

COMMUNITY INFRASTRUCTURE LEVY UPDATE

The Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is a tax on development which was introduced under the Planning Act 2008, but only became 'live' with the making of the CIL Regulations in 2010.

The purpose of CIL is to provide funding for infrastructure from development. Whilst not intended to wholly replace planning obligations imposed by local authorities under Section 106 agreements, there are restrictions on the use of planning obligations contained in the CIL Regulations.

Since CIL's introduction, the Government has sought to reform it on several occasions through CIL Amendment Regulations. The latest changes to CIL are made by the Community Infrastructure Levy (Amendment) Regulations 2014 which came into force on 23 February 2014 (the 2014 Regulations).

The 2014 amendments and implications for developers and local authorities

The 2014 Regulations bring into effect important changes to how CIL operates and the exemptions and reliefs available from CIL. We discuss below some of these changes and their implications for developers and local authorities.

Revised 'vacancy' test

The CIL Regulations include a vacancy test for calculating CIL liability so that vacant existing floorspace will result in a deduction from CIL liability for a development. This deduction only applies where the building has been in continuous lawful use for a period

of at least 6 months within a period of 12 months ending on the day planning permission first permits the development.

Under the 2014 Regulations, the Government has revised the vacancy test so that a building now only has to be in continuous lawful use for a period of 6 months within the previous 3 years.

The implication of this change is that a deduction from CIL liability will now apply to a wider range of vacant existing buildings. Buildings that may not have satisfied the previous requisite period for continued lawful use under the vacancy test, will now satisfy the revised period.

Restrictions on use of Section 278 agreements

Section 278 agreements are used by local authorities to impose obligations on developers to carry out highways works for development.

The 2014 Regulations restrict the use of Section 278 agreements to secure highways infrastructure which they are already funding through CIL.



Pooled financial contributions under Section 106 agreements

The CIL Regulations contain a deadline by which local authorities will be restricted from imposing planning obligations under Section 106 agreements which are in the form of pooled financial contributions (for example, education contributions).

The original deadline was 6 April 2014, however under the 2014 Regulations the Government has now postponed this deadline by 1 year to 6 April 2015.

This amendment should benefit those local authorities which have been lagging behind with the introduction of CIL in their administrative areas, providing them with some further breathing space before they are restricted in their use of pooled financial contributions under Section 106 agreements.

New exemptions and reliefs from CIL

The original 2010 CIL Regulations contained exemptions and reliefs from CIL in relation to social housing and charitable development.

Under the 2014 Regulations, the Government has introduced further exemptions from CIL for self-build housing and for development comprising residential annexes and extensions. Communal development such as staircases, common rooms and car parking for qualifying dwellings will also now benefit from social housing relief.



Further changes to CIL

The 2014 Regulations introduce the following further operational changes to CIL, which can be summarised as follows:

- Local authorities are now allowed to set differential CIL rates by reference to the intended floorspace of a development, or the number of units or dwellings within a development.
- Local authorities now have the option to accept the provision of infrastructure in payment of the whole or part of CIL payable on a development.
- Where a planning permission for a development is phased, then each phase of the development will now attract a separate CIL payment (previously this only applied to outline planning permissions).

What is the future of CIL?

CIL has now been operational for just under 4 years and a growing number of local authorities either have CIL in place or are seeking to introduce CIL in their administrative areas.

CIL has received much criticism since its introduction as being too complex and adding a further financial burden on development. Some commentators also argue that the level of affordable housing provision has suffered as a result of the impact that CIL is having on the viability of developments.

Clearly, the original 2010 CIL Regulations were hastily drafted given that there have since been several amendments made to these Regulations. The 2014 Regulations represent the Government's latest attempt to refine the operation of CIL so that it is fit for purpose.

We expect that this will not be the end of the Government's proposed reforms to CIL, and with an election looming next year whether or not CIL is retained in future may become an important election issue.

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