

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

DRAFT STATUTORY INSTRUMENTS

2020 No.

**COMMUNITY INFRASTRUCTURE
LEVY, ENGLAND**

The Community Infrastructure Levy
(Amendment) (England) (No. 2) Regulations 2020

Made - - - - - ***
Coming into force - - - 16th November 2020

The Secretary of State, in exercise of powers conferred by sections 205(1), 220(3), 222(1) and 223(1) (a) of the Planning Act 2008⁽¹⁾, with the consent of the Treasury, makes the following Regulations. 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 and approved by resolution of that House.

Citation, commencement and application

- 1.—(1) These Regulations may be cited as the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2020 and come into force on 16th November 2020.
- (2) These Regulations apply in relation to England only.

Amendments to the Community Infrastructure Levy Regulations 2010

2. The Community Infrastructure Levy Regulations 2010⁽²⁾ are amended in accordance with the following provisions.
3. In regulation 2(1)—
 - (a) in the definition of “clawback period”, after sub-paragraph (aa), insert—
 - “(ab) in relation to social housing relief granted in respect of a dwelling which satisfies the criteria set out in condition six of regulation 49, the period beginning

(1) 2008 c.29. Most of the functions of the Secretary of State under Part 11 of the Planning Act 2008, in relation to Wales, were transferred to Welsh Ministers by article 44 of the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644). There are amendments to section 205 which are not relevant to these Regulations.

(2) S.I. 2010/948; as amended by S.I. 2013/982, 2014/385, 2015/836 and 2019/1103. There are other amending instruments, but none are relevant to these Regulations.

with the day on which the chargeable development is commenced and ending with the day on which that qualifying dwelling is first sold in accordance with that condition,

- (ac) in relation to social housing relief granted in respect of a dwelling under regulation 49A where the criterion in regulation 49A(2)(c)(i) is satisfied, the period beginning with the day on which the chargeable development is commenced and ending with the day on which that qualifying dwelling is first sold in accordance with that regulation,”;
 - (b) after the definition of “financial year” insert—
 - ““first sale” of a dwelling means the first material disposal of that particular dwelling other than in circumstances where regulation 52 applies,”; and
 - (c) after the definition of “social housing relief” insert—
 - ““subsequent sale” of a dwelling means a sale of that particular dwelling after its first sale.”.
4. In regulation 49—
- (a) in paragraph (2), for “five” substitute “six”; and
 - (b) after paragraph (7A) insert—
 - “(7B) Condition six is that, in England, the following criteria are met—
 - (a) the first sale of the dwelling is for no more than 70 per cent of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market); and
 - (b) a planning obligation has been entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 70 per cent of its market value.”.
5. In regulation 49A, for paragraph (2) substitute—
- “(2) For the purposes of this regulation a dwelling is a qualifying dwelling if criteria (a), (b) and (c) are met in relation to it—
 - (a) criterion (a) is that the dwelling is sold for no more than 80 per cent of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);
 - (b) criterion (b) is that the dwelling is sold in accordance with any policy published by the charging authority under regulation 49B(1)(a)(iii); and
 - (c) criterion (c) is that at least one of the following requirements is met—
 - (i) a planning obligation has been entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 80% of its market value; or
 - (ii) the liability to pay CIL in relation to the dwelling remains with the person granted discretionary social housing relief.”.
6. In regulation 53(3)—
- (a) in sub-paragraph (d), omit “or”; and
 - (b) after sub-paragraph (d) insert—
 - “(da) the disposal is a first sale of a dwelling in respect of which social housing relief has been granted under regulation 49 on the basis that the dwelling satisfies condition six in that regulation, and the first sale meets the criteria set out in paragraph (7B) of that regulation; or”.

We consent

Date

Name
Two of the Lords Commissioners of
Her Majesty's Treasury

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

Date

Name
Minister of State
Ministry of Housing, Communities and Local
Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Community Infrastructure Levy Regulations 2010 (“the 2010 Regulations”) provide for the imposition of a charge known as the Community Infrastructure Levy (“CIL”). Regulations 49 and 49A of the 2010 Regulations provides that a chargeable development is eligible for relief from liability to CIL where it comprises, or is to comprise, “qualifying dwellings”. A qualifying dwelling is currently one which meets at least one of five conditions set out in regulation 49(3) to (7A), or the criteria in regulation 49A(2). Regulation 53 of the 2010 Regulations provides that relief must be withdrawn if a dwelling ceases to be a qualifying dwelling before the end of a “clawback period” (as defined by regulation 2(1)).

These Regulations amend the 2010 Regulations to add a sixth condition to regulation 49 (regulation 4). In order to be a qualifying dwelling by virtue of this condition, the first sale of the dwelling must be for no more than 70% of the dwelling’s market value. In addition, a planning obligation under section 106 of the Town and Country Planning Act 1990 must have been entered into designed to ensure that any subsequent sale of the dwelling is for no more than 70% of its market value.

These Regulations also make amendments to the discretionary social housing relief under regulation 49A of the 2010 Regulations (regulation 5). For a dwelling to be a qualifying dwelling under the existing Regulation 49A, it must be sold for no more than 80% of its market value; it must be sold in accordance with a relevant policy published by the CIL charging authority; and liability to pay any CIL in relation to the dwelling must remain with the person granted relief under regulation 49A. These Regulations introduce, as an alternative to the last of these criteria, a requirement that a planning obligation has been entered into designed to ensure that any subsequent sale of the dwelling is for no more than 80% of its market value.

These Regulations also amend the definition of “clawback period” in regulation 2(1) of the 2010 Regulations (regulation 3(a)). Where relief is granted under condition 6 as set out in regulation 49(7B), it will be withdrawn only if the dwelling ceases to be a qualifying dwelling before being first sold in accordance with the criteria in that paragraph. Where relief is granted under regulation 49A, and a planning obligation has been entered into as mentioned in that regulation, it will be withdrawn only if the dwelling ceases to be a qualifying dwelling before being first sold in accordance with the criteria set out in regulation 49A(2).

No formal impact assessment was produced for these Regulations and one is not required as it is a financial instrument.