

LGA response to the MHCLG consultation 'Reforming developer contributions: technical consultation on draft regulations'

January 2019

The Local Government Association (LGA) is the politically led cross-party national voice of local government. We work with councils to support, promote and improve local government.

Key messages

- We welcome the proposals to streamline consultation requirements for introduction/revision of a Community Infrastructure Levy, but are concerned about the new proposal to introduce additional consultation for removing CIL in an area.
- We welcome the proposal to remove the section 106 pooling restrictions for all councils
- We maintain our view that national exemptions for CIL cumulatively reduce amount of funding to invest in critical infrastructure to facilitate development and should be instead set locally.
- The regulations to apply indexation where a planning permission is amended are overly complicated and need to be simplified.
- The complexity of the proposed indexation of CIL rates risks leaving significant scope for error and acting as a disincentive to introduce CIL.
- We support the principle of the introduction of Infrastructure Funding Statements but councils need to be fully funded to introduce these and there needs to be sufficient lead-in time.
- We welcome the regulations enabling councils to require a sum to be paid to a local planning authority in respect of the cost of the monitoring of planning obligation delivery but these could be streamlined further.
- The government should ensure that the regulations work appropriately to reflect both two-tier and unitary areas
- We consider that there is an urgent need to consolidate the CIL regulations into a single updated version to reflect the numerous changes made since its introduction.

Briefing

Reducing complexity and increasing certainty

Ensuring that consultation [on introducing/making changes to CIL] are proportionate.

Question 1: Are there any elements in regulation 3 which will prevent the Government achieving the policy intent?

No.

We support the proposal to remove the statutory requirement to consult on a preliminary draft charging schedule, whilst retaining the requirement for an authority to consult on their draft charging schedule. However, it will be important that appointed Examiners have clear guidelines on undertaking CIL examinations to take into account these changes.

Future consideration should be also given to introducing a further streamlined consultation mechanism for partial review of CIL, which would also limit the opportunity for objections to be made to everything within a CIL charging schedule every time partial revisions are undertaken.

Removing the restriction which prevents local authorities using more than five section 106 obligations to fund a single infrastructure project ('the pooling restriction')

Question 2: Are there any elements in regulations 4 and 12 which will prevent the Government achieving the policy intent?

We welcome the proposal to remove the section 106 pooling restrictions altogether, which is something the LGA has repeatedly called for.

However, we are concerned by the proposal to include new requirements, including a requirement to consult, on authorities who wish to stop charging a Community Infrastructure Levy. Whilst we acknowledge that this proposal is intended to act as a disincentive for authorities considering abandoning CIL, this is at odds with the government's ambition to reduce complexity, increase certainty and ensure that consultation is proportionate. This additional complexity also risks putting authorities off who currently do not charge CIL and especially those that are marginal as to whether a CIL is viable in their area.

Rather than introducing additional consultation requirements through regulation, we consider a more proportionate approach would be to develop sector-led guidance, case studies and worked examples of CIL charging authorities that can demonstrate the value of the accrual of CIL funds over time to promote the benefits of CIL.

A more proportionate approach to administering exemptions

Question 3: Are there any elements in regulation 7 which will prevent the Government achieving the policy intent?

No. We consider that not introducing a grace period for applying for CIL exemption, and instead introducing a surcharge of the lower of 20% of the notional chargeable amount or £2,500 is a sensible approach.

The government should work with relevant national organisations representing the interests of small developers and self-builders to raise awareness of the requirements of the legislation as it relates to exemptions.

More generally, our longstanding view is that mandatory national exemptions to CIL reduce flexibility for charging authorities to cater for local needs and priorities. The cumulative impact of exemptions ultimately means a reduction in the amount of funding to invest in critical infrastructure to facilitate development. We consider that national exemptions to CIL should be removed and they should instead be decided by councils at a local level.

Extending abatement provisions to phased planning permissions secured

before the introduction of the Community Infrastructure Levy ('balancing')

Question 4: Are there any elements in regulation 13 which will prevent the Government achieving the policy intent?

If government are minded to take this regulation forward, the government should work with councils to test the regulations through worked examples before deciding whether to introduce them.

More broadly, we consider that where an application under section 73 is granted, which in effect is the issue of a new planning application, they should be treated as such for the purposes of applying CIL. This would minimise the need for the use of abatement provisions, reducing complexity and increasing certainty for both councils and developers.

Applying indexation where a planning permission is amended

Question 5: Are there any elements in regulation 6 which will prevent the Government achieving the policy intent?

No, we consider that it will resolve the issue it is seeking to address. However, it does currently appear overly complicated and consideration should be given to whether this could be simplified. Further clarity on what the regulation does could helpfully be picked up in the national planning practice guidance.

We consider that where an application under section 73 is granted, this is in effect the issue of a new planning application. Careful consideration should be given to ensure that these new proposed regulations do not have the unintended consequence of incentivising developments to continually amend a planning permission to get over the requirement to pay a CIL charge.

Increasing market responsiveness

Indexation of Community Infrastructure Levy rates

Question 6: Are there any elements in regulation 5 which will prevent the Government achieving the policy intent?

Yes. We have concerns with this regulation, in particular that its complexity risks will leave significant scope for error. We consider that it does not simplify the process as was the Government's intention. Its' application for mixed-use schemes risks adding further complication and uncertainty.

It is considered that that the current drafting could act as a disincentive to authorities who are not charging CIL already to introduce one.

If government are minded to take this regulation forward, the government should work with councils to test the regulations through worked examples, as well as getting a cross-sector group together to explore the proposal in more detail before making regulatory change.

Question 7: Do you have any further comments in relation to the Government's proposed approach to Community Infrastructure Levy indexation including, for residential development, the approach of using a smoothed index using local house prices [over three years].

No further comment.

Improving transparency and increasing accountability

Removing regulation 123 restrictions and introducing Infrastructure Funding Statements

Question 8: Are there any elements in regulation 10 which will prevent the Government achieving the policy intent?

No. We welcome the removal of regulation 123 restrictions.

We also support the principle of Infrastructure Funding Statements, in seeking to improve how councils propose to use developer contributions, and bringing the information into one place. The government should consider what new burdens this might add to local authorities and provide funding and support accordingly. We welcome the work that MHCLG has been undertaking with local planning authorities to design a data format for publishing Section 106 agreements, viability assessments, and other developer contributions.

However, it would be helpful as an extension of this work if it could capture the gap between contributions required by Local Plan policies and the actual contributions secured, as a result of viability assessments being used by applicants.

In particular, we consider that some of aspects of the proposed section 106 obligation reporting are over-engineered, for example, requiring information on school places and category. The request for this level of detail is onerous and could add significant additional burden on local planning authorities.

Consideration should also be made to the risk of duplication of work. For example affordable housing reporting on money is already published in Annual Monitoring Reports. Requirements for monitoring need to be streamlined and not duplicated.

The government should work with councils to ensure there are appropriate transitional arrangements and a sufficient lead-in time to get new monitoring arrangements and infrastructure funding statements in place. We consider that a December 2020 deadline would be better than 2019, given the amount of work that will need to be undertaken to get them in place.

Clarity should also be given as to when the requirements for data will start to apply. In particular, we would have significant concerns about the requirements applying retrospectively to obligations which have already been agreed because of the additional burden on local authorities.

Monitoring fees

Question 9: Are there any elements in regulation 11 which will prevent the Government achieving the policy intent?

We welcome the regulations enabling councils to require a sum to be paid to a local planning authority in respect of the cost of the monitoring in relation to the delivery of planning obligations.

We consider that in proposed paragraph (2A) that requirement (a) provides a sufficient safeguard to ensure that the sum collected is proportionate to the scale and kind of development and that requirement (b) is unnecessary.

Delivering Starter Homes

Question 10: Are there any elements in regulation 8 which will prevent the Government achieving the policy intent?

No, it appears that the regulation will achieve the policy intent to exempt Starter Homes from CIL.

More generally, our longstanding view is that mandatory national exemptions to CIL reduce flexibility for charging authorities to cater for local needs and priorities. The cumulative impact of exemptions ultimately means a reduction in the amount of funding to invest in critical infrastructure to facilitate development. We consider that national exemptions to CIL should be removed and they should instead be decided by councils at a local level.

Other technical clarifications

Question 11: Are there any elements in regulations 13 to 15 which will prevent the Government achieving the policy intent?

No comment.

As a general comment we consider that there is an urgent need to consolidate the CIL regulations into a single updated version to reflect the numerous changes made since its introduction. We remain concerned (due to the complexity of the existing regulations and the proposed amendments), about how the implementation of the revised regulations will work in practice across the country.