

# Community Infrastructure Levy

Quick Guide

June 2015

## 1. 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 the 6<sup>th</sup> April 2010. **So far only a small number of local planning authorities in Wales have introduced the levy.** This Quick guide aims to answer some of the most common questions that Members and their constituents may have regarding the CIL.

## 2. What is the purpose of the CIL?

The UK Government has decided that this tariff-based approach provides the best **framework to fund new infrastructure** to unlock land for growth. It considers that 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 sub-regional infrastructure to support the development of an area in line with a local authority's development plan.

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

## 3. 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 Local Development Plans 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.



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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. Further information on appeals is available from the Planning Portal website.<sup>1</sup>

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

If an authority wishes to introduce 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 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)<sup>2</sup> when drafting their charging schedules. Although responsibility for the levy is not devolved, the Welsh Government has also produced its own guidance on the production of charging schedules to assist planning authorities in Wales.<sup>3</sup>

The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure whilst 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, 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.

#### 5. 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 mitigation requirements in order to make a development acceptable in planning terms.<sup>4</sup> Unlike CIL, contributions under Section 106 agreements are negotiable.

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. Planning Policy Wales states that there is still a legitimate role for development-specific planning obligations to enable a local planning authority to be confident that the specific consequences of development can be mitigated.<sup>5</sup>

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<sup>1</sup> Planning Portal, Planning Practice Guidance, *Community Infrastructure Levy - appeals*

<sup>2</sup> Welsh Government, *Planning Policy Wales, Edition 7*, July 2014

<sup>3</sup> Welsh Government, *Community Infrastructure Levy - A Guide to the Production of a Charging Schedule*, September 2011

<sup>4</sup> See our Quick Guide on Section 106 agreements for further information

<sup>5</sup> Welsh Government, *Planning Policy Wales, Edition 7*, July 2014



The CIL Regulations introduced statutory restrictions on the use of Section 106 agreements. 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 or not CIL has been introduced in an area, from April 2015 the UK Government has also 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 help pay for new infrastructure, such as a new school, but now a maximum of five such contributions from April 2010 onwards are allowed. This is to encourage further take-up of CIL by local planning authorities.

Authorities introducing CIL should publish a list of those projects or types of infrastructure that it intends 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.

As part of the planning system, Section 106 agreements are a devolved matter, whilst the CIL is not.

## 6. 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 Local Development Plan. 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 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 pre-existing 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% 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.

## 7. 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, whilst 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 Planning Portal website.<sup>6</sup>

## 8. Where are we in Wales with the introduction of 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.

## 9. Is responsibility for the CIL likely to be devolved in future?

The UK Government's Commission on Devolution in Wales (the Silk Commission)<sup>7</sup> recommended that a number of taxes be devolved to Wales, but made no specific recommendation about devolution of responsibility for CIL. The Welsh Government's response to the Commission's second report called for devolution of responsibility "in order to give us the powers to tailor a CIL charge to assist in delivering local and strategic infrastructure, and support our distinct approach to development planning."<sup>8</sup>

## Further information

For further information about the **Community Infrastructure Levy**, please contact **Graham Winter** ([Graham.Winter@Assembly.wales](mailto:Graham.Winter@Assembly.wales)), Research Service.

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<sup>6</sup> Planning Portal, Planning Practice Guidance, *Community Infrastructure Levy - relief*

<sup>7</sup> **UK Commission on Devolution in Wales**

<sup>8</sup> Welsh Government, *Devolution, Democracy and Delivery Powers to achieve our aspirations for Wales*, 2014

