

CIL Reform - open for consultation

January 2019



Published by
Robin Barnes

On 20 December 2018 the Government opened their public consultation on reform to the Community Infrastructure Levy (CIL) regulations. The consultation can be found [here](#).

CIL is a flat rate charge that local authorities may choose to set and which is designed to help fund local and sub-regional infrastructure. CIL is charged on development which creates net additional floorspace (gross internal area) of 100 square metres or more, or creates a whole new dwelling. It was introduced through the Planning Act 2008 with the hope that it would provide for a more efficient system than local authorities negotiating planning obligations on a 'case-by case' basis.

The advertised aim of the suggested reforms is to improve the operation of CIL by reducing complexity, increasing certainty, transparency and market responsiveness and supporting swifter development. The changes are as follows:

1. The first area which the Government intends to simplify is the ease with which Councils can adopt CIL charging schedules in the first place. Just under half of local authorities have adopted a CIL charging schedule at the time of writing. The majority of charging authorities report that the initial implementation of CIL took one to two years, including two rounds of consultation. The Government therefore proposes to remove the statutory requirement to consult on a preliminary draft charging schedule.

2. The headline amendment was the removal of the 'pooling restriction'. This prevents local authorities from using any more than five section 106 obligations to fund a single infrastructure project. While the pooling restriction is intended to incentivise local authorities to introduce the CIL, it is recognised that it can have distortionary effects and lead to otherwise acceptable sites being refused planning permission. Initially the Government proposed only removing the 'pooling restriction' in areas that have adopted CIL, but has now suggested complete removal. Whilst this will certainly remove a layer of administration, it has the opposite effect of the original intention of the measure, in that it will remove the incentive to adopt a CIL charging schedule altogether.

3. The Government has also suggested a more proportionate approach to administering exemptions. The regulations allows for

certain exemptions from paying CIL, however obtaining the exemption is not automatic and relies upon developers submitting commencement notices prior to the start of work. This has led to many developments becoming liable by accident. The Government therefore suggests reducing penalties.

4. The Government also plans to implement changes to the way CIL is charged on phased development where the permission is later altered. Variations of permissions can result in increases or decreases to the sums payable across the different building phases. The current regulations cater for this by way of balancing provisions, but only where the original planning permission is secured since CIL came into force. However, the Government intends to extend these provisions to cases where development is permitted before a charging authority implemented CIL.

5. New regulations are also anticipated in regards to indexation. Where a planning permission has been varied, an increase in CIL payable will be indexed. This can result in developers being charged more for floorspace on which they have already paid CIL. The Government therefore proposes that any previously permitted floorspace continues to be charged at the rate when the development were permitted.

6. Staying with indexation, it is proposed that residential property values will be indexed against the three-year smoothed average of the annual local House Price Index. For non-residential indexation the Government proposes indexing to the Consumer Price Index.

7. To give greater accountability, the Government proposes a requirement for all local authorities (including those that have not implemented CIL) to publish an annual Infrastructure Funding Statement by 31 December each year. The Infrastructure Funding Statement would report how developer contributions have and will be applied.

8. In order to incentivise the delivery of more starter homes, the Government proposes provisions which will exempt starter homes from CIL where the dwelling is sold to individuals whose total household annual income is no more than £80,000 (£90,000 in Greater London).

It is clear from the proposed changes that the Government has listened to the grumblings of those in the development industry. The overall aim of the changes is undoubtedly to make the adoption and application of CIL simpler. Ironically however, the removal of the 'pooling restriction', arguably the most attention-grabbing amendment, may actually make the adoption of a CIL charging schedule less attractive to those Councils who have yet to make the transition. That said, removing unnecessary administration and inconsistencies in the application of CIL can only be a good thing for Councils trying to operate the system on increasingly limited budgets, and developers looking for greater speed and certainty.



Please note that these proposals relate to England only.

Maples Teesdale advise on all aspects of Town and Country Planning, including CIL and planning obligations. Should you need advice on these matters please contact Partner [John Bosworth](#).

