

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) (ENGLAND)
REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Transport 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”) by extending the period of time specified in regulation 60(7A) of those Regulations. That provision enables the Mayor of London (“the Mayor”) to spend Community Infrastructure Levy (“CIL”) receipts on repaying monies including interest, borrowed by the Greater London Authority (“GLA”) or Transport for London (“TfL”) provided that the money borrowed is for the purposes of, or in connection with, the Crossrail project (“Crossrail”). These Regulations extend the period of time specified to 31st March 2043, enabling CIL receipts to be so applied for a longer period.

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 to England only. This is because it applies to CIL collected in England only.
- 3.3 The instrument does not have any minor or consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order No. 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.
- 3.5 The Department has reached this view because the subject matter of the instrument is local taxation which has been devolved to the Scottish Parliament and Northern Ireland Assembly. Most of the Secretary of State’s functions under Part 11 of the Planning Act 2008 were transferred to Welsh Ministers on 1st April 2018.

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 Parliamentary Under Secretary of State for Transport Rachel Maclean MP has made the following statement regarding Human Rights:

“In my view the provisions of the Community Infrastructure Levy (Amendment) (England) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The 2010 Regulations, 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 and subject to a number of limited exemptions specified in the 2010 Regulations.
- 6.2 Regulation 59(2) of the 2010 Regulations provides that CIL collected on behalf of the Mayor must be spent on funding the provision, improvement, replacement, operation or maintenance of roads or other transport facilities, including, in particular, funding for the purposes of, or in connection with, scheduled works under the Crossrail Act 2008 (CIL comprised around £300m of the original Crossrail funding package).
- 6.3 In order to facilitate borrowing to fund Crossrail, regulation 3 of the Community Infrastructure Levy (Amendment) (England) Regulations 2019 inserted a new paragraph (7A) into regulation 60 of the 2010 Regulations allowing the Mayor to spend CIL received on repaying the GLA’s Crossrail borrowing, including interest, until 31st March 2033. These Regulations now extend that period to 31st March 2043.

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. The following paragraphs explain the change made by this instrument.
- 7.2 The purpose of this instrument is to enable a longer period under which the Mayor can apply CIL receipts to finance further Crossrail borrowing and repaying monies, including interest, on existing loans borrowed by the GLA or TfL for the purposes of funding Crossrail. Crossrail is a new railway line that will run from Reading in the west, through central London and out to Shenfield and Abbey Wood in the east. It will transform the rail network in London, carrying up to 200 million passengers a year, increasing the capacity of the network by up to 10%, reducing overcrowding, and helping deliver £42 billion of investment. A revised funding package of £17.6bn was agreed in December 2018.
- 7.3 In August 2020, Crossrail Ltd, the delivery body established to deliver Crossrail, provided an updated cost estimate to their Board of £1,071m above the previously agreed funding package. To maintain project continuity and provide funding certainty in a way that is fair to UK taxpayers and enables London – as the primary beneficiary

of Crossrail – to bear the additional costs, the Government, the Mayor and TfL agreed a revised funding solution which includes a proposed £825m further borrowing by the GLA, made possible by extending the amount of time the GLA can use CIL receipts to fund this additional borrowing.

- 7.4 To support this additional borrowing, and to support repayments of the existing loans where revenues have been impacted by current economic challenges, the GLA has asked that the period that CIL can be applied to Crossrail borrowing is extended from 31st March 2033 to 31st March 2043. The GLA estimate this extension will contribute around £100m for each additional year, thus enabling the GLA to fund the additional borrowing necessary to complete the Crossrail project. GLA will also continue to use their specific Business Rate Supplement for Crossrail, to support current and additional borrowing. This provision will cease to have effect on 31st March 2043. Until the expiry of the new extended term CIL is solely available for Crossrail, so while an extension will prolong the Crossrail contribution for those liable to pay CIL, it will not take funding away from other projects.

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 2018.

9. Consolidation

- 9.1 There are no current plans to consolidate the 2010 Regulations.

10. Consultation outcome

- 10.1 There has been no formal public consultation on this instrument. This instrument applies only to the Mayor of London. We have consulted with the GLA, Ministry of Housing, Communities and Local Government and Her Majesty's Treasury in the development of this instrument and are content that no further consultation is required.

11. Guidance

- 11.1 There are no plans to revise the guidance in relation to the changes made by this instrument. Current guidance on the community infrastructure levy can be found at: <https://www.gov.uk/guidance/community-infrastructure-levy>. Copies can be requested from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 As this is a financial instrument the Department is not required to undertake a formal Impact Assessment.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

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. The operation of Crossrail borrowing will be closely monitored by the Department, GLA and TfL.

15. Contact

- 15.1 Phillip London at the Department for Transport, telephone: 07748 14385 or email: Phillip.London@dft.gov.uk . For CIL policy CIL@communities.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alex Luke, Deputy Director for the Crossrail Sponsor/Client team, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.