

Summary

Introduction

1. The Community Infrastructure Levy (CIL) will be a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.
2. CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded.
3. Part 11 of the Planning Act 2008 provides the legislative basis for CIL. The Act enables the Secretary of State to lay regulations before Parliament establishing CIL. Developer representatives have welcomed this enabling approach to legislation, which will help to ensure CIL is a flexible instrument which can evolve and develop over time in the light of practical experience.
4. This consultation document sets out the Government's detailed proposals for CIL, and is accompanied by draft regulations. Comments are invited throughout this document on both.

Spending CIL: infrastructure

5. The Government is investing substantial additional funds to support housing growth and economic development. CIL will also provide further new resources. Estimates as to how much CIL will raise are heavily dependent on the number of local authorities that elect to charge CIL, and the rates that they charge. However, CIL is expected initially to raise hundreds of millions of pounds of extra funding per year towards the infrastructure that local communities need. While CIL will make a significant contribution to infrastructure provision, core public funding will continue to bear the main burden, and local authorities will need to utilise CIL alongside other funding streams to deliver infrastructure plans locally.
6. The Planning Act is clear that CIL may only be spent on infrastructure. The Government believes that CIL should be used to fund the infrastructure needs of development contemplated by the development plan for the area, not to remedy existing deficiencies.

7. The Government is taking action to improve both infrastructure planning and infrastructure delivery. Communities and Local Government is working with other Government departments to align funding streams and improve coordination of delivery at the local level.
8. The Government proposes that the definition of infrastructure for CIL purposes should be wide enough to enable local authorities to decide what infrastructure is appropriate for their local areas. Development can be unlocked and made sustainable by the provision of very different types of infrastructure. However, affordable housing provision should continue to be provided through the existing system of negotiated planning obligations, not through CIL.
9. A key benefit of CIL is that it can more easily fund sub-regional infrastructure – that is, larger pieces of infrastructure typically benefiting more than one local authority area. The Government proposes that local authorities should have the freedom to work together to pool contributions from CIL within the context of delivering their local development plans.
10. Timely delivery of infrastructure is also assisted by the introduction of CIL – not simply because it is a new source of income, but because it is a more predictable one. The Government considers that public sector bodies such as the Regional Development Agencies could provide funding for infrastructure and be reimbursed from a CIL income stream by the benefiting local authorities thereafter: known as “forward funding”.

Setting CIL

11. The Government proposes that those authorities who prepare development plans should be charging authorities. This includes district and unitary authorities, the London boroughs, the National Park Authorities and the Broads Authority. In Wales, the county councils, the county borough councils and the National Park Authorities will have the power to charge CIL. The Mayor of London will also have a power to charge CIL to fund certain types of strategic infrastructure. Charging authorities can choose whether or not to implement CIL.
12. There should be an up to date development plan for an area before CIL may be charged in that area. The Government has recently updated *Planning Policy Statement 12: Local Spatial Planning*, which indicates that the development plan should be supported by an infrastructure planning process to identify what infrastructure will be needed to deliver the plan. The process of setting CIL should also start with the development vision for the area set out in the development plan, and infrastructure planning should identify the likely cost of infrastructure coming forward. Taking other funding sources into account, the charging authority should identify gaps in funding

to arrive at a proposed amount to be raised from CIL, subject to an assessment of local development viability at the plan level.

13. The charging authority should at the same time prepare a draft charging schedule, which will be a new type of document within the Local Development Framework. The Government proposes that the charging schedule will not formally be part of the development plan, though in three key respects the Government proposes that the treatment of the charging schedule will be the same as that for development plan documents. These are: firstly, that the charging schedule will enjoy the same level of rigorous testing as development plan documents, including a requirement to consult and a public inquiry before an independent person; secondly, that the report of the independent person will be binding upon the charging authority, and thirdly, that the charging authority would not be under an obligation to adopt the final schedule but could instead submit revised proposals to a fresh examination if it was unhappy with the independent person's proposed changes. Ideally the independent person will be drawn from the Planning Inspectorate.

14. The charging schedule should allocate the proposed amount to be raised from CIL to each main class of development envisaged by the development plan. Charges will be expressed as a cost per square metre of floor space. Charges will be indexed to an index of inflation. In drawing up the charging schedule, the charging authority will need to be careful that CIL should not be set at such a level that it risks the delivery of its development plan, because development is rendered unviable by the charge proposed. There will therefore need to be a feedback loop between the process of developing the charging schedule and the process of infrastructure planning, and indeed the Government proposes that the two can occur together and be tested at the same time.

15. The Government is striking a careful balance between national consistency and local flexibility. To ensure consistency and simplicity the Government is minded to define at national level the descriptions of the unit of development that may be charged (or 'metrics'). It also proposes to set out exemptions, inflation indices and other similar matters at national level. However, the Government is also proposing a number of flexibilities aimed at ensuring that charging schedules can be tailored to local circumstances. These include a facility to set differential rates geographically (for example, in order not to prevent development in regeneration areas). The Government is also considering whether to make provision for exceptional circumstances where a developer cannot afford to pay the rate set out in the charging schedule. In such circumstances the Government is considering whether there could be an administrative procedure which enables a lower amount to be paid. However, the Government is clear that this route would only be available in a very limited number of genuinely very special circumstances.

16. The Government proposes that CIL will be levied on buildings rather than development more generally. For non-residential development there will however be a 'de minimis' threshold of 100 square metres below which CIL will not be payable. Householder development by homeowners will not be liable. A combination of these factors means that in practice most development permitted under the General Permitted Development Order (GPDO) will not be liable for CIL – though some will.
17. The draft regulations implement the requirements in the Planning Act 2008 for an exemption for development by charities for a charitable purpose; and the Government is also exploring in this consultation proposals for a discount for affordable housing developments.

Calculation, payment and enforcement

18. The amount of CIL due will be calculated with reference to the charging schedule when a planning permission is granted. The planning permission will determine the number of chargeable units and the charging schedule will determine the rate per square metre, so the liability will simply be one multiplied by the other, plus any indexing for inflation. Developers would be advised of the amount of liability when planning permission is granted.
19. However, payment would not be due until commencement. For simplicity and to take advantage of familiarity with the existing legislation, the definition of commencement would be the same as that set out in the Town and Country Planning Act 1990. Developers would be required to notify the charging authority of their intention to commence, as is usually the case for planning obligations currently. Developers would also be encouraged to provide details of the person who will pay CIL in advance of commencement. If no details are provided, landowners would become liable in default.
20. Payment would typically be required within a fixed time from commencement. The Government is minded to propose a 28 day 'payment window'. However, the Government is exploring the possibility that payment by instalments might also provide useful flexibility and would improve cash flow. Where development is phased (on the basis of an outline planning permission followed by reserved matters approvals), it is proposed that each phase would pay CIL separately. The Government is also exploring the possibility of payment in kind, though this presents some technical and fairness issues.
21. The Government has developed enforcement measures to ensure that CIL legislation is followed, drawing wherever possible on existing legislation. A key tool will be the potential to register CIL liability as a Local Land Charge, to ensure that subsequent purchasers of developed land and property are aware of the existence of an

outstanding liability. To ensure that those paying CIL promptly do not suffer because of late payment by others, charging authorities will also have powers to add interest and surcharges to CIL. Levels and rates will be specified nationally. The Government also expects that charging authorities will have the power to stop development, in a similar way to planning Stop Notice powers, plus other enforcement tools.

Planning obligations

22. The facility to enter into a negotiated planning obligation using section 106 of the 1990 Town and Country Planning Act will remain when CIL is introduced. This is because planning obligations can be a useful tool to ensure that the specific impacts of a development can be mitigated, allowing it to be granted permission where permission would otherwise be refused.
23. Planning obligations will also continue to be used to secure affordable housing. The Government's policy is that, in order to secure mixed communities, affordable housing should where possible be provided in kind and on the development site. Planning obligations provide the facility to tailor affordable housing contributions to the particular circumstances of the site.
24. The Government is considering whether restrictions on the use of planning obligations should be made once CIL is introduced. The Government proposes that its existing policy tests governing planning obligations should be made statutory to provide more clarity about the respective purposes of CIL and planning obligations.
25. The Government is also inviting views on whether or not there should be a further new test that all planning obligations should meet which require that a planning obligation can only be required to the extent that it solely mitigates the impact of the development in question. This would have the effect of preventing 'tariff' schemes from being based on section 106 on future. CIL would need to be used to secure contributions which have hitherto been secured through such tariffs. There would be a transitional period of at least 2 years before any such restriction would take effect.
26. The Government is also seeking views on how the planning obligations regime could be improved in its own right, including in areas such as supporting the delivery of affordable housing and skills.
27. The Government will continue to encourage local planning authorities to use planning conditions in preference to planning obligations wherever possible.

Implementation

28. Regulations implementing CIL will come into force on 6 April 2010. After that date charging authorities will be able to bring charging schedules into effect having completed the statutory procedures. However, charging authorities can already start preparatory work to ensure that they are ready to undertake formal processes when CIL becomes available.
29. CIL will demand new skills in local authorities and the Government will work with other organisations to ensure that staff have the necessary skills in good time to allow a smooth implementation of CIL. Existing work on increasing skills in local authorities can also play an important role.