



The Community Infrastructure Levy



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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@capita.co.uk
Online via the Communities and Local Government website:
www.communities.gov.uk

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Ministerial Foreword



Last year, we set out plans for the biggest housebuilding programme in decades – a huge increase in housing supply to meet the needs of our ageing, growing population. But housing alone is not enough. Without the public services and social infrastructure to support these developments – from parks and roads to schools and hospitals – we cannot hope to create the thriving communities which people want to live in.

That is why we have committed to introducing to a Community Infrastructure Levy – to give local authorities extra resources to invest in these vital facilities, and to give developers greater certainty about their role and contribution.

Of course, we recognise that developers are facing challenging short-term market conditions at present. And during these more difficult times, certainty and clarity is absolutely essential. The Community Infrastructure Levy represents a major improvement to the current system. Until now, developers and councils have had to negotiate individual planning agreements for each new project and as a consequence only a minority of developments have contributed to the infrastructure needed to support development. The Levy will make the process fairer and faster for all, with almost all developments contributing a fair share.

In January, our first policy document set out how the Community Infrastructure Levy might work in practice. Today, I'm publishing more details of how this will work – how it will be set, paid and spent. This represents the result of productive dialogue with both industry and local authorities. We are committed to making this a credible, predictable and fair way of raising vital revenue for community development. And so we will continue this open dialogue and collaborative approach as we work towards implementation.

Almost all development creates some need for infrastructure and services, so it is only right that developers contribute alongside Government. The Community Infrastructure Levy will provide vital additional funding for new infrastructure new communities need, and improving quality of life across the country.

A handwritten signature in black ink, appearing to read 'Caroline Flint'.

Rt Hon Caroline Flint MP

Executive Summary

Introduction

1. The Community Infrastructure Levy (CIL) will be a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.
2. CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded.
3. Part 11 of the Planning Bill, currently before Parliament, will form the legislative basis for CIL. Once enacted, the Bill will enable the Secretary of State, with the consent of HM Treasury, to lay regulations before Parliament establishing CIL. Developer representatives have welcomed this enabling approach to legislation, which will help to ensure CIL is a flexible instrument which can evolve and develop over time in the light of practical experience.

Spending CIL: infrastructure

4. The Government is already investing substantial additional funds to support housing growth and economic development. CIL will also provide further new resources. Estimates as to how much CIL will raise are heavily dependent on the number of local authorities that elect to charge CIL, and the rates that they charge. However, CIL is expected initially to raise hundreds of millions of pounds of extra funding per year towards the infrastructure that local communities need. While CIL will make a significant contribution to infrastructure provision, core public funding will continue to bear the main burden, and local authorities will need to utilise CIL alongside other funding streams to deliver infrastructure plans locally. The Planning Bill is clear that CIL may only be spent on infrastructure. The Government believes that CIL should be used to fund the infrastructure needs of development contemplated by the development plan for the area, not to remedy existing deficiencies.

5. The Government is taking action to improve both infrastructure planning and infrastructure delivery. Communities and Local Government is working with other Government departments to align funding streams and improve coordination of delivery at the local level.
6. The Government proposes that the definition of infrastructure for CIL purposes should be wide enough to enable local authorities to decide what infrastructure is appropriate for their local areas. Development can be unlocked and made sustainable by the provision of very different types of infrastructure, such as transport, schools and health centres, flood defences, play areas, parks and other green spaces, many of which are already funded in part by the existing system of developer contributions. However, affordable housing provision should continue to be provided through the existing system of negotiated planning obligations, not through CIL.
7. A key benefit of CIL is that it can more easily fund sub-regional infrastructure – that is, larger pieces of infrastructure typically benefiting more than one local authority area. The Regional Spatial Strategy (RSS) is likely to identify these infrastructure requirements, which can therefore be cascaded down into local development plans. The Government proposes that local authorities should have the freedom to work together to pool contributions from CIL within the context of delivering the RSS and local development plans. The Government has decided that the power on the face of the Bill for the Secretary of State and the Welsh Ministers to be able to charge CIL, which would have been used to levy CIL to fund sub-regional infrastructure, is not required.
8. Timely delivery of infrastructure is also assisted by the introduction of CIL – not simply because it is a new source of income, but because it is a more predictable one. The Government considers that public sector bodies such as the Regional Development Agencies could provide funding for infrastructure and be reimbursed from a CIL income stream by the benefiting local authorities thereafter: known as “forward funding”.

Setting CIL

9. The Government proposes that those authorities who prepare development plans should be charging authorities. This includes district and unitary authorities, the London boroughs, the National Park Authorities and the Broads Authority. In Wales, the county councils, the county borough councils and the National Park Authorities will have the power to charge CIL. The Mayor of London will also have a power to charge CIL to fund strategic infrastructure. Charging authorities can choose whether or not to implement CIL.

10. There should be an up to date development plan for an area before CIL may be charged in that area. The Government has recently updated *Planning Policy Statement 12: Local Spatial Planning*, which indicates that the development plan should be supported by an infrastructure planning process to identify what infrastructure will be needed to deliver the plan. The process of setting CIL should also start with the development vision for the area set out in the development plan, and infrastructure planning should identify the likely cost of infrastructure coming forward. Taking other funding sources into account, the charging authority should identify gaps in funding to arrive at a proposed amount to be raised from CIL, subject to an assessment of local development viability at the plan level.
11. The charging authority should at the same time prepare a draft charging schedule, which is likely to be a new type of document within the Local Development Framework. The Government is initially minded to propose that the charging schedule will not formally be part of the development plan, though in three key respects the Government proposes that the treatment of the charging schedule will be the same as that for development plan documents. These are: firstly, that the charging schedule will enjoy the same level of rigorous testing as development plan documents, including a public inquiry before an independent person; secondly, that the report of the independent person will be binding upon the charging authority, and thirdly, that the charging authority would not be under an obligation to adopt the final schedule but could instead submit revised proposals to a fresh examination if it was unhappy with the independent person's proposed changes. Ideally the independent person will be drawn from the Planning Inspectorate.
12. The charging schedule should allocate the proposed amount to be raised from CIL to each main class of development envisaged by the development plan. Charges will be expressed as a cost per unit of development, for example £1000 per dwelling or £1 per square foot. Charges can be indexed to an index of inflation. In drawing up the charging schedule, the charging authority will need to be careful that CIL should not be set at such a level that it risks the delivery of its development plan, because development is rendered unviable by the charge proposed. There will therefore need to be a feedback loop between the process of developing the charging schedule and the process of infrastructure planning, and indeed the Government envisages that the two will usually occur together and be tested at the same time. If the charging schedule is flawed, this will have implications for the soundness of the infrastructure planning underpinning the development plan, and vice versa.
13. The Government is striking a careful balance between national consistency and local flexibility. To ensure consistency and simplicity the Government is minded to define at national level the descriptions of the unit of development that may be charged (or 'metrics', for example

“per dwelling” or “per habitable room” in the case of residential development). It also proposes to set out exemptions, inflation indices and other similar matters at national level. However, the Government is also considering a number of flexibilities aimed at ensuring that charging schedules can be tailored to local circumstances. These include a facility to set differential rates geographically (for example, in order not to prevent development in regeneration areas); and a provision for very exceptional cases which cannot afford to pay the rate set out in the charging schedule. In exceptional cases the Government is considering whether there could be an administrative procedure which enables a lower amount to be paid. However, the Government is clear that this route will only be available in a very limited number of genuinely very special circumstances.

14. The Government proposes that CIL will be levied on most development, including both residential and commercial development. Some types of development could be exempt, though in order to be considered for exemption certain criteria will need to be satisfied, including, for example, the extent to which any exemption might have economically distortionary effects or be difficult to define (and therefore to enforce). There will be a ‘de minimis’ threshold below which CIL will not be payable. Householder development by homeowners will not be liable.

Calculation, payment and enforcement

15. The amount of CIL due will be calculated with reference to the charging schedule when a planning permission is granted. The planning permission will determine the number of chargeable units and the charging schedule will determine the rate per unit, so the liability will simply be one multiplied by the other. However, payment (including any indexation) would not be due until commencement. For simplicity and to take advantage of familiarity with the existing legislation, the definition of commencement would be the same as that set out in the 1990 Town and Country Planning Act. Developers would be required to notify the charging authority of their intention to commence, as is usually the case for planning obligations currently.
16. Payment would typically be required within a fixed time from commencement. The Government is minded to propose a 28 day ‘payment window’. However, the Government is exploring the possibility that payment by instalments might also provide useful flexibility and would improve cash flow. Where development is phased (on the basis of an outline planning permission followed by reserved matters approvals), it is expected that each phase could pay CIL separately. The Government is also exploring the possibility of payment in kind, though this presents technical and fairness issues in terms of valuing the contribution made.

17. As is the case for planning permissions themselves, the Government has developed enforcement measures to ensure that CIL legislation is followed. A key tool will be the potential to register CIL liability as a Local Land Charge, to ensure that subsequent purchasers of developed land and property are aware of the existence of an outstanding liability. To ensure that those paying CIL promptly do not suffer because of late payment by others, charging authorities will also have powers to add interest and surcharges to CIL. These will be specified nationally. The Government also expects that charging authorities will have the power to stop development, in a similar way to planning Stop Notice powers, plus other enforcement tools.

Planning obligations

18. The facility to enter into a negotiated planning obligation using section 106 of the 1990 Act will remain when CIL is introduced. This is because planning obligations can be a useful tool to ensure that the specific impacts of a development can be mitigated, allowing it to be granted permission where permission would otherwise be refused.
19. Planning obligations should also continue to be used to secure affordable housing. The Government's policy is that, in order to secure mixed communities, affordable housing should where possible be provided in kind and on the development site. Planning obligations provide the facility to tailor affordable housing contributions to the particular circumstances of the site.
20. The Government is considering whether restrictions on the use of planning obligations should be made once CIL is introduced. There would be a transitional period before any such restriction would take effect.
21. The Government will continue to encourage local planning authorities to use planning conditions in preference to planning obligations wherever possible.

Implementation

22. Regulations implementing CIL will not come into force before Spring 2009. However, charging authorities can already start preparatory work to ensure that they are ready to undertake formal processes when CIL becomes available.
23. CIL will demand new skills in local authorities and the Government will work with other organisations to ensure that staff have the necessary skills in good time to allow a smooth implementation of CIL. Existing work on increasing skills in local authorities can also play an important role here. The Government will consider whether the introduction of

CIL should be prioritised in local authorities that are preparing or have adopted development plans in order not to overload the new system. New mechanisms and systems necessary for CIL should be designed to minimise duplication with existing systems to make CIL as efficient a mechanism as possible.

Wales

24. In Wales, County Councils, County Borough Councils and National Park Authorities will be empowered to charge CIL. As in England, those that choose to implement CIL should do so to deliver the infrastructure needed to support the development of their area envisaged in their local development plan. The Welsh Assembly Government will continue to prioritise the delivery of affordable housing through planning obligations.
25. The development plan system in Wales differs from that in England. However, the Wales Spatial Plan, whilst not having the same status as Regional Spatial Strategies in England, does provide a strategic overarching framework with a sub-regional spatial emphasis to which local planning authorities should have regard when they prepare their local development plans. The Government is discussing with Welsh Ministers the detailed arrangements for CIL in Wales.

Research reports accompanying this document

26. Alongside this document the Government has published two new research reports relevant to planning obligations and CIL. These are, firstly, a study into the use of planning obligations in England in 2005-06, to update an earlier study for the year 2003-04; and a study into whether local planning authorities might secure greater levels of developer contributions to affordable housing if they set out in greater detail the assumptions they are working from.

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1. Introduction

Introduction

- 1.1 The Community Infrastructure Levy (CIL) will be a new charge which local authorities in England and Wales would be empowered, but not required, to levy on most types of new development in their areas. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area. The Government's proposals for the levy have been developed in close consultation with the development industry, local government and others, and build on the existing practice in standard charging which uses existing legislation.
- 1.2 This chapter sets out the background to the introduction of CIL, showing how the proposal for a new system of developer contributions has developed over time in response to active engagement with the development industry and local government. It explains why the current system of developer contributions towards infrastructure requires reform and describes the key benefits of CIL. CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed and will enable important sub-regional infrastructure to be funded. This chapter also sets out the legislative basis for CIL within the Planning Bill.

Content of the remainder of the document

- 1.3 Chapter 2 describes the Government's proposals for how CIL revenues will be spent. It sets out the context for infrastructure planning, funding and delivery and notes that CIL will typically be one of a number of funding sources contributing to infrastructure provision. The chapter notes that there will be a statutory requirement for CIL to be spent on infrastructure, makes a commitment that CIL funds will be additional to existing spending, and describes the Government's proposals for improving infrastructure planning in the light of its new policy statement on development plans.¹ The chapter goes on to discuss the manner in which CIL could be used to help address timing problems to help development and infrastructure provision to proceed in step with each other.

¹ *Planning Policy Statement 12: Local Spatial Planning* CLG, 2008

- 1.4 Chapter 3 describes which authorities may charge CIL, and how CIL will be set at the local level. It sets out the Government's proposals for a charging schedule which will be part of the Local Development Framework. It indicates the Government's proposals as to which public authorities may be charging authorities (typically local planning authorities), and describes the special arrangements which could apply in London. The process of preparing, consulting on and testing the charging schedule is also set out. This chapter also includes a discussion of the important issue of ensuring that charges are set at reasonable levels so that development is not choked off by the imposition of CIL.
- 1.5 Chapter 4 turns its attention to the way in which CIL will be levied in the case of individual developments. It describes who may be liable for CIL; shows how CIL liability will be calculated based on key characteristics of the planning permission for the development; sets out payment arrangements, including proposals for payment in instalments and for payment by phase of development. CIL will not be payable until commencement of development, so the chapter also explains proposals for notifying the charging authority that development has commenced. Proposals for the enforcement of CIL payments are also set out, though the Government envisages that these enforcement provisions will be infrequently used.
- 1.6 Chapter 5 sets out proposals as to how planning obligations could be reformed following the introduction of CIL. It announces the publication of new research on the value of planning obligations in England and on a possible 'common starting point' for negotiations on affordable housing, and sets out the steps the Government will take to protect levels of affordable housing delivered through planning obligations. The chapter also contains a brief commentary on the use of planning conditions.
- 1.7 Chapter 6 covers implementation issues, exploring the skills and capacity issues which arise from the introduction of CIL and the move towards stronger infrastructure planning for development. It also covers other timing and transitional arrangements, and recognises the importance of the local government efficiency agenda in ensuring that CIL is delivered in an efficient way.
- 1.8 Chapter 7 presents the Government's proposals for the implementation of CIL in Wales, where the planning system has some differences from that operated in England. The Government will continue to work closely with the Welsh Assembly Government in developing proposals which reflect these differences.
- 1.9 The Appendix to the document reproduces the Planning Bill clauses which create the statutory framework for CIL, as they stand following the introduction of the Bill into the House of Lords.

- 1.10 As noted above, two new research reports are also published today alongside this policy statement. They are a study into the use of planning obligations in England in the year 2005-06, to update an earlier study for the year 2003-04,² and a study into whether local planning authorities might secure greater levels of developer contributions towards affordable housing if they set out in greater detail the assumptions they are working from for the developer's contribution.³ More information on each report is contained in chapter 5.

Context: the challenge of housing growth and economic prosperity

The Government's long term objectives

- 1.11 Ensuring that we have sufficient new homes, for sale and for rent, is one of the Government's main priorities. Everyone deserves somewhere they can be proud to call home, at a price they can afford, in high quality places where all members of the community, and especially families, have ready access to key services and amenities.
- 1.12 Housing supply grew by nearly 200,000 net additional homes in 2006/2007, the highest level since the 1980s, and investment in social housing has reduced the number of households living in non-decent homes by over one million. Despite this progress, significant long term challenges remain. The UK's ageing and growing population and the growth in the number of households means that in recent years the supply of housing has not kept pace with rising demand. The recent Housing Green Paper⁴ therefore set out plans to deliver three million new homes by 2020 – homes that this country will need in the long term to meet growing demand and rising aspirations.
- 1.13 While the housing market is experiencing some challenging conditions in the short-term, the long term trends informing the Government's housing strategy remain the same, as set out in the Housing Green Paper. Over the long term, demand is likely to continue strongly and the need to deliver the infrastructure to unlock housing growth will remain as pressing as ever.
- 1.14 Alongside this new housing the country needs economic development to ensure we continue the growth of new jobs and investment that has been achieved over the past decade. The Government's strategy for advancing productivity growth is based on macroeconomic stability to allow firms and individuals to invest in the future, and microeconomic reforms to ensure that markets function efficiently and the barriers to productivity growth are tackled. The Government's discussion

² *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University, 2008

³ *Common Starting Points for Section 106 Affordable Housing Negotiations* Cambridge University and Sheffield University, 2008

⁴ *Homes for the future: more affordable, more sustainable* CLG, 2007

document *Productivity in the UK 7*⁵ highlights the importance of investment in infrastructure, and sets out the empirical evidence that transport infrastructure supports productivity growth. An important component of the Government's strategy therefore is the need to invest in the UK's infrastructure to ensure the long run success of the UK economy.

- 1.15 The Government is committed to making improvements in the economic performance of all English regions, while reducing the gap in growth rates between the regions. This commitment has been reaffirmed by the publication of the Sub National Review (SNR)⁶ in July 2007, the aim of which is to maximise prosperity in all parts of England by stimulating economic growth and improving housing supply. The Review sets out a number of structural reforms to deliver these improvements which will streamline and strengthen the regional tier, and strengthen the local tier, including a new statutory economic assessment duty. The Government recently consulted on more detailed proposals to implement the SNR.⁷
- 1.16 Providing supporting infrastructure is vital to ensure that new homes and jobs are sustainable. *The Eddington Transport Study*⁸ and the work of the 2007 Comprehensive Spending Review into Supporting Housing Growth have both identified the central importance of transport for growth. Therefore, it is possible that in many areas a substantial proportion of the levy receipts will be spent on transport infrastructure. However, the CIL is not just about transport and other strategic infrastructure, although they are important. It is about making certain that the very things that make the quality of life good in a neighbourhood are provided – or are not lost or weakened but are maintained or improved when an existing community grows.

Providing certainty for the long term

- 1.17 Although these are challenging economic times, the Government believes it is appropriate for the CIL to come into force in 2009. Where local authorities introduce a CIL, this will prevent delay in starting to realise the benefits of CIL, and put the right framework in place for the longer term. Four particular features of CIL help ensure it is fit for the full range of economic conditions.
- 1.18 Firstly local authorities will be able to decide whether the circumstances in their area make the introduction of CIL appropriate and at what level to set the charge. Local authorities will proceed at different speeds in establishing a levy and some may decide not to introduce CIL at all. This means there will not be a 'big bang' introduction of this

5 *Productivity in the UK 7: Securing long term prosperity* HM Treasury/Department for Business, Enterprise and Regulatory Reform, 2007

6 *Review of Sub-National Economic Development and Regeneration*, CLG/Department for Business, Enterprise and Regulatory Reform, 2007

7 *Prosperous Places: Taking forward the Review of Sub-National Economic Development and Regeneration*, CLG 2008

8 *The Eddington Transport Study*, HM Treasury, 2006.

instrument across the country. Rather, its introduction will be gradual and local.

- 1.19 Secondly if local authorities do decide to proceed with a CIL, they will need to set charges which reflect the economic circumstances of their areas, and will need to subject their CIL proposals to consultation with developers and the local community, and testing by an independent person. Chapter 3 sets out the Government's proposals on this process.
- 1.20 Thirdly the Government expects that charges will need to be kept under review and revised if, for example, changes in land values led to charges becoming unviable. The Government will be considering what procedures for revision might look like, and how they can provide for appropriate levels of both flexibility and stakeholder scrutiny; and will work closely with stakeholders on these issues.
- 1.21 Fourthly, the Government proposes that charges will be indexed against a measure of inflation, enabling wider change in costs or prices (including deflation) to be automatically reflected in charges. Charging authorities will need to make judgements about how far such automatic responsiveness can accommodate changes in the market; and when a more thorough revision of the charging schedule might be necessary.

Why should development pay for infrastructure?

- 1.22 Almost all development has some impact on the need for infrastructure, services and amenities, or benefits from it, so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community to help fund the infrastructure that is needed to make development acceptable and sustainable.
- 1.23 The Government therefore believes that it is right that development itself should make more of a contribution to the infrastructure costs faced by local communities, and that the burden of contributing to development should be spread more fairly.
- 1.24 However the Government also believes that developers should have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contribution should be spent in a way that developers will feel worthwhile; namely, on infrastructure to support the development of the area. This is what CIL will do.

Background to the development of CIL

The current system of developer contributions

- 1.25 The planning system has for a long time allowed local planning authorities to require developers to make payments to mitigate the impacts of new development, using a system known as planning obligations (see Box 1.1).

Box 1.1: The current system of planning obligations

Planning obligations are typically agreements negotiated between a local planning authority and a developer in the context of granting planning consent. These are underpinned legally by section 106 of the Town and Country Planning Act 1990, and are therefore also commonly known as 'section 106 agreements'. The Government's policy is that, in the context of planning consent, planning obligations should be used to make development acceptable in planning terms. This could include securing contributions towards the provision of infrastructure and facilities required by local and national planning policies or prescribing the nature of the development in some way; for example, by restricting the use of the land.

Planning obligations are sought for a wide range of purposes, including open space provision, transport and travel plans, and educational and community facilities. However, the main driver for the use of planning obligations in recent years has been to secure affordable housing contributions, largely on site in line with Government policy which aims to deliver mixed communities. Affordable housing contributions constitute around half of the total value of planning obligations secured in England.

There has been some criticism of planning obligations for delaying the planning process and for reducing its transparency, certainty and accountability. The Government has sought to address these issues through policies and guidance encouraging the publication of local planning authority policies for planning obligations, providing a model agreement for planning obligations, and promoting the use of standard charges and formulae to calculate developer contributions.

The Government's current policy on planning obligations is set out in *Circular 5/05: Planning Obligations CLG, 2005*.

- 1.26 Research⁹ shows that local authorities tend only to negotiate planning obligations alongside consents for larger developments, partly because affordable housing requirements (which often only apply to residential developments over a certain size) trigger a planning obligation, but also because the time and costs involved do not always make it worthwhile negotiating on smaller developments. Only around 14 per cent of all housing planning *permissions* made any contribution in

9 *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University, 2008

2005-06, although (since larger applications provide a disproportionate number of units) the proportion of *new homes* with a planning obligation attached was significantly higher. Nevertheless, many medium-sized and smaller developments currently do not contribute anything at all.

Concerns about the planning obligations system

- 1.27 Proposals for a system of standard charging originate in criticisms of the planning obligation system which have centred on the perception that the degree of flexibility that case law allows for the use of planning obligations has made it possible for local authorities to seek benefits or contributions which had little connection to the development. This in turn has led to concerns that on the one hand planning permission was being bought and sold, and on the other that developers were being held to ransom by local authorities.
- 1.28 Other concerns including inconsistency in the use of planning obligations between local authorities and thus that the system can be unfair, sometimes lacking transparency and accountability with contributions not necessarily being used for the purposes for which they are sought; or not being used at all; and that agreements can take too long to negotiate, often involving high legal costs, which can frustrate or delay development.

Tariff-based approaches

- 1.29 In response to these concerns, the Government has published a number of proposals for a standardised tariff-based approach for planning obligations,¹⁰ intended to address concerns about the lack of openness of negotiated agreements, the delays that they could cause to the planning process and the lack of certainty for developers.
- 1.30 In particular, the Government consulted on an 'Optional Planning Charge' (OPC) which drew on earlier tariff proposals. OPC had an 'optional' element for the developer to opt not to pay the charge and instead to negotiate a contribution. This negotiated element replaced the need for planning obligations, and had the OPC been implemented, s106 of the Town and Country Planning Act would have been repealed. Provisions for the OPC are contained in Sections 46-48 of the Planning and Compulsory Purchase Act 2004 but have never been implemented, as they were superseded by recommendations from the Barker Review of Housing Supply (see below). The present Planning Bill contains provision to repeal the OPC powers, including the repeal of provisions for the repeal of s106, which would have been made redundant by the introduction of the OPC, but which the Government has confirmed will continue to operate alongside CIL (see chapter 5).

¹⁰ *Reforming Planning Obligations: a Consultation Paper – Delivering a fundamental change* DTLR 2001; *Contributing to sustainable communities – a new approach to planning obligations* ODPM, 2003

Barker Review of Housing Supply and Planning-gain Supplement (PGS)

- 1.31 The Barker review of housing supply¹¹ proposed the introduction of a Planning-gain Supplement (PGS) to capture a modest portion of the increase in land value that occurs when full planning permission is granted, so that part of landowner development gains could contribute to wider benefits for the community and help unlock new development. Alongside the introduction of PGS, Barker also recommended that planning obligations should be ‘scaled back’ to cover direct impacts and mitigation along with affordable housing. The Government accepted this recommendation in principle, and consulted extensively on various aspects of the policy and design of PGS.
- 1.32 While considering the PGS proposal, in 2005 the Government also published a revised circular on the use of planning obligations¹² which brought guidance on planning obligations into line with other current planning policy (including that on affordable housing) and which encouraged the use of formulae and standard charges to help calculate the level of planning obligations that might be appropriate for certain types of development. Standard charges are now being increasingly used by local authorities as part of their framework for securing planning obligations (see Box 1.2).

Box 1.2: Examples of existing standard charging schemes

Horley (Reigate and Banstead Borough Council)

A per-dwelling charge on all development within an urban extension of 2,600 units. The charge is set out in a Supplementary Planning Document (SPD), which states the infrastructure requirements for new developments in Horley based upon consultation with the county council and other service providers. The SPD lists the infrastructure that is required, gives a justification for the basis upon which it is being sought and explains how much developers will be expected to contribute towards the different categories of infrastructure. Contributions are sought for transport, education, fire and rescue, social services and community facilities. Obligations are secured through a model framework agreement, which addresses the issue of phased payments and the triggers for payment.

City of London

A standard charging mechanism which uses standard formulae to calculate the level of contribution it seeks from developers for a variety of infrastructure requirements.

11 *Review of Housing Supply – Final Report* Kate Barker, 2004

12 *Planning Obligations (Circular 05/2005)* ODPM, 2005

A series of identified areas, accompanied by specific plans, have been developed to assess where obligations will be required. Charges are on a residential unit and floor space basis. Differing thresholds apply depending on the type of development for which an obligation is sought. Contributions are sought for, amongst other things, education, CCTV, parking, health, and open space, as well as for the monitoring and enforcement of the scheme. Payment is usually required before the commencement of development although in some circumstances payments can be phased.

Warrington Borough Council

A standard charging mechanism which seeks contributions on a per dwelling basis for residential development and square metre gross floor space for commercial development. The SPD indicates the type of development that should pay, the threshold (some obligations are only required for development of a certain size) and the amount sought. Examples of contributions sought include education provision and health care facilities, public and community transport, cycling and pedestrian facilities, highway improvements, travel plans, amenity open space, sports facilities, and affordable housing.

Some obligations are calculated through the use of standard formulae, with the remainder negotiated on a case by case basis. Where the cumulative effects of development are identified, the council may pool contributions.

Source: *British Property Federation, Home Builders Federation, Major Developers Group and London First, submission to Government, October 2007.*

The Community Infrastructure Levy

1.33 The Housing Green Paper,¹³ published in July 2007, set out a number of options for developer contributions, intended to form the basis of discussion with the development industry. The Green Paper made it clear that in considering whether to proceed with PGS or an alternative, “the test of an effective approach to planning gain will be its ability to raise significant additional funds to support the infrastructure needed for development, in a fair and non-distortionary way, and in a way that preserves incentives to develop in a variety of circumstances”. As a consequence of engagement with the industry during summer 2007, at the Pre-Budget report in October 2007 the Chancellor was able to announce that PGS would be deferred and that the Government would, instead, legislate for a new statutory planning charge.¹⁴ That charge is now known as the Community Infrastructure Levy (CIL).

¹³ *Homes for the future: more affordable, more sustainable* CLG, 2007

¹⁴ *Pre-Budget report and Comprehensive Spending Review* HM Treasury, 2007

- 1.34 CIL builds on many of the proposals that the Government has explored since 2003, not least on the standard charging approach which has formed the basis of most of these proposals. However, the Government also recognises that planning obligations are an effective mechanism for addressing certain planning-related matters and so will retain it as a (potentially modified) tool alongside CIL (see chapter 5).

Benefits of CIL

- 1.35 CIL will deliver a number of benefits. These include: more legal certainty enabling sub-regional infrastructure and the mitigation of cumulative impacts to be funded from CIL, a broader (and therefore fairer) range of developments contributing, improvements in transparency, and greater certainty and predictability as to the level of contribution which will be required.
- 1.36 CIL loosens the relationship between the development and the amount charged, since the charge is by definition an average cost distributed evenly across a number of developments. It follows from the loosening of this link that CIL contributions can be sought to “support the development of an area” (as the Bill puts it) rather than to support the specific development which is seeking planning permission. By extension, it follows that larger sub-regional infrastructure which is needed to unlock development could also be funded from CIL in a way that planning obligations struggle to achieve.
- 1.37 Furthermore, and mainly as a consequence of the above point, it becomes easier to levy contributions from less major developments. Research (see chapter 5) shows that the distribution of developer contributions has remained heavily skewed towards major developments. The administrative burden of negotiating planning obligations (both in terms of resource and time) has previously militated against collecting contributions from less major developments; and it can also be difficult to show that smaller developments have an impact on infrastructure and therefore necessitate a contribution, even if (when taken collectively) the impact of a large number of such developments is large and would necessitate infrastructure provision. CIL is therefore expected to result in a widening of the contributions base. This in turn benefits infrastructure funding because the flow of contributions to the local authority becomes much less ‘lumpy’ and much more predictable over time.
- 1.38 The existing system of negotiated planning obligations has sometimes struggled to contribute effectively to large infrastructure requirements. This has sometimes resulted in either the first developer in an area or the last developer contributing disproportionately to the cost of the infrastructure required in that area, because their development is the ‘tipping point’ for the need for a piece of infrastructure, while others make a low contribution or no contribution at all. Government has

actively sought to address these issues by encouraging the use of pooled contributions, and because standard charging approaches such as the CIL spread the burden more fairly and evenly, and result in a more predictable flow of income, they are likely to be better at dealing with this difficulty.

- 1.39 Even when a planning obligation is sought on the basis of a ‘tariff’ in a development plan, such a tariff is a policy only and therefore is ultimately always subject to negotiation, even if the developer contribution policy is presented as a clear fixed ‘tariff’. CIL will be mandatory. This clearly empowers the local authority to require the specified payment and so provides greater certainty of income, but it also has benefits for developers in that a level playing field is created between different developers as to what they will pay. The development industry has campaigned for an instrument that is certain, predictable and transparent – a mandatory CIL helps to deliver that. (An argument has nevertheless also made by the industry that there ought to be provision for a small number of exceptional cases to enter into a negotiation over the level of CIL paid – see chapter 4).
- 1.40 CIL also potentially represents a major advance on planning obligations practice in terms of transparency and community participation. The Government’s recent White Paper on empowering communities (see chapter 3) indicates that the Government is keen to do more to help communities engage in the planning system, including in the use to which developer contributions may be put. One of the key criticisms of the existing system has been the lack of transparency as to how much is being paid by developers and where the money goes, and the lack of clear policies as to how much is expected. The Government has sought to address some of these concerns (for example planning obligations are now placed on the planning register to provide transparency) but the charging schedule which the Bill provides for will provide greater transparency over the amount different developments are required to pay, and, combined with the mandatory nature of CIL noted above, will help remove suspicion of developers negotiating over the level of their contributions behind closed doors. The CIL powers in the Bill also enable new monitoring and accountability mechanisms.

The Planning Bill

- 1.41 Part 11 of the Planning Bill now before Parliament provides the legislative framework for the CIL (see Appendix).
- 1.42 The CIL clauses in the Bill allow for the making of regulations by the Secretary of State, which will be subject to formal public consultation and which will set out the detail of the new regime and how CIL will work in practice. This approach provides flexibility for the future. Planning obligations practice has evolved significantly over time, and it is expected that CIL will also evolve as charging authorities and

developers become more familiar with the new approach. The framework of enabling powers in this Bill will allow the regulations to respond to changing circumstances and changing practice.

- 1.43 CIL regulations will be made by the Secretary of State for Communities and Local Government, but will require the consent of HM Treasury before they can be made in Parliament.
- 1.44 CIL regulations need to be approved by an affirmative resolution of the House of Commons. This means that the Commons must pass a motion following a debate approving the draft regulations.
- 1.45 The Bill has now completed its Commons stages, and has been introduced to the House of Lords. Second Reading of the Bill in the Lords occurred on 15 July 2008. Subject to the Parliamentary timetable, the CIL clauses will be subject to detailed consideration in Lords Committee after the summer recess.

Amendments made during Commons Committee

- 1.46 The CIL clauses in the Planning Bill need to be effective and workable. The Government made a number of amendments to the Bill at Commons Committee stage, to reflect developing policy and the concerns of stakeholders, including the following matters:
- **infrastructure** – provisions requiring that CIL revenue is to be spent on infrastructure were amplified to include a list of examples of what constitutes infrastructure. This list included affordable housing, although it is not the intention that CIL will be used to deliver affordable housing in the first instance (see chapter 5 for more details). Provisions were also inserted to enable the list to be amended in future and to enable regulations to cover those circumstances where CIL revenue might be used to fund infrastructure not on the list;
 - **calculating the amount of CIL to be charged** – amendments provided that the level of CIL to be paid may be set out in a 'charging schedule', and enabled regulations to make provision for how charging schedules may operate and for procedures for setting CIL rates and criteria;
 - **liability** – amendments provided that regulations could make developers as well as landowners liable to pay CIL, and also allowed for regulations to make provision for joint liability;
 - **collection and enforcement** – amendments clarified the nature of criminal offences for evasion or provision of false information, and for enforcement of sums owed; and

- **relationship with other powers** – amendments were laid to allow for regulations to deal more generally with powers relating to planning or development (so that CIL can operate effectively alongside them) and to restrict the circumstances in which the powers to make regulations or guidance dealing with the interrelationship with CIL and these other powers can be exercised.

Amendments made during Report

1.47 A number of further amendments were made at Commons Report to respond to issues raised in Parliament during Commons Committee stage and by stakeholders. Amendments restricted the types of authorities which could be empowered by the Secretary of State to charge CIL to put on the face of the Bill assurances given by the Government in Commons Committee; and also set out that the amount of CIL to be charged should take into account other available sources of funding for infrastructure. The powers to establish criminal offences were capped and provision was made repealing the unused Optional Planning Charge (OPC) provisions.

Working with stakeholders

Broad support for the CIL approach

- 1.48 There has to date been a consensus among stakeholders in favour of CIL. The Confederation of British Industry identified the benefit of “greater certainty for businesses” offered by the CIL,¹⁵ while in its briefing to MPs in advance of the Commons Report stage of the Bill, the British Property Federation (BPF) highlighted *“the property industry’s continued support for the Community Infrastructure Levy (CIL).”* The BPF went on to say that *“significant progress has been made with the practical detail. CIL remains the most sensible approach towards obtaining a contribution from developers to support the infrastructure requirements which are a consequence of new development.”*
- 1.49 The enabling approach taken to legislating for the CIL has also been positively received, with the BPF and the Home Builders Federation (HBF) jointly announcing that they *“welcome the fact that the CIL clauses of the Bill are enabling clauses. This will provide the necessary flexibility to implement the levy through regulations and guidance as its full details are developed.”*¹⁶
- 1.50 This support from industry is echoed by the professional institutions. The Royal Institution of Chartered Surveyors (RICS), has said that it *“supports Government’s move towards a Community Infrastructure Levy”*¹⁷ and also by The Royal Town Planning Institute (RTPI), which said *“such a levy will provide a means of securing local infrastructure, based on an understanding of local infrastructure need developed in*

15 CBI: Briefing note to MPs for second reading of Planning Bill 10 December 2007

16 HBF/BPF: Joint Memorandum to the Planning Bill Committee 7 January 2008

17 RICS: Parliamentary briefing 10 December 2007

partnership between local planning authorities, development, infrastructure providers and local communities themselves."¹⁸

- 1.51 The Local Government Association has also welcomed CIL, stating that the CIL will make it possible for local authorities to *"build on the successful experience of Section 106 and innovative approaches like the Milton Keynes tariff/roof tax."*¹⁹

Addressing stakeholder concerns on detailed design

- 1.52 The Government welcomes the constructive way in which stakeholders have participated in the development of CIL. It will continue that dialogue during the passage of the Bill and beyond. Whilst there is broad support for CIL, the Government is working closely with stakeholders to work through concerns that they have on the detailed construction of CIL to ensure that it is deliverable.
- 1.53 Communities and Local Government is working with the main developer and local government bodies to work out the best practical arrangements for the CIL. The Government holds regular discussions with the main representatives of local government and the development industry as a means to engage leading stakeholders in the policy development process.
- 1.54 Communities and Local Government has also established a Practitioners Group of individuals experienced in developing or implementing planning obligations and charging policies drawn from across local government and the development industry.
- 1.55 The Government wants to build on the innovative arrangements that some authorities have introduced, learning from their experience. Working in partnership with the Local Government Association, the Government has invited local planning authorities who are members of the Practitioners Group to be the subject of case studies, both in terms of understanding their existing policies on developer contributions but also exploring with them what the Government's proposals for the CIL would mean for them.

Other engagement

- 1.56 The Government will also be talking to local planning authorities and others about what help they need to implement the new regime effectively and fairly, and will formally consult on draft Regulations.
- 1.57 Communities and Local Government officials have also met over 80 organisations since the introduction of the Bill, and carried out a range of engagement activities including regular briefing events and a variety of conference engagements.

¹⁸ RTPI: *Planning Resource* 27 November 2007

¹⁹ LGA: *Response to Planning Bill* 27 November 2007

Consolidation of previous statements

- 1.58 This document consolidates into one place all previous statements on CIL, particularly the document entitled *The Community Infrastructure Levy* published on 24 January 2008 and the written statement on CIL by the Minister for Housing and Planning made to the House of Commons on 9 October 2007.

2. Spending CIL: Infrastructure Delivery

Introduction

2.1 This chapter describes the Government's proposals for how CIL revenues will be spent. It sets out the context for infrastructure planning, funding and delivery and notes that CIL will typically be one of a number of funding sources contributing to infrastructure provision. The chapter notes that there will be a statutory requirement for CIL to be spent on infrastructure, makes a commitment that CIL funds will be additional to existing spending, and describes the Government's proposals for improving infrastructure planning in the light of its new policy statement on local spatial planning, PPS12. The chapter goes on to discuss how CIL could be used to address timing problems to help development and infrastructure provision to proceed in step with each other.

CIL funds in context

- 2.2 Over the past decade the Government has laid the foundations for improved public services. Since 1998, successive Spending Reviews have resulted in sustained investment alongside increased efficiency and better value for money, resulting in improved outcomes for people and communities.
- 2.3 The 1998 Comprehensive Spending Review (CSR) set for the first time fixed, three-year budgets for all departments, separated into resource and capital spending, removing the previous bias against capital investment and enabling public services to plan for the long term.
- 2.4 Since 1997, high levels of investment have been tackling the legacy of decades of under-investment. Public sector net investment increased from ½ per cent of GDP in 1997-98 to 2 per cent of GDP in 2007-08.
- 2.5 The 2007 CSR announced total public spending rising by an average of 2.1 per cent per year in real terms, with net investment rising to 2¼ per cent of GDP. These increases in spending will enable the Government to focus additional investment on its key long-term priorities, including investing in the human capital and physical infrastructure that will keep the UK economy competitive over the long-term, with additional spending by 2010-11 of £14.5bn on education, £19bn on the NHS, £3.6bn on transport, and total spending on new housing of at least £8bn over the next three years.

- 2.6 A priority for the Government is delivering three million new homes by 2020. The Government recognises the need to invest in infrastructure to support housing growth on this scale. The 2007 CSR therefore provided:
- £1.7bn targeted funding for infrastructure in designated growth areas, the Thames Gateway, new growth points, and eco-towns by 2016, including a £300m Community Infrastructure Fund for transport schemes supporting housing growth; and
 - £510m for the new Housing and Planning Delivery Grant over the three year period until 2010/11, to incentivise local authorities to increase housing supply and help bring forward Local Development Frameworks.
- 2.7 CIL will provide further new resources to support housing growth and the development of local communities. Estimates of CIL's revenue raising potential are heavily dependent on assumptions about the number of planning authorities who choose to implement a CIL and the level at which CIL is set in each area. However, the Government believes that CIL has the potential to raise hundreds of millions of pounds per year of extra funding for infrastructure.
- 2.8 The existing system of planning obligations does not meet all of the infrastructure costs of development. Similarly, while CIL will make a significant contribution to infrastructure provision, it is likely to remain the case that developer contributions on their own will not be able to meet the entire cost of a major infrastructure project. Core public funding will continue to bear the main burden, and infrastructure planning will need to take account of all of the funding streams available to local communities.

Co-ordinating infrastructure delivery

- 2.9 CSR 2007 also strengthened the performance management framework underpinning public investment. It introduced 30 new Public Service Agreements (PSAs) which articulate the Government's highest priority outcomes for the period 2008-11. For the first time these PSAs systematically span departmental boundaries, setting out a shared vision and leading collaboration at all levels in the delivery system.
- 2.10 These outcomes include increasing long term housing supply and affordability (PSA20). To ensure this target is delivered Communities and Local Government is conducting joint infrastructure reviews with other signatory departments to:
- identify current barriers and risks to delivery on PSA20 commitments;
 - explore ways in which these barriers can be overcome and the risks mitigated; and

- identify examples of best practice where local delivery partnerships are working well in support of housing growth.
- 2.11 This process has already strengthened the way that Government departments prioritise housing growth in their funding decisions.
- 2.12 Firstly, it has generated better alignment of key funding streams with improved criteria for appraising infrastructure projects and a higher priority attached to those that support housing delivery; for example:
- Communities and Local Government and the Department for Transport are working together to facilitate better coordinated infrastructure delivery between transport bodies and local and regional planning bodies, in order to ensure investment is planned and prioritised in the most effective way. The Departments are also refreshing the appraisal guidance for major transport projects to better reflect the economic benefits of housing growth.
 - Communities and Local Government and the Department for the Environment, Food and Rural Affairs, together with Environment Agency and Natural England, are continuing to assess how environmental (such as flood management, water, waste water and sewerage) and green infrastructure will be delivered effectively in support of new homes, whilst maximising housing supply's contribution to the Government's environmental objectives (especially those set out in PSA28, the Natural Environment PSA).
 - Communities and Local Government and the Department of Health are working together to ensure revenue allocations to Primary Care Trusts after 2008/09 support housing delivery in growth areas and new growth points. The Departments are working to ensure that health provision is aligned with new housing delivery via the planning system, including promotion of the new national planning guidance for health and social care.
 - Communities and Local Government and the Department for Children, Schools and Families are working together to ensure that buildings infrastructure for children's services is delivered alongside housing growth. The Departments are looking at how the systems for planning and delivering housing and children's services work together, which will inform their future plans.
- 2.13 Secondly, the process has increased recognition of the need for fully coordinated local infrastructure delivery planning, as the above reviews have highlighted the absence of this in many areas. An interim recommendation from the reviews is the need for guidance on infrastructure delivery planning to help local government and their local infrastructure delivery partners to deliver against PSA20. The Government plans to work with local government to agree how to strengthen guidance in this area and how to spread best practice.

Additionality of CIL

- 2.14 The Planning Bill specifies that CIL receipts can be used only to deliver the infrastructure needed to support the development of an area. The Bill in effect places a statutory ring-fence around CIL funds. The Government believes that CIL should not be used for general local authority expenditure, nor to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development.
- 2.15 This does not mean that CIL must be spent on entirely new infrastructure. It could equally be used to facilitate better use of existing infrastructure to increase capacity. So, for example, where development necessitates the provision of additional sports facilities, CIL could be used to pay for the refurbishment of an existing community centre to provide such facilities. And CIL could be used to repair failing existing infrastructure where this is important for the success and sustainability of new development. But it would not be acceptable to spend CIL on repair or refurbishment where the development circumstances of the local area did not justify this.
- 2.16 The Government is committed to the principle that CIL should provide funding for infrastructure that is additional to existing funding streams, filling funding gaps that remain once existing sources have been allocated.
- 2.17 As noted above, however, CIL cannot and should not work in isolation from other revenue streams. Authorities ought to have the flexibility to look across their range of funding streams in order to determine how best to deliver their infrastructure priorities and to utilise CIL. The infrastructure needs of an area will be best served if local authorities are able to take a holistic view of the infrastructure required, and of all of the income streams available to fund it. The Government wants to approach the funding of local government by monitoring the delivery of outcomes rather than prescribing precisely how funding should be spent. This means giving flexibility at a local level to mix funding sources, empowering local authorities to be more efficient in delivering the outcomes that local communities and the Government want.
- 2.18 Other sources of funding for infrastructure that are also ring-fenced for supporting new growth will of course continue to be spent on new growth – and the process for setting CIL should take these into account. Furthermore, CIL can never be set with the intention of raising more than the cost of the infrastructure needed to support growth, though the proportion of the cost which CIL meets will depend on the availability of other funding sources.

What CIL may be spent on

A wide definition of infrastructure

- 2.19 The Planning Bill provides that the regulations may set out what is meant by infrastructure and lists examples of infrastructure to which CIL could be applied. The things usually thought of as infrastructure – such as transport and flood defences – are expressly covered by the definition. Other items expressly covered include schools, sporting and recreational facilities and open spaces.
- 2.20 But local government in general, and the planning system in particular, is charged with the delivery of sustainable development in the widest sense, and therefore with ensuring that the very things that make the quality of life good are provided for (or are not lost or weakened but are maintained or improved) when an existing community grows. This means adequate local facilities such as play areas, parks and green spaces, health and social care facilities, police stations and other community safety facilities.
- 2.21 The Government favours a wide definition of infrastructure to give local communities flexibility to choose what infrastructure they need to deliver their development plan. Priorities will vary from place to place. In one authority, a new housing estate might require a new road bypass, while in another authority, a similar housing estate might require an additional drainage system or a new local district heating scheme. Charging authorities will be enabled by Regulations to pass CIL receipts to other infrastructure providers as well as spending them in pursuit of their own functions.
- 2.22 The Planning Bill contains a power for the regulations to amend the illustrative list of infrastructure types to which CIL revenue can be applied so that the CIL can be kept up to date. For instance, it may be that a new type of infrastructure is identified as necessary to support development; but there may be some doubt as to whether this new type of infrastructure is lawfully covered. This provision would permit the regulations to amend the Bill to allow local authorities to put CIL revenue to this use.

National infrastructure and national bodies

- 2.23 Some commentators have expressed concern that CIL should not be given to national bodies. However, there is a consensus that the spending of some national bodies, which form part of Central Government, is essential to unlocking development at a local level. The most usually cited examples are the Highways Agency and the Environment Agency. The spending of these agencies, and others, provides substantial benefits to a local or sub-regional area in a particular part of the country, rather than being of purely national benefit. Accordingly, the Government believes that these bodies should be able to receive funding from CIL revenues. However a decision to

allocate funding to national bodies should form part of the wider process of infrastructure planning alongside other infrastructure requirements.

Demand management

- 2.24 Pressures placed on natural resources through water consumption, waste and car use mean that authorities will need to think innovatively in the future about how they plan for and meet their infrastructure requirements. An increasingly important component of infrastructure planning is the area of demand management – that is, measures which prevent a need for new or more costly infrastructure from arising. Demand management measures can sometimes be the best and most cost effective solutions to delivering sustainable communities. By their nature demand management measures – frequently used to address transport infrastructure needs – enable authorities to make the most effective use of existing infrastructure.
- 2.25 To the extent that demand management measures can be defined as infrastructure, the Government is keen that CIL should be used to fund them.

Affordable housing

- 2.26 The Government's preference is that negotiated planning obligations should continue to be used to enable affordable housing to be delivered on site, in support of its policy of mixed communities. The Government therefore does not initially intend to include affordable housing within the scope of what may be funded from CIL. However, affordable housing is included within the definition of infrastructure in the Bill so that affordable housing could receive CIL funding if evidence shows that this is necessary. Chapter 5 contains more detail on this proposal.

Reserve powers

- 2.27 The Bill also allows regulations to provide for a reserve power of direction for the Secretary of State in relation to the spending of CIL. This is intended as a safeguard, to be used in exceptional cases, where the spending proposed for CIL by a charging authority does not meet the purposes envisaged by the Government for CIL. The Government expects that this power would be used only as a last resort, and that it might be subject to a procedure which the Secretary of State would be required to follow before exercising it – including, for example, consultation with the charging authorities, infrastructure providers or local communities affected by it.

Sub-regional infrastructure

Why sub-regional infrastructure is needed

- 2.28 Some of the infrastructure needed to support the development of an area is likely to serve more than one local authority area (this is referred to here as 'sub-regional infrastructure'). Examples might include hospitals, larger transport projects, or waste facilities. Sub-regional infrastructure is often larger infrastructure to which a number of authorities, and developers, need to contribute in order to make it affordable.
- 2.29 Negotiated planning obligations can struggle to deliver an adequate private sector contribution to such infrastructure, both in terms of quantum and timing of payments. This is partly because of the link between the development and the infrastructure being provided which is a feature of negotiated planning obligations. This link can be more difficult to demonstrate in relation to sub-regional infrastructure, because such infrastructure serves a wide geographical area and the impact on infrastructure which any one development generates may be small. Even if the cumulative impact of all the development in an area plainly necessitates such infrastructure, this may not be enough of a justification to secure a contribution towards its cost from any individual development.
- 2.30 But sub-regional infrastructure can often be the most critical type of infrastructure in terms of unlocking significant housing or economic development, and it is therefore important that the CIL is able to contribute to it.

The Government's preferred approach

- 2.31 As the Government said in its earlier policy statement on CIL in January, a number of options for funding sub-regional infrastructure are being explored. Where possible, the Government will seek to provide a framework enabling local planning authorities to agree voluntarily to fund sub-regional infrastructure through CIL. This is the Government's preferred way to finance sub-regional infrastructure, supporting the Government's commitment to devolve powers and decision-making to the local level.
- 2.32 This approach aims to empower local bodies to make decisions that best respond to the needs and wishes of their communities, without intervention from central Government, enabling them jointly to take important decisions that go beyond the scope of their local boundaries for the benefit of their sub-region. Local planning authorities will need to work together and think strategically in deciding infrastructure priorities, including infrastructure needs at a sub-regional level which increase the sustainability of their area overall, as well as bringing benefits to the development of their local area and to their local people.

Examples of current joint working between authorities are set out in Box 2.1.

Box 2.1: Partnership working at the local level

South Hampshire (PUSH) Multi Area Agreement

The Partnership for Urban South Hampshire (PUSH) Multi Area Agreement (MAA) comprises eleven partner local authorities across South Hampshire, formed in 2003 as a voluntary partnership. The partnership was formalised as a Joint Committee in November 2007, and was selected as a New Growth Point in October 2006.

The joint aim of the partners is to improve the economic performance of the sub-region supported by the provision of 40,425 homes by 2016, and by investment in the necessary infrastructure. This includes water supply and waste water treatment which is a major issue in the PUSH area, as well as the necessity of assessing future development sites for flood risk.

PUSH are seeking to explore opportunities to secure funding and to deploy developer contributions sub-regionally to help fund strategic infrastructure which usually benefits an area beyond its immediate locality, and therefore requires authorities to work across administrative boundaries.

North Northamptonshire

North Northamptonshire is planned to deliver 52,100 homes and 47,400 jobs by 2021. The North Northamptonshire Joint Planning Committee (JPC) is planning this growth and is made up of the five local authorities, Corby, Kettering, Wellingborough, East Northamptonshire and Northamptonshire County Council.

North Northants Development Company (NNDC) is an Urban Regeneration Company and the Local Delivery Vehicle co-ordinating the delivery of the necessary infrastructure to support this growth.

The independent Inspector's report published in May 2008 found the Joint Core Spatial Strategy (CSS) for North Northamptonshire to be sound and it was adopted recently. It is the first of its type in the country. The CSS includes a policy on developer funding. The JPC is now preparing a Supplementary Planning Document (SPD) which will set out its approach to planning obligations and Standard Charges which will help fund strategic and local infrastructure across the four district areas. It is intended that NNDC will play a role in the negotiation of planning obligations for major applications.

Between 2003 and 2008 North Northamptonshire received nearly £30m from Communities and Local Government's Growth Areas Fund (GAF) to support the delivery of infrastructure, and has been awarded an indicative sum of around £29m for the period 2008-2011.

Under the new arrangements introduced from 2008/09 Northamptonshire County Council is the Accountable Body for GAF and for the Programme of Development which will inform the SPD. NNDC is acting as the programme manager for this activity.

Source: *Partnership for Urban South Hampshire, North Northamptonshire County Council*

- 2.33 The Government's approach to funding sub-regional infrastructure through CIL supports other Government devolution initiatives, for example, the Review of Sub-National Economic Development and Regeneration.²⁰ Taken with the SNR's recommendations for devolved decision making and a local economic assessment duty, and the Government's proposal for a business rate supplement, CIL could be part of a wider toolkit that empowers local authorities to deliver growth. Sub-regional CIL arrangements could also complement Multi Area Agreements (MAAs) which allow cross boundary working between authorities in order to deliver their shared priorities.
- 2.34 There are choices to be made about how CIL could contribute to funding sub-regional infrastructure through CIL. One model building on current arrangements might be as follows.
- The Regional Spatial Strategy (RSS) should be accompanied by an Implementation Plan which sets out which organisation is responsible for delivery of policies and proposals, along with the current status of the proposal (for example, whether there is a commitment to its delivery) and the timescales for the key actions to deliver it. This should identify sub-regional infrastructure necessary to support (parts of) the RSS that could potentially be funded by CIL.
 - The Planning and Compulsory Purchase Act 2004 requires that development plan documents (DPDs) in England should be in general conformity with the Regional Spatial Strategy. A DPD would not be in general conformity where an inconsistency or omission would cause significant harm to the implementation of the Regional Spatial Strategy. The RSS, informed by its Implementation Plan, should be a key influence on the form and delivery of the local authority's development strategy. Local planning authorities should therefore seek to include mechanisms to deliver sub-regional infrastructure through the infrastructure planning process underpinning their development strategy in order to demonstrate general conformity.

²⁰ *Prosperous Places: Taking forward the Review of Sub-National Economic Development and Regeneration*, CLG, 2008

- Charging authorities in a sub-region would agree which items of sub-regional infrastructure needed funding by CIL before setting (or revising) their CIL.
- In setting the charge, charging authorities would propose the level of the CIL derived from the total of sub-regional and local funding. The Government would not seek to prescribe this proportion as it would need to arise out of the development plan strategy.
- Charging authorities would set a CIL covering both 'sub-regional' and 'local' elements. To ensure simplicity for developers, the Government prefers an approach whereby charging authorities charge a single amount incorporating both local and sub-regional components, but recognises that there may be practical constraints.
- Depending on the sub-regional infrastructure concerned, CIL receipts would be passed to the infrastructure provider by the charging authority. It is important, therefore, that sub-regional infrastructure providers involve themselves in the development of the RSS and the LDFs that flow from it.

2.35 In London, sub-regional infrastructure requirements could be addressed by a number of boroughs acting jointly, or by the Mayor, in the context of the London Plan which is the Regional Spatial Strategy in London. More details on the Mayor's proposed powers are set out in chapter 3.

Secretary of State and Welsh Ministers as charging authorities

2.36 Given the progress that has been made in developing this approach to sub-regional infrastructure, the Government considers that the powers in the Planning Bill for the Secretary of State and Welsh Ministers to be charging authorities are not required. Those powers could have been used to levy a CIL to fund sub-regional infrastructure. The Government is minded to withdraw such powers from the face of the Bill. The Government will of course keep under review the extent to which sub-regional infrastructure is delivered through the model described here.

Timely delivery

2.37 Delays in infrastructure delivery and gaps in funding can frustrate the development process and the creation of sustainable communities.

2.38 That is one reason why the Government is introducing CIL. As a source of additional finance for infrastructure, it can help to fill funding gaps that can hold up the delivery of key schemes. While CIL revenues in a particular local authority may be modest, they offer local authorities flexibility and could help to unblock the delivery of key items of infrastructure.

2.39 But finding additional finance is only part of the story; the timing and release of that money is crucial to unlocking growth effectively. There are several ways in which timing issues can be addressed, as follows:

- **Predictability of income.** A predictable flow of finance will enable authorities to more effectively plan for and deliver infrastructure. There is likely to be a certain level of predictability flowing from CIL income because it will capture contributions from smaller developments of which there is a steady stream in most local authorities. In this way, CIL will be less 'lumpy' than planning obligations which are sought mainly on larger developments and are typically negotiated. Although the irregular nature of major development means that there will always be a level of uncertainty as to CIL receipts it is anticipated that there will be a predictable and forecastable minimum level of regular CIL income. To maximise predictability of receipts, payment arrangements will be standardised and be accompanied by a credible and effective enforcement regime to ensure prompt payment (see chapter 4).
- **Bankers and front funding mechanisms.** There are different financial tools that allow authorities to bring forward capital funds for upfront investment, and thereby enable them to deliver infrastructure before other receipts come on stream. Options include injections of cash from public sector 'bankers' (for example English Partnerships) or using innovative mechanisms like the regional infrastructure fund (RIF). RIFs are a pot of money within existing capital allocations from which local authorities can bid for funding immediate infrastructure in anticipation of later recycling of forecast income, such as CIL receipts, into the fund. The predictability of receipts is an important prerequisite for such vehicles. The Government welcomes initiatives to make better use of such front-funding vehicles, and will be happy to explore how more regions could utilise such vehicles and the sources of upfront money. Box 2.2 explores some of these cash flow vehicles in more detail.

Box 2.2: Mechanisms for forward funding infrastructure

South West RDA (SWRDA) Regional Infrastructure Fund (RIF)

The RIF is a mechanism through which SWRDA can help ensure the timely delivery of infrastructure projects, where anticipated private funding (developer contributions) will not be available when the infrastructure is needed. The RIF is used to support more sustainable growth or to unlock growth, by enabling the funding of infrastructure to begin before the private sector developer contributions required to fund particular pieces of infrastructure come on stream. This so-called 'forward-funding' will then be recouped from forecast private sector developer contributions (using planning obligations and potentially the CIL). It is also used to pool contributions in advance of a piece of infrastructure being needed, because an authority foresees the need for that infrastructure once planned development emerges. The RIF could work with CIL similarly to enable earlier delivery of essential infrastructure.

Launched in March 2008, the RIF is backed with public funding of £80m agreed as part of the Government's Regional Funding Allocation (RFA) process. An initial RIF Business Plan has identified a number of potential investments across the region's Growth Points and priority places. All potential investments are considered by the SW RIF Investment Panel.

English Partnerships

English Partnerships (EP) works with local authorities, and other public bodies, to help to unlock housing growth by forward funding vital infrastructure. In West Bedford, for example, public sector agencies led by EP collaborated to underwrite the cost of a by-pass that released land for the development of 2,250 new homes. The by-pass is now under construction, and its costs will be recovered through the resulting uplift in land values. In Ashford, EP is providing early finance for the Highways Agency to deliver a new junction to increase capacity at Junction 10 of the M20 and thereby unlock approximately 5,000 new homes. The costs will be recovered through the local authority's Strategic Tariff.

Source: *GO South West, South West RDA & English Partnerships*

Monitoring and transparency

The Government's approach to monitoring and recording CIL

2.40 In addition to the requirement that CIL must be spent on infrastructure to support the development of an area, the Bill gives regulation-making powers to specify that any body which has received CIL (not just the authority that charged it) should monitor the use which either has been or will be made of it; and report on how CIL was collected or spent.

- 2.41 It is important to ensure accountability and transparency of CIL receipts so that charging authorities can satisfy themselves – as well as developers and their local communities – that they are making the best use of CIL. It will therefore be necessary to have clear information about the income received from CIL and the infrastructure delivered. However, it is neither necessary nor beneficial for authorities to attempt to make links between a single CIL receipt and a specific item of infrastructure. This would be impractical and burdensome for authorities.
- 2.42 The Government proposes that, to minimise additional burdens on local authorities, authorities should use existing monitoring mechanisms, as far as possible, to monitor the collection and use of CIL receipts. There are good mechanisms and safeguards within existing reporting and accounting practices, which can deliver transparency in relation to CIL. The Bill itself creates clear legal parameters on expenditure and reporting that will in turn dictate the ways in which CIL monies should be accounted for – for example, authorities will need to manage their accounts in such a way that CIL monies are readily distinguishable to demonstrate that they are acting lawfully in how they spend and distribute it.
- 2.43 The Government is also exploring how different reporting tools might be used to demonstrate CIL inputs and outputs. A leading option is to utilise the annual outturn reports that authorities complete to show annual income and expenditure, because these currently capture the amount of money spent on each capital expenditure category (for example education or transport) and within that, the different finance streams supporting that spending. Other options include using the Annual Monitoring Report system to capture data on infrastructure milestones; and using the MAA and LAA process to monitor delivery. Where the information the Government seeks on the income received from CIL and the infrastructure outputs being delivered would be captured by charging authorities as part of their usual procedures, they could assemble that information into an annual report, or alternatively, simply make public the data held.

Auditing

- 2.44 Local authorities must utilise funds in accordance with the law, and the lawful use of monies will be assessed by auditors. In the case of CIL, this will mean verifying that CIL funds are being spent on infrastructure. All the bodies that will be empowered to charge CIL (see chapter 3) are covered by legislative requirements to be audited either by the Audit Commission, the Comptroller and Auditor General, the Auditor General for Wales, or an auditor appointed by the Secretary of State.

3. Setting CIL

Introduction

3.1 This chapter describes which authorities may charge CIL, and how CIL will be set at the local level. It sets out the Government's proposals for a 'charging schedule' which will be part of, and tested in the same way as other documents within, the Local Development Framework. It describes the Government's proposals as to which public authorities may be charging authorities (typically local planning authorities), and describes the special arrangements which could apply in particular parts of the country, such as London. The process of preparing, consulting on and testing the charging schedule is also set out. This chapter also includes a discussion of the important issue of ensuring that charges are set at reasonable levels so that development is not choked off by the imposition of CIL.

The charging authority

Bodies which can be charging authorities

3.2 Only certain authorities (referred to in the Bill as "charging authorities") will be able to levy CIL. Given the close link between CIL and the development plan process, the Government proposes that (in England – see chapter 7 for Welsh arrangements), planning authorities that prepare development plan documents pursuant to the Planning and Compulsory Purchase Act 2004 will be empowered as CIL charging authorities. These are:

- District Councils
- Metropolitan District Councils
- London Borough Councils
- Unitary Authorities
- National Park Authorities
- The Broads Authority

3.3 These authorities should already be undertaking infrastructure planning in relation to the delivery of their development plans in accordance with Planning Policy Statement 12: Local Spatial Planning (PPS12).

London: the Mayor will be a charging authority

3.4 The Greater London Authority (GLA) was established in 2000 as a new form of citywide governance, made up of a directly elected Mayor and a separately elected Assembly. The Mayor is responsible for strategic planning for the capital.

- 3.5 The Mayor has responsibility for producing a Spatial Development Strategy (SDS) for London (the London Plan). The SDS is part of the statutory development plan and provides a strategic framework for the Local Development Frameworks of the boroughs. It must set out the Mayor's general policies for the development and use of land in London. It should also incorporate the spatial – that is, geographical and local (though not site specific) – elements of transport, economic development, environmental and other strategic policies for London, bringing them together in a single, comprehensive framework. It should adopt an integrated approach, embracing all aspects of physical planning, infrastructure development, and other policies affecting or affected by the distribution of activities.
- 3.6 The London Plan should therefore help to secure the effective co-ordination and targeting of activities and resources, and a consistent, holistic approach to the delivery of policy objectives across London. To further this role, the Government proposes that the Mayor should have the power to set a CIL charge to deliver key strategic infrastructure needed to support implementation of the London Plan.
- 3.7 There is no simple definition of strategic infrastructure, but the Greater London Authority Act 1999 makes clear that the London Plan should focus on matters of genuine regional or sub-regional importance and should not concern issues more appropriately dealt with by boroughs through LDFs. The Act also makes clear that such matters need not affect the whole area of Greater London, but they should be of significance to the wider interests of London, having regard, in particular, to the principal purposes of the GLA. The Government will continue to discuss with London organisations what a focus on strategic infrastructure might mean in practice to ensure that a balance between local and London-wide requirements can be appropriately struck. The Government does however consider that the Mayor should be able to charge and apply CIL funds to fund CrossRail.

Bodies which will not be charging authorities

- 3.8 Ministers indicated in debate on the Bill during Commons Committee²¹ that Regional Planning Bodies and Regional Development Agencies would not be empowered as charging authorities. Amendments made to the Bill at its Commons Report stage mean that there is no power by which such bodies can become charging authorities. Similarly, there are no powers for the new Infrastructure Planning Commission to be a charging authority.
- 3.9 County councils which are not unitary authorities prepare plans for minerals and waste development. The Government is not minded to empower these county councils as CIL charging authorities since it considers that the infrastructure needs of minerals and waste development of an area are best planned for alongside the

²¹ *Hansard Planning Bill Debate, 31 January 2008 c605*

infrastructure needs of other forms of development by the district authority in preparing its LDF.

- 3.10 This does not mean that CIL revenue cannot be collected for and spent on waste infrastructure (for example, a new waste processing plant) or on the infrastructure needed to support minerals and waste development (for example, a road upgrade to accommodate heavier vehicles). Infrastructure demands such as these can form part of the charging authority's infrastructure planning requirements for growth and the charging schedule can reflect these costs as it would other infrastructure demands. In two-tier areas, the district council would be the charging authority and will identify, working with infrastructure providers, the infrastructure needs of its area. The county council will be able to make a case for additional waste management infrastructure as part of that infrastructure planning process.
- 3.11 Waste infrastructure may serve the needs of new communities in more than one charging authority area and the county council may need to work with several district charging authorities to ensure that any costs to be attributed to CIL for such infrastructure are appropriately allocated across them.

The Secretary of State and Welsh Ministers

- 3.12 Given the progress that has been made in developing alternative approaches to sub-regional infrastructure (see chapter 2), the Government considers that the powers in the Planning Bill for the Secretary of State and Welsh Ministers to be charging authorities are not likely to be required. The Government is therefore minded to lay amendments withdrawing such powers from the face of the Bill.

The process of setting CIL

Start with core strategy and development vision

- 3.13 The process of setting a CIL needs to start with an understanding of the development strategy for the area. In England, the development strategy is contained in the statutory development plan which encompasses the Regional Spatial Strategy, the Spatial Development Strategy (in London) and the Development Plan Documents (DPDs) in the Local Development Framework, particularly the Core Strategy and saved policies in Local Plans and UDPs. The development plan will set out the broad quantum, type and location of development anticipated in the area. The quantum and type of development will inform estimates of how much CIL is likely to be collected as well as the quantum and type of infrastructure required.

Infrastructure planning to underpin the core strategy

- 3.14 Core strategies need to be underpinned by infrastructure planning. This is important to ensure that development is both deliverable and sustainable. It will also be important to those authorities wanting to introduce CIL. Regulations could require charging authorities to prepare and publish a list of projects to be funded, wholly, or in part, by CIL. However, rather than creating a new and separate infrastructure list for CIL purposes, the Government wants CIL infrastructure planning to complement and reinforce the infrastructure planning process that should underpin development plans.
- 3.15 The Government's policy on infrastructure planning is set out in PPS12 (applicable in England). PPS12 stresses the importance of infrastructure planning to underpin the preparation of the core strategy of the Local Development Framework, and the need for the infrastructure planning process to identify infrastructure needs and costs, funding sources, and who will be responsible for delivery (see Box 3.1).

Box 3.1: Extract from *Planning Policy Statement 12: Local Spatial Planning*

4.8 The core strategy should be supported by evidence of what physical, social and green infrastructure is needed to enable the amount of development proposed for the area, taking account of its type and distribution. This evidence should cover who will provide the infrastructure and when it will be provided. The core strategy should draw on and in parallel influence any strategies and investment plans of the local authority and other organisations.

4.9 Good infrastructure planning considers the infrastructure required to support development, costs, sources of funding, timescales for delivery and gaps in funding. This allows for the identified infrastructure to be prioritised in discussions with key local partners. This has been a major theme highlighted and considered via HM Treasury's CSR07 Policy Review on Supporting Housing Growth. The infrastructure planning process should identify, as far as possible:

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

4.10 The need for infrastructure to support housing growth and the associated need for an infrastructure delivery planning process has been highlighted further in the Government's recent Housing Green Paper. The outcome of the infrastructure planning process should inform the core strategy and should be part of a robust evidence base. It will greatly assist the overall planning process for all participants if the agencies responsible for infrastructure delivery and the local authority producing the core strategy were to align their planning processes. Local authorities should undertake timely, effective and conclusive discussion with key infrastructure providers when preparing a core strategy. Key infrastructure stakeholders are encouraged to engage in such discussions and to reflect the core strategy within their own future planning. However the Government recognises that the budgeting processes of different agencies may mean that less information may be available when the core strategy is being prepared than would be ideal. It is important therefore that the core strategy makes proper provision for such uncertainty and does not place undue reliance on critical elements of infrastructure whose funding is unknown. The test should be whether there is a reasonable prospect of provision. Contingency planning – showing how the objectives will be achieved under different scenarios – may be necessary in circumstances where provision is uncertain.

4.11 Infrastructure planning for the core strategy should also include the specific infrastructure requirements of any strategic sites which are allocated in it.

4.12 The Government has made provision for a Community Infrastructure Levy (CIL) in the Planning Bill introduced to Parliament in November 2007. Local authorities will be empowered to charge CIL on new developments to help finance the infrastructure needed to support growth. The CIL powers are expected to come into effect by spring 2009 (subject to the Parliamentary timetable). In the meantime local authorities should continue to advance their infrastructure planning in order to ensure that there is clear evidence about planned infrastructure, its cost, timing and other likely sources of funding to underpin their development strategies. This would also serve as a basis for establishing policies for charging CIL on developments in their areas.

3.16 Development plans look many years ahead and need to be flexible enough to cope with major uncertainties, including in relation to long term funding commitments for infrastructure. As a result, the outcomes of the infrastructure planning process, whilst overall setting out the anticipated infrastructure needed to support the development strategy for the area, may need to be broken down into two types.

- Firstly, there will be specifically identified items of infrastructure needed to support major strands of the development strategy; for example, transport links to a major planned urban extension.

- Secondly, there will be infrastructure not specifically identified but known to be needed; such as the number of primary schools needed to support anticipated population growth but without specific locations.
- 3.17 Whilst local planning authorities should seek to identify as much infrastructure as possible of the first type, this may be difficult given uncertainties over future funding. In addition there is a need to balance the desire for certainty over specific pieces of infrastructure with the need for flexibility to respond to unexpected developments and the need for re-prioritisation as funding decisions are made.
- 3.18 The second category of infrastructure will provide the flexibility to cater for the form of development strategy likely to be in place in more urban contexts where major change such as urban extensions is unlikely; and also for windfall development which, whilst it must accord with the development strategy for the area, cannot, by definition, be identified in advance. It also mitigates the danger of overly complicated infrastructure planning which risks making CIL unnecessarily complex.
- 3.19 It would be appropriate for charging authorities to use CIL to fund infrastructure in both categories.
- 3.20 PPS12 makes clear that it is essential that stakeholders key to the delivery of the plan are engaged early in the production of the development strategy which gives rise to the need for infrastructure. This includes those agencies responsible for delivering infrastructure, both public and private sector. The Government consider that the requirements of infrastructure planning underpinning CIL spending are unlikely to require different or additional consultees from those needed for the development strategy as a whole.

Establishing other sources of funding and delivery commitments

- 3.21 As chapter 2 indicates, CIL will only be one component of a range of funding streams financing infrastructure. In deciding how much to seek to raise from CIL, authorities should look across their suite of funding sources in allocating funds to achieve their infrastructure delivery plans, as well as securing timely funding commitments from other infrastructure providers. The amount to be raised from CIL should have regard to how much will be available from other sources.

Improving infrastructure planning

- 3.22 Research²² into the current operation of Local Development Frameworks has shown that the quality and extent of evidence about infrastructure need and the level of commitment to delivery from infrastructure providers varies considerably. Common weaknesses identified by the research included a failure to provide sufficient detail on the infrastructure requirements of the plan; a lack of identification of the

²² *Infrastructure Delivery: Spatial Plans in Practice – Supporting the reform of local planning* CLG, 2008

agencies responsible to deliver specific projects or proposals or who the key partners might be; insufficient consideration (or evidence) that the key partners were willing or able to take responsibility for delivering relevant infrastructure requirements of the LDF; insufficient consideration of the existing plans, strategies and expenditure commitments of the key partners; and the inclusion of overly 'aspirational' or unrealistic policies and proposals. That said, Box 3.2 shows that there also many examples of good practice in infrastructure planning.

Box 3.2: Infrastructure Delivery: Summary of Spatial Plans in Practice Research – Supporting the reform of local planning

The *Spatial Plans in Practice* project was commissioned by Communities and Local Government to investigate the implementation of the Local Development Framework system and to identify emerging issues and good practice for wider dissemination. The fifth thematic report of the study focused on the role of spatial plans in the delivery of infrastructure requirements.

The research found a number of positive lessons and examples of 'good practice', in terms of how authorities have addressed delivery issues in their LDF documents.

Redcar and Cleveland Core Strategy provides an excellent example of an adopted core strategy which has, as a key component, an "Implementation Plan" which cross-references policy commitments outlined in the Core Strategy with desired outcomes, indicators for monitoring implementation, the mechanism for delivery and the lead agencies involved. This approach was commended by the Inspector following the Examination of the Core Strategy.

The development of partnership approaches and the consideration of cross-boundary issues were also positive aspects. However, challenges identified include some difficulties in engaging developers, and subsequently keeping them involved, as well as issues of timing and synchronisation between the LDF process and the strategy-making activities of some other Council departments and external organisations.

North Plymstock Area Action Plan (AAP). Chapter 6 of the AAP covers delivery and for each policy in the plan, establishes the agency responsible for its delivery, targets, funding and phasing. Within the AAP, there is evidence of joint ownership of policies across a variety of sectors. The intentions of other delivery agents are also indicated; for instances, the conformity between the proposals contained in the AAP and the local transport plan are referred to on several occasions.

3.23 The Government is working to address these issues. The 2005 Pre-Budget Report launched a Policy Review to develop a co-ordinated long term approach for the delivery of infrastructure to support housing growth. The review recommended improvements to the way

Government departments prioritise and allocate expenditure and more co-ordinated infrastructure planning and delivery at the local level (see chapter 2).

- 3.24 PPS12 (see Box 3.1) also recognises the importance of improving infrastructure delivery and makes clear that a local planning authority's infrastructure planning must encompass infrastructure needs and costs; phasing of infrastructure development; funding sources; and responsibilities for delivery of infrastructure. These responsibilities will exist whether or not a local authority chooses to introduce CIL, but they will be particularly important to those that do.
- 3.25 Whilst infrastructure planning, both for the purposes of development planning and CIL, will improve over time, development plans inevitably need to be flexible enough to cater for uncertain futures. The long time-scales over which infrastructure planning needs to be done mean that it will never be a precise science. The Government believes that there is recognition within the development and local government communities that there will therefore need to be an element of pragmatism about the calculation of costs to be attributed to CIL. Attempts to identify costs accurately too far in advance may lead to spurious decisions and actually result in a worse allocation of resources than if planning maintains a reasonable degree of uncertainty. The Government recognises that the key issue is to ensure that any uncertainty does not lead to a CIL charge that is set too high. It will therefore seek to ensure that the process for setting the charge achieves the right balance between setting the CIL low enough that not too many sites are at or below the margin of viability, but not too low that the CIL is ineffective in providing worthwhile additional resources to help fund infrastructure. This issue is returned to in more detail later in this chapter.

Testing of infrastructure planning

- 3.26 The Planning and Compulsory Purchase Act 2004 requires DPDs to be "sound". PPS12 says that to be "sound" a Core Strategy should be justified, effective and consistent with national policy. In practice this means they must be founded on a robust and credible evidence base, be deliverable, flexible and capable of being monitored. The results of the infrastructure planning process will be a key part of a robust and credible evidence base.
- 3.27 Developers and others will be able to challenge the robustness of the infrastructure planning process through the soundness requirement and seek changes to the development strategy for the area if they consider that the soundness test is not satisfied; for example, if infrastructure requirements seem to be over-elaborate or unjustified given the volume of development proposed.

Local authorities with up to date plans may implement CIL

- 3.28 It is important that local authorities are able to implement CIL to support delivery of the development strategy for their area without having unreasonable burdens placed on them. The Government is minded to propose that a pre-requisite for being able to levy CIL will be that there must be an up to date adopted development strategy for the area in which they propose to charge; whether in a saved local plan or UDP; Core Strategy DPD; local development plan (in Wales); or Spatial Development Strategy (in London).
- 3.29 Any authority wishing to charge CIL which does not have an up to date development strategy for the area would therefore need to prepare a new development plan (alongside which they can prepare their CIL charging schedule) before they can take advantage of CIL. This will allow them to prepare their evidence base on infrastructure to underpin CIL.
- 3.30 The Government is minded to propose that it should be the responsibility of the local authority to decide whether the adopted development plan for the area is up to date. This will avoid creating unnecessary additional processes and minimise delay. But the Government will consider whether there are any criteria local authorities should take into account in making this decision.
- 3.31 Having an up to date development plan will not however be sufficient to draw up a charging schedule. The development plan will also need to be underpinned by satisfactory infrastructure planning. Development plans with weak or non-existent infrastructure planning should not be used as a basis for drafting a charging schedule.
- 3.32 To be satisfactory, infrastructure planning should broadly satisfy the principles set out in PPS 12 (see Box 3.1). As a minimum there should therefore exist (either in the development plan, or as a background document that was available to the inquiry or examination into the development plan) clear statements of:
- named items or classes of infrastructure related to delivery of the development strategy;
 - a broad idea of the quantum of infrastructure needed of each type; and
 - an assessment of the other sources of funding available to deliver the infrastructure and the shortfall in funding.
- 3.33 As with the assessment of whether the development strategy is up to date, the Government is minded to propose that the assessment of whether the infrastructure planning is sufficient should be the responsibility of the authority. If the authority satisfies itself that it has both an up to date development plan and robust infrastructure planning, it could then prepare a charging schedule and have it independently examined.

3.34 In the case of authorities which have an up to date plan but which conclude that their infrastructure planning is weak, there will be a need for the local planning authority to articulate the infrastructure needed to support their development strategy in order to create proper foundations for a charging schedule. But it would be perverse to require the local planning authority that has an up to date development plan to prepare an entire new development plan simply to undertake the infrastructure planning process. The Government therefore proposes that local authorities may undertake a discrete infrastructure planning process to facilitate the preparation of the charging schedule. The infrastructure planning process should result in a clear statement of the matters set out above, which could go forward as a background evidence document to the examination into the draft charging schedule.

Existing 'tariff' policies

3.35 Some local authorities have standard charging arrangements in place for planning obligations, whether in development plans or supplementary planning documents or guidance. The Government does not propose to provide for the automatic conversion of these types of document into CIL charging schedules as these documents may not have been independently tested and will give rise to legitimate expectations of negotiation around the charge that will eventually apply to a given development. Some standard policies will not have had the benefit of the level of public testing that is warranted for CIL. Subject to provision for exceptional cases, CIL charges are intended to be mandatory and so it will be important that there is an opportunity for the developers and other stakeholders to have their say on the proposed charge in full knowledge of its intended status. Further details on transitional arrangements for existing tariff schemes are set out in chapters 5 and 6.

The charging schedule

Iterative approach between core strategy, infrastructure planning and charging schedule

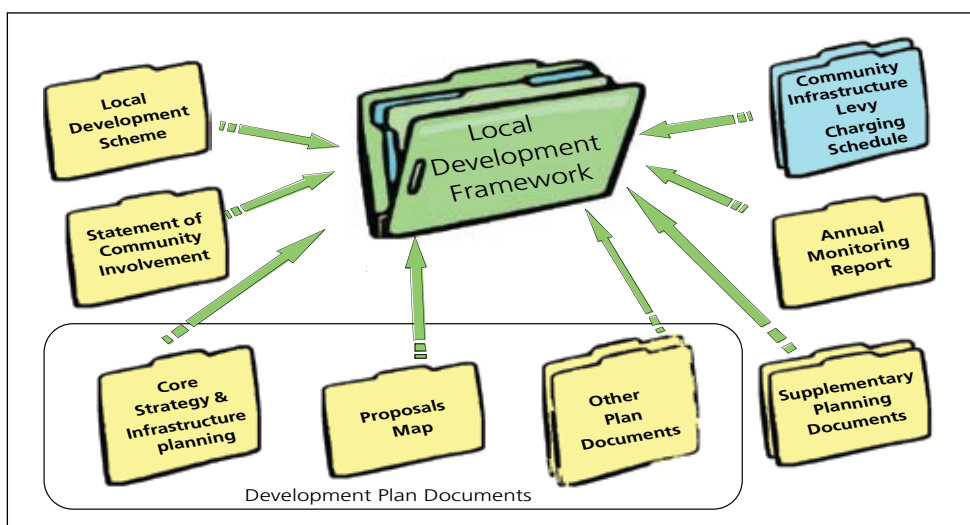
3.36 As an integrally related exercise to the infrastructure planning process the charging authority should produce a draft charging schedule setting out the rates and/or formulas for determining how the levy will be calculated in their area. There should be a direct relationship between the process for establishing the charging schedule and the infrastructure planning process (and therefore the development strategy for the area) to allow for feedback between decisions about the level and scope of the charge and the infrastructure planning process (and so potentially the development strategy). This will be facilitated by the Government's proposals for testing of the charging schedule (see below).

Status of the charging schedule

3.37 The Government's January policy statement said that the process of setting charges should ideally be embedded in the development plan process. This will ensure that the charging schedule is integrally linked to the development strategy for the area and is subject to robust arrangements for independent testing with developers, infrastructure providers and the public in order to ensure that it satisfactorily supports growth and is deliverable.

3.38 The Government proposes therefore that the charging schedule will be a legal document created through the CIL regulations but will also be part of the folder of documents that make up the Local Development Framework defined through PPS12 (see diagram 3.1 below). The formal legal status of the charging schedule is a matter of ongoing discussion with stakeholders. The Government is currently minded to propose that the charging schedule will not formally be part of the development plan. However, it will be tested in a similar way to development plan documents to ensure robustness and provide a full opportunity for stakeholders to test it.

Diagram 3.1



Evolution of charging schedule practice

3.39 Regulations could potentially permit very sophisticated charging schedules. However, the benefits of more sophisticated charging schedules need to be balanced against the advantages of simplicity. In the early years of CIL, at least, the Government believes that both the development industry and local government recognises that there are strong arguments in favour of a relatively simple approach to drawing up charging schedules.

3.40 Furthermore, it seems likely that (as will be the case for infrastructure planning) the determination of CIL rates will, at least initially, involve an element of pragmatism. To maintain a system that is speedy and

simple, consultees on the schedule will need to accept that the rates proposed are based on broadly acceptable approximations derived against a background of some uncertainty, rather than a precise calculation. The Government is exploring ways to support charging authorities in developing the skills needed to achieve satisfactory charging schedules.

Testing of the charging schedule

- 3.41 The Government is minded to propose that the charging schedule will be consulted upon for a minimum of six weeks and then be submitted to an independent person for examination as is the case for development plan documents. The Government proposes that examinations will follow the same rules as for examinations into development plan documents; that is, a right to be heard in person before the independent person, with an expert assessor if necessary. However, the means by which that right to be heard is exercised – round table discussion, informal hearing or formal inquiry session – is likely to be at the discretion of the independent person. The Government is keen to explore the possibility that charging authorities could use mediation in advance of examinations to limit, as far as possible, areas of dispute over the charging schedule.
- 3.42 The independent examination would test whether the proposed charging schedule would put at risk delivery of the development strategy for the area set out in the adopted development plan by making development in the area unviable. To facilitate this, the charging schedule should normally be tested alongside the Core Strategy so that direct cross reference and feedback is possible. It may be that the examinations into both the charging schedule and development plan are carried out by the same independent person.
- 3.43 It will be important that the independent person testing the draft charging schedule is seen to be independent and has the confidence of those participating in debate on its contents. The Government's lead option is that the Planning Inspectorate should lead the examination of charging schedules with the assistance where necessary of expert assessors from, for example, the Valuation Office Agency.
- 3.44 The cost of the independent examination will be borne by the charging authority, following the current practice in relation to other documents tested in this way.

The report of the independent person will be binding

- 3.45 The Government proposes to make the recommendations of the Inspector binding upon the charging authority. The Inspector's report would therefore need to contain precise recommendations for how the charging schedule must be changed within the bounds of the evidence presented to the examination. The report would not present detailed summaries of the cases submitted to the examination but would focus

on addressing the question of whether the proposed charge would put at risk the delivery of the development strategy for the area.

- 3.46 The charging authority would be required make the changes recommended by the Inspector before adopting the charging schedule. If the Inspector concluded that changes were needed which had not been exposed to the examination, whether through discussion or in the evidence submitted to the examination, the Inspector could remit the schedule back to the charging authority for further work.
- 3.47 If the charging authority does not wish to accept the Inspector's changes, it would have the option of not adopting the amended schedule and therefore not charging a CIL at all; or of resubmitting a revised schedule to a fresh examination.

Formal adoption of the charging schedule

- 3.48 Given the key role of the charging schedule, and in line with the adoption standards of development plan documents, the Government proposes that it should be formally brought into force, for example by a resolution of the full Council of the charging authority.
- 3.49 In London the Government anticipates that the Mayor would make a formal decision to adopt his or her CIL charging schedule in accordance with the Greater London Authority's decision making framework, evidenced by a Mayoral Decision Document. However the Government will discuss this proposal further with stakeholders in London.

Setting charges to reflect development viability

- 3.50 If the CIL is set at unaffordable levels, development will not be delivered and the CIL will not be meeting its objective of helping to unlock development.
- 3.51 The Bill provides that the regulations will include provisions for determining rates of CIL. In drawing up its charging schedule, the charging authority may, amongst other things, make reference to the likely increase in value arising from the grant of planning permission in its area.
- 3.52 This provision rests on the assumption that the affordability of CIL will depend ultimately on what proportion it represents of the increase in value arising from development. The uplift in value likely to arise from gaining planning permission will be a significant component of that value increase. However, should the CIL liability grow too large relative to the uplift in value which is effectively funding it, development will not come forward.
- 3.53 Some commentators, particularly from the commercial development sector, have argued that value uplift arising from the grant of planning permissions in an area may not be the right measure of development

viability for charging authorities to use in setting CIL levels when they prepare their charging schedule, and that there could be other more immediate proxies. The Government will continue discussions with the industry to establish whether other measures or proxies might be appropriate, and is open to the possibility of amending the Bill if an agreeable alternative to value uplift can be found. Proposals put forward so far include the level of developer profits or return on investment, rental returns, impact on land supply, or impact on delivery of the development plan.

- 3.54 John Calcutt's recent report to the Government on housing delivery²³ recommended that the Government should work with the Homes and Communities Agency, the development industry and local government to develop or adopt a standard methodology to assist local planning authorities in assessing what level of developer contribution is viable for any particular development. Several methodologies or 'tool kits' already exist to help inform decision-making on the level of developer contributions where viability is an issue and, as Box 3.3 shows, some local authorities are commissioning detailed analyses to assist viability judgements at the plan level rather than on individual sites. The Government is considering what further support and guidance could be given to assist charging authorities to make plan-level viability assessments, and chapter 6 considers further the skills issues that this requirement may raise. In the context of the Planning White Paper commitment to streamline guidance and only provide it when needed to produce a specific outcome, and evidence such as that from Swindon that planning authorities already have an understanding of the techniques required, the Government will consider whether national guidance for assessing viability is desirable.

Box 3.3: Swindon's viability study

Swindon Borough Council has already undertaken work to identify the need generated by new development, having regard to existing and future service provision and capacity analysis, and the cost of catering for this need. The result of this work was the introduction of 'standard charges' per dwelling, in September 2006 through a series of Development Control Guidance Notes, which exist as an amplification of Swindon Borough Council's Adopted Local Plan.

Swindon Borough Council has commissioned a study to determine the capacity of development proposals to afford infrastructure contributions and affordable housing.

This involves the development of a robust methodology for the measurement of land value uplift conferred on the granting of planning permission, tested against selected previously developed case studies across Swindon.

The project includes the following outputs:

- an assessment of existing use value (as a minimum threshold value against which to test viability), and expected gross development values across Swindon Borough for both residential and commercial development
- the production of an area based value analysis to inform a value profile of Swindon reflecting economic circumstances and local supply and demand factors
- a commentary, based on industry knowledge and best practice, about the contribution that can be reasonably sought by the Council for strategic and social infrastructure benefit before it prevents landowners bringing land forward for development
- a recommendation on a reasonable level/or levels of 'profit' that can be expected by developers reflecting the nature of proposals and risk

As part of this study, Swindon will seek a viability assessment of each identified value area derived from the above analysis that should incorporate:

- residual land value calculations assessing development costs, including site preparation costs, abnormals, relevant planning standards, prospect of funding or investment to address identified constraints or assist development
- scenario testing of Developer Contributions, and Transport Tariffs applied to commercial (per sqft) and residential (per unit/bedspace) development as development costs
- levels of contribution that can reasonably be levied against proposals coming forward through the planning process in each of the value areas
- capacity to 'future proof' the methodology, given emerging workstreams including the formulation of a comprehensive strategic and social infrastructure toolkit and the likely introduction of the Community Infrastructure Levy by central Government in 2009.

Source: *Swindon Borough Council*

3.55 In drawing up its charging schedule the charging authority will also need to be able take into account the wider range of development costs placed on developers. This assessment should include, for example, the level of affordable housing contributions which the authority will require from developments, in order to ensure that a CIL liability does not reduce the amount of affordable housing delivered through planning obligations (see also chapter 5), and also the effects of other regulatory costs.

- 3.56 CIL rates might include contributions towards both local and sub-regional infrastructure. This might be the composite of two amounts, proposed by two different bodies, for example the Mayor, and a particular London Borough; or a particular local authority outside London and a group of local authorities of which that authority is a member. The Government will consider what safeguards could be put in place to ensure that local and more strategic infrastructure both receive a fair share of overall CIL receipts, without making rates too high and rendering development unviable.
- 3.57 Robust testing and consultation procedures, described above, will be employed to assess the feasibility of charging schedules.

Apportioning CIL to different classes of development

- 3.58 In addition to the need to set charges in a way which is sensitive to levels of viability, charging authorities will also need to consider how charges might be set to reflect the broad relative impacts of different types of development, and different levels of viability between those different classes. Existing tariffs already charge different rates on different land uses (for example, different rates on residential and commercial development) to reflect the fact that some types of development have a higher intensity of use and so have a greater impact on infrastructure.
- 3.59 Such provision is necessary to ensure that tariff schemes underpinned by planning obligations are compliant with the Government's policy tests which require contributions to be directly related to the proposed development, and fairly and reasonably related in scale and kind to the proposed development. CIL will secure contributions from developments in a more generalised way than planning obligations, ensuring that all development contributes towards the infrastructure needed to support the development of the area.
- 3.60 The Government wishes to explore further how CIL charges could be set in such a way to reflect in this more generalised way the general impacts of a class of development, for example through some measure of intensity of use. Ultimately, infrastructure costs will determine what is to be raised from CIL overall in a particular area, and in apportioning these costs in the charging schedule it will be important that the charges set are viable and fair, while at the same time securing the additional revenue needed to help address infrastructure need.

Differential rates

- 3.61 Local authority areas are often diverse and infrastructure needs and economic conditions may vary significantly within the same area. Some local authorities have already designed tariffs which reflect these variable factors in different rates for different areas, such as by charging a higher rate in particular parts of the authority where there is a much higher infrastructure need, for example to address a particular flood

risk. Tariff rates set may also reflect the levels of viability for a particular class of development or zone within an authority's area.

- 3.62 The Government will continue to explore with industry bodies and local authorities whether it might be appropriate to allow different CIL rates within a local authority area, and if so under what circumstances and how it might work. For example, if one portion of a local authority has particular needs for new flood defence and transport infrastructure, while another portion is a brownfield regeneration area with particularly difficult economic conditions, it might prove challenging to agree a single CIL rate that works for the whole area. The same could also be true of an authority with both urban and rural areas.
- 3.63 The Government will seek stakeholder views on whether this flexibility should be permitted within CIL and present a firmer view in draft Regulations.

Metrics: what is the unit of development being charged?

- 3.64 The rate of CIL to be paid will be expressed in the charging schedule in terms of an amount to be paid per unit of development. Existing standard charging regimes use a variety of different bases for determining the contribution. These include floor and site area; number of dwellings; or number of bedrooms. To aid transparency and comparability across the country, the Government proposes that regulations will specify which 'metrics' could be used for residential development under the CIL, and which for each class of non-residential development.
- 3.65 Calculating CIL rates per square metre of floor space of development would appear to be sensible for industrial and commercial development where, for example, planning fees are already calculated on this basis.
- 3.66 However, the Government will need to consider further which metric is most appropriate for residential development.
- 3.67 A per dwelling approach is used to calculate residential planning fees, and is one familiar to developers. However, it imposes a proportionately bigger burden on smaller houses, with the effect – which may be seen as an advantage in some areas – of incentivising the building of larger family homes.
- 3.68 A per-bedroom basis or per habitable room basis better reflects the likely impacts of development, in that it is a good indicator of the number of people living in that development, but could also encourage developers towards lower densities to maximise profits. It may also invite dispute (particularly in the case of a per-bedroom charge) as to how many CIL chargeable units there are in any given dwelling. A per square metre approach for residential development avoids many of the disincentives or disputes created by per dwelling or per room, but

could have the effect of penalising a developer for building to more generous space standards.

Indexation of the charging schedule

3.69 The Government is keen to ensure that the ability of CIL payments to fund the level of infrastructure intended when the charging schedule was adopted is not affected by subsequent changes in related prices and costs. The Government therefore intends that regulations will enable charging authorities to update the charges set out in the charging schedule in line with an index measuring changes in appropriate prices or costs. The Government is minded to prescribe which indices will be appropriate.

Reserve powers in respect of levels of CIL

3.70 Where there is a danger that the level of CIL which is proposed by a charging authority does not meet the Government's objectives, the Bill allows for regulations to provide a reserve power for the Secretary of State to cap the amount of CIL which an authority may raise. The Government envisages that this power would be used only as a last resort, and that it might be subject to a procedure which the Secretary of State would be required to follow before exercising it.

Reviewing the charging schedule

3.71 The content of the charging schedule will flow from the decisions made in the development plan about the infrastructure needed to support the development strategy for the area. Development plans must look fifteen to twenty years ahead and should, amongst other things, seek to take account of anticipated changes in the economic climate. This will affect the degree of potential change envisaged in the development strategy and the scale of infrastructure needed to support it. By implication, the level of CIL set out in the charging schedule should also reflect these anticipated changes.

3.72 The charging schedule should be kept under regular review to ensure that it remains appropriate as circumstances change – for example as market conditions change, causing changes in land values and development priorities. The Government does not envisage that charges would be set so close to the margin of viability that normal variation in market conditions would necessitate review of the schedule. And a certain level of automatic responsiveness will be allowed through regulations, for example allowing charges to move in line with a measure of inflation. However regulations will nevertheless need to set out procedures to amend schedules, and in a way that ensures full community and stakeholder participation.

3.73 The charging authority will need to keep under review the effect of the level of CIL on development in their area. A key tool for achieving this could be the Annual Monitoring Report (AMR) prepared by the local planning authority which measures the performance of their local development documents, and the monitoring and reporting tools outlined in chapter 2. In addition, all local authorities are required under the Planning and Compulsory Purchase Act 2004 to monitor those matters affecting the development of their area, including economic matters. Where this monitoring evidence shows that economic circumstances have changed significantly or the AMR suggests that there is a need to revise the development strategy for the area, the charging authority should also assess the need to revise their charging schedule.

Community empowerment

3.74 On 9 July 2008, the Government published *Communities in Control: real people, real power*. This represents the next stage in the Government's plans, originally set out in the 2006 Local Government White Paper, on devolving power from Whitehall to town-hall, and from town-hall to citizen.

3.75 The White Paper's objectives are to:

- improve public services by developing practical ways for local people to exercise influence and control;
- revitalise local democracy and boost civic society; and
- support representative and participatory democracy.

3.76 The Government's programme of planning reform will improve opportunities for public participation in both the infrastructure planning underpinning the charging schedule and the procedures for preparing the schedule.

3.77 The Government will ensure that there are full opportunities for the community and other stakeholders to influence the purpose and level of CIL to deliver local infrastructure priorities. Infrastructure planning will be an integral part of the preparation of the development plan strategy for the area which is fully consulted upon and independently tested. This chapter has shown that communities will also be able to argue that the proposals in the draft charging schedule would prejudice delivery of the development envisaged in their local development plan and set out how they want it to change.

4. Paying CIL

Introduction

4.1 This chapter focuses on how CIL will be levied in the case of individual developments. It describes who may be liable for CIL and the way in which liability is assumed; shows how CIL liability will be calculated based on key characteristics of the planning permission for the development; sets out payment arrangements, including proposals for payment in instalments and for payment by phase of development. CIL will not be payable until commencement of development, so the chapter also explains proposals for notifying the charging authority that development has commenced. Proposals for the enforcement of CIL payments are also set out, though the Government envisages that enforcement tools will be infrequently used.

Definition of development and of planning permission

4.2 The Bill requires that regulations must ensure that CIL is payable when development commences in reliance on planning permission. 'Development' and 'planning permission' will therefore need to be defined for CIL purposes.

'Development'

4.3 The Government believes that CIL should be levied on most types of development. This will minimise the possibility that patterns of development are distorted by CIL, and ensure that all development which has a significant impact on infrastructure contributes towards the cost of that infrastructure. The Bill requires that regulations define the development on which CIL is payable.

4.4 The starting point for the definition of development will be that set out in the Town and Country Planning Act 1990. It is envisaged that CIL should be charged on most types of residential, commercial and industrial development. However, the Government will explore whether, and how, this definition could be constructed to ensure that it covers only those types of development which can generally be assumed to give rise to some impact on, or need for, infrastructure. This could be achieved by constructing a definition which means that CIL is charged only on buildings, or on prescribed classes of development, as set out in the Use Classes Order, for example.

4.5 The Government will seek the views of stakeholders on how to could construct a definition which provides clarity on the type of development on which CIL is payable, while still ensuring that in broad

terms development contributes fairly to the infrastructure need which it creates.

‘Planning permission’

- 4.6 The CIL clauses in the Bill also provide for planning permission to be defined in regulations. The definition of planning permission will be driven by the scope of development to be included in CIL, and is likely to include permissions granted under the Town and Country Planning Act 1990, including general consents such as local development orders, and may cover development consents under other regimes.
- 4.7 Providing for ‘planning permission’ to be defined in regulations ensures that provisions can be made for those circumstances where permission is granted, but not through a standard planning consent. One example of this is where outline permission is granted for a site, but development cannot commence on that site until subsequent approval has been received for certain specified reserved matters (such as the scale of the development or landscaping) for which a subsequent application needs to be made. The Government proposes that in such cases, it is the grant of approval for the final reserved matters for a site, or part of a site, which should constitute the planning permission for the purposes of determining the CIL liability. Outline permission is often used to enable development to come forward in phases, each of which is subject to the approval of certain reserved matters, and in such cases CIL liability would be calculated and paid separately for each of the phases.
- 4.8 Some development does not require planning permission to be applied for, as it is already deemed to have been granted permission, by virtue of being included in the General Permitted Development Order (GPDO). Most GPDO development is likely to be excluded from CIL.
- 4.9 Under s.73 of the 1990 Act, a developer may make a fresh planning application which has different or fewer conditions than those attached to an existing planning permission, which, if approved, effectively modifies or discharges the existing conditions. It is possible that a condition might relate to the size or use class of development, in which case modification or discharge of that condition could have some relevance to the CIL liability. The Government would not wish to create an avoidance mechanism whereby the discharge or modification of a condition using s.73 enabled a development to avoid its full CIL liability. The Government will therefore consider with stakeholders how permissions under s.73 should be provided for, that avoids unnecessary administrative burden, while ensuring that all development that should contribute does so.

Exemptions and reductions from CIL at national level

4.10 The Government does not envisage that there should be many exemptions to or reductions from CIL, in order to avoid complexity and distortions and ensure fairness. The question of whether or not exemptions or reductions should be given is separate from whether a charging authority may reduce CIL in particular areas (considered in chapter 3), or what provisions there may be for sites which would be rendered unviable by the CIL rate set (considered below). The Government has already indicated that it will consider the case for any exemptions against a set of criteria, and proposes that the criteria that a potential exemption or reduced rate must meet before the Government will consider it, are as follows:

- **The exemption should be able to be designed to avoid definitional issues.** It is vitally important that any exemptions to CIL should not create scope for challenge, be difficult to apply, or create a loophole because it is not clear what they apply to. CIL is intended to provide greater certainty for developers, and any exemptions that may be granted should not undermine this.
- **The exemption should be fair and not create undue distortions of competition (in particular, it should not give rise to an illegal State aid).** Reductions in the amount of CIL which a class of development is liable to pay could be viewed as a State aid under EU rules, if it appears to benefit a particular type of undertaking in a way which cannot be justified with reference to the inherent design of CIL. Any exemptions to CIL should therefore avoid creating an unjustifiable State aid, but in any event, should not confer unfair or unjustified advantage.
- **The proposed exemption should not give rise to other unacceptable distortions to behaviour or create perverse incentives.** For example, if an exemption relies on a threshold, care needs to be taken that it does not create a perverse incentive to develop in an undesirable way to minimise CIL liability.
- **The exemption should not lead to charging authorities suffering a disproportionate loss of revenue.** All exemptions will, to some extent, reduce the revenue which could potentially be raised through CIL. However, in determining whether to provide for an exemption, the Government will need to consider whether the effect of that exemption will be to undermine the delivery of development plans by significantly restricting the infrastructure that may be supported by CIL, to an extent which is not justified by the benefit conferred on those enjoying the exemption.

- 4.11 If the Government considers that a case for an exemption has been made, in many cases it may be fairer to offer a reduction rather than a full exemption which, while recognising the particular nature of the development to which the relief has been granted, also ensures that some contribution is received for the community infrastructure from which that development will benefit.
- 4.12 The Bill provides for exemptions to CIL to be set out in regulations. The Government is minded to propose that exemptions will be national in coverage.
- 4.13 The Government announced in its January 2008 document that in order to reduce administrative complexity, there will be a *de minimis* threshold for CIL. The Government has already indicated that householder development by homeowners, much of which is already covered by permitted development rights, will not be liable to pay CIL.

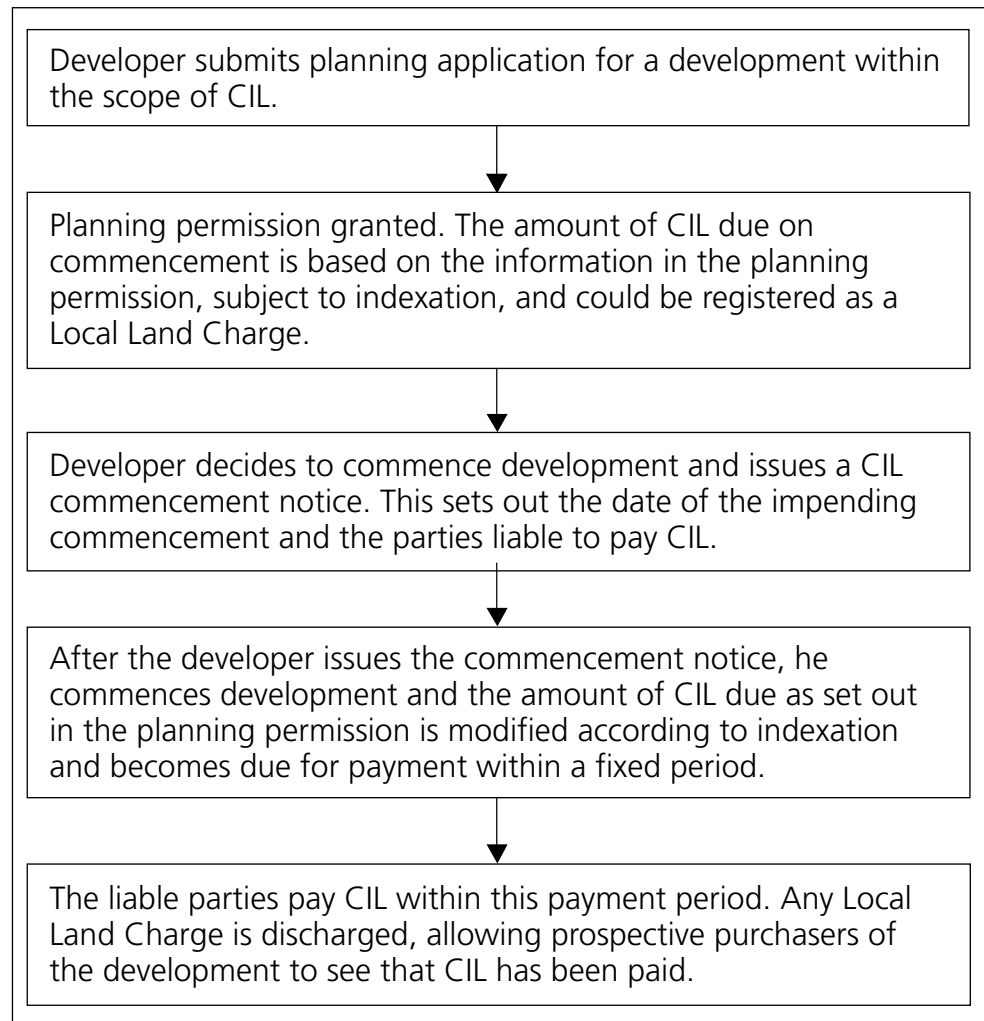
Which charging schedule is applicable?

- 4.14 As chapter 3 indicates, the Government expects charging authorities to review their charging schedules and revise them when necessary. Where a new charging schedule is set to be adopted by a charging authority, the Government proposes that the applicable charging schedule should be the one in force at the time that the planning application is validated, so as to ensure that the CIL liability faced remains predictable and is not unfairly affected by any unforeseen delays in the planning process.

Determining the amount of CIL due

4.15 Diagram 4.1 below sets out the key stages in determining the amount of CIL due, and paying CIL. These stages are explained in more detail in subsequent paragraphs.

Diagram 4.1



CIL due is based on the planning permission and the charging schedule

4.16 The planning permission will confirm the amount of CIL-chargeable units a developer is permitted to build. The rate in the charging schedule, multiplied by the units of development indicated by the permission will indicate the amount of CIL a developer will be asked to pay (notwithstanding the effects of any indexation). CIL cannot be levied where no charging schedule is in force, and cannot be levied on any planning application which was validated prior to the charging schedule coming into force. CIL will also not apply to planning permissions which have been granted before the day on which the charging schedule comes into force in an area.

Appeal against inaccurate calculation of CIL due

4.17 The Government intends the calculation and collection of CIL to be as simple and straightforward as possible to minimise disputes over the amount of CIL due. Nevertheless, where such cases do exist, liable parties will be allowed to appeal on matters of fact. Examples of this might be where the liable party feels that errors have been made in the number of CIL-chargeable units, or in the charging schedule which has been used.

Exceptional cases

4.18 Even where charging authorities take sensible precautions to ensure that charging schedules set out viable charges, there may still be a very small number of cases where the level of charge set may not be affordable on a particular development. The number of such cases may be minimized if charging schedules set differential rates (see chapter 3) that accurately reflect the circumstances of different parts of a local authority's area. There are two approaches that could be taken to any remaining cases where the level of CIL set is not affordable. The first, if the number of cases is sufficiently small, is to accept that those particular developments might not happen at all, or may be delayed. The second is to make provision to ensure that where possible, this residual amount of development is not prevented from coming forward as a consequence of the imposition of CIL. However, the Government is clear that any such provision should apply only in exceptional cases: CIL is intended to deliver speed and certainty, both of which could be undermined if anything other than an extremely limited number of developments require special treatment.

4.19 The Government will continue to seek views on what factors or features of development might enable an objective assessment of whether it should have its CIL liability reassessed and how to establish what level of CIL such development should be required to pay, in a way which is fair, systematic and transparent. It has been suggested that a viable level of CIL payment for such development could be established on the basis of an independent 'open book' valuation of developer costs and profits. The Government has some reservations about how this could be made to operate in a fair and consistent way, and which did not place undue administrative burdens on developers and charging authorities. However, the Government will continue to explore how an exceptional cases procedure might be designed.

Triggering CIL liability

CIL liability crystallises upon commencement

4.20 CIL liability will only be triggered and thus due for payment on commencement of development, an arrangement that mirrors many planning obligation agreements. This is because not all permissions are implemented, raising issues of unfairness: charging CIL simply on

permissions granted could result in CIL being paid in support of infrastructure that was never prompted by new development. Commencing development on a planning permission on the other hand confirms a likely need for additional infrastructure which CIL will contribute towards.

Definition of commencement

4.21 In determining at what point a development has started, the Government is minded to use the definition of when development is begun set out in the Town and County Planning Act 1990. Section 56 of the Act defines commencement (in the case of operational development) as the time when operations are begun, and the Act defines operations to include construction in the course of the erection of a building, demolition, digging of trenches for foundations, laying of pipes, operations in the course of road construction and any other “material development” which does not already have consent, for example, through the General Permitted Development Order. In the case of change of use, commencement of development is the time when the new use is instituted. Using the existing definition provides a relatively tried and tested definition understood by planners and developers alike.

Timing of commencement and proposal for a commencement notification

4.22 While the commencement of development has an established definition, determining the precise *timing* of this commencement and hence the date from which liability is triggered is less straightforward.

4.23 In England, a planning permission may be commenced at any time within its (typically) three year life span, giving charging authorities little immediate certainty of when this, and therefore the triggered CIL liability, might occur. This is important both for charging authorities and developers because:

- there is a risk that non-compliant developers might gain an unfair advantage over compliant developers by commencing without paying, and not paying until prompted by the charging authority; and
- without prior notification charging authorities are unlikely to have the resources to be able to monitor for commencement to ensure non-compliant developers do not gain an advantage over compliant developers.

4.24 The Government therefore proposes that developers be required to notify the charging authority of their intention to commence development via a “commencement notice”, an arrangement that mirrors many planning obligation agreements, and existing building regulations requirements where the local authority is the certifying

authority. This would enable charging authorities to distinguish more easily between compliant developers from non-compliant developers and to direct collection and enforcement resources accordingly, an approach fully in line with the new style of risk-assessed regulatory enforcement required by the Hampton Review.²⁴

- 4.25 To ensure that liable parties do not have to make the same notification twice, the Government is exploring whether those being notified as a result of other requirements could share this information with CIL collection officers (or vice versa). Data protection requirements would however need to be satisfied.

Content and operation of proposed commencement notice

- 4.26 The Government proposes that such notification would contain the impending date of commencement as well as the details of the parties who will pay CIL. This should ensure that charging authorities are aware of the identity of these parties on commencement as well as the fact that commencement has occurred. To aid flexibility where the commencement is delayed or liable parties change, such notices could be withdrawn and re-submitted.
- 4.27 To ensure that those parties that do not submit such a notice before commencement do not gain an advantage over those that do, the Government proposes that such a failure could lead to withdrawal of the normal payment options (detailed below), leaving CIL due immediately.

The liable party

- 4.28 The Bill provides for the liable party to be either the landowner, developer or a third party. The regulations will determine how and in what circumstances liability might be attached to the landowner or developer. However, the identity of the appropriate liable parties will be known to the charging authority through the commencement notice proposed above.

Proposal for a notice to assume or transfer liability after commencement

- 4.29 There may be occasions where the party liable for CIL needs to change after commencement of development, for example where the development has been sold to another developer or landowner during the course of development. The Government proposes to allow for liability transfer between parties by means of a separate notice.

Joint and several liability

- 4.30 The Government recognises that some parties may wish to share liability for CIL. To address this, the Government is considering that where appropriate such liability may be assumed or attach on commencement jointly and severally to different parties. The effect

²⁴ *Restricting administrative burdens: effective inspection and enforcement* Hampton, P, HM Treasury, 2005

of this would be to share liability between the parties in question but that any party may be liable for the whole amount.

Indexation of CIL payments

- 4.31 As set out above, commencement could be up to three years from the grant of planning permission during which time the prices of infrastructure that CIL is to fund may have changed significantly.
- 4.32 The Government is therefore minded to allow charging authorities to update CIL liabilities in line with certain indices of inflation in infrastructure prices beyond the point of planning permission to when this liability becomes due for payment on commencement. The Government is minded to prescribe which indices may be used. They may include the BERR Construction Price and Cost Indices Online, found at www.bcis.co.uk, which is also specified in the Government's guidance for indexing planning obligations.

Payment

Payment arrangements

- 4.33 Subject to decisions on whether payment on account should be provided for, payment of CIL will be due on commencement. To minimise the impact of a CIL liability on a developer's cash-flow, the Government proposes that developers will not have to pay their CIL liability immediately on commencement but instead within a fixed period from commencement. The Government will seek views on what this period should be, but is initially minded to propose a period of 28 days, which would apply nationally to provide consistency for developers.
- 4.34 However this payment period may still act as a constraint for some CIL amounts and therefore the Government is considering offering developers with liabilities over a certain limit the possibility of payment by instalments. If the Government proceeds with this proposal it envisages giving developers the opportunity to make payments on fixed dates from the date of commencement to maintain simplicity and ease collection. Such instalments might be of equal, increasing or decreasing proportions of the total sum due.
- 4.35 Of course, flexibility for developers of this nature means slower income for charging authorities, with potential consequences for income predictability and timely delivery of infrastructure. And as with other areas of CIL, rules on who would be allowed to pay this rate and how much they had to pay at each stage would need to be consistently applied to ensure fairness. Developers would not be able to negotiate bespoke payment schedules.

4.36 If payment was outstanding after the initial fixed payment period or the payment schedule was not met, then liable parties might face enforcement action (see below).

Payment in cases of approval of reserved matters

4.37 Where development is phased in line with the approval of reserved matters following outline permissions, the Government currently envisages that as each phase commences the liable party would pay the CIL for that phase of development only. As in the case of development that is not phased, liable parties could potentially have the option of paying in instalments. However this could lead in some circumstances to quite complex payment arrangements, adding administrative burdens to both developers and local authorities. Since phasing is itself a mechanism by which developers spread risk and smooth their cash flow, the Government will consider whether payment in instalments should also be available in such cases.

On-line payment

4.38 The Government is keen to minimise the burden of payment for liable parties. On-line payment offers many advantages over conventional methods such as security, convenience, instant confirmation of receipt, and speed. The Government is therefore currently exploring how the online payment of CIL might be facilitated, including through existing services such as the Planning Portal.

Standard forms

4.39 Similarly, the Government does not wish to add complexity and uncertainty to the CIL payment process by introducing forms that may vary significantly between charging authorities. The Government is therefore minded to ensure that related forms such as the commencement notice proposed above are consistent in their content across charging authorities. Further, it is also considering how, as part its future development, the Standard Planning Application form might be used to facilitate identification of CIL liable parties, and draw the attention of applicants to a potential CIL liability.

Payment in-kind

4.40 Planning obligations enable developers to provide certain infrastructure through in-kind provision such as providing a school on land under their control. Representations to the Government have suggested that CIL similarly could be payable in-kind. However, payment of CIL in-kind raises some significant challenges.

4.41 It is not clear how the value of an in-kind offer would be calculated so that it could be compared to the normal CIL charge due from a development proposal. There are two main options: the cost actually incurred by the developer to provide the in-kind offer, or the cost that would fall to the charging authority if they were to provide the infrastructure.

- 4.42 Under the first option, it is possible that the costs to the developer of providing the in-kind provision could be significantly lower than paying the CIL charge for the same infrastructure through use of their own land or workforce to construct the infrastructure as part of the wider development. This could raise fairness issues.
- 4.43 The alternative approach of assessing the costs to the charging authority of providing the infrastructure may be simpler but this might build in to the system benefit or advantage to certain developers, particularly larger developers who, for example, are more likely to be able to offer in-kind contributions.
- 4.44 In-kind payment also raises questions over the compatibility of such an approach with EU procurement rules; and payment in-kind would need specific consideration as to how to enforce payment; for example, how to deal with disputes as to whether or not the in-kind payment had in fact been delivered to the quality expected by the charging authority. Finally, it would be necessary to consider whether the charging authority should have final say on whether or not an in-kind contribution would be acceptable in place of a cash payment.
- 4.45 The Government nevertheless recognises the potential for in-kind payments and have therefore provided for them in the Planning Bill. The Government will continue to discuss with stakeholders the technical challenges that in-kind payments present.

Other issues

Development straddling a local authority boundary

- 4.46 Where a development proposal straddles local planning authority boundaries, the Government proposes that, as with current planning obligation policies, the relevant CIL charging schedule (if any) would be applied to the parts of the development within the relevant authority. There is some risk, as there is now, that this may lead developers to design their proposals in a way that minimises their CIL liability. However, the proposed development would still need to be in accordance with planning policies, such as the need to provide mixed communities, safe access to the site and appropriate levels of open space in order to secure planning permission. This provides a safeguard in circumstances where this risk might arise.

The Killian Pretty Review

- 4.47 The Killian Pretty Review is considering how the planning application process can be improved. A call for solutions paper, which was published on 27 June 2008,²⁵ has invited views on a range of matters where improvement is required. The reviewers are due to report back to Communities and Local Government and BERR in autumn 2008.

²⁵ *The Killian Pretty Review. Planning Applications: A faster and more responsive system – A Call for Solutions* CLG, 2008

The review's conclusions on potential reforms of the development control process may have implications for the way in which CIL is paid and enforced. The Government will seek to reflect any relevant findings of the review in the CIL regulations.

Collecting authorities may be different from charging authorities

4.48 The Planning Bill provides that other authorities may collect CIL on behalf of a CIL charging authority. This will help to reduce administrative burden. For instance, the Mayor of London will be a charging authority and the Government will be ideally seeking to design a collection system that ensures that developers only pay one rate of CIL to one collection authority, which is likely to mean that London Boroughs collect CIL on his behalf rather than the Mayor collecting CIL in each case.

Deductibility of CIL in computing other tax liabilities

4.49 The treatment of CIL payments in computing other tax liabilities will follow normal HM Revenue and Customs rules. This means that for developers who incur CIL wholly and exclusively for the purposes of their development trade (but not in relation to a fixed capital asset of the trade), CIL payments will be a deductible expense when calculating profits for Corporation Tax or Income Tax purposes. However, where the development in respect of which the CIL is paid is treated as a fixed capital asset, CIL will not be an allowable cost in computing a chargeable gain for Corporation Tax or Capital Gains Tax purposes.

Enforcement provisions

4.50 Given the key role the Government expects CIL to play in supporting development, delayed payment or non-payment of CIL will undermine the ability of the charging authority to deliver sustainable communities and place an unfair burden on those parties that have paid CIL in a timely fashion. The Government therefore proposes the following measures to enforce payment of CIL. Although these provisions are a necessary safeguard, the Government envisages that, like planning enforcement tools, they will in practice be used sparingly.

The enforcement authority

4.51 In most cases, the Government expects the authority collecting and enforcing CIL to be the same authority as the charging authority. However, the Government recognises that in certain cases it may be appropriate for CIL collection and enforcement duties to be carried out by a related body, perhaps where development control functions are carried out by an authority other than the charging authority.

The Local Land Charge

4.52 Each CIL liability could be registered as a Local Land Charge (LLC) by the charging authority and potentially also by the collecting authority

(where different). A LLC would indicate that CIL liabilities are contingent on commencement, to ensure that purchasers of affected land are fully aware of possible CIL liabilities should they decide to develop.

- 4.53 Although LLCs are only a signal of liability which may be pursued by the charging authority and do not carry any further enforcement rights (such as right of sale) in themselves, the Government expects registering CIL as a LLC to present a powerful incentive to pay CIL. This is because on discovering such LLCs prospective purchasers of land or properties will not want to be pursued for any outstanding CIL liabilities and so are likely to insist that such CIL liabilities are fully discharged beforehand. Liable parties evading CIL liabilities are therefore unlikely to be able to sell properties unless they pay the charge. Alternatively, purchasing parties might lower their price to reflect the fact that they will need to pay CIL themselves.
- 4.54 Registering CIL in this way should usually ensure payment of CIL at some stage, thereby avoiding the need for charging authorities to take enforcement action. However, for LLCs to be an incentive to pay, it needs to be clear to prospective purchasers of land that the possibility of charging authorities pursuing outstanding CIL payments, and their ability to do so, is a real one. The effectiveness of LLCs thus depends on the presence of additional enforcement mechanisms.

Optional registration at the Land Registry

- 4.55 While the Government proposes that CIL will be registered as a Local Land Charge, charging authorities will still be able to register CIL charges as registered charges where appropriate at the Land Registry if the authority wishes to gain a power of sale over the land. However, the Government is not currently minded to confer higher priority on such charges, meaning that the discharge of CIL following any sale of land could only occur once existing charges, including those with a higher statutory priority, had first been satisfied.

Interest and surcharges

- 4.56 The Government is keen that the CIL collection and enforcement system results in timely receipt of funds for charging authorities and ensures that non-compliant liable parties do not gain an unfair advantage over compliant parties. As delaying payment of CIL could unduly delay spending on infrastructure, impose additional borrowing costs for charging authorities and create unfairness, the Government proposes to allow charging authorities to be able to add interest on to the amount of CIL outstanding when payment is late. To aid consistency and certainty across charging authority areas, the Government proposes that this rate of interest be set nationally. Such a rate is likely to be similar to those found in many planning obligation agreements, for example a number of percentage points higher than

the commercial lending interest rate of a major UK bank, or the Bank of England 'base rate'.

4.57 For these same reasons, if payment continues to be outstanding 28 days after the end of the payment window, the Government proposes that charging authorities will be able to add a surcharge of five per cent to the outstanding CIL amount, with the option of adding another such surcharge if CIL continues to be outstanding 90 days after the end of the payment window.

Serious cases of non-compliance

4.58 Despite the incentives for timely payment described above, some liable parties may continue to try to evade their CIL liabilities. It has been suggested by some stakeholders that planning enforcement mechanisms, including Stop Notices, will be adequate to ensure the payment of CIL. However, those powers do not make any provision for the collection of outstanding monies – only for the halting of development. This creates a potential loophole – for example if a development is completed before the charging authority becomes aware of it, or before the payment window has expired.

4.59 Accordingly, the Government considers that new enforcement tools are required. Although the Government envisages that these tools would rarely be used, the Government considers that they are necessary as a deterrent and to address serious cases.

4.60 The Government is considering a proposal to create a CIL Stop Notice, which would be similar in effect to planning Stop Notices, prohibiting development on the site until the payment in question had been made. Charging authorities would only be able to issue CIL Stop Notices in certain conditions; namely, where payment of CIL was overdue and warnings of the risk of a CIL Stop Notice being served have been ignored. Charging authorities would also have to take the potential Human Rights Act implications of serving a CIL Stop Notice into consideration, including whether such a Notice would be a proportional enforcement response to the case in question. The Government proposes that contravention of a CIL Stop Notice would be a criminal offence.

4.61 The Government proposes to give charging authorities the power to seize assets of the liable party to recover monies due. After completion of development, asset seizure will be the only means of active debt recovery available to charging authorities as CIL Stop Notices will no longer be effective.

4.62 Where a charging authority could show that it had exhausted all other means available to it, the Government is exploring the possibility that regulations could enable charging authorities to ask a Magistrates' Court to commit a liable party which had failed to pay CIL to prison for up to three months.

Rights of appeal against enforcement action

4.63 As is the case for planning enforcement action, and to ensure fairness, the Government intends that liable parties will be able to appeal against enforcement actions where it can be shown that such enforcement actions are unwarranted. Examples include development not commencing and therefore CIL not being due for payment, payment of CIL not being late and thus enforcement action being inappropriate, or insufficient prior notification of enforcement actions such as CIL Stop Notices. These appeal facilities would be additional to the proposals for dealing with exceptional cases set out above.

5. Planning Obligations and Planning Conditions

Introduction

5.1 This chapter sets out the Government's proposals as to how planning obligations could be reformed following the introduction of CIL. It develops the Government's thinking on the future role of planning obligations and announces the publication of new research on the value of planning obligations and on a possible 'common starting point' for negotiations on affordable housing. The chapter also sets out the steps the Government will take to protect levels of affordable housing delivered through planning obligations and contains a brief commentary on the use of planning conditions.

Planning obligations to continue

5.2 Earlier proposed reforms of the developer contributions regime (see Chapter 1) envisaged the repeal of planning obligations in full. However, planning obligations will remain available to local planning authorities after the CIL regulations come into force. This will ensure that developer contributions towards matters such as affordable housing will continue to be made through planning obligations, even where an authority introduces CIL.

5.3 Local authorities that choose not to establish a CIL in their area can continue to use planning obligations to enable development to be granted planning permission, subject to the potential restrictions outlined below.

Restricting the use of planning obligations

5.4 The Government is considering whether there is a case to restrict the use of planning obligations in the future.

5.5 The current scope of acceptable uses of planning obligations is set by the policy tests set out in Circular 05/05 which define a specific strength of relationship between the planning obligation sought and the development. In short, a planning application should be refused permission if the planning obligation in question were not secured. This relationship-based approach means that large developments can be legitimately asked to provide significant contributions through planning

obligations (for example a major residential scheme may be asked to provide an entire school).

- 5.6 Kate Barker's proposals for a Planning-gain Supplement (PGS) (see chapter 1) included a complementary proposal to scale back the use of planning obligations to 'direct impact mitigation' and affordable housing.
- 5.7 The Government's consultation paper on reforming planning obligations as part of the introduction of PGS²⁶ developed this proposal for a reduced scope for planning obligations which included affordable housing, direct replacement of facilities or amenities caused by the development, and other matters necessary to make the development site (not the planning application as a whole) acceptable in planning terms. This meant that providing access, ensuring physical safety of the site, design and landscaping of the site and environmental quality would have been within scope, but items such as schools, libraries, medical facilities and transport improvements would not.
- 5.8 Contributions towards these more strategic types of infrastructure are often collected by means of standard charges and formulae and are therefore well suited to collection through CIL. One option that the Government therefore wishes to explore is whether contributions towards these types of infrastructure should be collected through CIL by restricting the scope of planning obligations.
- 5.9 The provision of land for community facilities such as schools needs careful consideration if the use of planning obligations is to be restricted. It is important that such facilities are located in an appropriate place and that authorities do not have to resort to negotiated or compulsory purchase to secure suitable sites. It may be that provision of land for community facilities should remain within the scope of planning obligations to overcome this potential difficulty.
- 5.10 Other options include reducing the scope of planning obligations through a narrower set of criteria than those set out in Circular 5/05, or preventing planning obligations from being used to secure developer contributions through the use of standard charges.
- 5.11 Should any reduction in the scope or use of planning obligations be undertaken, it will be important to consider how local planning authorities move from one regime to the other, and the consequences this has for the delivery of development, in particular for areas with tariff type policies which would need revision under this proposal. The Government believes that existing tariff schemes should, over time, be migrated to CIL. However, the Government will also consider how best to phase any reduction in scope to minimise transitional issues (see also chapter 6), and over what timescale that reduction should take place.

- 5.12 Any scaling-back of planning obligations will not affect planning obligation agreements which have already been signed or which are signed at any time up to the time when the scaling-back occurs; in short, this change would not be retrospective in effect. The Government is committed to retaining affordable housing within planning obligations (see below) should any such scale back be implemented.

Improving planning obligations

- 5.13 The Government is committed to continuing to improve the operation of the planning obligations regime in both the short and long term.

New research on planning obligations

- 5.14 New research²⁷ published alongside this document shows that local authorities are making greater use of planning obligations. Box 5.1 sets out the key findings.
- 5.15 The research indicates that despite greater use of standard charging, which should facilitate the wider use of planning obligations for smaller development proposals, it is still the case that larger development proposals are the focus for developer contributions through planning obligations and that the majority of small schemes make no contribution at all to the infrastructure costs which they generate. By sharing the costs of the infrastructure out more evenly, CIL provides a mechanism that local authorities can use to ensure that each development pays its fair share.

Box 5.1: The Use of Planning Obligations

A new study on the use of planning obligations published alongside this document²⁸ shows that planning obligations are increasingly becoming focused on planning permissions for larger schemes despite changes in policy which enable local planning authorities to apply them to smaller schemes. The study shows that in 2005-06, the proportion of major residential planning permissions with planning obligations attached increased from 40 per cent in 2003-04 to 48 per cent in 2005-06. The proportion of permissions for minor development that had planning obligations attached actually fell (6.9 per cent of minor residential permissions had a planning obligation attached in 2005-06 compared to 9.3 per cent in 2003-04). The overall proportion of all planning permissions with planning obligations attached fell slightly between the two years (6.9 per cent to 6.2 per cent).

Local authorities participating in the study suggested that the resources required to secure planning obligations and the associated delay in processing the planning application meant that local planning authorities rarely seek planning obligations for smaller applications, even where they could seek them in accordance with current policy.

27 *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University, 2008

28 *Valuing Planning Obligations in England: Update Study for 2005-06* Sheffield University, 2008

5.16 The Government will commission a further study to assess the use of planning obligations in the year 2007-08.

Policy, guidance and support on planning obligations

5.17 The Government will seek views on whether new policy on the use of planning obligations in light of the introduction of CIL is necessary and if so, what such policy might contain. The Government is also considering the need for guidance on the implementation and use of CIL. These decisions will be taken in the context of our commitment in the Planning White Paper²⁹ to streamline the planning framework. The Government's ambition is a clear, strategic and focused planning framework to provide the context for local plan-making and decision taking. This means the Government will look critically at whether any additional guidance is needed to support planning obligations or CIL, and whether the Government is the right body to produce that guidance.

5.18 The Government has, in the past, produced guidance and support materials for local planning authorities including practice guidance on the use of planning obligations³⁰ and has worked with the Law Society to produce a model planning obligations agreement.³¹ That agreement will now be updated in light of experience of using the first version. The Planning Advisory Service operates a forum for planning obligation officers to exchange information and advice on planning obligations.³² And the new Homes and Communities Agency will be an active agent in spreading best practice between local authorities.

5.19 The Call for Solutions document published by the Killian Pretty review³³ is inviting comments on how further improvements can be made to the planning obligations regime and the Government will consider the review's recommendations in due course.

Transparency for local communities

5.20 *Communities in Control: real people, real power* launched on 9 July (see chapter 3) sets out the Government's intentions to explore whether local communities could be provided with more information on developer contributions made through planning obligations. The Government has already changed the law to provide that planning obligations must be placed on the planning register to provide greater transparency³⁴ and it is strongly recommended that authorities put in place monitoring systems so that information is readily available to the public.

29 *Planning for a Sustainable Future: White Paper* CLG, 2007

30 Available on CLG website at <http://www.communities.gov.uk/publications/planningandbuilding/planningobligationspractice>

31 Available on CLG website at <http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/planningobligations/modelplanningobligation/>

32 <http://www.pas.gov.uk/pas/forum/topics-index.do?forumId=22677>

33 *The Killian Pretty Review. Planning Applications: A faster and more responsive system – A Call for Solutions* CLG, 2008

34 *The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002 (SI 2002 No 828)*

5.21 The Government now wants to explore whether it can strengthen the information provided to local communities about how planning obligations have been delivered by developers (for example information about when payments have been made) and how the local authority has put those contributions to use. This will enable local communities to hold local authorities to account if infrastructure agreed in a planning obligation and paid for by a developer does not come forward. It will also help ensure that local authorities do not amass significant levels of unspent developer contributions without good reason. The Government will also explore whether local communities have sufficient opportunity to comment on proposed developer contribution policies to ensure that local needs arising from new development are properly understood and addressed.

Affordable housing

5.22 The Government said in its January 2008 document on CIL that developer contributions towards the provision of affordable housing should continue to be negotiated through planning obligations to ensure that there is sufficient affordable housing to achieve genuinely mixed communities. This would best ensure that affordable housing was, wherever possible, provided on-site as set out in national planning policy.

Impact of CIL on affordable housing levels

5.23 The January document also set out the Government's intention that there should not be any reduction in the level of affordable housing contributions secured from developers as a result of the introduction of CIL. Some stakeholders have expressed concern that CIL could affect the level of developer contributions through planning obligations if CIL is not set at a sensitive level. The Government would be interested to receive evidence which shows that CIL and planning obligations will interact in this way, or that local planning authorities will consider it appropriate to grant planning permission with reduced levels of developer contributions towards affordable housing.

5.24 The Government has put in place safeguards which aim to ensure that the introduction of CIL will not result in a reduction in the overall level of contributions secured for affordable housing. The Planning Bill was amended at its Commons Committee stage to include a list of examples of infrastructure to which the CIL regulations could permit CIL revenue to be applied. This list includes affordable housing. Should monitoring reveal that the introduction of CIL is having an adverse impact, CIL regulations can be amended to permit CIL to be used to top up developer contributions towards affordable housing. However, as the Government set out in the January document, the Government does not intend to include affordable housing within the definition of infrastructure at first.

- 5.25 The Government is considering how best to monitor and identify any changes in affordable housing arising from the introduction of CIL. The Housing Strategy Statistical Appendix (HSSA) published by Communities and Local Government includes data on provision of affordable housing funded by developer contributions through planning obligations at the local authority level. The data allows the identification of year-on-year changes in the number of affordable housing units, their tenure and whether they were fully or partially supported by planning obligations. Therefore, it would be possible to examine the data relating to local authorities who have implemented CIL to observe if there have been any changes in affordable housing provision. It will be important however to understand all the drivers for any observed changes in levels of affordable housing in authorities introducing CIL as other factors (including the general state of the local housing market) may also have an impact.
- 5.26 The Government is engaged in discussions with the Chartered Institute of Housing, National Housing Federation, Shelter and other housing stakeholders to ensure that the risks of a decline in affordable housing are prudently managed.

Improving affordable housing policy and practice

- 5.27 The Government is keen to explore whether improvements can be made in the way planning obligations are used to secure developer contributions towards affordable housing. The Government has today published new research³⁵ which explores whether local authorities can improve their performance in this area. The research stresses the need for a clear local policy so that the developer can understand the financial implications clearly and early in the process. This should allow land deals to be completed with a better knowledge of the likely contribution sought by the authority which may reduce negotiation over the level of the contribution to be made.
- 5.28 Different approaches to setting out local affordable housing policies are explored in the research. Some local authorities simply set out their policies as a percentage of the number of units planned on site. Others set out their policies in terms of whether grant from the Housing Corporation should be assumed, the size and tenure mix of units required, and in some cases, policies establish the price that should be paid for the units by an RSL.
- 5.29 The research concludes that it is not easy to develop standard approaches for general use across a wide range of local authorities since their circumstances vary significantly. However, the Government is keen to explore with local authorities whether more can be done to stimulate the take up of good practice in setting policies for developer contributions towards affordable housing and the negotiation of planning obligations for affordable housing more generally.

5.30 The Government will explore whether Government Offices could facilitate the exchange of skills and experience between authorities, particularly on negotiating developer contributions for affordable housing. London Councils facilitates such a forum for officers in the London Boroughs. Chapter 7 sets out the Welsh Assembly Government's proposals for improving planning obligations practice in Wales.

Planning Conditions

5.31 Where there is a choice between imposing planning conditions and entering into a planning obligation, it is the Government's policy (paragraph B51, Circular 05/05 *Planning Obligations*) that the imposition of an appropriate condition is preferable. This is because a developer may appeal to the Secretary of State regarding the imposition of the condition. Appeals only arise in relation to planning obligations where an application has been refused permission due to the developer not agreeing to the inclusion of an obligation, or where the request to modify an obligation is refused. Enforcement of planning conditions is also more straightforward since it generally involves the use of the planning enforcement system rather than private contractual action in the Courts.

5.32 The introduction of CIL by a local planning authority will not change this. The Government will continue to encourage local planning authorities to use planning conditions rather than planning obligations wherever possible.

6. Implementation

Introduction

- 6.1 This chapter covers implementation issues, exploring the timing, skills and capacity issues which arise from the introduction of CIL and the move towards stronger infrastructure planning for development. It also covers other transitional arrangements, and recognises the importance of the local government efficiency agenda in ensuring that CIL is delivered in an efficient way.

Timing and transitional arrangements

- 6.2 The timing of the remaining Parliamentary stages of the Bill is a matter for Parliament and so it is not certain when the Bill might come into force. However, the Government does not expect the Regulations underpinning CIL to come into force before spring 2009. Charging authorities will then be able to go through the formal process of preparing CIL charging schedules.
- 6.3 The discretionary nature of CIL will enable local authorities to consider whether the circumstances in their local area, including the status of their development plan (see chapter 3), are suitable for implementing CIL. The Government anticipates that the varied circumstances of local areas will mean that CIL take-up will occur over an extended period. The Government will ensure that the arrangements for introducing CIL allow for an orderly implementation and avoid creating bottlenecks.
- 6.4 It will be important that the implementation of CIL is manageable for all parties. Lessons learnt from the introduction of the Local Development Framework system emphasise the risks of large numbers of local authorities seeking to implement new arrangements at the same time. Whilst CIL will be discretionary for local authorities to implement, the risk will still exist that parts of the system, particularly the arrangements for independent examination of CIL charging schedules, are put under pressure by a surge of requests from charging authorities for Inspectors. The Government will keep under review the impact of the new arrangements, particularly in relation to any impact on the ability of the Planning Inspectorate to sustain their commitment to the examination of development plan documents.
- 6.5 To minimise the risks of overloading the new system the Government will consider prioritising CIL examinations for those authorities preparing, or with adopted, development plans proposing significant growth or change; and those with existing tariff arrangements in place. The Government will keep under review the need for prioritisation in

light of economic conditions and the level of demand to take up CIL; and will work with the Planning Inspectorate and those authorities with existing tariff schemes to establish how long they would need to migrate to CIL, thus ensuring that the transitional period can be as short as possible.

- 6.6 As chapter 4 indicates, CIL cannot be levied where no charging schedule is in force, and cannot be levied on any planning application which was validated prior to the charging schedule coming into force. CIL will also not apply to planning permissions which have been granted before the day on which the charging schedule comes into force in an area.

Preparatory work

- 6.7 There are a range of actions local authorities could take now to get themselves into a position where they can implement CIL. For example, work on infrastructure planning to underpin their development plans will assist in the timely delivery of their development strategy and the assessment of development viability in the area will assist in their understanding of economic circumstances and the practical impacts of going forward with CIL. There is already a range of good practice in both aspects (see for example Box 3.2 on infrastructure planning and Box 3.3 on viability assessment).

Status of Circular 05/05

- 6.8 Government policy on the use of planning obligations as set out in Circular 5/05 “Planning Obligations” remains in force for time being but will be reviewed once CIL is introduced, bearing in mind the Government’s Planning White Paper commitment to streamline planning policy. The Government will also consider whether planning obligations should be scaled back, how this should be done and over what timescale this should take place – see chapter 5.

Skills and capacity

The Government’s skills programme for sustainable communities

- 6.9 The introduction of CIL may require local authorities, developers and others to develop new skills or apply existing skills in a different way. These skills needs should be seen in the context of the learning curve being required of planners to deliver a wider transformation of planning. There has been a substantial change in the scope, nature and role of planning in recent years including (for example) issues such as spatial planning, housing delivery, infrastructure provision and coordination, and climate change.
- 6.10 Communities and Local Government commissioned two important pieces of research into the current situation on skills and capacity. The first was funded jointly with the Local Government Association (LGA)

and commissioned Oxford Brookes University to draw up a Skills and Vacancy Survey of all English Local Planning Authorities (2004). In addition Sir John Egan was commissioned to do a Review of Skills for Sustainable Communities (2004) which looked at the whole range of skills required to deliver sustainable communities, not just those required by planners. The Egan Report concluded that it was a lack of generic skills among built environment professionals, rather than their professional and technical skills, that made the difference between successful delivery of plans and failure.

- 6.11 The Government has made good progress in addressing these issues. For example, the Department has established a number of bodies to address different aspects of this agenda, to build capacity and promote the skills needed to deliver sustainable communities. These are the Commission for Architecture and the Built Environment (CABE); the Academy for Sustainable Communities (ASC); Planning Advisory Service (PAS) and the Advisory Team on Large Scale Applications (ATLAS). ASC and Atlas will be delivered through the Homes and Communities Agency from next year.
- 6.12 The Department has also directly delivered a number of projects to promote skills capacity within local government for example:
- commissioning research into planning skills capacity issues;
 - financing post graduate planning bursaries to bring more people into the planning profession;
 - funding the creation and operation of two distance learning planning courses, delivered by the University of the West of England at Bristol; and
 - making one-off capacity building grants to individual universities.
- 6.13 Skills in planning for infrastructure will play an increasingly important role in spatial planning. It will be important for the business community, health authorities, emergency services and government agencies, to understand the processes, constraints and priorities of those who deliver different parts of the infrastructure necessary to support development, including the working of their regulatory bodies, and actively participate in the infrastructure planning process. For example, if infrastructure providers are going to look to CIL for funding, they will need to have a good appreciation of the purposes and processes of the spatial planning system and the need to engage early in it.
- 6.14 The introduction of CIL also highlights the importance of skills needed to assess economic viability, and the ability of local authorities, in

conjunction with other key participants, to set levels of CIL at a rate that generates income for infrastructure whilst not rendering development unviable. CIL involves setting one, or at most a few rates for the local authority area, rather than looking at the needs of each site on an individual basis. As chapter 3 argues, it is important that CIL is not set at such a level that it is close to the margins of viability for a typical scheme in the local authority's area. There should be some headroom built into it to allow for changes in market conditions without constantly needing to change the rate of CIL. Attempts to achieve absolute precision in setting the CIL rate will be neither workable nor desirable, but it will still need to be considered against the total cost of the infrastructure required and the viability of development in the area. This requirement will demand skills from all those engaged in developing CIL charging schedules.

- 6.15 Given that CIL is likely to be only a part of the funding required for the infrastructure required to support development, it will be important to ensure that the full cost of it can be met at the appropriate time to facilitate development. Charging authorities will need to understand how any deficit in funding can be covered and work to bring these resources together. So skills in funding, financing and infrastructure delivery will also be required.
- 6.16 The Government will work closely with organisations responsible for skills issues relevant to CIL, including the Planning Officers Society, Royal Town Planning Institute, Local Government Association, Planning Inspectorate, Valuation Office Agency and Royal Institute of Chartered Surveyors to consider how best to ensure stakeholders develop, or have access to, the skills they need to implement and operate CIL effectively.
- 6.17 For example, the Planning Inspectorate (PINS) already aims to provide basic development economics training to all inspectors, and to provide inspectors who already have a background in development economics with top up training. But PINS will also establish working arrangements with appropriate bodies including the RICS and the Valuation Office Agency with a view to using specialist advisors where appropriate at CIL examinations.
- 6.18 Equally, it will be important that the wider community of stakeholders working alongside planners come to better understand the planning system so that the CIL system can operate to best effect. CIL's introduction will not simply make demands on planners, but on a whole range of disciplines across the public sector.

Resources to improve capacity

- 6.19 In the next few years there will be increased funds available for developing skills and capacity in local planning authorities. For example, £60m this year and £72m next year will be available from the

planning component of the Housing and Planning Delivery Grant,³⁶ and as of April 2008 there has been a 23 per cent increase in planning fees, both of which could be used by local authorities to help train and develop staff. These resources could provide a valuable boost to local authorities which decide to implement CIL.

Implementing CIL efficiently

- 6.20 A large number of individual local planning authorities in England and Wales will be empowered by the Planning Bill to charge CIL. Given the number of authorities involved, and the fact that CIL is a new instrument, there are clear opportunities to ensure that the administration of CIL is efficient and customer-focused. Many local authorities already cooperate by jointly procuring outsourced collection services for council tax, parking charges and other payments, and the Government will encourage local authorities to work together to reduce administration costs for CIL this way. Their ability to do so is enhanced by Bill powers that allow the collection authority to be different from the charging authority (see chapter 4).
- 6.21 The 2004 Spending Review set tough new efficiency targets for local authorities following Sir Peter Gershon's review to promote efficiency. Local authorities have met their Gershon efficiency targets one year early, and the Government has seen many examples of them deploying innovative approaches to improving services while reducing costs. Efficiency continues to be a key theme for the current spending review period, and the Local Government CSR 2007 value for money delivery plan³⁷ sets out a number of activities to promote collaboration for efficiency between public bodies.
- 6.22 The Government will work with stakeholders to ensure that the necessary support is in place for authorities to establish and operate CIL efficiently. The Government will also explore whether the Planning Portal could play a role in the administration of CIL and whether the Standard Planning Application Form (1APP) could be used to provide the information that authorities will need to administer CIL in their areas.

Review of CIL

- 6.23 Once CIL is implemented, the Government will keep CIL's effectiveness under review to ensure that its objective of significant additional funding for infrastructure is being met.

36 *Housing and Planning Delivery Grant: Allocation Mechanism and Summary of Consultation Responses* CLG, 2008

37 *Delivering Value for Money in Local Government: Meeting the Challenge of CSR07* CLG, 2007

7. Wales

- 7.1 The Planning Bill empowers the Secretary of State to make regulations for CIL with the consent of HM Treasury. The Secretary of State will be responsible for bringing regulations forward on an England and Wales basis and consultation on those regulations would be undertaken by the Department for Communities and Local Government, informed by discussions with the Welsh Assembly Government.
- 7.2 Within Wales, County Councils, County Borough Councils and National Park Authorities (in their capacity as local planning authorities) will be empowered as CIL charging authorities. As the discussion on sub-regional infrastructure in chapter 2 shows, the UK Government has concluded that the existing power in the Planning Bill for Welsh Ministers (and the Secretary of State) to be a charging authority is not required, and the Government is therefore minded to withdraw this power from the face of the Bill. Introduction of CIL would be discretionary, not mandatory, in both England and Wales. As in England, it will be important for Welsh charging authorities that choose to charge CIL to identify the infrastructure required to deliver the strategy outlined in an up to date adopted development plan, supported by evidence and information on likely costs, timing and other potential sources of funding. The resultant charging schedules should be subject to examination.
- 7.3 The development plan system in Wales differs from that in England in certain respects and the UK Government is holding discussions with Welsh Ministers on arrangements for CIL in Wales.
- 7.4 In Wales, the Wales Spatial Plan provides the overarching framework to which Local Development Plans, prepared by local planning authorities, should have regard. Whilst the Wales Spatial Plan does not have the same statutory development plan status as Regional Spatial Strategies in England, it provides strategic direction with a sub-regional spatial emphasis, focused around area frameworks. These frameworks provide an opportunity for local planning authorities to work collaboratively and identify infrastructure beyond their individual administrative boundaries, necessary to support the level of change identified. Infrastructure determined to be appropriate through such an approach could then be identified through the Local Development Plan process and tested accordingly. This process would ensure that infrastructure within, and beyond, individual authority boundaries to support development would be identified and evidenced, with a clear mechanism for delivery that would be subject to scrutiny. CIL charging schedules could then be developed on an individual authority basis to reflect their requirements, as appropriate.

Planning Obligations in Wales

- 7.5 The planning obligations system as operated in Wales is essentially the same as in England. The legislative basis for planning obligations in Wales is set out in Section 106 of the Town and Country Planning Act 1990 (as amended) with policy guidance provided by Planning Policy Wales (2002) and Circular 13/97 'Planning Obligations'.
- 7.6 The approach to planning obligations in Wales has been to focus on delivery within a stable policy environment. Research³⁸ has been undertaken on the use and value of planning obligations in Wales and targeted training on the provision of affordable housing through the planning system has been provided for local authority members and officers. Free in depth training has also been provided for local planning and housing officers to improve negotiation skills. Good practice guidance on the delivery of affordable housing through the planning system will be published in July 2008.
- 7.7 The Welsh Assembly Government is committed to using all available tools to deliver affordable housing. *One Wales: A progressive agenda for Wales* includes a comprehensive range of actions to improve the supply of affordable housing. The Assembly Government is currently consulting on a requirement for local and National Park authorities to prepare affordable housing delivery plans. For land use planning purposes these will provide the mechanism to update local affordable housing planning policies ahead of the adoption of local development plans from 2010.
- 7.8 The Welsh Assembly Government will continue to prioritise the delivery of affordable housing through the planning system. The Assembly Government is consulting on the principle that all market housing should contribute to affordable housing, either through on site in-kind contributions, or financial contributions to be used to secure affordable housing elsewhere in the local planning authority area. Revised policy will be introduced in 2009.

38 *Use and Value of Planning Obligations in Wales, University of Sheffield, 2007*

Appendix: The Planning Bill, Part 11: CIL Clauses

As at July 2008 – Now replaced by Part II of the Planning Act 2008 at www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1

Part 11

Community Infrastructure Levy

198 The levy

- (1) The Secretary of State may with the consent of the Treasury make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL).
- (2) In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land the value of which increases due to permission for development.
- (3) The following sections make provision about other aspects of the regulations.

Section	Topic
Section 199	Charging authorities
Section 200	Liability
Section 201	Amount
Section 202	Application
Section 203	Collection
Section 204	Enforcement
Section 205	Community Infrastructure Levy: procedure
Section 206	Secretary of State
Section 207	CIL regulations: general
Section 208	Relationship with other powers

- (4) In those sections regulations under this section are referred to as “CIL regulations”.

199 Charging authorities

- (1) CIL regulations must specify the authorities which may charge CIL, each of which must be—
 - (a) a local planning authority (within the meaning of Part 1 of TCPA 1990 or Part 2 of the PCPA 2004),
 - (b) a county council, a county borough council, a district council, a London borough council, a metropolitan district council, the Common Council of the City of London or the Council of the Isles of Scilly,
 - (c) the Secretary of State,
 - (d) the Welsh Ministers, or
 - (e) the Mayor of London.
- (2) The regulations may—
 - (a) specify different authorities for different cases or circumstances;
 - (b) permit or require authorities to act jointly.
- (3) An authority empowered by CIL regulations to charge CIL is referred to in this Part as a “charging authority”.

200 Liability

- (1) CIL regulations must make provision about liability to pay CIL.
- (2) The regulations must ensure that—
 - (a) CIL is payable in respect of land when development is commenced in reliance on planning permission,
 - (b) liability attaches to the owner or developer of land at the time when CIL becomes payable in respect of it, and
 - (c) the amount of CIL is determined at, or by reference to, the time when planning permission first permits the development as a result of which CIL becomes payable.
- (3) The regulations must define—
 - (a) development (and commencement of development),
 - (b) planning permission (which may include planning permission within the meaning of TCPA 1990 and any other kind of permission or consent (however called, and whether general or specific)), and
 - (c) the time when planning permission first permits development (and the regulations may, in particular, include provision about outline planning permission and provision treating permission as having been given at a particular time in the case of general consents).
- (4) The regulations must include provision for determining which owner or developer is liable in respect of development; and the regulations may, in particular—
 - (a) define “owner”;

- (b) define “developer”;
 - (c) provide for joint liability (including joint and several liability);
 - (d) permit one or more persons to assume sole or joint and several liability;
 - (e) permit one or more persons to assume joint and several liability with a person who is liable in accordance with the regulations;
 - (f) provide for liability in default of assumed liability;
 - (g) provide for transfer of liability (assumed or otherwise);
 - (h) make provision about notices.
- (5) The regulations may require CIL to be paid in respect of land developed in reliance on planning permission whether or not its value has increased as a result of the grant of the permission.
- (6) The regulations may provide for cases when development which requires planning permission is commenced without it (and subsection (2) is subject to this subsection).

201 Amount

- (1) CIL regulations must include provision for determining the amount of CIL.
- (2) The regulations—
- (a) may require charging authorities to set, revise and publish rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development is to be determined;
 - (b) may include provision about the procedure to be followed in setting or revising rates or other criteria (which may include provision for consultation, for the appointment of an independent person or a combination).
- (3) The regulations may permit or require charging authorities, in setting or revising rates or other criteria—
- (a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected costs of infrastructure (whether by reference to lists prepared by virtue of section 205(5)(a) or otherwise);
 - (b) to have regard, to the extent and in the manner specified by the regulations, to actual or expected increase in value arising from planning permission (calculated in accordance with the regulations);
 - (c) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL;
 - (d) to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes;
 - (e) to have regard, to the extent and in the manner specified by the regulations, to other actual or expected sources of funding for infrastructure;

- (f) to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes;
 - (g) to present the rates or other criteria in the form of a document (a “charging schedule”);
 - (h) to produce charging schedules having effect in relation to specified periods (subject to revision).
- (4) The regulations may permit or require charging schedules to adopt specified methods of calculation.
- (5) In particular, the regulations may—
- (a) permit or require charging schedules to operate by reference to descriptions or purposes of development;
 - (b) permit or require charging schedules to operate by reference to any measurement of the amount or nature of development (whether by reference to measurements of floor space, to numbers or intended uses of buildings, to numbers or intended uses of units within buildings, to allocation of space within buildings or units, to values or expected values or in any other way);
 - (c) permit or require charging schedules to operate by reference to the nature or existing use of the place where development is undertaken;
 - (d) permit or require charging schedules to operate by reference to an index used for determining a rate of inflation;
 - (e) permit or require charging schedules to operate by reference to values used or documents produced for other statutory purposes;
 - (f) provide, or permit or require provision, for differential rates, which may include provision for supplementary charges, increased rates or reductions.
- (6) The regulations must provide for appeals on questions of fact in relation to the application of methods for calculating CIL.
- (7) In this section a reference to publication includes a reference to making available for inspection.

202 Application

- (1) CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to funding infrastructure.
- (2) In subsection (1) “infrastructure” includes—
- (a) roads and other transport facilities,
 - (b) flood defences,
 - (c) schools and other educational facilities,
 - (d) medical facilities,
 - (e) sporting and recreational facilities,
 - (f) open spaces, and

- (g) affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 and such other housing as CIL regulations may specify).
- (3) The regulations may amend subsection (2) so as to—
 - (a) add, remove or vary an entry in the list of matters included within the meaning of “infrastructure”;
 - (b) list matters excluded from the meaning of “infrastructure”.
 - (4) The regulations may specify—
 - (a) works, installations and other facilities that are to be, or not to be, funded by CIL,
 - (b) criteria for determining the areas in relation to which infrastructure may be funded by CIL in respect of land, and
 - (c) what is to be, or not to be, treated as funding.
 - (5) The regulations may—
 - (a) require charging authorities to prepare and publish a list of projects that are to be, or may be, wholly or partly funded by CIL;
 - (b) include provision about the procedure to be followed in preparing a list (which may include provision for consultation, for the appointment of an independent person or a combination);
 - (c) include provision about the circumstances in which a charging authority may and may not apply CIL to projects not included on the list.
 - (6) In making provision about funding the regulations may, in particular—
 - (a) permit CIL to be used to reimburse expenditure already incurred;
 - (b) permit CIL to be reserved for expenditure that may be incurred on future projects;
 - (c) permit CIL to be applied (either generally or subject to limits set by or determined in accordance with the regulations) to administrative expenses in connection with infrastructure or in connection with CIL;
 - (d) include provision for the giving of loans, guarantees or indemnities;
 - (e) make provision about the application of CIL where the projects to which it was to be applied no longer require funding.
 - (7) The regulations may—
 - (a) require a charging authority to account separately, and in accordance with the regulations, for CIL received or due;
 - (b) require a charging authority to monitor the use made and to be made of CIL in its area;
 - (c) require a charging authority to report on actual or expected charging, collection and application of CIL;

- (d) permit a charging authority to cause money to be applied in respect of things done outside its area;
 - (e) permit a charging authority or other body to spend money;
 - (f) permit a charging authority to pass money to another body (and in paragraphs (a) to (e) a reference to a charging authority includes a reference to a body to which a charging authority passes money in reliance on this paragraph).
- (8) In this section a reference to publication includes a reference to making available for inspection.

203 Collection

- (1) CIL regulations must include provision about the collection of CIL.
- (2) The regulations may make provision for payment—
 - (a) on account;
 - (b) by instalments.
- (3) The regulations may make provision about repayment (with or without interest) in cases of overpayment.
- (4) The regulations may make provision about payment in forms other than money (such as making land available, carrying out works or providing services).
- (5) The regulations may permit or require a charging authority or other public authority to collect CIL charged by another authority.
- (6) Regulations under this section may replicate or apply (with or without modifications) any enactment relating to the collection of a tax.
- (7) Regulations under this section may make provision about the source of payments in respect of Crown interests.

204 Enforcement

- (1) CIL regulations must include provision about enforcement of CIL.
- (2) The regulations must make provision about the consequences of late payment and failure to pay.
- (3) The regulations may, in particular, include provision—
 - (a) for the payment of interest;
 - (b) for the imposition of a penalty or surcharge;
 - (c) for the registration of local land charges;
 - (d) for the suspension or cancellation of a decision relating to planning permission;
 - (e) enabling an authority to prohibit development pending assumption of liability for CIL or pending payment of CIL;

- (f) conferring a power of entry onto land;
 - (g) requiring the provision of information;
 - (h) creating a criminal offence (including, in particular, offences relating to evasion or attempted evasion or to the provision of false or misleading information or failure to provide information, and offences relating to the prevention or investigation of other offences created by the regulations);
 - (i) conferring power to prosecute an offence;
 - (j) for enforcement of sums owed (whether by action on a debt, by distraint against goods or in any other way);
 - (k) conferring jurisdiction on a court to grant injunctive or other relief to enforce a provision of the regulations (including a provision included in reliance on this section).⁵
- (4) The regulations under this section may—
- (a) replicate or apply (with or without modifications) any enactment relating to the enforcement of a tax;
 - (b) provide for appeals.
- (5) The regulations under this section creating a criminal offence may not provide for—
- (a) a maximum fine exceeding £20,000 on summary conviction,
 - (b) a maximum term of imprisonment exceeding 6 months on summary conviction, or
 - (c) a maximum term of imprisonment exceeding 2 years on conviction on indictment.
- (6) The Secretary of State may by order amend subsection (5) to reflect commencement of section 283 of the Criminal Justice Act 2003 (c. 44).
- (7) In this Part a reference to administrative expenses in connection with CIL includes a reference to enforcement expenses.

205 Community Infrastructure Levy: procedure

- (1) CIL regulations may include provision about procedures to be followed in connection with CIL.
- (2) In particular, the regulations may make provision about—
- (a) procedures to be followed by a charging authority proposing to begin charging CIL;
 - (b) procedures to be followed by a charging authority proposing to stop charging CIL;
 - (c) consultation;
 - (d) the publication or other treatment of reports;
 - (e) timing and methods of publication;
 - (f) making documents available for inspection;
 - (g) providing copies of documents (with or without charge);
 - (h) the form and content of documents;
 - (i) giving notice;

- (j) serving notices or other documents;
 - (k) examinations to be held in public in the course of setting or revising rates or other criteria or of preparing lists;
 - (l) the terms and conditions of appointment of independent persons;
 - (m) remuneration and expenses of independent persons (which may be required to be paid by the Secretary of State or by a charging authority);
 - (n) other costs in connection with examinations;
 - (o) reimbursement of expenditure incurred by the Secretary of State (including provision for enforcement);
 - (p) apportionment of costs;
 - (q) combining procedures in connection with CIL with procedures for another purpose of a charging authority (including a purpose of that authority in another capacity).
- (3) A provision of this Part conferring express power to make procedural provision in a specified context includes, in particular, power to make provision about the matters specified in subsection (2).
- (4) Sections 214 to 216 do not apply to this Part (but CIL regulations may make similar provision).

206 Secretary of State

- (1) CIL regulations may confer powers on the Secretary of State to control the imposition, collection and application of CIL.
- (2) In particular, the regulations may permit the Secretary of State—
- (a) to set maximum amounts of CIL to be raised by a charging authority (whether in respect of a period or in respect of one or more developments);
 - (b) to direct a charging authority as to the application of money received by way of CIL.
- (3) The regulations may make provision about the procedure to be followed by the Secretary of State in exercising, or considering whether to exercise, a power by virtue of this section.
- (4) The regulations may permit the Secretary of State to exercise a power by virtue of this section—
- (a) generally or in relation to specified cases, circumstances, areas or authorities;
 - (b) differently for different cases, circumstances, areas or authorities.
- (5) The Secretary of State may give guidance to a charging authority or other public authority about any matter connected with CIL; and the authority must have regard to the guidance.

207 CIL regulations: general

- (1) CIL regulations—
 - (a) may make provision that applies generally or only to specified cases, circumstances or areas,
 - (b) may make different provision for different cases, circumstances or areas,
 - (c) may provide for exceptions,
 - (d) may confer a discretionary power on the Secretary of State, a local authority or another specified person,
 - (e) may apply an enactment, with or without modifications, and
 - (f) may include provision of a kind permitted by section 217(3)(b) (and incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment).

- (2) CIL regulations—
 - (a) shall be made by statutory instrument, and
 - (b) shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

208 Relationship with other powers

- (1) CIL regulations may include provision about how the following powers are to be used, or are not to be used—
 - (a) section 106 of TCPA 1990 (planning obligations), and
 - (b) section 278 of the Highways Act 1980 (c. 66) (execution of works).

- (2) CIL regulations may include provision about the exercise of any other power relating to planning or development.

- (3) The Secretary of State may give guidance to a charging or other authority about how a power relating to planning or development is to be exercised; and authorities must have regard to the guidance.

- (4) Provision may be made under subsection (1) or (2), and guidance may be given under subsection (3), only if the Secretary of State thinks it necessary or expedient for—
 - (a) complementing the main purpose of CIL regulations,
 - (b) enhancing the effectiveness, or increasing the use, of CIL regulations,
 - (c) preventing agreements, undertakings or other transactions from being used to undermine or circumvent CIL regulations,
 - (d) preventing agreements, undertakings or other transactions from being used to achieve a purpose that the Secretary of State thinks would better be achieved through the application of CIL regulations, or

- (e) preventing or restricting the imposition of burdens, the making of agreements or the giving of undertakings, in addition to CIL.
- (5) CIL regulations may provide that a power to give guidance or directions may not be exercised—
- (a) in relation to matters specified in the regulations,
 - (b) in cases or circumstances specified in the regulations,
 - (c) for a purpose specified in the regulations, or
 - (d) to an extent specified in the regulations.

209 Community Infrastructure Levy: repeals

The following provisions of the Planning and Compulsory Purchase Act 2004 (c. 5) shall cease to have effect—

- (a) sections 46 to 48 (planning contribution), and
- (b) paragraph 5 of Schedule 6 (repeal of sections 106 to 106B of the Town and Country Planning Act 1990 (c. 8) (planning obligations)).

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