing relief: qualifying amount) is amended so that the calculation of relief should now be in accordance with paragraph 6 of Schedule 1.

Regulation 5 also makes consequential changes to the following regulations (which are otherwise unchanged) to apply the provisions in Schedule 1:

- 53(5) (Withdrawal of social housing relief);
- 64(4) (Notice of chargeable development);
- 64A(2) (Preparation and service of notice of chargeable development by collecting authority);
- 74B(6) and (13) (Abatement: implementation of a different planning permission).

Regulation 128A (Transitional provision: section 73 of TCPA 1990 applications) is deleted and replaced together with additional provisions by Part 4 to Schedule 1 (Pre-CIL permissions ‘amended’ when CIL is in effect). Regulation 128A had set out the calculation for determining the chargeable amount for development which is permitted before a charging schedule came into effect but is then amended through a section 73 permission after the Levy has been introduced These changes are discussed in more detail in the guidance on Part 4 of Schedule 1 below.

Regulation 9 (Meaning of “chargeable development”) defines what the chargeable development is. This is amended to provide that where there is a section 73 permission, the chargeable development is the mostly recently commenced or re-commenced chargeable development. This could be either the new permission or the one it amends. The comparison

of the chargeable amount currently in regulation 9(8) is deleted and replaced with new provisions in Schedule 1.

Regulation 6. Reliefs: commencement notices and other amendments relating to applications for relief

Issue
The regulations allow for certain development (such as residential annexes or extensions and self-build housing) to be exempt, or gain relief, from the Levy. In most cases a developer must submit a commencement notice to the charging authority prior to the start of works as this determines the start of the clawback period, in which an exemption can be removed if a disqualifying event occurs. If the developer fails to submit a commencement notice in time, the exemption or relief is lost, and the full chargeable amount becomes payable.

This is considered to be disproportionate and affects self-builders in particular who are more likely to be unaware of the full requirements of the regulations. Instead, the 2019 Regulations introduce a more proportionate penalty: whichever is lower of a surcharge of 20% of the chargeable amount, or £2,500.

How the regulation works
For each of the relevant exemptions and reliefs, the relevant regulations are amended (as below) so that the exemption is not removed if a commencement notice is not submitted on time. In parallel, Regulation 83 is amended to introduce the surcharge.

Regulation 42B (Exemption for residential annexes or extensions: procedure) is amended so that where an exemption for a residential annex or extension has been granted in relation to a chargeable development and then a section 73 permission allows the annex or extension to change after the commencement of that development, the developer is allowed to apply for a new exemption. Regulation 42B(6) is deleted: this regulation set out that exemptions for residential annexes or extensions cease if a commencement note is not submitted before building commences. Regulation 42B(4) is amended to require the collecting authority, when notifying a claimant that their exemption has been granted, to also provide them with an explanation of the requirements of regulation 67(1) – i.e. the requirement to submit a commencement notice before commencing development. This latter requirement only applies to residential annexes. A commencement notice does not need to be submitted for a residential extension (see regulation 67(1A) introduced in 2014)[2].

Regulation 47(Charitable relief: procedure) is amended so that where charitable relief has been granted in relation to a chargeable development and then a section 73 permission allows the development to change after building works have commenced, the developer is allowed to apply for the relief i.e. the relief is not automatically lost on granting the new permission. Regulation 47(7) which removed the relief if a commencement notice is not submitted is deleted.

Regulation 51 (Social housing relief: procedure) is amended so that where social housing relief has been granted in relation to a chargeable development and then a section 73 permission allows the development to change after building works have commenced, the developer is allowed to apply for the relief i.e. the relief is not automatically lost on granting

[2] SI 2014/385

of the new permission. It also requires the charging authority to explain the need for a commencement notice to be submitted before commencement ((regulation 67(1)); but deletes regulation 51(7)(a) so if a commencement notice is not submitted beforehand, the social housing relief is not lost.

Regulation 54B (Exemption for self-build housing: procedure) is amended so that where an exemption for self-build housing has been granted and then the provision of self-build housing or self-build communal development changes after the commencement through a section 73 permission the developer is allowed to apply for the exemption i.e. the exemption is not automatically lost on granting of the new permission. It also deletes regulation 54B(6) which stated that the exemption was lost if a commencement notice had not been submitted before development commenced.

Regulation 83 (Surcharge for failure to submit a commencement notice) – is amended to provide a mandatory penalty for failure to submit commencement notice for

(a) an exemption for residential annexes;
(b) an exemption for self-build housing;
(c) charitable relief; or
(d) social housing relief.

Regulation 7. Section 73 permissions: carry over of relief and instalments

Issue
Regulation 7 deals with two issues around chargeable developments which are amended through a section 73 planning permission. The first deals with the carry over of reliefs or exemptions, the second with the carry over of instalment policies.

Exemptions and reliefs from the Levy can only apply where they were granted before the development has commenced. This means that where a planning permission is amended through section 73 of the TCPA after the original development had commenced, the exemption or relief that applied to the original permission is lost and the development is subject to the full chargeable amount.

Regulation 6 amends the exemptions and reliefs so that a developer can in these circumstances still apply for the exemption or relief after a section 73 permission has been granted and the development has commenced. Regulation 7 goes further. It amends the 2010 Regulations so that where a chargeable development has been granted in relation to:

- an exemption for residential annexes or extensions;
- an exemption for self-build housing;
- charitable relief;
- or social housing relief,

and the development is commenced and subsequently amended through a section 73 permission in such a way as not to change the amount of liability for the Levy, the original application for exemption or relief is treated as if it had been made in relation to the section 73 permission – i.e. in these circumstances there is no need for the developer to apply for the relief or exemptions as it is automatically applied to the new permission. This provision is an extension of the existing provision in regulation 50(6) of the 2010 Regulations.

The regulation also deals with the carry over of instalment policies, where a charging authority has published a policy allowing the Levy to be payable in instalments.

How the regulation works
A new regulation 58ZA (Carry over of relief in relation to certain section 73 permissions) is inserted into Part 6 of the 2010 Regulations. It provides that where following the grant of a section 73 permission, there is no change in the amount of relief for residential annexes or extensions or self-build housing; charitable relief; or social housing relief that the original application for exemption or relief in relation to the development is treated as if it had been made in relation to the new section 73 permission.

Regulation 70 (Payment periods) which relates to payment periods where a charging authority has a published an instalment policy is amended so that where a chargeable development is amended through a section 73 planning permission, then the amount of Levy for the new permission is payable in accordance with that instalment policy.

Regulation 8. Enforcement by taking control of goods

Issue

Regulation 8 replaces references to distress in the 2010 Regulations with reference to the new procedure for taking control of goods set out in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

How the regulation works
Distress has been abolished and replaced with the new Schedule 12 procedure; the amendment reflects that change.

Regulation 9. Annual infrastructure funding statements and CIL rate summary

Issue
Regulation 123 (Further limitations on use of planning obligations) provides for charging authorities to set out a list (referred to as a 'regulation 123 list') of those projects or types of infrastructure that it intends to fund, or may fund, through the Levy. Items on this list cannot be funded through section 106 planning obligations. We are changing this. To improve transparency and accountability around the spending of CIL and section 106 planning obligations, the regulation 123 lists are being replaced by annual Infrastructure Funding Statements. Infrastructure Funding Statements will have to be produced at least annually by any authority that has received contributions from development. Regulation 9 provides the legal basis for the Infrastructure Funding Statements.

Regulation 9 also amends the equation in Regulation 58A(7) which is used to calculate the maximum amount of CIL receipts that should be passed to a parish council in each financial year. It is based on £100 for each dwelling in the area of the parish council indexed to the year in which it is passed to the parish council. It also amends the calculation so the approach to indexation is aligned with that used elsewhere in the regulations.

How the regulation works
This regulation introduces new Part 10A (Reporting and monitoring on CIL and planning obligations) and inserts definitions for 'acquired land', 'CIL expenditure' and 'CIL receipts'

currently in Regulation 58A (Interpretation of Part 7 – 'Application of CIL') into regulation 2(1). It also amends the definition of infrastructure list – clarifying that the move to the meaning given in regulation 121A will occur on 31 December 2020 and annually thereafter.

Regulation 62 (Reporting) which required charging authorities to prepare an annual report and set out what the report should include and regulation 62A (Reporting by local councils) which requires local councils to prepare reports for any financial years in which it receives CIL receipts are deleted as their content is moved to new Part 10A.

Regulation 73A (Infrastructure payments) is amended to include a definition of 'relevant infrastructure' – i.e. prior to 31 December 2020 infrastructure listed on the infrastructure list, and afterwards any infrastructure where no list is published. This is to take account of the introduction of the Infrastructure Funding Statements

Regulation 121A (Annual infrastructure funding statements) is a new provision which requires any charging authority which issues a liability notice during the reporting year to publish an annual Infrastructure Funding Statement which provides a statement of the infrastructure projects or types of projects which will be, or may be, wholly or partly funded by CIL, a report about CIL in relation to the previous financial year in accordance with paragraph 1 of Schedule 2 and a report about planning obligations in accordance with paragraph 3 and 4 of Schedule 2. The first annual Infrastructure Funding Statement must be published by 31 December 2020 (Regulation 121A(2)). This replaces the existing reporting requirements in regulation 62, which is deleted.

Regulation 121B (Reporting by parish councils) replaces the requirement for parish councils to prepare a report on CIL for any financial year in which it receives CIL receipts currently set out in regulation 62A, which is deleted. The requirements on parish councils are unchanged.

Regulation 121C (Annual CIL rate summary) is a new provision which requires a charging authority to publish an annual CIL rate summary which includes each of the rates, taken from the charging schedule, at which CIL is chargeable together with a description of the development to which the rate applies; and for each rate the index figure for the calendar year in which the charging schedule containing the rate took effect. This will improve transparency as all parties will know the rate including increases for indexation for different development types in their area.

A new digital data format and tools will support authorities with the implementation of this regulation (https://digital-land.github.io/guidance/developer-contributions/).

Regulation 10. Fees for monitoring planning obligations

Issue

Regulation 122 of the 2010 regulations sets out provisions on the limitation of uses of section 106 planning obligations. It includes at paragraph (2) the criteria for using planning obligations when granting planning permission for the development. The obligation must be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Regulation 11 of the 2019 Regulations amends regulation 122 to ensure charging authorities can include provision allowing for monitoring fees in agreements under section 106.

How the regulation works
This regulation amends regulation 122 (Limitation on use of planning obligations) to make clear that subject to certain conditions a local planning authority is allowed to include a monitoring fee in agreements under section 106. The conditions are that the sum to be paid for monitoring must fairly and reasonably relates in scale and kind to the development and must not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

Regulation 11. Removal of pooling restrictions

Issue
Regulation 123 of the 2010 Regulations restricts the number of section 106 planning obligations which a charging authority can enter into in relation to funding particular infrastructure. No more than five obligations can be used. Regulation 123 is deleted which means the restriction no longer applies. The removal of this pooling restriction gives authorities more flexibility to use both CIL and contributions under section 106 for the same project.

How the regulation works
This deletes regulation 123 (Further limitations on use of planning obligations) so there is no limit as to the number of planning obligations that could be used to fund a single infrastructure project.

Regulation 12. Consequential amendments to other secondary legislation

Issue
Regulation 12 makes a number of consequential amendments to other secondary legislation.

How the regulation works
Paragraph (1) amends article 6 of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011to bring terminology in line with Enforcement provisions above—

(a) for "distress", where it first occurs, substitute "taking control of goods";

(b) in sub-paragraph (c) for "to levy any amount of distress and sale of goods" substitute "to take control of goods".

Paragraph (2) amends Regulation 34(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (Authorities' monitoring reports) to reflect the replacement of regulation 62 (Reporting) with the report required under regulation 121A(1)(b); and the contents of the annual Infrastructure Funding Statement set out in paragraph 1 of schedule 2.

SCHEDULE 1

Issue

It is recognised that unconsolidated regulations can be challenging to understand, and that this challenge can be particularly acute when calculating Levy liabilities. To increase usability the Government has consolidated all regulations relating to the calculation of Levy liabilities into a single schedule. This includes existing calculations set out in regulation 40 (Calculation of chargeable amount) and regulation 50 (Social housing relief: qualifying amount) and new calculations to deal with 'non-standard' cases.

How Schedule 1 works

1. Chargeable amount: standard cases

Paragraph 1 of Schedule 1 sets out the provisions which were previously in regulation 40, for calculating the chargeable amount in standard cases. Changes to these provisions include:

- Clarification that the 'index year' is the 'calendar year' to avoid confusion with the 'financial year';
- The introduction of a new index from the Royal Institute of Chartered Surveyors (RICS) - the 'RICS CIL Index'. This will come into effect from 2020. It will improve the transparency and certainty around indexation by replacing the existing proprietary data with a single, publicly available, figure which is published once a year;
- Addition to the definition of 'new build' to exclude existing buildings which were built pursuant to a previous planning permission to which the new permission relates. This is to ensure that floorspace that had been constructed under the original permission (or an earlier section 73 amendment) is not treated as 'retained parts of in-use buildings', where it has been in lawful use for a continuous period of at least six months at the point at which a later section 73 amendment is granted.

As was previously the case, the amount of Levy that is payable is calculated by multiplying the net additional internal floor space by the rate for a particular development type as set out in the relevant charging schedule. To calculate this, collecting authorities should apply an index of inflation to keep the Levy responsive to market conditions. From 2020 onwards, the index figure for a given calendar year will be the figure for 1 November for the preceding calendar year in the RICS Building Index for CIL published from time to time by the Royal Institution of Chartered Surveyors. This index will not be retrospective and where development was first permitted prior to 2020 under a charging schedule indexed to the existing BCIS All In Tender Price Index, the existing indexed rate should be used for the purpose of calculation.

The procedures and sequencing are set out in the box below:

Schedule 1 Paragraph (1)

(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times Ip}{Ic}$$

where—

A = the deemed net area chargeable at rate R, calculated in accordance with sub-paragraph (6);

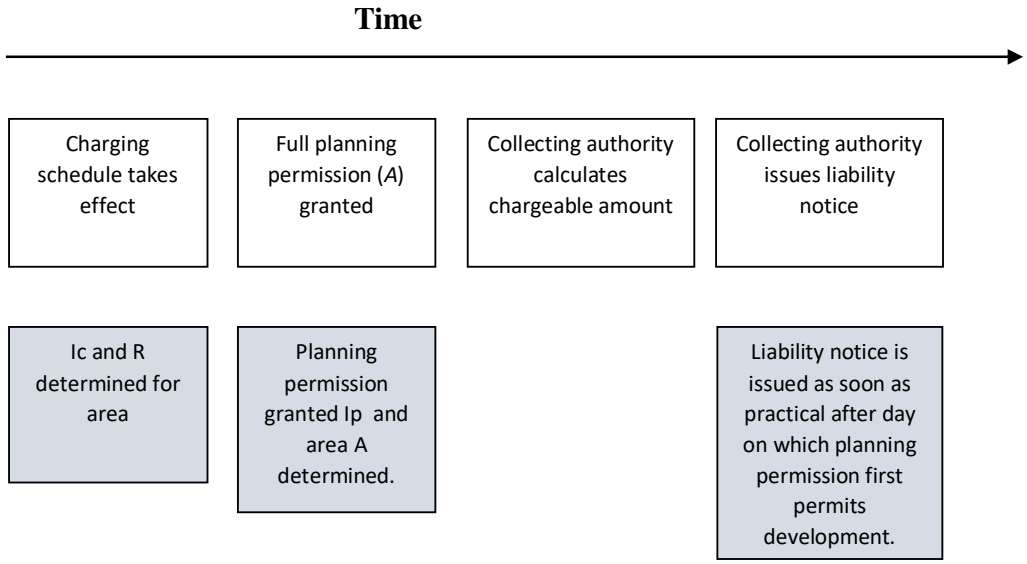
Ip = the index figure for the calendar year in which planning permission was granted; and

Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect.

(10) "relevant charging schedules" means the charging schedules which are in effect—

(i) at the time planning permission first permits the chargeable development, and

(ii) in the area in which the chargeable development will be situated;



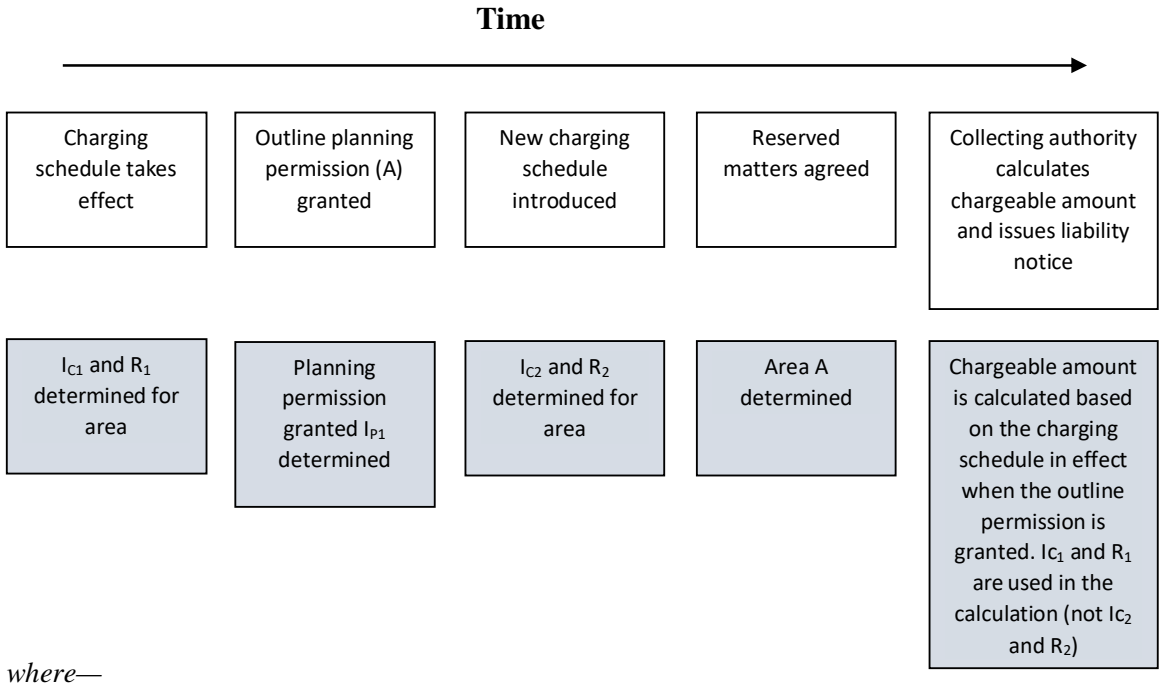
2. Chargeable amount: outline permissions where first permits date is after new charging schedule

There are situations where an outline planning permission has been granted in an area that has adopted CIL, but before the reserved matters have been agreed, a new charging schedule with new rates comes into effect. The CIL Regulations define first permitting development as the point at which reserved matters have been agreed. However, the index Ip is determined from the point at which the outline planning permission is granted. If the calculation of the chargeable amount was based on the rates in the new charging schedule, with the index Ic for the year the new charging schedule came into effect, there would be an unintended

distortionary effect when calculating the chargeable amount because the index for inflation Ip/Ic would be less than 1.

To avoid this potentially deflationary effect, paragraph (2) provides that in these circumstances the original charging schedule should be used.

Outline permissions where the first permits date is after a new charging schedule is introduced (Schedule 1(2))



where—

A = the deemed net area chargeable at rate R;

Ip_1 = the index figure for the calendar year in which outline planning permission was granted;

Ic_1 = the index figure for the calendar year in which the charging schedule containing rate R_1 took effect.

R_2 = the rate introduced by the new charging schedule

Ic_2 = the index figure for the calendar year in which the new charging schedule containing rate R_2 took effect.

With a phased planning permission, each phase is a separate chargeable development. The relevant rates, including indexation, are those set out in the charging schedule which was in effect at the time of grant of planning permission (whether a full permission or in outline).

3. Chargeable amount etc: 'amended' planning permissions

The 2019 regulations ensure that when a section 73 planning permission changes the chargeable amount for a development, for instance, by increasing floorspace, the new floorspace should be charged at the latest indexed rate, while the remainder of the floorspace should be charged at the rate in place when that element of the development was first permitted. Any decreases in chargeable amount, for instance reduced floorspace, should be

charged at the rate in place when the development was first permitted. In order to establish whether the chargeable amount has changed, Paragraph 3 of Schedule 1 (which is an amended version of what was regulation 9(8) of the 2010 Regulations) is used to compare the new permission with the previous permission, to identify the change in liability. This involves the comparison of 'notional amounts' for both the earlier planning permission and the section 73 permission as if they were both granted on the same day as the earlier permission. By comparing permissions as if they were granted on the same day, we compare like with like and remove any effects due to indexation.

When calculating the notional amounts any applicable reliefs which have been applied for and granted in relation to either permission should be taken account – although the amount of the applicable relief for the section 73 permission should be calculated as if the relief was applied on the same date as the earlier permission – as with the chargeable amount.

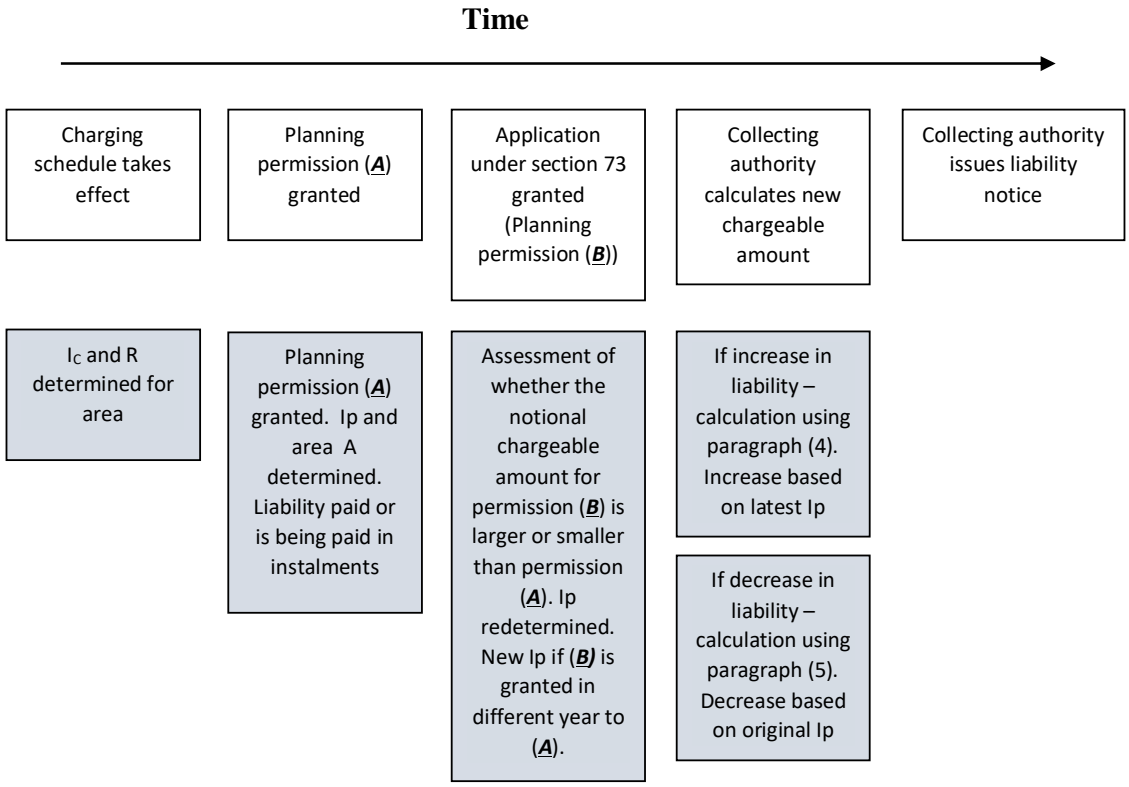
If the notional amount is the same, the chargeable amount is the amount shown on the most recent liability notice for the previous development.

If the notional amount has increased the provisions in paragraph 4 should be used to calculate the chargeable amount for the section 73 permission.

If the notional amount has decreased, paragraph 5 applies.

The procedure and sequencing are set out in the box below:

Chargeable amount where a chargeable development is amended through a section 73 permission



where—

A = the deemed net area chargeable at rate R;

Ip = the index figure for the calendar year in which planning permission was granted;

Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect;

*(**A**) = in-CIL planning permission (i.e. planning permission granted after CIL comes into effect);*

*(**B**) = in-CIL planning permission amending (**A**) granted under section 73.*

Sub-paragraphs (6) and (7) of paragraph 3 deal with circumstances where the earlier permission was still in outline (i.e. reserved matters have not been agreed) when a section 73 permission is granted. The effect is that the section 73 permission is treated as the first permission and as though it was granted on the same day as the outline permission. However, sub-paragraph (8) ensures that if there is a further section 73 granted, the comparison of notional amounts should be between the first and second section 73 permissions and not the original outline permission.

The final sub-paragraphs provide a definition of "applicable relief" and also make clear that the provisions of paragraph 3 do not apply to transitional cases (i.e. where the original permission was granted before a charging schedule came into effect and is subsequently amended through section 73 after a charging schedule is in effect) which are dealt with in paragraphs 7 and 8.

4. Amount of CIL payable: section 73 permissions which increase liability

As mentioned above, paragraph 4 of Schedule 1 is used to calculate the chargeable amount where the paragraph 3 exercise shows a section 73 permission increases liability. Paragraph 4 introduces the X-Y+Z equation to undertake the calculation. The X-Y element is a comparison between the liabilities of the new and previous permission as if they were both charged at the latest indexed rates. This is used to identify the additional liability which should be charged at the latest rate of indexation. Z is the existing liability as set out in the most recent liability notice for the earlier permission. The full equation therefore sums the additional liability generated by the section 73 permission, which is charged at the new rate, and the existing liability, which is charged at the rate(s) set out in the previous liability notice. This avoids the need, where there have been multiple section 73 permissions over a number of years, of having to recalculate the change in liability for each section 73 permission.

A similar calculation is undertaken for applicable reliefs. The outcome of this calculation is deducted from the chargeable amount calculated above. The two outcomes are derived separately so that it is clear how much relief might be lost if there is a disqualifying event. The amount of relief should be included on the liability notice.

Sub-paragraph (5) provides that if there is a further section 73 permission, the provisions in the paragraph apply to that permission in the same way as they applied to the previous section 73 permission.

The final sub-paragraph provides that the provisions of paragraph 4 do not apply to transitional cases which are covered by different provisions in paragraphs 7 and 8.

5. Amount of CIL payable: section 73 permissions which reduce liability

As mentioned above, paragraph 5 of Schedule 1 is used to calculate the chargeable amount where the paragraph 3 exercise shows a section 73 permission decreases the liability. The X-Y+Z equation is used to identify the reduction in liability which should be charged at the indexation at the time of the original permission.

As with paragraph 4, the first step is to identify the difference in liability between the new and amended permissions (X-Y). In this case, the comparison is made on the basis that both permissions were permitted on the same day as the original planning permission. This could be the permission being amended or an even earlier one where there have been multiple section 73 permissions.

The second step is then to add the liability as set out in the latest liability notice for the permission being amended (Z) to the result of the X-Y calculation.

A similar calculation is undertaken for applicable reliefs. The outcome of this equation is deducted from the chargeable amount calculated above. The two outcomes are derived separately so that the amount of relief that might be lost if there is a disqualifying event is clear. The amount of relief should be included on the liability notice.

Paragraph 5(8)(b) clarifies that when identifying the amount of relief for the latest permission, this should include any relief carried over under new regulation 58ZA – i.e. in relation to

(a) an exemption for residential annexes or extensions;
(b) an exemption for self-build;
(c) charitable relief;
(d) social housing relief.

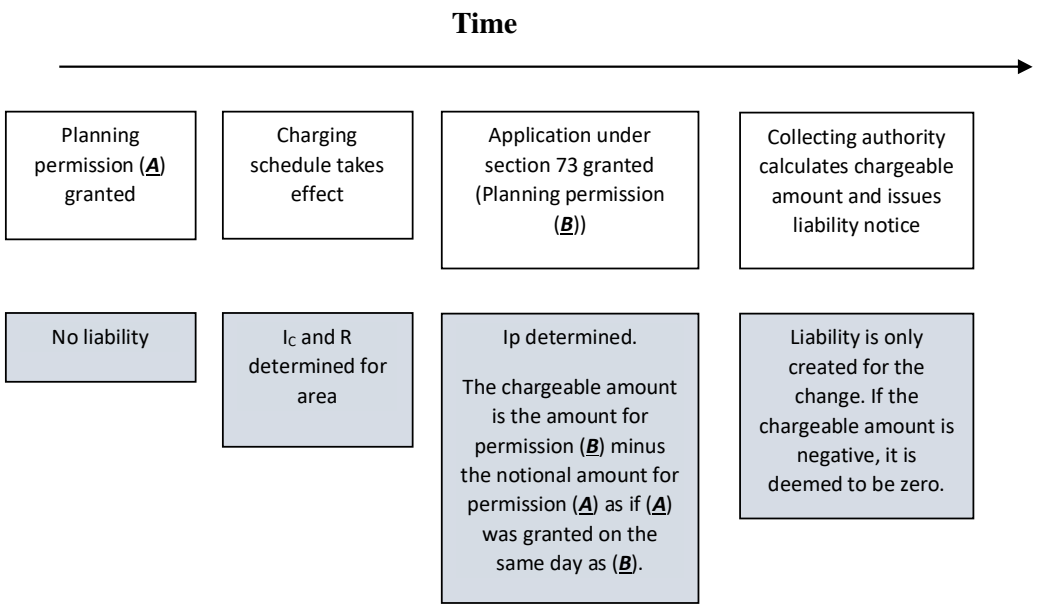
6. Social housing relief: calculating qualifying amount

Paragraph 6 of Schedule 1 was formerly regulation 50 of the 2010 Regulations and sets out the procedure for calculating the qualifying amount for social housing relief. It has been moved to Schedule 1 so that the current approach to all calculations can be found together in the same schedule.

7. Amount of CIL payable: pre-CIL permissions 'amended' when CIL is in effect

A development which is granted planning permission when a charging schedule is not in effect in an area is not liable for CIL. However, if the local authority introduces a charging schedule, and the earlier planning permission is then amended through a section 73 permission (as in the diagram below), the Levy would only apply to any additional liability it introduces.

Pre-CIL permission amended when CIL is in effect



where—

A = the deemed net area chargeable at rate R;

Ip = the index figure for the calendar year in which planning permission was granted; and

Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect.

*(**A**) = pre-CIL planning permission*

*(**B**) = in-CIL planning permission amending (**A**) granted under section 73.*

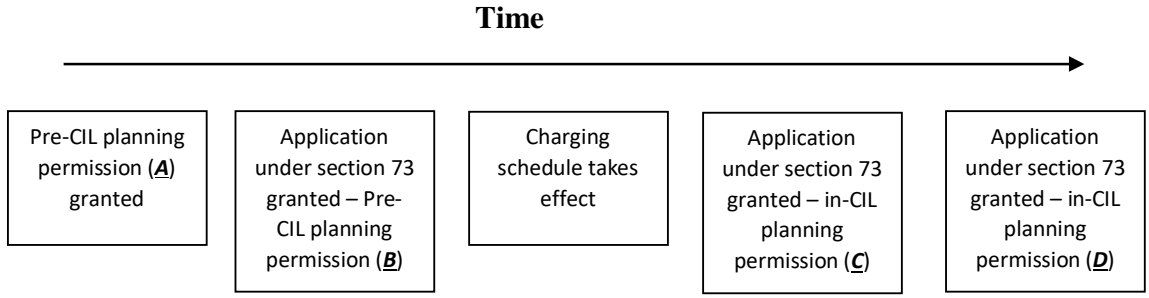
Paragraph 7 of Schedule 1 largely replaces what was regulation 128A of the 2010 Regulations and is used to determine the liability for a section 73 permission granted after a charging schedule has come into effect, where the original planning permission (either outline or full permission) were granted before a charging schedule was in effect.

Sub-paragraph (3) provides for the 'base' situation where the post-CIL section 73 permission amends a pre-CIL permission. The first step is to calculate a notional chargeable amount for the pre-CIL permission, as if the pre-CIL permission was granted on the same day as the later section 73 permission (i.e. using the latest indexation). The same calculation is undertaken for the section 73 permission. The former figure is then deducted from the latter to give the chargeable amount for the development. This means there is no CIL charge on the original pre-CIL development, but there is a CIL charge for any additional liabilities created through the post-CIL section 73 permission. It is not appropriate to charge liability for the pre-CIL permitted floorspace as local authorities will have had the opportunity to negotiate a section 106 planning obligation.

A similar exercise is carried out to calculate any applicable relief. Sub-paragraph (6)(b) provides that apart from social housing relief, a charging authority may not apply a notional relief for the pre-CIL permission where the type of relief the authority is considering applying is not applied in relation to the latest permission.

Sub-paragraph (7) deals with the situation where the latest section 73 permission amends an earlier post-CIL section 73 permission. The same calculation as above is used, except that the comparison is between the latest section 73 permission and the most recently granted pre-CIL permission (not the in-CIL permission it amends). In this way, any increase in liability post CIL coming into effect should be charged at the latest rate of indexation.

Pre-CIL permissions amended when CIL is in effect – multiple section 73 amendments



*In transitional cases, where an in-CIL permission amends an earlier in-CIL permission (in this case, permission (**D**) amends permission (**C**)), the calculation of liability involves the latest section 73 permission (**D**) and the most recently granted pre-CIL permission (**B**).*

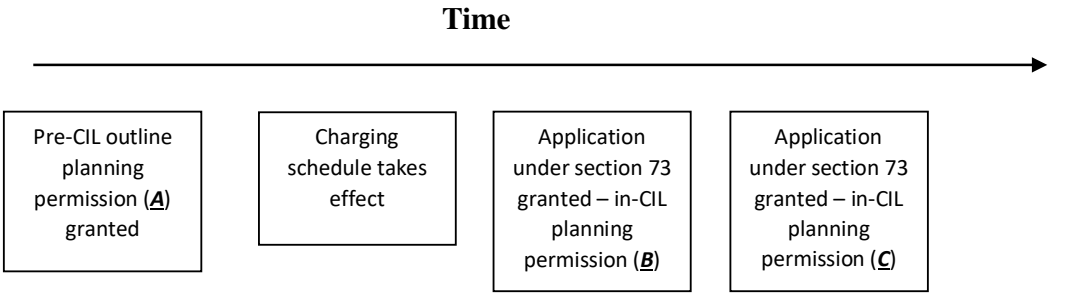
If the outcome of the calculation is negative, the amount of CIL payable is zero (sub-paragraph (8)).

Sub-paragraph (9) then deals with the situation where a further section 73 permission is granted. The same process as above should be followed. The section 73 permission could amend an earlier section 73 permission or even the original planning permission. In all cases

the chargeable amount is calculated by comparing the latest pre-CIL permission with the new section 73 permission.

Sub-paragraph (10) deals with the situation where the pre-CIL permission is still in outline with reserved matters not agreed when the permission is amended through a section 73 permission. In this case, if the charging authority has sufficient information to calculate the notional amount for the outline permission, they can do so. However, if there is not sufficient information, the chargeable amount for the section 73 permission should be deemed to be zero. In other words, the section 73 permission should be treated as the original pre-CIL permission (and as a pre-CIL permission CIL is not chargeable). Sub-paragraph (11), provides that this can happen only once, and subsequent section 73 permissions amending the outline permission should be treated as though they amended the first section 73 permission.

Pre-CIL outline permissions 'amended' when CIL is in effect – before reserved matters are agreed



*In this situation, where the charging authority has sufficient information to calculate the notional amount, planning permission (**B**) can be compared with the notional amount for planning permission (**A**). Where this is not possible, the first in-CIL section 73 permission (**B**) should be treated as a pre-CIL permission and the liability is zero. The liability for a subsequent section 73 permission (**C**) would involve a calculation of the difference between the chargeable amount for (**C**) and the notional amount for (**B**).*

Sub-paragraph (12) provides that if following the situation with the outline permission above, a new section 73 permission amends the pre-CIL permission, then when calculating the chargeable amount the calculation process is applied as though the latest permission amends the first full permission granted post CIL (i.e. the permission that substituted the reserved matters of the outline permission).

8. Transitional cases: pre-CIL phased permissions 'amended' when CIL is in effect

Paragraph 8 of Schedule 1 deals with phased planning permissions which were granted before CIL came into effect which are amended through section 73 permissions after a charging schedule is in effect.

It applies the same procedures as in paragraph 7 of Schedule 1 above, except that each phase is treated as a separate chargeable development.

It introduces a system of credits which can be passed between phases where there are increases and decreases in the notional liability associated with changes to different phases. If following the calculations set out in paragraph 7 above, the amount calculated is negative (i.e. a reduction in notional liability) a 'phase credit' is created which can be passed to a subsequent phase to offset a deficit there provided the developer has made an application to do so.

Under the existing system any reduction in liability in a phase would be treated as zero, whereas any increase would be charged, leading to a ratchet effect where the overall liability across all the phases may exceed the net liability for all the phases.

9. Pre-CIL permissions 'amended' when CIL in effect: appeal in relation to notional relief

Paragraph (9) provides that persons who are aggrieved at a decision to grant a notional relief can appeal on the grounds that the collecting authority has incorrectly determined the value of the notional relief.

Schedule 2 - Matters to be included in the annual infrastructure funding statement

To increase the transparency of developer contributions, contribution receiving authorities will be required to make developer contributions data publicly available by producing Infrastructure Funding Statements annually. These statements will be made up of three parts as set out in regulation 121A: the infrastructure list, the CIL report, and the section 106 report. Future guidance will add further detail and the Government is providing digital tools to support local authority monitoring and reporting.

The infrastructure list
This is a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL.

CIL report

This is a report on the previous financial year ("the reported year") which includes the following, as set out in paragraph 1 of Schedule 2:

- The total value of CIL set out in demand notices issued in the reported year
- The total amount of CIL received in the reported year
- The total amount of CIL collected before the reported year which has been allocated, and the amount which has not
- The total amount of CIL expenditure for the reported year
- The total amount of CIL allocated but not spent in the reported year
- Summary details in relation to CIL expenditure for the reported year, including the items of infrastructure CIL was spent on and how much was spent, the amount of CIL spent to repay borrowing, and the amount of CIL spent on administrative expenses
- Summary details of the items of infrastructure to which CIL has been allocated to but not spent on and how much is allocated

- The amount of CIL passed to parish councils and individuals
- Summary details of neighbourhood CIL received and spent, and the amounts allocated or spent on each item of infrastructure
- Summary details of any notices served requesting CIL receipts from parish councils, including the value requested and the funds still to be recovered
- The total amounts of CIL receipts which were retained at the end of the reported year, separated by whether they were received before or during the reported year and whether they are neighbourhood CIL or not

Section 106 report

This is a report on the previous financial year ("the reported year") which includes the following, as set out in paragraph 3 of Schedule 2:

- The total amount of money to be provided under planning obligations entered into during the reported year
- The total amount of money received from planning obligations in the reported year
- The total amount of money received before the reported year which has not been allocated
- Summary details of any non-monetary contributions to be provided under planning obligations entered into during the reported year, including details of the number of affordable housing units and school places (divided by category) to be provided
- The total amount of money received from planning obligations which was allocated but not spent in the reported year
- The total amount of money received from planning obligations which was spent
- Summary details of the items of infrastructure on which money from planning obligations has been allocated but not spent during the reported year, including the amount allocated to each item
- Summary details of money from planning obligations which was spent during the reported year, including the items of infrastructure it was spent on and the amount spent, the amount spent on repaying borrowing, and the amount spent on monitoring planning obligations
- The total money from planning obligations which was retained at the end of the reported year, and the amount allocated for the purposes of longer term maintenance ("commuted sums")

A report on highway agreements (under section 278 of the Highways Act 1980) may also be included, as set out in paragraph 4 of Schedule 2. This may contain summary details of the infrastructure to be funded or provided through agreements entered into during the reported year, as well as summary details of any infrastructure funded or provided that year.