



# Community Infrastructure Levy (CIL) Regulations – What you need to know

## Summary and implications

CIL is a new charge introduced by the Planning Act 2008. Property owners and developers cannot afford to ignore CIL as local authorities will have draconian powers to enforce it.

Revised draft Regulations, incorporating the results of the Government consultation, were laid before Parliament on 10 February 2010. Subject to approval by the House of Commons, the Government has announced that the CIL Regulations will come into effect on 6 April 2010. Key actions and implications at this point are:

- Ensure that CIL is factored into contractual documentation.
- Consider whether there is any financial advantage in bringing forward any planning application process to pre-empt CIL.
- Consider whether the imminent changes to the existing S.106 regime will affect any of your current planning applications.
- Keep an eye on proposals to introduce CIL in any area in which you wish to develop land – local planning authorities will introduce CIL at different times and in different ways and there will be an opportunity to be involved.
- Take care when considering demolition – the timing of demolition is relevant to the level of CIL payable.
- Beware of “double charging” under CIL and the existing planning regime.

## Revisions to the draft Regulations

Key revisions to the draft Regulations include:

- The introduction of provisions designed to mitigate the risk of double charging under CIL and S.106.
- A procedure for discretionary relief in exceptional circumstances.
- Allowing land donations in lieu of CIL payments in certain cases.

## Ask a question

If you have any questions please contact

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## What is CIL?

Introduced in the Planning Act 2008, local planning authorities will be able to levy a new charge, CIL, to raise funds for local and sub-regional infrastructure. Local planning authorities will not be forced to adopt CIL but it is hard to believe that they will not exploit this new revenue stream.

## What is the current status of CIL?

Draft Regulations were laid before Parliament on 10 February 2010 and, subject to approval of the House of Commons, will come into effect on 6 April 2010.

The Conservatives have stated that they will abolish CIL. However, their proposed replacement, which is referred to in their recently-released planning green paper as a "local tariff", does not appear to be fundamentally different to CIL; both are new charges intended to partially supplant S.106 contributions.

More details of the Conservatives' proposals will no doubt emerge in due course. For now, property owners and developers cannot afford to ignore CIL or the associated changes to S.106.

## What will happen to S.106 agreements?

S.106 agreements will continue to be used, but their scope will be narrowed. Amendments to the S.106 regime will be phased in.

The first change to the S.106 regime, which will be brought into force on the same date the Regulations take effect, is a statutory "relevance" test.

As a result of this change developers may be more likely to challenge Councils' demands for S.106 contributions. Third parties will also have wider statutory grounds for challenging any planning permissions granted on the back of S.106 obligations. You should consider whether this imminent change will affect any of your current planning applications.

## Beware of "double charging"

The revised draft CIL Regulations will prevent a local planning authority from imposing a S.106 obligation in relation to the funding of certain infrastructure once CIL is in force in their area. However, there are holes in this provision and "double charging" under CIL and the existing planning regime is still a risk. You will need to take care when considering S.106 agreements, planning conditions and highways agreements.

## Who pays? How much? When?

The draft Regulations provide that:

- Liability for CIL is apportioned between the freeholder and tenants under leases which expire more than seven years after grant of the relevant planning permission.
- Alternatively, the parties can agree between them who pays and that party notifies the local planning authority that it assumes liability – note that if the liable party doesn't pay, the liability can still be enforced against the owners.
- The rates of CIL payable will be set by each local planning authority (plus, in London, by the Mayor of London, who can use CIL to raise funds for Crossrail and other transport projects).
- The charge will be made on the basis of additional floorspace – note that care will need to be taken on the timing of demolition, as this is relevant to the level of CIL payable.
- CIL is payable following commencement of development. Larger CIL liabilities are payable in up to four instalments from 60 to 240 days following commencement.

## Ensure CIL is factored into contractual documentation and due diligence

It will be necessary to make appropriate enquiries of the local authority if you are buying a site to be developed. Check whether a CIL charging schedule has been adopted by the local planning authority or what the timescale is for such adoption.

If you are negotiating the sale, purchase, letting or development of a development site, ensure that the legal documentation addresses CIL. Some relevant issues are shown in the table below.

Note that local planning authorities will have draconian powers to enforce CIL obligations including the ability issue stop notices, levy distress and apply for charging orders – the consequences of non-payment can therefore be very serious for all parties.

### Contractual issues

- Which party or parties should be liable for CIL?
- The relevant party should accept a contractual obligation to pay CIL and agree to notify the local planning authority that it has assumed liability.
- Should the liable party indemnify the other parties for CIL liability?
- What are the contractual consequences if that party fails to pay CIL?
- If the agreement is conditional upon planning consent, is there a particular level of CIL which is acceptable?

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