

# The Planning Series: 12 - Community Infrastructure Levy

April 2019



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# The Planning Series:

## 12 - Community Infrastructure Levy

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### **Paper Overview:**

This briefing aims to answer some of the most common questions that Members and their constituents may have regarding the CIL.

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## What is the Community Infrastructure Levy?

The Community Infrastructure Levy (CIL) is a locally based development tax, introduced by the ***Planning Act 2008*** that came into force in England and Wales on 6 April 2010. **So far only a small number of local planning authorities in Wales have introduced the levy.**

The CIL aims to help local authorities raise funds from developers undertaking new building projects in their areas by seeking contributions from those carrying out the development work. The funds raised can be used to support development by funding the provision, improvement, replacement, operation or maintenance of a wide range of infrastructure projects of benefit to the community.

**Introduction of the CIL by a local planning authority is voluntary** and even where it is introduced, it can only be used to support the development of infrastructure that has previously been identified in an authority's Local Development Plan (LDP).

## What is the purpose of the CIL?

The CIL was introduced because the then UK Government decided that this tariff-based approach provides the best **framework to fund new infrastructure** to unlock land for growth. It considers that the CIL is fairer, faster and more transparent than the use of planning obligations (also known as Section 106 agreements). The proceeds of the levy can be used to provide new local and subregional infrastructure to support the development of an area in line with an authority's LDP.

Section 106 agreements are still used, but following the introduction of the CIL their scope has been restricted

## Who charges the CIL and on what types of development?

In Wales, local planning authorities (Unitary Authorities and National Park Authorities) have the power to charge a levy. These authorities all prepare LDPs for their areas, which include an assessment of their future infrastructure needs for which the levy may be collected.

The authority can set charges based on the size and type of new development. It can set different rates for different geographical areas and for different intended types of development. The authority should consider the potential impact of the levy on the viability of development in its area. It can set a zero rate for certain types of development in some areas.

Not all types of development are subject to the levy. Minor development of less than 100 square metres is generally exempt. Individual self-build houses are also exempt as are structures such as wind turbines. Relief from the CIL is also available in some cases (see question 7 below). Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay.

Where a charging schedule (see question 4 below) has been formally adopted, applicants for planning permission are required to provide additional information with their planning application – this helps the authority to calculate the amount payable. An authority may refuse to accept a planning application without this additional information. If the authority grants planning permission, it will also issue a CIL Liability Notice.

There is a right of appeal against various aspects of CIL charges, including appeals about whether the amount that has been calculated is correct and also about who is responsible for paying it.

## What is a charging schedule and how are the rates set?

If an authority wishes to introduce the CIL, it must first produce a **draft charging schedule** that is subject to an independent examination and must then be formally adopted.

An authority intending to collect the CIL must set out its levy rates in the charging schedule. The rates are the amount to be charged per square metre of new development. Charging authorities should consider relevant national planning policy set out in **Planning Policy Wales (PPW)** when drafting their charging schedules. The Welsh Government has produced **guidance on the production of charging schedules** to assist planning authorities in Wales.

The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure, while ensuring that the rates are not so high that they put development across the area at serious risk. The proposed rates should therefore be supported by evidence on issues such as the **economic viability** of new development and the area's **infrastructure needs**. Charging authorities must consult their local communities – including local businesses and neighbouring authorities – regarding their proposed rates for the levy. Anyone has the right to give their views on a published draft charging schedule. It must also undergo a **public examination** by the Planning Inspectorate before the charging authority can formally adopt it.

## How does the CIL differ from Section 106 agreements?

Section 106 agreements, also known as planning obligations, are legal agreements tied to individual planning permissions and impose local requirements in order to make a development acceptable in planning terms (see our separate briefing on Section 106 agreement). The CIL is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. Unlike the CIL, contributions under Section 106 agreements are negotiable.

The CIL does not replace section 106 agreements, but a planning obligation cannot be sought for infrastructure intended to be funded by the CIL, if the CIL operates in that area.

**Part 11 of the CIL Regulations 2010** introduced statutory restrictions on the use of Section 106 agreements for developments where the CIL could be charged, regardless of whether the CIL has been introduced in that area. The main reason for this is to avoid the potential situation where a developer could be paying through both the CIL and a Section 106 agreement for the same thing. The restrictions are that a planning obligation must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Regardless of whether the CIL has been introduced in an area, in April 2015 the UK Government restricted the number of Section 106 contributions that can be “pooled” to pay for new infrastructure. Previously such contributions from a number of different developments could be collected together to pay for new infrastructure, such as a new school, but now a maximum of five such contributions from April 2010 onwards can be pooled. This is to encourage further take-up of the CIL by local planning authorities.

Authorities introducing the CIL should publish a list of those projects or types of infrastructure that they intend to fund, or may fund, through the levy (known as a **Regulation 123 list**). Section 106 agreements can then only be used for matters that are directly related to a specific site and are not set out in a Regulation 123 list. Examples could include providing direct site access, flood protection and wildlife protection measures and on-site leisure provision such as open space.

## How will the CIL be spent?

The levy can be used for a variety of infrastructure, such as roads and transport, schools and educational facilities, flood defences, medical facilities, sports and recreational facilities, and open spaces, as long as these have been identified in the authority's LDP. However **affordable housing contributions** cannot be funded through the levy and where applicable these should be sought through Section 106 agreements.

Charging authorities can spend the 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 help development in their areas.

The levy is intended to focus on the provision of new infrastructure and should not be used to remedy preexisting deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. It can, however, be used to increase the capacity of existing infrastructure or to repair failing infrastructure.

The Regulations require that at least 15 per cent of the levy collected is passed to **Community Councils** where development has taken place. If there is no Community Council, the charging authority will retain the levy receipts but should engage with the relevant communities and agree with them how best to spend the funding.

## What forms of relief are available from the CIL?

The Regulations make a number of provisions for charging authorities to give relief from the levy. Some types of relief are compulsory, while others are offered at the charging authority's discretion.

Depending on the circumstances, there are a range of reliefs available to charities, social housing and to those with "exceptional circumstances". This is in addition to the exemptions for some types of development. Further information about CIL relief is available from the [UK Government website](#).

## Which local planning authorities have introduced the CIL?

Only three local planning authorities in Wales have so far introduced the CIL. These are **Caerphilly**, **Merthyr Tydfil** and **Rhondda Cynon Taf**. Two authorities, **Cardiff** and **Monmouthshire** have so far published preliminary draft charging schedules. Four authorities, **Carmarthenshire**, **Conwy**, **Newport** and **Torfaen** are consulting on preliminary draft charging schedules. The **Vale of Glamorgan** has resolved to commence work on the CIL.

## When was responsibility for the CIL devolved ?

When originally introduced in 2010 by the *Planning Act 2008* (as amended), the CIL was a non-devolved matter. However, the **Wales Act 2017** (which amended the *Government of Wales Act 2006*) devolved further powers to Wales, including the CIL. The Assembly has legislative competence to pass legislation concerning the CIL. The **Welsh Ministers (Transfer of Functions) Order 2018** also transferred the necessary executive functions to the Welsh Ministers to accompany devolution of the CIL. This came into force in May 2018.

## Key Sources

### Welsh Government

The **planning section** of the Welsh Government's website provides information including:

- **[Planning Policy Wales \(Edition 10, December 2018\)](#)**
- **[Guidance on producing a CIL charging schedule: Community Infrastructure Levy \(CIL\): Preparation of a Charging Schedule, 2011](#)**

### UK Government

The UK Government Ministry of Housing, Communities and Local Government provides information on the CIL, although some content only applies to England. This information includes:

- Guidance on how the CIL operates: **[Guidance: Community Infrastructure Levy](#)**
- Guidance on appeals against the CIL: **[Community Infrastructure Levy - Appeals](#)**

### Planning Aid Wales

**Planning Aid Wales** is a charitable organisation helping eligible individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

### Planning Portal

The **Planning Portal** is the UK Government's planning and building regulations resource. It includes information on the planning system in Wales, although some of the content only applies to England.

### Senedd Research

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