

**2014 No. 385**

**COMMUNITY INFRASTRUCTURE LEVY, ENGLAND  
AND WALES**

**The Community Infrastructure Levy (Amendment) Regulations  
2014**

*Made* - - - - *23rd February 2014*

*Coming into force in accordance with regulation 1*

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(a).

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 205(1), 208(8), 209(5) and (6), 211(2), (4) to (6) and (7B), 215(3), 217(1) to (4), 218(2) to (6), 220(1) to (3), 222(1) and 223(1) and (2) of the Planning Act 2008, and with consent of the Treasury, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Community Infrastructure Levy (Amendment) Regulations 2014 and shall come into force on the day after the day on which they are made.

**Amendments to the Community Infrastructure Levy Regulations 2010**

2. The Community Infrastructure Levy Regulations 2010(b) are amended in accordance with the following Regulations.

**Amendment to Part 1 – introductory**

3.—(1) In regulation 2(1) (interpretation)—

(a) for the definition of “clawback period” substitute—

““clawback period” means—

- (a) in relation to the exemption for residential annexes, the period of three years beginning with the date of the compliance certificate relating to the residential annex,
- (b) in relation to the exemption for self-build housing, the period of three years beginning with the date of the compliance certificate relating to the relevant dwelling, and

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(a) 2008 c. 29. Section 205(2) was amended by section 115(2) of the Localism Act 2011 (2011 c. 20). Section 211(4) was amended by section 115(4) of the Localism Act 2011. Section 209(7B) was inserted by section 114(2) of the Localism Act 2011.

(b) S.I. 2010/948 as amended by S.I. 2011/987, 2012/2975 and 2013/982.

- (c) for all other purposes, the period of seven years beginning with the day on which a chargeable development is commenced;”;
  - (b) after the definition of “commencement notice” insert—
    - ““compliance certificate” means a certificate given under either—
    - (a) regulation 17 (completion certificates) of the Building Regulations 2010(a); or
    - (b) section 51 (final certificates) of the Building Act 1984(b)”;
  - (c) in the definition of “disqualifying event” before “48” insert “42C,” and after “53” insert “, 54D”;
  - (d) after the definition of “disqualifying event” insert—
    - ““draft infrastructure list” has the meaning given in regulation 11;”;
  - (e) after the definition of “electronic communication” insert—
    - ““exemption for residential annexes” has the meaning given in regulation 42A(4)(a);
    - “exemption for residential extensions” has the meaning given in regulation 42A(4)(b);
    - “exemption for self-build housing” means an exemption under regulation 54A;”;
  - (f) after the definition of “infrastructure” insert—
    - ““infrastructure list” means a list published by a charging authority for the purposes of paragraph (a) of the definition of “relevant infrastructure” in regulation 123(4);
    - “infrastructure payment” has the meaning given in regulation 73A;”;
  - (g) after the definition of “owner” insert—
    - ““phased planning permission” means a planning permission which expressly provides for development to be carried out in phases;”;
  - (h) after the definition of “qualifying amount” insert—
    - ““qualifying communal development” must be construed in accordance with regulation 49C;”;
  - (i) in the definition of “qualifying dwelling” after “regulations 49” insert “, 49A”;
  - (j) in paragraph (c) of the definition of “relevant land” omit “outline” and after “granted which” insert “expressly”;
  - (k) in the definition of “relief” after “means” insert “an exemption for residential annexes or extensions, an exemption for self-build housing;”;
  - (l) after the definition of “retail prices index” insert—
    - ““self-build housing” and “self-build communal development” must be construed in accordance with regulation 54A;”;
  - (m) in the definition of “social housing relief” after “regulation 49” insert “or 49A”.
- (2) Omit regulation 2(3).

#### **Amendment to Part 2 – definition of key terms**

- 4.—**(1) In regulation 8 (time at which planning permission first permits development)—
- (a) after paragraph (3) insert—
    - “(3A) In the case of a phased planning permission, planning permission first permits a phase of the development—
    - (a) for any phase of an outline planning permission which is granted in outline—

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(a) S.I. 2010/2214. Regulation 17 was amended in relation to England and certain purposes in relation to Wales, and regulation 17A was inserted, by S.I. 2012/3119. Regulation 17 was amended in relation to Wales, and regulation 17A was inserted, by S.I. 2013/747.

(b) 1984 c. 55. Section 55 was amended by S.I. 1996/1905.

- (i) on the day of final approval of the last reserved matter associated with that phase; or
  - (ii) if earlier, and if agreed in writing by the collecting authority before commencement of any development under that permission, on the day final approval is given under any pre-commencement condition associated with that phase; and
- (b) for any other phase—
- (i) on the day final approval is given under any pre-commencement condition associated with that phase; or
  - (ii) where there are no pre-commencement conditions associated with that phase, on the day planning permission is granted.

(3B) In this regulation a “pre-commencement condition” is a condition imposed on a phased planning permission which requires further approval to be obtained before a phase can commence.”;

- (b) in paragraph (4), after the first mention of “planning permission” insert “which is not a phased planning permission”; and
- (c) omit paragraphs (5) and (6).

(2) In regulation 9(4) for “outline planning permission which permits development to be implemented in phases” substitute “phased planning permission”.

### **Amendment to Part 3 – charging schedules**

**5.**—(1) In regulation 11 (interpretation and application of Part 3), after the definition of “differential rate” insert—

““draft infrastructure list” means a draft of the list that the charging authority intends to publish as their infrastructure list;”.

- (2) In regulation 13 (differential rates)—
- (a) in paragraph (1)(b) for “development.” substitute “development;”;
  - (b) after paragraph (1)(b) insert—
    - “(c) by reference to the intended gross internal area of development;
    - (d) by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.”

- (3) In regulation 14 (setting rates)—
- (a) in paragraph (1) omit the words “aim to” and “what appears to the charging authority to be”; and
  - (b) after paragraph (4) insert—
    - “(5) For the purposes of section 211(7A) of PA 2008(a), a charging authority’s draft infrastructure list is appropriate evidence to inform the preparation of their charging schedule.”

### **Amendment to Part 5 – chargeable amount**

**6.** For regulation 40 (calculation of chargeable amount), substitute—

#### **“Calculation of chargeable amount**

**40.**—(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

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(a) 2008 c. 29. Section 211(7A) was inserted by section 114(2) of the Localism Act 2011 (c. 20).

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

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

$$\frac{R \times A \times I_p}{I_c}$$

where—

$A$  = the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

$I_p$  = the index figure for the year in which planning permission was granted; and

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

(6) In this regulation the index figure for a given year is—

(a) the figure for 1st November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors<sup>(a)</sup>; or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1<sup>st</sup> November for the preceding year in the retail prices index.

(7) The value of  $A$  must be calculated by applying the following formula—

$$G_R - K_R - \frac{(G_R \times E)}{G}$$

where—

$G$  = the gross internal area of the chargeable development;

$G_R$  = the gross internal area of the part of the chargeable development chargeable at rate R;

$K_R$  = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings, and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

$E$  = the aggregate of the following—

(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and

(ii) for the second and subsequent phases of a phased planning permission, the value  $E_x$  (as determined under paragraph (8)), unless  $E_x$  is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(8) The value  $E_x$  must be calculated by applying the following formula—

$$E_P - (G_P - K_{PR})$$

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(a) Registered in England and Wales RC00487.

where—

$E_P$  = the value of E for the previously commenced phase of the planning permission;

$G_P$  = the value of G for the previously commenced phase of the planning permission; and

$K_{PR}$  = the total of the values of  $K_R$  for the previously commenced phase of the planning permission.

(9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.

(10) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

(a) whether part of a building falls within a description in the definitions of  $K_R$  and E in paragraph (7); or

(b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero.

(11) In this regulation—

“building” does not include—

(i) a building into which people do not normally go,

(ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or

(iii) a building for which planning permission was granted for a limited period;

“in-use building” means a building which—

(i) is a relevant building, and

(ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;

“new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings;

“relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

“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;

“retained part” means part of a building which will be—

(i) on the relevant land on completion of the chargeable development (excluding new build),

(ii) part of the chargeable development on completion, and

(iii) chargeable at rate R.”

## **Amendment to Part 6 – exemptions and reliefs**

7.—(1) After regulation 42 (exemption for minor development) insert—

### **“Exemption for residential annexes or extensions**

**42A.**—(1) Subject to paragraphs (5) and (6), a person (P) is exempt from liability to pay CIL in respect of development if—

(a) P owns a material interest in a dwelling (“main dwelling”);

- (b) P occupies the main dwelling as P's sole or main residence; and
  - (c) the development is a residential annex or a residential extension.
- (2) The development is a residential annex if it—
- (a) is wholly within the curtilage of the main dwelling; and
  - (b) comprises one new dwelling.
- (3) The development is a residential extension if it—
- (a) is an enlargement to the main dwelling; and
  - (b) does not comprise a new dwelling.
- (4) An exemption or relief under this regulation—
- (a) in respect of a residential annex is known as an exemption for residential annexes;
  - (b) in respect of a residential extension is known as an exemption for residential extensions.
- (5) An exemption for residential annexes or extensions cannot be granted to the extent that the collecting authority is satisfied that to do so would constitute a State aid which is required to be notified to and approved by the European Commission.
- (6) Where paragraph (5) applies, the collecting authority must grant relief up to the amount that would not constitute a State aid which is required to be notified to and approved by the European Commission.

**Exemption for residential annexes or extensions: procedure**

**42B.**—(1) A person who wishes to benefit from the exemption for residential annexes or extensions must submit a claim to the collecting authority in accordance with this regulation.

- (2) The claim must—
- (a) be received by the collecting authority before commencement of the chargeable development;
  - (b) be submitted to the collecting authority in writing on a form published by the Secretary of State (or a form substantially to the same effect);
  - (c) include the particulars specified or referred to in the form; and
  - (d) be accompanied by the documents specified or referred to in the form.
- (3) A claim under this regulation will lapse where the chargeable development to which it relates is commenced before the collecting authority has notified the claimant of its decision on the claim.

(4) As soon as practicable after receiving a valid claim, and subject to regulation 42A(5), the collecting authority must grant the exemption and notify the claimant in writing of the exemption granted (or the amount of relief granted, as the case may be).

(5) A claim for an exemption for residential annexes or extensions is valid if it complies with the requirements of paragraph (2).

(6) A person who is granted an exemption for residential annexes or residential extensions ceases to be eligible for that exemption if a commencement notice is not submitted to the collecting authority before the day the chargeable development is commenced.

**Withdrawal of the exemption for residential annexes**

**42C.**—(1) This regulation applies if an exemption for residential annexes is granted and a disqualifying event occurs before the end of the clawback period.

- (2) For the purposes of this regulation, a disqualifying event is—
- (a) the use of the main dwelling for any purpose other than as a single dwelling;

- (b) the letting of the residential annex; or
  - (c) the sale of the main dwelling or the residential annex unless they are sold at the same time to the same person.
- (3) Where this regulation applies the relevant person is liable to pay—
- (a) an amount of CIL equal to the amount of CIL that would have been payable on commencement of the development if the exemption had not been granted; or
  - (b) if regulation 42A(6) applies, the amount of the relief granted.
- (4) The relevant person must notify the collecting authority in writing of the disqualifying event before the end of the period of 14 days beginning with the day on which the disqualifying event occurs.
- (5) As soon as practicable after receiving the notice of the disqualifying event, the collecting authority must notify the relevant person in writing of the amount of CIL payable under paragraph (3).
- (6) In this regulation—
- (a) “main dwelling” and “residential annex” have the same meaning as in regulation 42A; and
  - (b) “relevant person” means the person benefitting from the exemption for residential annexes in respect of the dwelling which has ceased to qualify for the exemption.”
- (2) In regulation 46, for paragraph 2(c) substitute—
- “(c) make the document available for inspection—
- (i) at its principal office, and
  - (ii) at the places at which the document mentioned in paragraph (1) was made available for inspection under paragraph (1)(c)(ii), or, if the charging authority considers that any such places are no longer appropriate, such other places within its area as it considers appropriate; and”.
- (3) In regulation 47(7), omit “on or”.
- (4) For regulation 49 (social housing relief) substitute—

**“Social housing relief**

**49.**—(1) A chargeable development which comprises or is to comprise qualifying dwellings or qualifying communal development (in whole or in part) is eligible for relief from liability to CIL.

(2) For the purposes of this regulation a qualifying dwelling is a dwelling which satisfies at least one of the following four conditions.

(3) Condition 1 is that the dwelling is let by a local housing authority on one of the following—

- (a) a demoted tenancy;
- (b) an introductory tenancy;
- (c) a secure tenancy;
- (d) an arrangement that would be a secure tenancy but for paragraph 4ZA or 12 of Schedule 1 to the Housing Act 1985(a).

(4) Condition 2 is that all of the following criteria are met—

- (a) the dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008(b);

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(a) 1985 c. 68. Paragraph 4ZA was inserted by section 297(1) of the Housing and Regeneration Act 2008 (c. 17).  
 (b) 2008 c. 17.

- (b) the percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the 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);
  - (c) on the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and
  - (d) in any given year the annual rent payable does not increase by more than the percentage increase in the retail prices index for the year to September immediately preceding the anniversary of the day on which the lease was granted plus 0.5 per cent.
- (5) Condition 3 is that, in England—
- (a) the dwelling is let by a private registered provider of social housing on one of the following—
    - (i) an assured tenancy (including an assured shorthold tenancy);
    - (ii) an assured agricultural occupancy;
    - (iii) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988<sup>(a)</sup>;
    - (iv) a demoted tenancy; and
  - (b) one of the criteria described in paragraph (6) is met.
- (6) The criteria are—
- (a) the rent is—
    - (i) subject to the national rent regime, and
    - (ii) regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008;
  - (b) the rent is—
    - (i) not subject to the national rent regime;
    - (ii) not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008; and
    - (iii) no more than 80 per cent of market rent;
  - (c) the rent is—
    - (i) not subject to the national rent regime; and
    - (ii) regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008 which requires the initial rent to be no more than 80 per cent of the market rent of the property (including service charges).
- (7) Condition 4 is that, in Wales—
- (a) the dwelling is let by a registered social landlord (within the meaning of Part 1 of the Housing Act 1996<sup>(b)</sup>) on one of the following—
    - (i) an assured tenancy (including an assured shorthold tenancy);
    - (ii) an assured agricultural occupancy;
    - (iii) a demoted tenancy;

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<sup>(a)</sup> 1988 c. 50; Paragraph 12ZA was inserted by section 297(2) of the Housing and Regeneration Act 2008 (2008 c. 17).

<sup>(b)</sup> 1996 c. 52.

- (iv) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988; and
  - (b) the rent is no more than 80 per cent of market rent.
- (8) Any claim for relief under this regulation relating to qualifying communal development must be made either—
- (a) at the same time as the claim for relief in respect of the qualifying dwellings to which the qualifying communal development in question relates; or
  - (b) where the qualifying dwellings referred to in sub-paragraph (a) are granted permission through a phased planning permission, in relation to any phase of that permission.
- (9) Relief under this regulation, or regulation 49A, is referred to in these Regulations as social housing relief.
- (10) Social housing relief is given by deducting the qualifying amount from what would otherwise be the amount of liability to CIL that would arise in respect of the chargeable development.
- (11) In this regulation—
- “assured agricultural occupancy”, “assured shorthold tenancy” and “assured tenancy” have the same meanings as in Part 1 of the Housing Act 1988;
  - “demoted tenancy” means a tenancy to which section 20B of the Housing Act 1988(a) or section 143A of the Housing Act 1996(b) applies;
  - “introductory tenancy” has the same meaning as in Chapter 1 of Part 5 of the Housing Act 1996;
  - “market rent” means the rent which the lease might reasonably be expected to fetch at that time on the open market;
  - “national rent regime” means the rent influencing regime set out in the Social Rent Guidance within the Rent Standard Guidance as published by the Regulator of Social Housing in March 2012;
  - “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985; and
  - “unsold interest” means the freehold interest or the leasehold interest owned by the person providing the dwelling.”.

(5) After regulation 49 (social housing relief) insert—

**“Discretionary social housing relief**

**49A.**—(1) A chargeable development is eligible for relief from liability to CIL if—

- (a) discretionary social housing relief is available in the area in which the chargeable development will be situated; and
- (b) the development comprises or is to comprise qualifying dwellings or qualifying communal development (in whole or in part).

(2) For the purposes of this regulation a dwelling is a qualifying dwelling if all of the following criteria are met—

- (a) the dwelling is sold for no more than 80% 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) the dwelling is sold in accordance with any policy published by the charging authority under regulation 49B(1)(a)(iii); and

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(a) Section 20B was inserted by section 15(1) of the Anti-social Behaviour Act 2003 (c. 38).

(b) Section 143A was inserted by paragraph 1 of Schedule 1 to the Anti-social Behaviour Act 2003.

- (c) the liability to pay CIL in relation to the dwelling remains with the person granted discretionary social housing relief.
- (3) Any claim for relief under this regulation relating to qualifying communal development must be made either—
- (a) at the same time as the claim for relief in respect of the qualifying dwellings to which the qualifying communal development in question relates; or
  - (b) where the qualifying dwellings referred to in sub-paragraph (a) are granted permission through a phased planning permission, in relation to any phase of that permission.
- (4) Social housing relief is given by deducting the qualifying amount from what would otherwise be the amount of liability to CIL that would arise in respect of the chargeable development.

**Discretionary social housing relief: notification requirements**

**49B.**—(1) A charging authority which wishes to make discretionary social housing relief available in its area must—

- (a) issue a document which—
    - (i) gives notice that discretionary social housing relief is available in its area,
    - (ii) states the date on which the collecting authority will begin accepting claims for relief, and
    - (iii) to the extent that the charging authority is responsible for allocating the housing to be granted relief, includes a policy statement setting out how that housing is to be allocated in its area;
  - (b) publish the document on its website;
  - (c) make the document available for inspection—
    - (i) at its principal office, and
    - (ii) at such other places within its area as it considers appropriate; and
  - (d) send a copy of the document to the collecting authority (if it is not the charging authority).
- (2) Where a charging authority wishes to revise its policy on the allocation of the relevant housing in its area it must—
- (a) issue a document which—
    - (i) gives notice of the revised policy,
    - (ii) states the date from which the revised policy applies, and
    - (iii) includes a revision of the policy statement mentioned in paragraph (1)(a)(iii);
  - (b) publish the document on its website;
  - (c) make the document available for inspection—
    - (i) at its principal office, and
    - (ii) at the places at which the document mentioned in paragraph (1) was made available for inspection under paragraph (1)(c)(ii), or, if the charging authority considers that any such places are no longer appropriate, such other places within its area as it considers appropriate; and
  - (d) send a copy of the document to the collecting authority (if it is not the charging authority).
- (3) A charging authority which no longer wishes discretionary social housing relief to be available in its area must—
- (a) issue a statement giving notice to that effect and stating the last day on which the collecting authority will accept claims for relief;

- (b) publish the statement on its website;
- (c) make the statement available for inspection—
  - (i) at its principal office, and
  - (ii) at the places at which the document mentioned in paragraph (1) was made available for inspection under paragraph (1)(c)(ii), or, if the charging authority considers that any such places are no longer appropriate, such other places within its area as it considers appropriate; and
- (d) send a copy of the statement to the collecting authority (if it is not the charging authority).

(4) The day mentioned in paragraph (3)(a) must be no earlier than the end of the period of 14 days beginning with the day on which the statement mentioned in that paragraph is published on the charging authority’s website.

**Social housing relief: qualifying communal development**

**49C.**—(1) For the purposes of this regulation, qualifying communal development is the amount of communal development (calculated in accordance with paragraph (4)) which is for the benefit of the occupants of more than one qualifying dwelling.

(2) Subject to paragraph (3), development is communal development if it is development for the benefit of the occupants of more than one qualifying dwelling, whether or not it is also for the benefit of the occupants of relevant development.

- (3) Development is not communal development if it is—
  - (a) wholly or partly made up of one or more dwellings;
  - (b) wholly or mainly for use by the general public;
  - (c) wholly or mainly for the benefit of occupants of development which is not relevant development; or
  - (d) to be used wholly or mainly for commercial purposes.

(4) The gross internal area of any communal development that is qualifying communal development must be calculated by applying the following formula—

$$\frac{X \times A}{B}$$

where—

- X = the gross internal area of the communal development;
- A = the gross internal area of the qualifying dwellings to which the communal development relates; and
- B = the gross internal area of the qualifying dwellings and the relevant development, provided that the communal development is for the benefit of those dwellings and that relevant development.

(5) In this regulation, “relevant development” means development which is granted permission by the same planning permission as the qualifying dwellings in question, but which does not include the qualifying dwellings or the communal development.”

(6) For regulation 50, substitute—

**“Social housing relief: qualifying amount**

**50.**—(1) The amount of social housing relief for which a chargeable development is eligible (“the qualifying amount”) must be calculated in accordance with this regulation.

(2) The qualifying amount is an amount equal to the aggregate of the qualifying amounts at each of the relevant rates.

(3) The relevant rates are the rates, taken from the relevant charging schedules, at which, but for social housing relief, CIL would be chargeable in respect of the parts of the chargeable development which will comprise—

- (a) qualifying dwellings; or
- (b) qualifying communal development.

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

$$\frac{R \times A \times I_p}{I_c}$$

where—

*A* = the deemed net area chargeable at rate R;

*I<sub>p</sub>* = the index figure for the year in which planning permission was granted; and

*I<sub>c</sub>* = the index figure for the year in which the charging schedule containing rate R took effect.

(5) Paragraph (6) of regulation 40 applies to determine the index figure for a given year.

(6) Paragraphs (7) to (10) of regulation 40 apply for the purpose of calculating *A* with the following modifications—

- (a) for *G<sub>R</sub>*, substitute *Q<sub>R</sub>*, and
- (b) for *K<sub>R</sub>*, substitute *K<sub>QR</sub>*

where—

*Q<sub>R</sub>* = the gross internal areas of the part of the chargeable development which will comprise the qualifying dwellings or qualifying communal development, and in respect of which, but for social housing relief, CIL would be chargeable at rate R; and

*K<sub>QR</sub>* = the aggregate of the gross internal areas of the following—

- (i) relevant retained parts of in-use buildings; and
- (ii) for other relevant buildings, relevant retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

(7) Where—

- (a) social housing relief has been granted in relation to a development; and
- (b) planning permission is granted under section 73 of TCPA 1990 in respect of that development; and
- (c) the amount of social housing relief calculated in accordance with this regulation that the development is eligible for has not changed as a result of the planning permission referred to in sub-paragraph (b),

anything done in relation to an application for social housing relief made under regulation 51 (social housing relief: procedure) in relation to the development referred to in sub-paragraph (a) is to be treated as if it was done in relation to development that the planning permission referred to in sub-paragraph (b) relates to.

(8) In this regulation—

- (a) a reference to part of a chargeable development which will comprise qualifying dwellings includes a reference to part of a chargeable development which comprises qualifying dwellings;

- (b) “relevant retained part” means part of a building which will be—
    - (i) on the relevant land on completion of the chargeable development (excluding new build),
    - (ii) part of the chargeable development on completion, and
    - (iii) chargeable at rate R but for social housing relief;
  - (c) “building”, “in-use building”, “new build”, “relevant building” and “relevant charging schedules” have the same meaning as in regulation 40.”
- (7) In regulation 51 (social housing relief: procedure)—
- (a) in paragraph (3)—
    - (i) at the beginning of sub-paragraph (b) insert “subject to paragraph (4A),”, and
    - (ii) in sub-paragraph (d)(ii) after “regulation 49” insert “, the criteria mentioned in regulation 49A(2) or regulation 49C”;
  - (b) in paragraph (4) for “A claim” substitute “Subject to paragraph (4A), a claim”;
  - (c) after paragraph (4) insert—
 

“(4A) Paragraphs (3)(b) and (4) do not apply where the provision of qualifying dwellings or qualifying communal development in respect of a chargeable development changes after the commencement of that development.”;
  - (d) in paragraph (8)—
    - (i) in sub-paragraph (a) omit the second “and”, and
    - (ii) after sub-paragraph (a) insert—
 

“(aa) identifies the qualifying communal development (if any) and the gross internal area of that development; and”;
  - (e) after paragraph (8) insert—
 

“(9) Paragraph (10) applies where a charging authority issues a statement (in accordance with regulation 49B(3)(a)) giving notice that discretionary social housing relief will no longer be available in its area.

(10) Any claim for discretionary social housing relief received by the collecting authority on or before the day mentioned in regulation 49B(3)(a) in respect of a chargeable development situated in the charging authority’s area must be considered by the collecting authority.”.
- (8) In regulation 52 (social housing relief: disposal of land before occupation)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b) after “qualifying dwellings” insert “or qualifying communal development”, and
    - (ii) in sub-paragraph (c) after “for occupation” insert “or that qualifying communal development is made available for use”;
  - (b) in paragraph (2) after “qualifying dwellings” insert “or qualifying communal development”;
  - (c) in paragraph (3)(a)(i) after “qualifying dwellings” insert “or qualifying communal development”; and
  - (d) in paragraph (7)—
    - (i) in sub-paragraph (a) after “qualifying dwellings” insert “or qualifying communal development”, and
    - (ii) in sub-paragraph (b) after “dwellings” insert “or development (as the case may be)”.
- (9) In regulation 53 (withdrawal of social housing relief)—
- (a) in paragraph (2) after “qualifying dwelling”, in both places, insert “or qualifying communal development”;

- (b) in paragraph (3)—
    - (i) after “qualifying dwelling”, in each place it occurs, insert “or qualifying communal development”,
    - (ii) omit “or” at the end of sub-paragraph (c),
    - (iii) in sub-paragraph (d) for “2008.” substitute “2008; or”, and
    - (iv) after sub-paragraph (d) insert—
      - “(e) discretionary social housing relief has been granted in relation to the dwelling or qualifying communal development, and the dwelling or development (as the case may be) is disposed of in accordance with regulation 49A(2).”;
  - (c) in paragraph (7)—
    - (i) in sub-paragraph (a) after “qualifying dwelling” insert “(if any)”, and omit “and”,
    - (ii) after sub-paragraph (a) insert—
      - “(aa) state the gross internal area of the development which has ceased to be qualifying communal development (if any); and”, and
    - (iii) in sub-paragraph (b) after “sub-paragraph (a)” insert “or the development mentioned in sub-paragraph (aa)”; and
  - (d) in paragraph (10) after “qualifying dwelling” insert “, or the development which has ceased to be qualifying communal development”.
- (10) After regulation 54 (social housing relief: information notice) insert—

**“Exemption for self-build housing**

**54A.**—(1) Subject to paragraphs (10) and (11), a person (P) is eligible for an exemption from liability to pay CIL in respect of a chargeable development, or part of a chargeable development, if it comprises self-build housing or self-build communal development.

(2) Self-build housing is a dwelling built by P (including where built following a commission by P) and occupied by P as P’s sole or main residence.

(3) The amount of any self-build communal development that P can claim the exemption in relation to is to be determined in accordance with paragraphs (4) to (6).

(4) Subject to paragraph (5), development is self-build communal development if it is for the benefit of the occupants of more than one dwelling that is self-build housing, whether or not it is also for the benefit of the occupants of relevant development.

(5) Development is not self-build communal development if it is—

- (a) wholly or partly made up of one or more dwellings;
- (b) wholly or mainly for use by the general public;
- (c) wholly or mainly for the benefit of occupants of development which is not relevant development; or
- (d) to be used wholly or mainly for commercial purposes.

(6) The amount of any self-build communal development that P can claim the exemption in relation to must be calculated by applying the following formula—

$$\frac{X \times A}{B}$$

where—

X = the gross internal area of the self-build communal development;

A = the gross internal area of the dwelling in relation to which P is claiming the exemption for self-build housing; and

B = the gross internal area of the self-build housing and relevant development, provided that the self-build communal development is for the benefit of that housing and that relevant development.

(7) In this regulation, “relevant development” means development which is authorised by the same planning permission as the self-build housing in question, but which does not include the self-build housing or the self-build communal development.

(8) In order to claim the exemption in relation to self-build communal development, P must assume liability to pay CIL in respect of that development (and may do so jointly in respect of the chargeable development) and either claim the exemption—

- (a) at the same time as P claims the exemption in respect of the self-build housing; or
- (b) where the self-build housing is granted permission through a phased planning permission, in relation to any phase of that permission.

(9) An exemption or relief under this regulation is known as an exemption for self-build housing.

(10) An exemption for self-build housing cannot be granted to the extent that the collecting authority is satisfied that to do so would constitute a State aid which is required to be notified to and approved by the European Commission.

(11) Where paragraph (10) applies, the collecting authority must grant relief up to an amount which would not constitute a State aid which is required to be notified to and approved by the European Commission.

#### **Exemption for self-build housing: procedure**

**54B.**—(1) A person who wishes to benefit from the exemption for self-build housing must submit a claim to the collecting authority in accordance with this regulation.

(2) The claim must—

- (a) be made by a person who—
  - (i) intends to build, or commission the building of, a new dwelling, and intends to occupy the dwelling as their sole or main residence for the duration of the clawback period, and
  - (ii) has assumed liability to pay CIL in respect of the new dwelling, whether or not they have also assumed liability to pay CIL in respect of other development;
- (b) be received by the collecting authority before commencement of the chargeable development;
- (c) be submitted to the collecting authority in writing on a form published by the Secretary of State (or a form substantially to the same effect);
- (d) include the particulars specified or referred to in the form; and
- (e) where more than one person has assumed liability to pay CIL in respect of the chargeable development, clearly identify the part of the development that the claim relates to.

(3) A claim under this regulation will lapse where the chargeable development to which it relates is commenced before the collecting authority has notified the claimant of its decision on the claim.

(4) As soon as practicable after receiving a valid claim, and subject to regulation 54A(10), the collecting authority must grant the exemption and notify the claimant in writing of the exemption granted (or the amount of relief granted, as the case may be).

(5) A claim for an exemption for self-build housing is valid if it complies with the requirements of paragraph (2).

(6) A person who is granted an exemption for self-build housing ceases to be eligible for that exemption if a commencement notice is not submitted to the collecting authority before the day the chargeable development is commenced.

#### **Exemption for self-build housing: completion of development**

**54C.**—(1) A person (P) granted an exemption for self-build housing in respect of development (D) must comply with this regulation.

(2) Within six months of the date of the compliance certificate for D, P must submit a form to the collecting authority confirming that D is self-build housing or self-build communal development (as the case may be).

(3) The form referred to in paragraph (2) must—

- (a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect);
- (b) include the particulars specified or referred to in the form; and
- (c) be accompanied by the documents specified or referred to in the form.

#### **Withdrawal of the exemption for self-build housing**

**54D.**—(1) This regulation applies if an exemption for self-build housing is granted and a disqualifying event occurs before the end of the clawback period.

(2) For the purposes of this regulation, a disqualifying event is—

- (a) any change in relation to the self-build housing or self-build communal development which is the subject of the exemption such that it ceases to be self-build housing or self-build communal development;
- (b) a failure to comply with regulation 54C;
- (c) the letting out of a whole dwelling or building that is self-build housing or self-build communal development;
- (d) the sale of the self-build housing; or
- (e) the sale of the self-build communal development.

(3) Subject to paragraphs (5) and (6), where this regulation applies the exemption for self-build housing granted in respect of the self-build housing or self-build qualifying development is withdrawn and the relevant person is liable to pay—

- (a) an amount of CIL equal to the amount of CIL that would have been payable on commencement of the development if the exemption had not been granted; or
- (b) where regulation 54A(11) applies, the amount of relief granted.

(4) The relevant person must notify the collecting authority in writing of the disqualifying event before the end of the period of 14 days beginning with the day on which the disqualifying event occurs.

(5) The collecting authority must notify the relevant person at least 28 days before taking any action in relation to a disqualifying event under paragraph (2)(b), informing them of the date after which they intend to take any such action.

(6) If the relevant person submits to the collecting authority a form which complies with the requirements of regulation 54C(3) before the date mentioned in paragraph (5), the exemption is not withdrawn and the collecting authority may take no further action in relation to that disqualifying event.

(7) As soon as practicable after receiving the notice of the disqualifying event (or the expiry of the period in paragraph (5), as the case may be) the collecting authority must notify the relevant person in writing of the amount of CIL payable under paragraph (3).

(8) In this regulation “relevant person” means the person benefitting from the exemption for self-build housing in respect of the dwelling or communal development which has ceased to qualify for the exemption.”.

(11) In regulation 55(3)(c) (discretionary relief for exceptional circumstances) omit paragraph (i).

(12) In regulation 56, for paragraph (2)(c) substitute—

“(c) make the document available for inspection—

(i) at its principal office, and

(ii) at the places at which the document mentioned in paragraph (1) was made available for inspection under paragraph (1)(c)(ii), or, if the charging authority considers that any such places are no longer appropriate, such other places within its area as it considers appropriate; and”.

(13) In regulation 57 (exceptional circumstances relief: procedure)—

(a) in paragraph (4)(d) omit paragraph (i);

(b) for paragraph (6), substitute—

“(6) The claimant must—

(a) send a copy of the completed claim form to the owners of the other material interests in the relevant land (if any);

(b) notify those owners that the particulars referred to in paragraph 4(d) are available on request; and

(c) send a copy of those particulars to any owners who ask for them.”; and

(c) in paragraph (11)(a)(i) after “social housing relief” insert “or an exemption for self-build housing or residential annexes or extensions”.

#### **Amendment to Part 7 – application of CIL**

**8.—**(1) In regulation 58, in the definition of “index figure” for “regulation 40(7) and (8)” insert “regulation 40(6)”.

(2) In regulation 59B (application of regulation 59A to land payments)—

(a) in the heading after “land” insert “and infrastructure”;

(b) in paragraph (1) after “(payment in kind)” insert “and infrastructure payments accepted by a charging authority in accordance with regulation 73A(1) (infrastructure payments)”;

(c) in paragraph (2) after “land” insert “or infrastructure”; and

(d) in paragraph (3) after “land” insert “or infrastructure”.

(3) In regulation 61 (administrative expenses) after paragraph (7) insert—

“(7A) For the purposes of this regulation reference to CIL collected in a year includes the value of infrastructure provided, or to be provided, by virtue of an infrastructure payment accepted in that year.”

(4) In regulation 62 (reporting)—

(a) after paragraph (3) insert—

“(3A) For the purposes of paragraph (1), CIL collected by a charging authority includes infrastructure payments made in respect of CIL charged by that authority, and CIL collected by way of an infrastructure payment has not been spent if at the end of the reported year the infrastructure to be provided has not been provided.”; and

(b) after paragraph (4)(d) insert—

“(e) in relation to any infrastructure payments accepted by the charging authority—

(i) the items of infrastructure to which the infrastructure payments relate,

(ii) the amount of CIL to which each item of infrastructure relates.”.

## **Amendment to Part 8 – administration**

**9.**—(1) In regulation 64 (notice of chargeable development)—

- (a) in paragraph (1A)—
  - (i) at the end of sub-paragraph (a) omit “or”, and
  - (ii) after sub-paragraph (a) insert—
    - “(aa) in relation to which no CIL is payable because an exemption for residential extensions was granted; or”;
- (b) in paragraph (4), for sub-paragraphs (b) and (c) substitute—
  - “(b) any building that is relevant for the purpose of calculating E or  $K_R$  under regulation 40;”;
- (c) omit paragraph (9).

(2) In regulation 64A (preparation and service of notice of chargeable development by collecting authority)—

- (a) in paragraph (1)(c) for paragraph (ii) substitute—
  - “(ii) in relation to the development—
    - (aa) the exemption conferred by regulation 42 does not apply; or
    - (bb) the exemption for residential extensions does not reduce the CIL liability to zero.”;
- (b) in paragraph (2)(c), for paragraphs (iii) and (iv) substitute—
  - “(iii) where the collecting authority has sufficient information to do so, any building that is relevant for the purpose of calculating E or  $K_R$  under regulation 40;”.

(3) In regulation 65 (liability notice)—

- (a) in paragraph (2)(e) after “amount of any” insert “exemption for residential annexes or extensions,”;
- (b) in paragraph (2)(f)—
  - (i) after “social housing relief” insert “or an exemption for self-build housing”, and
  - (ii) in paragraphs (i) and (ii) after “relief” insert “or exemption”;
- (c) in paragraph (11)(a) after “social housing relief” insert “, or an exemption for residential annexes or self-build housing,”;
- (d) in paragraph (11)(b) after “clawback period” insert “(or, if a disqualifying event under regulation 54D(2)(b) has occurred and the collecting authority may take no further action in relation to that event); and
- (e) in paragraph (12) before “planning permission” insert “phased”.

(4) In regulation 66 (local land charges)—

- (a) in paragraph (3)(a) after “social housing relief” insert “, or an exemption for residential annexes or self-building housing,”; and
- (b) in paragraph (3)(b) after “clawback period” insert “(or, if a disqualifying event under regulation 54D(2)(b) has occurred and the collecting authority may take no further action in relation to that event).”

(5) In regulation 67 (commencement notice)—

- (a) at the end of paragraph (1A)(a) omit “or”;
- (b) after paragraph (1A)(a) insert—
  - “(aa) in relation to which no CIL is payable because an exemption for residential extensions was granted; or”.

(6) After regulation 73 (payment in kind) insert—

## **“Infrastructure payments**

**73A.**—(1) If a charging authority has made infrastructure payments available in its area it may accept one or more infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

(2) An infrastructure payment is the provision of one or more items of infrastructure by a person (P) who would be liable to pay CIL in respect of a chargeable development on commencement of that development.

(3) Where CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided.

(4) Paragraph (1) is subject to the following provisions of this regulation.

(5) A charging authority must aim to ensure that the infrastructure provided through an infrastructure payment will be used to support the development of its area.

(6) A charging authority may accept an infrastructure payment relating to infrastructure to be provided outside its area if it considers that the infrastructure will support the development of its area.

(7) A charging authority may not accept an infrastructure payment unless—

- (a) it is satisfied that P—
  - (i) has, or is likely to have, sufficient control over the land on which the infrastructure is to be constructed to enable P to provide the infrastructure, and
  - (ii) has provided the charging authority with evidence that P has obtained, or will be likely to be able to obtain, any relevant statutory authorisations that are necessary to enable the infrastructure to be constructed;
- (b) it is satisfied that the infrastructure to be provided—
  - (i) is relevant infrastructure, and
  - (ii) is not necessary to make the development granted permission by the relevant permission acceptable in planning terms;
- (c) the infrastructure will be provided to the charging authority or a person nominated by the charging authority (with that person’s agreement);
- (d) P has assumed liability to pay CIL in respect of the chargeable development; and
- (e) an agreement to provide the infrastructure is entered into before the chargeable development mentioned in paragraph (2) is commenced.

(8) The agreement mentioned in paragraph (7)(e) must—

- (a) be in writing;
- (b) state the value of the infrastructure;
- (c) state the date by which the infrastructure is to be provided and provide for payment to the charging authority of—
  - (i) the CIL cash amount, and
  - (ii) interest,in money if the infrastructure is not provided by that date, or in accordance with an agreed extension to that date; and
- (c) must satisfy the requirements of paragraph (9).

(9) The agreement mentioned in paragraph (7)(e) must ensure that by the time the CIL cash amount would be payable if it was being paid in money, an amount equal to the CIL cash amount must either—

- (a) have been used to provide the infrastructure; or
- (b) be subject to an arrangement so that—
  - (i) it can only be used by P for the purposes of providing the infrastructure,

- (ii) P cannot use that amount as a means of securing additional funding or in any other way that would benefit P,
- (iii) any interest or other benefit received in relation to that amount from that date belong to the charging authority,
- (iv) any funds subject to the arrangement remaining once the infrastructure has been provided belong to the charging authority, and
- (v) if the CIL cash amount becomes payable in money, any funds subject to the arrangement are used for that purpose.

(10) Where the infrastructure is to be provided to a person other than the charging authority, the charging authority may not enter into the agreement mentioned in paragraph (7)(e) unless it is satisfied that that person will use the infrastructure to support the development of the charging authority's area.

(11) For the purposes of this regulation, the value of the infrastructure provided must be determined by an independent person, and is the cost to P of providing that infrastructure (including related design costs) on the day the valuation takes place.

(12) In this regulation—

- (a) “the CIL cash amount” means the CIL the infrastructure payment is accepted in satisfaction of;
- (b) “independent person” has the same meaning as in regulation 73(14) (payment in kind);
- (c) infrastructure is “provided to” a person if it is completed and ownership of it is transferred to that person;
- (d) “relevant infrastructure” has the same meaning as in regulation 123 (further limitations on the use of planning obligations); and
- (e) “relevant permission” means the planning permission which grants permission for the chargeable development mentioned in paragraph (2).

### **Infrastructure payments: notification requirements**

**73B.**—(1) A charging authority which wishes to allow infrastructure payments in its area must—

- (a) issue a document which—
  - (i) gives notice that it is willing to accept infrastructure payments in its area,
  - (ii) states the date on which the charging authority will begin accepting infrastructure payments, and
  - (iii) includes a policy statement setting out the infrastructure projects, or types of infrastructure, which it will consider accepting the provision of as infrastructure payments (this may be done by reference to the charging authority's infrastructure list);
- (b) publish the document on its website;
- (c) make the document available for inspection—
  - (i) at its principal office, and
  - (ii) at such other places within its area as it considers appropriate; and
- (d) send a copy of the document to the collecting authority (if it is not the charging authority).

(2) Where a charging authority wishes to revise its policy on allowing infrastructure payments in its area it must—

- (a) issue a document which—
  - (i) gives notice of the revised policy,

- (ii) states the date from which the revised policy applies, and
    - (iii) includes a revision of the policy statement mentioned in paragraph (1)(a)(iii);
  - (b) publish the document on its website;
  - (c) make the document available for inspection—
    - (i) at its principal office; and
    - (ii) at the places at which the document mentioned in paragraph (1) was made available for inspection under paragraph (1)(c)(ii), or, if the charging authority considers that such places are no longer appropriate, such other places within its area as it considers appropriate; and
  - (d) send a copy of the document to the collecting authority (if it is not the charging authority).
- (3) A charging authority which no longer wishes to allow infrastructure payments in its area must—
- (a) issue a statement giving notice to that effect and stating the last day on which the charging authority will consider entering into an agreement under regulation 73A(7)(e);
  - (b) publish the statement on its website;
  - (c) make the statement available for inspection at the places at which the document mentioned in paragraph (1) was made available for inspection; and
  - (d) send a copy of the statement to the collecting authority (if it is not the charging authority).
- (4) The day mentioned in paragraph (3)(a) must be no earlier than the end of the period of 14 days beginning with the date on which the statement mentioned in that paragraph is published on the charging authority’s website.”
- (7) In regulation 74 (payment in kind: further provision)—
- (a) in the heading after “in kind” insert “and infrastructure payments”;
  - (b) in paragraph (1) after “land” insert “or infrastructure”;
  - (c) in paragraph (2) after “land” insert “or infrastructure”;
  - (d) after paragraph (3) insert—
 

“(3A) An infrastructure payment is deemed to have been received on the day on which the funds to be used to provide that infrastructure have either been used to provide it or are subject to an arrangement made in accordance with regulation 73A(9)(b).”;
  - (e) in paragraph (4)—
    - (i) in sub-paragraph (a) after “land payment” insert “, an infrastructure payment” and for “two” substitute “three”, and
    - (ii) in sub-paragraph (b) after “land” insert “or infrastructure”;
  - (f) in paragraph (7) after “land”, in both places, insert “or infrastructure”.
- (8) In regulation 74A (abatement) in the heading after “Abatement” insert “: section 73 applications”.
- (9) After regulation 74A insert—

**“Abatement: implementation of a different planning permission**

**74B.**—(1) This regulation applies where—

- (a) a chargeable development has been commenced under a planning permission (A);
- (b) a different planning permission (B) has been granted for development on all or part of the land on which the chargeable development under A is authorised to be carried out; and

- (c) the charging authority receives notice from a person who has assumed liability to pay CIL in relation to B that the chargeable development under A will cease to be carried out and that the chargeable development under B will commence.

(2) Where this regulation applies a person who has assumed liability to pay CIL in relation to B may request that the charging authority credits any CIL paid in relation to A against the amount due in relation to B.

(3) To be valid a request under paragraph (2) must be—

- (a) made before the chargeable development under B is commenced; and
- (b) accompanied by proof of the amount of CIL that has already been paid.

(4) Subject to the following paragraphs of this regulation, the charging authority must grant any valid request made under paragraph (2).

(5) This regulation does not apply where B is a planning permission granted under section 73 of TCPA 1990.

(6) Any CIL paid in relation to A can only be credited against the CIL due in relation to B to the extent that the CIL paid in relation to A relates to buildings (“relevant buildings”) that—

- (a) have not been completed when the request is made; and
- (b) are not taken into account in reducing the chargeable amount in relation to B through the operation of regulation 40.

(7) Where—

- (a) B is a phased planning permission; and
- (b) the amount to be credited against the CIL due in relation to B is greater than the amount due in relation to the first phase of B commenced after a request under this regulation has been granted,

the remainder must be credited against the next phase or phases of B until there is no remainder.

(8) Paragraph (9) applies where—

- (a) a request under paragraph (2), which is a valid request, is made in respect of the amount due in relation to B;
- (b) a relevant building is completed under A after the valid request is made (whether the completion occurs before or after the chargeable development under B commences); and
- (c) a reduced amount of CIL is paid in relation to B as a result of the grant of the request under this regulation.

(9) Where this paragraph applies the person who was granted the abatement under this regulation must pay to the collecting authority an amount equal to the amount of CIL paid in relation to that relevant building which was credited against the amount due in relation to B.

(10) For the purposes of this regulation the amount payable under paragraph (9), if paid, is to be treated as CIL paid in relation to B.

(11) Abatement may be granted more than once in relation to a planning permission.

(12) Paragraph (13) applies where a request under paragraph (2) in respect of the amount due in relation to B is made within the period ending three years after the grant of A and that request is granted.

(13) Where this paragraph applies, any parts of buildings which—

- (a) were demolished under A,
- (b) were taken into account in reducing the chargeable amount in relation to A through the operation of regulation 40,

(c) would have been taken into account under regulation 40 in relation to B had they not been demolished, and

(d) are not otherwise taken into account under regulation 40,

are to be taken into account under regulation 40 in relation to B as if they are parts of in-use buildings that are to be demolished before the completion of the chargeable development under B (or, if B is a phased permission, in relation to the first phase of B).

(14) The difference between the amount paid in relation to A and amount due in relation to B after any abatement has been granted under this regulation is not to be treated as an overpayment for the purposes of regulation 75.”

(10) In regulation 75 (overpayment) in paragraph (2)(b), after “land” insert “or infrastructure”.

#### **Amendment to Part 9 – enforcement**

**10.** In regulation 84 (surcharge: disqualifying events) after paragraph (5) insert—

“(5A) Where the disqualifying event occurs in relation to an exemption for residential annexes, the surcharge is payable by the relevant person within the meaning of regulation 42C(6).

(5B) Where the disqualifying event occurs in relation to an exemption for self-build housing, the surcharge is payable by the relevant person within the meaning of regulation 54D(8).”

#### **Amendment to Part 10 – appeals**

**11.**—(1) In regulation 112 (interpretation of Part 10)—

(a) in sub-paragraph (a) of the definition of “appointed person” in paragraph (1) for “115 or 116” substitute “115, 116, 116A or 116B”;

(b) after paragraph (2)(b) insert—

“(c) in the case of an appeal under regulation 116A, the person is the person who was granted the exemption for residential annexes;

(d) in the case of an appeal under regulation 116B, the person is the person who was granted the exemption for self-build housing.”; and

(c) in paragraph (3)—

(i) in sub-paragraph (a), for “or 116” substitute “, 116 or 116A”; and

(ii) after sub-paragraph (a) insert—

“(aa) in the case of an appeal under regulation 116B, the person is—

(i) the charging authority,

(ii) the collecting authority (if it is not the charging authority), or

(iii) any person that is jointly liable to pay CIL with the appellant in respect of the chargeable development to which the appeal relates;”.

(2) In regulation 113 (review of chargeable amount)—

(a) at the beginning of paragraph (9)(b) insert “subject to paragraph (9A),”;

(b) after paragraph (9) insert—

“(9A) A review may be requested after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced”; and

(c) in paragraph (10) after “will lapse if” insert “it was requested before the relevant development was commenced and”.

(3) In regulation 114 (chargeable amount: appeal)—

(a) in paragraph (3) for “A person” substitute “Subject to paragraph (3A), a person”;

(b) after paragraph (3) insert—

“(3A) A person may appeal under this regulation after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced.”; and

(c) in paragraph (4) after “will lapse if” insert “it was made before the relevant development was commenced and”.

(4) After regulation 116 (charitable relief: appeal) insert—

**“Exemption for residential annexes: appeal**

**116A.**—(1) An interested person who is aggrieved at the decision of a collecting authority to grant an exemption for residential annexes may appeal to the appointed person on the ground that the collecting authority has incorrectly determined that the development is not wholly within the curtilage of the main dwelling.

(2) An appeal under this regulation must be made before the end of the period of 28 days beginning with the date of the decision of the collecting authority on the claim for exemption for residential annexes.

(3) An appeal under this regulation will lapse if the relevant development is commenced before the appointed person has notified the appellant of the decision on the appeal.

(4) Where an appeal under this regulation is allowed the appointed person may amend the amount of exemption for residential annexes granted to the appellant.

(5) In this regulation “main dwelling” has the same meaning as in regulation 42A.

**Exemption for self-build housing: appeal**

**116B.**—(1) An interested person who is aggrieved at the decision of a collecting authority to grant an exemption for self-build housing may appeal to the appointed person on the ground that the collecting authority has incorrectly determined the value of the exemption allowed.

(2) An appeal under this regulation must be made before the end of the period of 28 days beginning with the date of the decision of the collecting authority on the claim for exemption for self-build housing.

(3) An appeal under this regulation will lapse if the relevant development is commenced before the appointed person has notified the appellant of the decision on the appeal.

(4) Where an appeal under this regulation is allowed the appointed person may amend the amount of exemption for self-build housing granted to the appellant.”

(5) In regulation 120(7) (appeal procedure) for the words from “The appellant and” to “end of the representations period;” substitute “The appointed person must have received any comments the appellant and the interested parties have on each other’s representations in writing within 14 days of the end of the representations period (or such longer period as the appointed person may in any particular case determine)”.

**Amendment to Part 11 – planning obligations**

**12.** In regulation 123 (further limitations on use of planning obligations)—

(a) in paragraph (2) after “relevant infrastructure” insert “(including, subject to paragraph (2B), through requiring a highway agreement to be entered into)”;

(b) after paragraph (2) insert—

“(2A) Subject to paragraph (2B) a condition falling within either of the following descriptions may not be imposed on the grant of planning permission—

(a) a condition that requires a highway agreement for the funding or provision of relevant infrastructure to be entered into;

- (b) a condition that prevents or restricts the carrying out of development until a highway agreement for the funding or provision of relevant infrastructure has been entered into.
- (2B) Paragraphs (2) and (2A) do not apply in relation to highway agreements to be entered into with—
- (a) the Minister, for the purposes of section 1(1) of the 1980 Act(a); or
  - (b) Transport for London.”;
- (c) in paragraph (3)—
- (i) for “A planning obligation” substitute “Other than through requiring a highway agreement to be entered into, a planning obligation”, and
  - (ii) in sub-paragraph (a) after “infrastructure project or” insert “provides for the funding or provision of a” ; and
  - (iii) in sub-paragraph (b)(ii), for “, or” substitute “or provide for the funding or provision of that”.
- (d) in paragraph (4)—
- (i) before the definition of “charging authority” insert—  
““the 1980 Act” means the Highways Act 1980(b);”,
  - (ii) after the definition of “charging authority” insert—  
““condition”, in relation to a planning permission, has the same meaning as in section 70(1)(a) of TCPA 1990;”,
  - (iii) after the definition of “determination” insert—  
““highway agreement” means an agreement under section 278 of the 1980 Act(c);”, and
  - (iv) in the definition of “relevant determination” for “6th April 2014” substitute “6th April 2015”.
  - (v) in the definition of “relevant infrastructure”, for paragraphs (a) and (b) substitute—  
“(a) where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies), those infrastructure projects or those types of infrastructure;  
(b) except where paragraph (c) applies, where no such list has been published, any infrastructure; or  
(c) in relation to any planning obligation requiring a highway agreement to be entered into or condition falling within paragraph (2A), where no such list has been published, no infrastructure.”

### **Amendment to Part 12 – Miscellaneous and transitional provisions**

**13.** In regulation 128A, for paragraph (4) substitute—

“(4) For the purpose of calculating Y, for the definition of “relevant charging schedules” in regulation 40(11) substitute—

“relevant charging schedules” means the charging schedules which are in effect—

- (i) at the time B was granted, and
- (ii) in the area in which the development will be situated;”

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(a) 1980 c.66. In relation to Wales, the functions of the Minister were transferred to the National Assembly for Wales by S.I. 1999/672, and to Welsh Ministers by paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(b) 1980 c. 66.

(c) Section 278 was substituted by section 23 of the New Roads and Street Works Act 1991 (c. 22).

## Transitional provisions

14.—(1) Regulations 3(g) and (j), 4 and 9(3)(e) do not apply in relation to a development if it was granted planning permission before these Regulations come into force.

(2) Regulation 5(2) and (3) does not apply in relation to a charging schedule if a draft charging schedule was published in accordance with regulation 16 of the 2010 Regulations before these regulations come into force.

(3) Regulations 6 and 7(6) do not apply in relation to a development if a liability notice under regulation 65 of the 2010 Regulations was issued in relation to it before these Regulations come into force.

(4) Regulation 11(5) does not apply to any appeal made under Part 10 of the 2010 Regulations before these Regulations come into force.

(5) Regulation 12(a) to (c) and (d)(v) does not apply in relation to any highway agreements entered into in relation to a charging authority's area until—

- (a) the charging authority publishes an infrastructure list after the relevant date (including by replacing or amending an existing infrastructure list); or
- (b) 6th April 2015,

whichever is the sooner.

(6) For the purposes of paragraph (5)—

- (a) a charging authority's "infrastructure list" is a list published by a charging authority for the purposes of paragraph (a) of the definition of "relevant infrastructure" in regulation 123(4) of the 2010 Regulations; and
- (b) the relevant date is two months after these Regulations come into force.

(7) For the purposes of this regulation, "the 2010 Regulations" are the Community Infrastructure Levy Regulations 2010.

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

23rd February 2014

*Nick Boles*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

We consent

13th February 2014

*Sam Gyimah*  
*Anne Milton*  
Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 11 of the Planning Act 2008 provides for the imposition of a charge known as the Community Infrastructure Levy (“the Levy”). The Community Infrastructure Levy Regulations 2010(a) (“the CIL Regulations”) implement the detail of the Levy. These Regulations amend the CIL Regulations. The CIL Regulations and these Regulations apply in relation to England and Wales only.

The changes made by these Regulations can be grouped into five broad categories: the setting of the Levy; calculation and payment of the Levy; reliefs and exemptions from the Levy; the relationship between the Levy and planning obligations and highway agreements; and appeals. The main amendments are detailed below.

### **Setting the Levy**

Regulation 5(2) allows charging authorities to set differential rates by reference to the intended floorspace of development, or the intended number of units or dwellings.

Regulation 5(3)(a) amends the test for setting Levy rates.

Regulation 5(3)(b) provides for a charging authority’s draft list of the infrastructure it intends to fund through the Levy to be used to inform the drafting of its charging schedule.

### **Calculating and paying the Levy**

Regulation 4 ensures that if any planning permission is phased, then each phase will be a different chargeable amount. Currently, this only applies in relation to outline planning permissions. Regulation 4 also changes the date at which the CIL liability is calculated for non-phased permissions. The date will now be when the permission was granted, rather than when the pre-commencement conditions are discharged.

Regulation 6 substitutes the existing regulation 40, to extend the range of existing buildings in relation to which a credit against the Levy can be given. Rather than part of a building having to be in use for a six month period in the previous 12 months, it will have to be in use for a six month period in the previous 3 years. A building will also be able to get credit where planning permission would not be required for the building to be used in the same way as the completed development will be used. The substituted regulation 40 also provides for certain credit for existing buildings that are demolished in one phase to be carried over into future phases.

Regulation 9(7) allows the Levy to be paid through the provision of infrastructure. Such an arrangement must be made in accordance with the charging authority’s published policy.

Regulation 9(9) applies if the Levy is paid in relation to a building that is not finished. The amount of Levy paid can be credited against the CIL due in relation to a revised scheme on the same site.

### **Exemptions and reliefs**

Regulation 7(4) substitutes the existing regulation 49, to ensure that rental housing provided at no more than 80% of market rent will be eligible for social housing relief.

Regulation 7(5) provides for communal development, such as stairs, common rooms and car parking, to benefit from social housing relief. This is done on a proportional basis where the communal area will be used by the occupants of qualifying dwellings and other relevant development.

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(a) S.I. 2010/948 as amended by S.I. 2011/987, 2012/2975 and 2013/982.

Regulation 7(5) also introduces a new discretionary social housing relief for certain discount market sale housing. In order to qualify, this housing must be allocated in accordance with the charging authority's published policy.

Regulation 7(7)(a)(i) and (c) allows a developer to apply to the collecting authority for a recalculation of their liability if the provision of social housing in a development changes after commencement of that development.

Regulation 7(6) substitutes the existing regulation 50, to ensure that the calculations for social housing relief are consistent with the changes to the calculations under regulation 40.

Regulation 7(11) amends the requirements relating to the discretionary relief for exceptional circumstances. There will no longer be a requirement for the cost of complying with the linked planning obligation to be greater than the relevant chargeable amount.

Regulation 7(10) introduces a new mandatory exemption for self-build housing, including communal development. This also includes a three year clawback period starting from certification of completion. Regulation 7(1) introduces new mandatory exemptions for residential annexes and extensions.

### **Highway agreements and planning obligations**

Regulation 12(a) and (b) restricts the use of highway agreements under section 278 of the Highways Act 1980. A local planning authority will not be able to use its planning powers to require a developer to enter into such an agreement in relation to infrastructure that the charging authority intends to fund through the Levy. This will operate by reference to the list produced by the charging authority for the purposes of regulation 123.

Regulation 12(d)(iv) delays by a year the date that the pooling restrictions on planning obligations will apply nationally.

### **Appeals**

Regulation 11(2) and (3) allows applications to review and appeal the chargeable amount to be made after development has commenced if planning permission for that development was only granted after commencement.

Regulation 11(5) changes the time in which parties must comment on each other's representations.

These Regulations also make some minor amendments to improve the drafting of the CIL Regulations, and consequential on the main amendments highlighted above. They also make related transitional provisions.

The Department is not required to produce an impact assessment in relation to the community infrastructure levy as it is a financial instrument.

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