



Llywodraeth Cymru
Welsh Government

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Community Infrastructure Levy (CIL)

Preparation of a Charging Schedule





1. Introduction

- 1.1 The Planning Act 2008 (Part 11) provides that the Secretary of State for Communities and Local Government (CLG) may, with the consent of Her Majesty's Treasury, make regulations providing for a Community Infrastructure Levy (CIL). This is not a devolved matter. Regulations have subsequently been made on an England and Wales basis 'Community Infrastructure Levy Regulations 2010', coming into force on 6th April 2010. Amendments have been made to the regulations 'Community Infrastructure Levy (Amendment) Regulations 2011.
- 1.2 Whilst the CIL Regulations are non-devolved, the Welsh Government considers it important that in order to assist Welsh local authorities deliver infrastructure from planning to support future development, more specific guidance for Wales is necessary. This guidance sits alongside that produced by the Secretary of State for Communities and Local Government (CLG), relating specifically to the devolved development plan system in Wales.
- 1.3 The provision of infrastructure will be a key factor in delivering the development necessary to meet the needs of the communities which a local planning authority serves. County and county borough councils and national park authorities have the power to charge a levy to fund the provision of infrastructure including transport, flood defences, schools, hospitals, and other health and social care facilities. Facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities may be funded through CIL. Charging authorities can spend CIL on infrastructure projects outside the authority's area, for example on flood defence work. Different charging authorities may also pool contributions to provide infrastructure that would facilitate development in their areas.
- 1.4 CIL may be extremely useful in facilitating the provision of much needed infrastructure to support regeneration. However, it will supplement not replace public funding and is intended to fill the gaps between public funding and the costs of providing infrastructure. CIL should not be used to remedy existing deficiencies unless those deficiencies would be made more severe by new development. CIL can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure. Affordable housing cannot be funded through the levy but this should (unless amended by further regulations) be sought through Section 106 planning obligations.
- 1.5 Local planning authorities are not bound to introduce charging schedules and may choose to continue to rely on planning obligations to provide necessary infrastructure. However, post 6th April 2014 their ability to do so will be limited. The Community Infrastructure Levy (CIL) Regulations 2010¹ (as amended by the Community Infrastructure Levy (Amendment) Regulations 2011²) provide a transitional period after which planning obligations designed to collect pooled contributions from 5 or more developments may not be used to provide infrastructure which could be funded from CIL, or on the local adoption of the levy if this is before the end of the transitional period. However, **when assessing whether five separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure, local planning authorities will need to look back over agreements that have been entered into since 6th April 2010.**



- 1.6 The transitional period will end on 6th April 2014, or on the day that a local authority begins to charge CIL if this occurs sooner. After this date, where a CIL charge has been introduced a planning obligation may not constitute a reason for granting planning permission where it relates to infrastructure projects or types of infrastructure that the charging authority intends will be, or may be, wholly or partly funded by CIL. This would not apply if an authority chose not to set a CIL charge and so only Section 106 obligations were used, although in such cases no more than 5 obligations for any one project (outlined in paragraph 1.5 above) would apply after April 2014 or if CIL were introduced. A list of infrastructure proposed to be funded by CIL should be considered by the local planning authority and published on the charging authority's website. If no list is published a planning obligation may not constitute a reason for granting planning permission where it relates to any infrastructure³.
- 1.7 This guide is aimed at those authorities who are planning to introduce a charging schedule. It starts by providing advice on evidence gathering, producing the charging schedule and follows the process through to examination and adoption. This note is designed to supplement the CLG publication 'Community Infrastructure Levy Guidance, Charge setting and charging schedule procedures'⁴.

2. How to get started; the development plan, infrastructure planning and other evidence

- 2.1 A charge may be levied on development for which planning permission is granted, including from 2013 that given by a general consent such as a development order⁵. The charge is levied on the net additional increase in floor space created as a result of a development, provided the gross internal area of new build exceeds 100m². That limit does not apply to new dwellings and a charge can be levied on a single dwelling of any size. Householder development will not normally be charged as it is very likely to be below the 100m² threshold and a charge of less than £50 is deemed to be zero (i.e. not collected)⁶.
- 2.2 The levy must be charged in pounds per square metre on the net additional increase in floor space. Differential rates may be set for different areas and/or for different types of development. However, in setting a levy, charging authorities will need to strike a balance between collecting revenue and ensuring that the rates are not so high that they put development across the area at serious risk. Viability will be a key factor. **A nil rate must be based on viability evidence, not policy.**
- 2.3 Regulation 14 requires that, in setting a rate or rates, charging authorities must aim to strike what to it seems like an appropriate balance between:
- the desirability of funding from CIL (in whole or in part) the actual and expected cost of infrastructure required to support the development of its area taking into account other committed and expected sources of funding, section 106 implications and administrative costs, and
 - the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the whole area
- 2.4 For those Welsh authorities setting a levy regard must be had to guidance⁷ issued by the Secretary of State, as expressed through the UK Government's Community Infrastructure Levy Guidance⁸.
- 2.5 A charging authority needs to identify the total cost of infrastructure it wishes to fund from CIL and what other sources of funding are available. Consequently, it is very important that one of the first things a charging authority does after deciding to produce a charging schedule is to engage with infrastructure providers. Once other sources of funding are identified it should then be possible to identify a gap in funding which should inform the CIL infrastructure funding target. The Localism Bill, once enacted, will require a meaningful proportion of the CIL revenue to be directed towards "other persons" for them to spend on the infrastructure projects and facilities that are most important to them. Charging authorities may also use monies received through CIL to recoup expenses associated with its set up and on on-going administration, provided that does not exceed 5% of total receipts. They may have regard to the costs of setting-up and administering CIL when they are setting a charge and preparing a draft charging schedule.



- 2.6 Charging authorities are required to use '*appropriate available evidence*' to inform their draft charging schedule. It is likely that evidence produced to inform and support a Local Development Plan (LDP) could be used to inform a draft charging schedule. As this is likely to lead to time, cost and efficiency savings, in producing evidence to support a LDP (such as background/topic papers, land availability or viability studies) charging authorities should consider what (if any) additional information might render a document also fit to inform a charging schedule. Time will be a factor with regard to the relevance and robustness of evidence and a significant delay between the adoption of a LDP and the production of a charging schedule may mean that studies have to be re done or updated – although this will be for the authority to determine and justify to the examination.
- 2.7 Charging authorities should consider whether they have the necessary expertise to bring forward a charging schedule. There may be colleagues outside the planning department who can help with valuation and viability issues. Charging authorities could also consider working with other authorities in their area and pool resources and/or set up joint training. Building links with neighbouring authorities and the Welsh Government will be particularly important if CIL is to be spent on infrastructure in other administrative areas or on projects which will benefit more than one authority.
- 2.8 It is also necessary to think about the systems that will need to be in place to charge, collect and monitor CIL. It is likely that administering CIL will involve colleagues in finance and legal sections of the authority. It will be important to ensure that the Chief Executive, Finance Director and other senior managers are briefed as setting up and operating CIL effectively will require their support. However, it will also be important to ensure that they are aware of its limitations.
- 2.9 The administration of CIL must be open and transparent. Charging authorities must publish on their websites by 31st December each year a report on CIL for the previous financial year. As CIL should be closely associated with the adopted LDP, it is likely to make sense (and save work) if the report is part of the Annual Monitoring Report which reports on their local development plan. Charging authorities must report how much CIL revenue was received in the last financial year and how much remained at the end of the financial year. They must also report total expenditure from CIL in the preceding financial year, with details of what infrastructure CIL funded and how much CIL was spent on each item of infrastructure.

The Development Plan

- 2.10 The Welsh Government expects that the evidence base supporting a charging schedule will include an up to date development plan. It is for local planning authorities to decide whether an adopted development plan is sufficiently up to date to implement CIL. However, the age of most Unitary Development Plans, Structure and Local Plans in Wales is such that it is doubtful that they would provide a robust base for the infrastructure planning necessary to support a charging schedule.

2.11 A draft LDP would suffice if it were submitted for Examination alongside a charging schedule. Joint Examinations could lead to savings as a joint Pre Hearing Meeting and joint Hearing sessions could be held to hear evidence on such things as infrastructure and viability. The LDP Inspector could also examine the charging schedule. However, LDP Examinations can be very demanding and local planning authorities should consider whether they have the resources to service concurrent Examinations. Further, should the LDP be found to be unsound or allocated sites removed and/or new sites added during the Examination, the evidence base supporting the charging schedule may be prejudiced or the charging schedule may need significant revision.

Infrastructure Planning

2.12 LDP Wales⁹ states that, in areas where significant development is proposed, LDPs should identify any new infrastructure required to bring it forward. Local planning authorities must be able to show that they can deliver the development planned in their LDPs. LDPs should, therefore, be supported by evidence of good infrastructure planning. Done properly, infrastructure planning should also be able to be used to support a charging schedule.

2.13 A requirement for LDPs is to demonstrate that the strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base¹⁰. To provide the evidence to support the LDP, infrastructure planning should consider the infrastructure required to support development, costs, sources of funding, timescales for delivery and gaps in funding, in broad terms. It should also cover who will provide the infrastructure and be informed by and inform any strategies and investment plans of the authority and other organisations. Whilst infrastructure planning is not a CIL requirement, it will assist determining an appropriate CIL charge and is considered good practice. Infrastructure planning of a scale appropriate to demonstrate delivery of the LDP should identify, as far as possible:

- infrastructure needs and costs;
- phasing of development;
- funding sources; and
- responsibilities for delivery

2.14 It is acknowledged that some infrastructure providers can be reluctant to engage and that their spending programmes are relatively short lived compared to the life of a LDP. However, it is critical that charging authorities are proactive in involving infrastructure providers as details of costs and funding will be a key part of the evidence base. It may help to point out that being involved at an early stage is likely to help their infrastructure planning.



2.15 Evidence submitted to support a charging schedule will be in the public domain and infrastructure providers and others may be reluctant to release sensitive information. Charging authorities may have to provide estimates of costs if others will not. It may be appropriate to use comparable projects (where costs are known) and/or standard costings. Examiners will take a pragmatic approach when considering such evidence but will expect it to be based on realistic assumptions.

The Development Plan

2.16 LDPs submitted for Examination so far have been supported by evidence covering a wide range of topics. The following list includes subject areas and types of strategies and studies submitted to LDP Examinations which may also inform a charging schedule:

- Local housing market assessments
- Housing Needs Surveys/Assessments
- Housing land availability studies
- Viability studies
- Feasibility studies (including individual sites)
- Employment land availability studies
- Education (capacity/need)
- Recreation and open space needs/strategies
- Retail capacity studies
- Town centre and other regeneration strategies
- Tourism strategies
- Strategic transport assessments
- Regional Transport Plan
- Regional Waste Plan
- Evidence of discussions with landowners and developers
- Evidence of discussions with infrastructure and service providers (for example those providing flood mitigation/defences, transport, water supply and drainage)

2.17 Supplementary planning guidance regarding tariffs or contributions to be secured through planning obligations may also be useful as may the evidence used to support that guidance.

- 2.18 Studies providing evidence on viability to support affordable housing policies in LDPs have tended to be based on a limited number of sites across an authority's area. A similar approach would be appropriate should charging authorities consider that the available evidence is not sufficient. In such an exercise studies should concentrate on those sites where the imposition of CIL may have a significant impact on viability.
- 2.19 In considering viability it will be necessary to consider development costs arising from other regulatory/policy requirements (such as the Code for Sustainable Homes and affordable housing).
- 2.20 Consideration should also be given to the different values that may be achieved by different forms/types of development. Across an administrative area different locations and uses could give rise to differing levels of viability with consequential implications for the ability to vary CIL charges geographically or by use. Authorities should consider whether such an approach is appropriate, bearing in mind the CIL charging schedule should not become unduly complex. **However, it is important to reflect that it is the viability evidence which can provide evidence for a differential CIL charge, not policy.** It may also be the case that land values across the whole of an authority's area may already result in development becoming unviable or marginal, the implications of which need to be considered in relation to setting a CIL charge, or not. It is of primary importance that a CIL charge does not inhibit development from coming forward over a broad area (this could mean that specific developments may be unviable). Overall development across an area should not be put at serious risk.
- 2.21 The list and suggestions set out above are not exhaustive and may include matters not relevant to a particular charging schedule. It is for charging authorities to determine whether evidence is appropriate. Further detailed guidance can be found in the UK Government's Community Infrastructure Levy Guidance¹¹. Welsh local authorities should have regard to the Secretary of State guidance on CIL, as set out in section 221 of the Planning Act 2008.



3. Producing a Charging Schedule

- 3.1 The regulations state that a charging authority may determine the format and content of a charging schedule but that it must contain¹²:
- a. the name of the charging authority
 - b. the rates (set at pounds per square metre) at which CIL is to be chargeable in the authority's area;
 - c. where a charging authority sets differential rates, a map which;
 - i. identifies the location and boundaries of the zones
 - ii. is reproduced from, or based on, an Ordnance Survey map
 - iii. shows National Grid lines and reference numbers, and
 - iv. includes an explanation of any symbol or notation which it uses
 - d. an explanation of how the chargeable amount will be calculated
- 3.2 An approved charging schedule must also contain:
- a. the date on which the charging schedule was approved
 - b. the date on which the charging schedule takes effect; and
 - c. a statement that it has been issued approved and published in accordance with the regulations and Part 11 of the Planning Act 2008¹³.
- 3.3 Differential rates may be set for different areas and/or for different types of development. Where different rates are proposed for different areas those areas must be defined by reference to the economic viability of development within them. **A nil rate can only be set if it can be shown that development would not be viable or would be at the margins of viability.**
- 3.4 Charging authorities must consult on a preliminary draft charging schedule. Local planning authorities and any other person who exercises the functions of a local planning authority whose areas are within or adjoin the charging authority's area and Welsh Ministers are defined as consultation bodies in the regulations. Representations must also be invited from residents and businesses in the area and, where appropriate, voluntary bodies and associations representing businesses in the area¹⁴.
- 3.5 The regulations do not specify how consultations should be carried out. Charging authorities with an adopted LDP will have produced a Community Involvement Scheme. It may be appropriate to adopt the LDP participation strategy as it would avoid reinventing the wheel and the community ought to be familiar with the strategy. No time period is specified in the regulations but it is expected that the consultation period should be no less than 6 weeks. Charging authorities must take any representations into account before publishing a draft charging schedule for Examination.

3.6 Before submitting a draft charging schedule for Examination, charging authorities must publish the schedule and the supporting evidence and call for representations to be made within a period of at least 4 weeks¹⁵. A copy of the draft charging schedule must also be sent to the consultation bodies. Anyone making representations may request the right to be heard by the examiner¹⁶. Authorities are strongly advised to ensure that their published draft charging schedule sets out what they consider to be their final charge proposals and so avoid making changes after publication. Such changes would require the publication of a "statement of modifications" and entail an additional period for the registering of rights to be heard.



4. The Examination

- 4.1 The charging authority must appoint an examiner who, in the opinion of the authority, is independent and has the appropriate qualifications and experience. The Examination will be run on similar lines to a LDP Examination. Whilst the Planning Inspectorate has experience in running such Examinations, Planning Inspectors or other suitably qualified people can be appointed. An assistant examiner could also be appointed but only if agreed by both the examiner and the charging authority. Where the nature of the evidence makes it appropriate the examiner may request the assistance of an expert in valuation/viability.
- 4.2 Charging authorities may also need to appoint a programme officer, particularly in cases where representors have expressed a wish to be heard. The programme officer acts as a liaison between the participants, the LPA and the examiner which is important in demonstrating the examiner's independence from the charging authority. Programme officers would work under the direction of the examiner and their role would be similar to that in LDP Examinations. Guidance regarding the role and responsibilities of programme officers is available on the Planning Inspectorate's website¹⁷.
- 4.3 The charging authority must submit to the examiner¹⁸:
- a. the draft charging schedule,
 - b. a statement setting out the number of representations made in relation to the draft charging schedule and a summary of the main issues raised, or a statement that no representations were made,
 - c. copies if any representations made in relation to the draft charging schedule
 - d. where the charging schedule was modified following publication a statement of modifications and
 - e. copies of the relevant evidence
- 4.4 Hard copies of all the above must be provided. Those documents specified under a, b and d above must also be sent electronically as should those specified under c and e insofar as it is practicable to do so.
- 4.5 Preferably at the same time but as soon as possible after submission the charging authority must place a copy of the documents specified in 4.3 above at its principal office and other places it considers appropriate. It must also publish the draft charging schedule, the representations statement and statement of modifications on its website. As far as it is practicable to do so, the other documents specified in paragraph 4.3 (previous page and above) should also be placed on the website. A statement that the above documents are available for inspection and where they can be seen must also be published on the website.

- 4.6 At the same time the charging authority must notify those persons who requested to be informed that the draft charging schedule has been submitted to the examiner. Where the draft charging schedule was modified after it was published, the charging authority must publish the statement of modifications on its website and send a copy to each of the consultation bodies¹⁹.
- 4.7 Charging authorities must notify persons who have expressed a wish to be heard of the date of an examination session at least 4 weeks before it takes place. Anyone who wishes to be heard in relation to any modifications must inform the charging authority in writing within 4 weeks of the draft charging schedule being submitted to the examiner. Charging authorities must notify those persons of the date of an examination session at least two weeks before it takes place²⁰.
- 4.8 Charging authorities should discuss the Examination programme with the examiner as soon as possible after the draft charging schedule is submitted. A Pre Hearing Meeting (PHM) will only be held if one is considered to be necessary. A PHM is not likely to be required if there aren't many representations or if only a few people have expressed a wish to be heard. If a PHM is held, as with LDP Examinations, it will be used to consider procedural, programming and administrative matters. Further guidance can be found in 'Examining Local Development Plans, Procedure Guidance'²¹.
- 4.9 In light of the notification periods set out in the regulations, where a charging schedule has been modified, it would be best to wait at least 6 weeks after submission before holding a PHM. However, realistically given that an examiner will need time to assess the draft charging schedule, the supporting evidence and any representations it is likely to be at least 8 weeks before the PHM or first hearing session.
- 4.10 It is for the examiner to determine but it is envisaged that hearings will be conducted in the same way as they are in LDP Examinations. Charging authorities with an adopted LDP will be familiar with the process and further guidance can be found in 'Examining Local Development Plans, Procedure Guidance'²².
- 4.11 The role of the examiner is to ensure that:
- procedural and legislative requirements have been met as specified under section 221 of the Planning Act 2008 (this will probably be covered in a PHM if there is one),
 - the draft charging schedule and proposed rate/s are supported by and consistent with the appropriate available evidence and,
 - the evidence provided demonstrates that the proposed rate/s would not put overall development in the area at serious risk.
- 4.12 The examiner's recommendations and reasons for those recommendations must be submitted in writing to the charging authority. As with Inspectors reports on LDP Examinations the report should be submitted to the charging authority for a fact check, the principles for which are set out in 'Examining Local Development Plans, Procedure Guidance'²³.



- 4.13 The charging authority must publish the final report. Once this has been done, any errors in the report should be notified to the examiner and correctable errors may be corrected by the examiner²⁴. The examiner may approve, modify or reject the draft charging schedule. A charging authority may only approve a charging schedule if the examiner has recommended approval, has been modified in accordance with the examiners' recommendations and has met the legislative requirements. Currently, the examiners recommendations are binding (see paragraph 4.14 below) and an authority must make any specified recommendations if they intend to adopt the charging schedule. The charging authority does not have to approve the draft charging schedule (as recommended to be modified or otherwise) and may withdraw it at any time, or submit a revised charging schedule to a subsequent examination.
- 4.14 New provisions in the Localism Bill will result in examiners only able to ensure charging authorities do not set unreasonable charges. Where examiners consider charges to be unreasonable, authorities will have greater discretion on how they resolve any issues, either through varying the mix of charges applicable to different uses, or amending any differential rates.
- 4.15 Before it can take effect a charging schedule must be approved²⁵ and published by the charging authority²⁶. The charging schedule must be published on the authority's web site, notice of publication must be given by way of local advertisement and it must be made available for inspection²⁷.
- 4.16 Liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect. Where permission is granted by way of a development order (for example, in an enterprise zone, subject to their introduction in Wales), CIL is not chargeable if development commences either before 6 April 2013 or before a charging schedule comes into effect²⁸.



References

¹ [CIL Regulations 2010](#)

² [CIL \(Amendment\) Regulations 2011](#)

³ Regulation 123, CIL Regulations 2010

⁴ [CIL Guidance, Charge setting and charging schedule procedures](#)

⁵ See Regulation 9 of the CIL Regulations 2010 for the definition of chargeable development and regulation 5 for the definition of general consent.

⁶ Regulations 40 & 42, CIL Regulations 2010 & CIL (Amendment) Regulations 2011

⁷ Section 221, Planning Act 2008

⁸ [CIL Guidance](#)

⁹ [LDP Wales](#)

¹⁰ Local Development Plans Wales 2005

¹¹ [CIL Guidance](#)

¹² Regulation 12, CIL Regulations 2010

¹³ [2008 Planning Act](#)

¹⁴ Regulation 15, CIL Regulations 2010

¹⁵ Regulations 16 & 17, CIL Regulations 2010

¹⁶ Regulation 21, CIL Regulations 2010

¹⁷ [Planning Inspectorate website](#)

¹⁸ Regulation 19, CIL Regulations 2010 & CIL (Amendment) Regulations 2011

¹⁹ Regulation 5, CIL (Amendment) Regulations 2011

²⁰ Regulation 21, CIL Regulations 2010

²¹ [Planning Inspectorate website](#)



²² [Planning Inspectorate website](#)

²³ [CIL Guidance](#)

²⁴ For the definition of a correctable error see Regulation 24, CIL Regulations 2010

²⁵ Section 213 Planning Act 2008

²⁶ Section 214 Planning Act 2008, Regulation 28, CIL Regulations 2010

²⁷ Regulation 25, CIL Regulations 2010

²⁵ Regulation 128, CIL Regulations 2010

