Department for Communities and Local Government

Community Infrastructure Levy Guidance

February 2014
Department for Communities and Local Government

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February 2014

ISBN: 978-1-4098-4150-0

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1 Notes

This guidance applies to England and Wales. A Welsh language version will be published shortly. The English language version will also be uploaded onto the National Planning Policy Guidance website shortly.

This guidance consolidates and replaces the following documents published by the Department for Communities and Local Government:

- April 2013 Community Infrastructure Levy: Guidance
- May 2011 Community Infrastructure Levy: an Overview
- May 2011 Community Infrastructure Levy Relief: information document
- October 2011 Community Infrastructure Levy: collection and enforcement information document
- November 2010 Community Infrastructure Levy: Summary
- March 2010 Community Infrastructure Levy Guidance: charge setting and charging schedule procedures

Relevant Legislation

References to Regulations in this document refer to the Community Infrastructure Levy Regulations (as amended). These are available online.

Community Infrastructure Levy Regulations 2010:
http://www.legislation.gov.uk/uksi/2010/948/contents/made

Community Infrastructure Levy (Amendment) Regulations 2011:
http://www.legislation.gov.uk/uksi/2011/987/contents/made

Community Infrastructure Levy (Amendment) Regulations 2012:
http://www.legislation.gov.uk/uksi/2012/2975/contents/made

Community Infrastructure Levy (Amendment) Regulations 2013:
http://www.legislation.gov.uk/uksi/2013/982/contents/made

Community Infrastructure Levy (Amendment) Regulations 2014
(link to be updated when these come into force):
http://www.legislation.gov.uk/ukdsi/2014/9780111108543/contents

2:1 What is the Community Infrastructure Levy, and who has to pay it?

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. .

2:1:1 What kind of development is liable for the levy?

The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres (section 2:2 explains how this is calculated). That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder' (see section 2:7:5 and Regulation 54A and 54B).

2:1:2 What kind of development does not pay the levy?

The following do not pay the levy:

- development of less than 100 square metres (see Regulation 42 on Minor Development Exemptions) - unless this is a whole house, in which case the levy is payable
- houses, flats, residential annexes and residential extensions which are built by 'self builders' (see Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations)
- social housing that meets the relief criteria set out in Regulation 49 or 49A (as amended by the 2014 Regulations)
- charitable development that meets the relief criteria set out in Regulations 43 to 48
- buildings into which people do not normally go (see Regulation 5(2))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see Regulation 5(2))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules
- vacant buildings brought back into the same use (see section 2:3:12, and Regulation 40 as amended by the 2014 Regulations)

Where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.

Mezzanine floors of less than 200 square metres, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well. .

2:1:3 Who can charge and collect the levy?

In England, levy charging authorities are district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority, Mayoral Development Corporations and the Mayor of London. In Wales, the county and county borough councils and the national park authorities have the power to charge the levy. These bodies all prepare relevant Plans (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) for their areas, which include assessments of the infrastructure needs for which the levy may be collected.

The levy is collected by the 'collecting authority' (as defined by Regulation 10). In most cases this is the charging authority but, in London, the boroughs collect the levy on behalf of the Mayor. County councils collect the levy charged by district councils on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development, with the agreement of the relevant charging authority, where they grant permission.

2:1:4 Who is liable to pay?

Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners and payment becomes due as soon as development commences (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development'). Liability to pay the levy can also default to the landowners where the collecting authority has been unable to recover the levy from the party that assumed liability for the levy, despite making all reasonable efforts.

Section 2:3:5 provides further information about liability for payment.

2:1:5 How does the levy relate to planning permission?

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal..

Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders (see related National Planning Policy Guidance on Local Development Orders http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/). Development can also be granted consent by Neighbourhood Development Orders (see related guidance here: http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning/), including Community Right to Build Orders. Some Acts of Parliament, such as the Crossrail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent.

The levy may also be payable on permitted development (see related guidance on the General Permitted Development Order here: http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/).

Development which is the subject of a Lawful Development Certificate may be liable for the levy, depending on the circumstances. A lawful development certificate (granted under section 191 or 192 of the Town and Country Planning Act 1990) is often sought to confirm permitted development rights. It does not by itself trigger a levy payment because it is not a planning permission as defined in Regulation 5. It simply confirms that no further application for planning permission is needed for the development described in the certificate. So where a certificate is sought to confirm permitted development rights, the normal levy provisions in respect of permitted development rights apply, and the grant of such a certificate is not relevant to whether or not, or when, the levy may be payable.

Where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes (see Regulation 8(3A) as amended by 2014 Regulations). This may apply to schemes which have full planning permission as well as to outline permissions. For further details, see sections 2:2:6:2 and 2:3:10 of this guidance

What is the impact of a section 73 application to amend a planning condition?

Developers can amend a condition attached to a planning consent, under section 73 of the Town and Country Planning Act.

If the section 73 permission does not change the liability to the levy, only the original consent will be liable.

If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability.

There may be transitional cases, where the original planning permission was granted before a levy charge came into force in the area, and a section 73 permission is granted after the charge comes into force. In these circumstances, the section 73 consent will only trigger levy liability for any additional liability it introduces to the development.

Developers can also seek to extend the life of existing planning permissions granted before October 2010, without any changes to the scheme (see article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010). These applications are not liable for the levy.

2:2 How are Community Infrastructure Levy rates set?

The charging authority sets out its levy rates in a charging schedule (see section 2:2:1 of this guidance and Section 211(1) of the Planning Act 2008).

Levy rates are expressed as pounds per square metre. These figures are applied to the gross internal floorspace of the net additional development liable for the levy.

Liable development is the type of development specified in the charging schedule as incurring a particular levy charge. Where an existing building is being redeveloped, the nature of the redevelopment may impact on the levy charge (see section 2:3:12 for further details). .

Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). . They will need to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.

What is meant by an appropriate balance?

The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.

This balance is at the centre of the charge-setting process. In meeting the regulatory requirements (see Regulation 14(1)), charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area. .

As set out in the National Planning Policy Framework in England (paragraphs 173 – 177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. The same principle applies in Wales.

2:2:1 What is a charging schedule?

A charging schedule sets out the levy rates for a charging authority area.

Charging authorities should consider relevant national planning policy when drafting their charging schedules. This includes the National Planning Policy Framework in England (see https://www.gov.uk/government/publications/national-planning-policy-framework--2)

and Planning Policy Wales in Wales (see http://wales.gov.uk/topics/planning/policy/ppw/?lang=en).

Charging schedules should be consistent with, and support the implementation of, up-to-date relevant Plans.

What is a 'relevant Plan'?
In relation to the levy, the relevant Plan is the Local Plan in England, Local Development Plan in Wales, and the London Plan in London.

Charging schedules are not formally part of the relevant Plan, but charging schedules and relevant Plans should inform and be generally consistent with each other. The National Planning Policy Framework in England (paragraph 175) provides that, where practical, charging schedules should be worked up and tested alongside the Local Plan. The same principles apply in Wales (see paragraph 2.1.1 of Planning Policy Wales). A charging authority may use a draft plan if they are proposing a joint examination of their relevant Plan and their levy charging schedule.

The process for preparing a charging schedule is similar to that which applies to relevant Plans. Charging authorities may work together when preparing their charging schedules, and Government supports this approach as a means to share knowledge and costs and to support strategic thinking in the use of the levy, linking the use of the levy to activities such as growth planning. Charging schedules do not require a Sustainability Appraisal. Charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area. This may for example include working with neighbouring authorities, Local Enterprise Partnerships and other interested parties and involve consideration of other funding available that could be combined with the levy to enable the delivery of strategic infrastructure, including social and environmental infrastructure, and facilitate the delivery of planned development.

2:2:1:1 How is a charging schedule prepared?

In summary, a charging schedule is prepared and adopted as follows. Each of these stages is discussed in more detail in the rest of this chapter (2:2).

- the charging authority prepares its evidence base in order to prepare its draft levy rates, and collaborates with neighbouring/overlapping authorities (and other stakeholders)
- the charging authority prepares a preliminary draft charging schedule and publishes this for consultation
- consultation process takes place
- the charging authority prepares and publishes a draft charging schedule
- period of further representations based on the published draft
- an independent person (the "examiner") examines the charging schedule in public
- the examiner's recommendations are published
- the charging authority considers the examiner's recommendations
- the charging authority approves the charging schedule

2:2:1:2 What is the role of the county council?

County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy, and should work closely with them in setting priorities for how the levy will be spent in two-tier areas.

Collaborative working between county councils and charging authorities is especially important in relation to the preparation or amendment of the regulation 123 infrastructure list (see section 2:6:2:1 for further details), bearing in mind the potential impact on the use of highway agreements by the county council (see section 2:6:5 for further details).

2:2:1:3 Should other interested groups be involved?

Charging authorities should seek early engagement with local developers, others in the property industry and infrastructure providers when preparing their charging schedules.

2:2:2 What evidence is required to inform levy rates?

The evidence base for a charging schedule is examined in public prior to the adoption of the levy. Care must be taken to ensure that it is robust.

2:2:2:1 How does the levy charge relate to infrastructure planning?

Charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so, they must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence.

Information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). This is because the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs (see paragraphs 162 and 177 of the NPPF in England).

In determining the size of its infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other possible sources of funding to meet those costs. This process will help the charging authority to identify a levy funding target.

The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. Charging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.

The Community Infrastructure Levy examination should not re-open infrastructure planning issues that have already been considered in putting in place a sound relevant Plan.

2:2:2:2 What infrastructure planning evidence is required at examination?

At examination, the charging authority should set out a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy (see Regulation 123). The charging authority should also set out any known site-specific matters for which section 106 contributions may continue to be sought. This is to provide transparency about what the charging authority intends to fund through the levy and where it may continue to seek section 106 contributions. The role of the list is to help provide evidence on the potential funding gap – it is not the purpose of the examination to challenge the list.
A charging authority may undertake additional infrastructure planning to identify its infrastructure funding gap, if it considers that the infrastructure planning underpinning its relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) is weak or does not reflect its latest priorities. This work may be limited to those projects requiring funding from the levy.

Where infrastructure planning work which was undertaken specifically for the levy setting process has not been tested as part of another examination, it will need to be tested at the levy examination. The examiner will need to test that the evidence is sufficient in order to confirm the aggregate infrastructure funding gap and the total target amount that the charging authority proposes to raise through the levy.

Other infrastructure planning work, which was submitted in support of a sound relevant Plan, should not be re-appraised.

Further information about examinations is provided at section 2:2:4.

2:2:2:3 How do local authorities prepare their evidence to support a levy charge?

A charging authority should be able to explain how their proposed levy rate or rates will contribute towards the implementation of the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London), and support development across their area. Charging authorities will need to summarise their economic viability evidence. This evidence should be presented in a document (separate from the charging schedule) that shows the potential effects of the proposed levy rate or rates on the economic viability of development across the authority's area.

As background evidence, the charging authority should also provide information about the amount of funding collected in recent years through section 106 agreements. This should include information on the extent to which their affordable housing and other targets have been met.

2:2:2:4 How should development be valued for the purposes of the levy?

A charging authority should use an area-based approach, involving a broad test of viability across their area, as the evidence base to underpin their charge. The authority will need to be able to show why they consider that the proposed levy rate or rates set an appropriate balance (see section 2:2 for further guidance on 'appropriate balance') between the need to fund infrastructure and the potential implications for the economic viability of development across their area.

There are a number of valuation models and methodologies available to charging authorities to help them in preparing this evidence. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates if they do.

A charging authority must use 'appropriate available evidence' (as defined in the Planning Act 2008 section 211(7A)) to inform their draft charging schedule. The Government recognises that the available data is unlikely to be fully comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

A charging authority should draw on existing data wherever it is available. They may consider a range of data, including values of land in both existing and planned uses, and property prices – for example, house price indices and rateable values for commercial property. They may also want to build on work undertaken to inform their assessments of land availability.

In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London)] relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites).

The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making.

Charging authorities that decide to set differential rates (discussed further in section 2:2:2:6) may need to undertake more fine-grained sampling, on a higher proportion of total sites, to help them to estimate the boundaries for their differential rates. Fine-grained sampling is also likely to be necessary where they wish to differentiate between categories or scales of intended use.

The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy is likely to be most significant.

The outcome of the sampling exercise should be to provide a robust evidence base about the potential effects of the rates proposed, balanced against the need to avoid excessive detail.

A charging authority's proposed rate or rates should be reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence. For example, this might not be appropriate if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism. It would be appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support

development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly.

2:2:2:5 How should development costs be treated?

A charging authority should take development costs into account when setting its levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. A realistic understanding of costs is essential to the proper assessment of viability in an area.

Development costs include costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites.

For England, further guidance on viability can be found here (see National Planning Policy Guidance section entitled 'What are the key factors to be taken into account when assessment of viability is required for decision-taking on planning applications and appeals? http://planningguidance.planningportal.gov.uk/blog/guidance/viability-guidance/how-should-viability-be-assessed-in-decision-taking/).

2:2:2:6 Can differential rates be set?

The regulations allow charging authorities to apply differential rates in a flexible way, to help ensure the viability of development is not put at risk. Differences in rates need to be justified by reference to the economic viability of development. Differential rates should not be used as a means to deliver policy objectives.

Differential rates may be appropriate in relation to

- geographical zones within the charging authority's boundary
- types of development; and/or
- scales of development.

A charging authority that plans to set differential rates should seek to avoid undue complexity. Charging schedules with differential rates should not have a disproportionate impact on particular sectors or specialist forms of development. Charging authorities should consider the views of developers at an early stage.

If the evidence shows that the area includes a zone, which could be a strategic site, which has low, very low or zero viability, the charging authority should consider setting a low or zero levy rate in that area. The same principle should apply where the evidence shows similarly low viability for particular types and/or scales of development.

In all cases, differential rates must not be set in such a way that they constitute a notifiable state aid under European Commission regulations (see section 2:7:7 for further information on state aid). One element of state aid is the conferring of a selective advantage to any 'undertaking'. A charging authority which chooses to differentiate between classes of development, or by reference to different areas, should do so only where there is consistent economic viability evidence to justify this approach. It is the responsibility of each charging authority to ensure that their charging schedules are state aid compliant.

How can rates be set by type of use?

Charging authorities may also set differential rates by reference to different intended uses of development. The definition of “use” for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987, although that Order does provide a useful reference point. Charging authorities taking this approach will need to ensure that the differential rates are supported by robust evidence on economic viability.

How can rates be set by scale?

Charging authorities may also set differential rates by scale. Rates can be set by reference to either floor area or the number of units or dwellings in a development. Again, any differential rates must be justified by reference to economic viability.

Can different rates be combined?

Charging authorities may choose to set differential rates by combining several of the above approaches. They must be consistent in the way that appropriate available evidence on economic viability informs the treatment of each proposed rate, striking a balance between the desirability of funding infrastructure through the levy and the impact on economic viability of development across the area. They should be aware that it is likely to be harder to ensure that more complex patterns of differential rates are state aid compliant.

2:2:2:7 Can Charging Authorities claim the administrative costs of the levy?

Charging authorities may take account of their related administrative expenses when setting their levy. For example, an authority may set levy rates slightly higher than the levels required to meet their infrastructure funding needs, in order to cover administration costs, but will need to take this impact into account in fulfilling their responsibilities to set an appropriate balance (see section 2:2 for definition of ‘appropriate balance’), and the limits on the amount which can be applied to administrative expenses contained in Regulation 61.

For further guidance on administrative expenses, see section 2:4:5.

2:2:2:8 How does the operation of the levy differ in London?

At present, London is the only place where a strategic tier authority (the Mayor) may set a levy in addition to the local tier authority (London boroughs and Mayoral Development Corporations). The Mayor and the Boroughs should work closely in setting and running the Levy in London, through mutual co-operation and the sharing of relevant information.

When they set their own levy, the London Boroughs and Mayoral Development Corporations must take into account any levy rates set by the Mayor (as set out in Regulations 14(3) and 14(4)). This is to ensure that rates are set in a way which retains viability across London for local and strategic infrastructure and allows both the boroughs and the Mayor to implement their development strategies.

The Mayor's levy is mandatory. When setting their own levy rates, London boroughs must take into account any proposals for new Mayoral levy rates that have been published in a draft or preliminary draft charging schedule. Similarly, when reviewing his levy rates, the Mayor should also take account of borough levies that are in force at the time.

Further information about the operation of the levy in London can be found at sections 2:1:3 (charging and collection of the levy), 2:2:2:9 (Mayoral Development Corporations), 2:2:6 (charging schedule implementation), 2:2:7 (ceasing to charge), 2:3:15 (payments), 2:4:1:5 (neighbourhood share), and 2:7:4:2 (exceptional circumstances relief).

2:2:2:9 Can Mayoral Development Corporations charge the levy?

Mayoral Development Corporations can be given local planning functions. Where they take on all the plan making functions in Part 2 of the Planning and Compulsory Purchase Act 2004 (http://www.legislation.gov.uk/ukpga/2004/5/part/2) for the whole of their area they will be the charging authority for their area. They can develop a charging schedule in the same way as other charging authorities – subject to the same requirements.

It is important to ensure that communities and local authorities do not lose out when a Mayoral Development Corporation becomes or ceases to be the charging authority for an area, or is dissolved.

In advance of formally establishing a Mayoral Development Corporation, the Mayor of London may carry out the preparatory work for it to approve a charging schedule. This will enable the Mayoral Development Corporation to start charging the Levy as soon as possible after it becomes the charging authority for its area.

After a Mayoral Development Corporation becomes the charging authority for an area, London Borough Councils that have granted planning permission for a development in that area are still able to collect any levy due in relation to that development. Equally if the Mayoral Development Corporation ceases to be the charging authority for an area, provided that it has a charging schedule in place and has granted planning permission for a development in that area, it will still be entitled to receive the levy due in respect of that development.

2:2:3 What is a preliminary draft charging schedule?

A preliminary draft charging schedule is a document which sets out the charging authority's initial proposals for the levy, for public consultation. The authority must take into account the comments it receives when firming up its proposals in the form of the draft charging schedule (see section 2:2:3). This document then goes forward for examination (see section 2:2:5).

The preliminary draft charging schedule should go beyond broad proposals for the levy. It should be based on evidence about the infrastructure needs of the area and the ability of development in that area to fund that infrastructure in whole or in part. Providing sufficient detail at the preliminary draft stage will reduce the need for later amendments.

It is good practice for charging authorities to also publish their draft infrastructure lists and proposed policy for the associated scaling back of section 106 agreements at this stage, in order to provide clarity about the extent of the financial burden that developments will be expected to bear so that viability can be robustly assessed. The list now forms part of the 'appropriate available evidence' for consideration at the examination.

What consultation is required on the preliminary draft charging schedule?

The charging authority must consult the bodies listed in Regulation 15 , sending them a copy of the preliminary draft charging schedule and inviting them to comment. They must also invite comments from local residents, businesses and voluntary organisations (under Regulation 15(5)).

The regulations do not specify how charging authorities should consult, because charging authorities are best placed to decide how best to engage with their local communities and other relevant parties. Charging authorities may also decide how long a consultation period to offer, although they should consider an appropriate period to ensure that respondents have enough time to comment.

2:2:4 What is a draft charging schedule?

A draft charging schedule is prepared by the charging authority, in light of comments received on the preliminary draft and other updated evidence where applicable. It is subject to further public consultation before going forward for a formal independent examination.

2:2:4:1 What consultation is required on the draft charging schedule?

Before being examined, a draft charging schedule must be formally published. Alongside the draft charging schedule, the charging authority must also publish the appropriate available evidence on infrastructure costs, other funding sources and economic viability.

The consultation period must be at least four weeks long. It is good practice to allow at least six weeks, and longer if the issues under consideration are particularly complex. A copy of the draft charging schedule must be sent to all the bodies consulted during the preliminary drafting stage. Other parties who commented on the preliminary draft charging schedule should also be notified when the draft charging schedule is published .

During the consultation period, any person may comment on the draft charging schedule, and may ask to be heard by the examiner if they wish (under Regulation 21).

2:2:4:2 Can the draft charging schedule be modified after publication?

Charging authorities should avoid making substantive changes to the draft charging schedule between publication and submission to the examiner. Substantive changes should always be avoided, unless they have been sufficiently consulted on.

Where any changes are made to a draft charging schedule after publication, the charging authority must set these out in a 'statement of modifications' (as defined in Regulation

11(1)). Charging authorities should take any steps they consider necessary to inform people who were invited to make representations on the draft charging schedule that this statement has been published (see also Regulations 15 and 19).

Anyone wishing to comment on the statement of modifications may ask to be heard by the examiner, within four weeks of the statement being published (under Regulation 21(5)). Charging authorities may ask anyone wishing to be heard to provide additional details where appropriate; for example, whether they support or oppose the modification(s) and why. These details may be submitted to the examiner, along with the requests to be heard, where the authority considers they will help the examiner or if the examiner has asked for them.

2:2:5 How will the charging schedule be examined?

A charging schedule must be examined in public by an independent person appointed by the charging authority. Any person asking to be heard before the examiner at the examination must be heard in public. The independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted efficiently and effectively.
Where a charging authority has chosen to work collaboratively with other charging authorities, they may opt for a joint examination of their charging schedule with those of the other charging authorities. In addition, an examination of one or more charging schedules may be conducted as an integrated examination with a draft development plan document.

For further details on the evidence presented at the examination, see section 2:2:2. For more on the role of the Regulation 123 infrastructure list, see section 2:6:2:1.

2:2:5:1 How are the examiner and the examiner's assistants appointed?

The charging authority must appoint an examiner to examine its draft charging schedule. The charging authority must consider that this examiner is independent and has appropriate qualifications and experience. The Government believes that a Planning Inspector is likely to meet these criteria.

If the charging authority and the examiner agree it is necessary, the charging authority may appoint an assistant. For example, this might be an expert assessor from the Valuation Office Agency or another suitably qualified and experienced independent person. This appointment can be made by an exchange of letters.

2:2:5:2 How much should the examiner charge?

The charging authority must meet the cost of the examination. The regulations do not specify what the examiner's fees should be. It will be for the market to determine what rates are appropriate.

Where the examiner or assistant is an employee of the Crown or under contract to an executive agency of Government, such as the Planning Inspectorate, the Secretary of State can recover their costs from the charging authority (under Regulation 30). In

practice, the examiner should be able to provide a reasonable estimate of the likely costs prior to the examination, based on their assessment of its anticipated length and complexity.

In all other cases, the examiner or assistant should simply agree their fees and expenses with the charging authority prior to the examination (under Regulation 29).

Where there is a 'joint examination' (see section 2:2:5:4) of one or more charging schedules and a Development Plan Document (in England), Local Development Plan (in Wales) or the London Plan, any cost savings achieved by carrying out a joint examination are passed to the charging authority or split between the charging authorities. For example, where the same Inspector examines a relevant Plan and a Community Infrastructure Levy charging schedule at a 'joint examination', the Secretary of State would first recover costs of the relevant Plan examination using the statutory daily rate , before recovering any additional costs under Community Infrastructure Levy Regulation 30.

2:2:5:3 How should the charging schedule examination be run?

Regulation 21(8) sets out what steps the charging authority must take to notify interested parties about a forthcoming examination. They should do this as early as possible and at least four weeks before a hearing takes place. If the authority published a statement of modifications (see section 2:2:4:2), and one or more people asked to comment on it at the examination, this period can be shortened to two weeks (under Regulation 21(11)).

Examiners may hold a pre-hearing meeting, where they consider it appropriate. The examiner may use this pre-hearing meeting to undertake an initial check that the charging authority has complied with the legislation when preparing its charging schedule, and that the appropriate available evidence is sufficient. This can help to identify potential problems prior to the examination and save time and effort. The examiner may also use a pre-hearing meeting to discuss how the examination will be managed, to identify the main issues to be considered, and to outline the structure and draft programme. Whether or not a pre-hearing meeting is held, examiners should share the draft programme for the hearings at an early stage to ensure that those who wish to attend are clear when to do so.

An informal hearing format is usually the most appropriate form of examination for the Community Infrastructure Levy. If no-one has requested the right to be heard, the examiner also has the option of conducting the examination by written representations.

Regulation 21(12) allows the examiner to decide how the hearing will be conducted and to set time limits for representations from the participants who wish to speak. The examiner may refuse to allow representations if they consider that these may be repetitious, irrelevant, vexatious or frivolous, although the legislation does not allow an examiner to deny a participant's right to be heard altogether. The examiner may decide whether cross-examination of participants will be allowed. The examiner may also make any necessary arrangements to accommodate participants who are unable to attend the examination during normal working hours.

2:2:5:4 What are joint examinations (for charging schedules and local plans)?

Joint examinations of a charging schedule and a Development Plan Document (in England), Local Development Plan (in Wales) or the London Plan provide an opportunity for issues that are relevant to the charging schedule and the plan to be considered in a holistic way. This may involve the submission of joint evidence documents or the holding of a joint pre-hearing meeting. Joint hearing sessions may also cover issues such as infrastructure planning and the economic viability evidence. The charging schedule examiner and the plan inspector, where this is a different person, may decide to collaborate when writing their final examination reports.

Joint examinations must ensure there is transparency, so that all the participants are aware of exchanges of information between the two examinations and have an opportunity to comment where appropriate. A joint pre-hearing meeting and joint hearing sessions will help to achieve this. Where other exchanges of information take place, such as after the hearings have ended, the relevant authorities should take steps to ensure that they place relevant information their website and make the examination participants aware of this.

Joint examinations are optional. Two or more charging schedules can be examined together if each of the charging authorities that prepared a draft agree to this approach, If the joint examination is to assess one or more charging schedules and a plan document, the charging authorities must get approval from the Secretary of State (in England) or Welsh Ministers (in Wales) in advance (under Regulation 22). This may be agreed through an exchange of letters.

2:2:5:5 What is in the examiner's report?

The examiner must report their recommendations to the charging authority in writing. The examiner may recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications. The examiner must give reasons for those recommendations.

Approval: the examiner must recommend approval of the draft charging schedule if a charging authority has complied with the requirements in the Planning Act and the levy regulations (collectively known as the "drafting requirements" as defined by Section 212(4) of the Planning Act 2008). In doing so, the examiner should establish that:

- the charging authority has complied with the legislative requirements set out in the Planning Act 2008 (http://www.legislation.gov.uk/ukpga/2008/29/part/11)] and the Community Infrastructure Levy Regulations as amended;
- the draft charging schedule is supported by background documents containing appropriate available evidence;
- the proposed rate or rates are informed by and consistent with the evidence on economic viability across the charging authority's area; and
- evidence has been provided that shows the proposed rate or rates would not threaten delivery of the relevant Plan as a whole (for England, see National Planning Policy Framework paragraph 173)

Note that the changes to the rate setting and examination processes made by the 2014 Regulations do not apply to authorities who have already published a draft charging schedule on the date when those regulations come into force.

Approval subject to modifications: if the charging schedule can be modified so as to comply with the drafting requirements, the examiner must recommend appropriate modifications. This could be the case where the proposed rate or rates would be inconsistent with the evidence, or would put the delivery of the relevant Plan at risk. As long as the charging authority addresses the non-compliance, they do not have to make the specific modifications recommended by the examiner.

If the examiner does not recommend rejection of the draft charging schedule, they can also make non-binding recommendations.

Rejection: where the charging authority has not complied with the drafting requirements, and this could not be remedied by modifying the draft charging schedule, the examiner must recommend that the schedule is rejected. For example, this may occur where the charging authority has not complied with a procedural requirement in preparing it.

Where the examiner has recommended rejection, their recommendations will be binding on the charging authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule. The charging authority cannot adopt a schedule in its original form if the examiner rejects it. However, the charging authority is not obliged to adopt the final charging schedule. If it prefers, it may submit a revised charging schedule to a fresh examination.

2:2:5:6 How are any errors in the examiner's report corrected?

Examiners should encourage charging authorities to 'fact check' the final report before it is published. The examiner may remedy any 'correctable errors' (under Regulation 24) in their recommendations before the charging schedule is approved. However, after such errors are corrected, the charging authority must republish the recommendations in accordance with Regulation 24 and give notice of these corrections to anyone who asked to be notified of the examiner's recommendations.

For the purposes of Regulation 24, there are two types of 'correctable error'. The first is an error which 'does not alter the substance of the examiner's recommendations or reasons'. For example, this could be a minor typographical or factual error, but not one that would affect levy liability. The second is an error which 'must be corrected to make the recommendation consistent with the reasons given for those recommendations'. These more significant errors, which would give rise to a different levy rate or affect levy liability, may be corrected but only if the error in the recommendations is clearly traceable from the examiner's reasons within the same report and the correction is needed to make the recommendations consistent with the reasons.

2:2:6 How is the charging schedule approved and implemented?

The charging schedule must be formally approved by a resolution of the full council of the charging authority. The resolution should include an appropriate commencement date, following or on approval. In London, the Mayor must make a formal decision to approve his or her charging schedule.

2:2:6:1 Can any errors in the approved charging schedule be corrected?

Generally, the charging schedule should not be amended after an examination, until an authority chooses to undertake a full review and consult on a new schedule. However, certain errors in the charging schedule may be corrected for a period of up to six months after the charging schedule has been approved (under Regulation 26). If the charging authority corrects errors it must republish the charging schedule (under Regulation 27).

2:2:6:2 When does a charging schedule come into effect?

An approved charging schedule must be published by the charging authority. The date the charging schedule comes into effect is chosen by the charging authority and is specified within the charging schedule, but this must be at least one day after the date of publication. The charging schedule remains in effect until the charging authority either brings into effect a revised version or decides to stop charging the levy.

Planning permissions which first permit development on a day when the charging schedule is in effect will be liable for the levy. Regulation 8 defines the time at which a planning permission is treated as first permitting development. In most cases it will be the day that planning permission is granted. However, this will vary with different types of permission – see Regulation 8 for further details.

For outline planning permissions, if there is a charging schedule in force at the time when the outline planning permission is granted, each phase of that permission is subject to that charging schedule, or to any replacement schedule which the charging authority may bring into force.

2:2:6:3 When should the charging schedule be reviewed and revised?

Charging authorities must keep their charging schedules under review and should ensure that levy charges remain appropriate over time. For example charging schedules should take account of changes in market conditions, and remain relevant to the funding gap for the infrastructure needed to support the development of the area.

When reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.

Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule (as specified under the Planning Act 2008

http://www.legislation.gov.uk/ukpga/2008/29/part/11 , particularly sections 211-214, and the levy Regulations).

Government does not prescribe when reviews should take place. However, in addition to taking account of market conditions and infrastructure needs, charging authorities should also consider linking a review of their charging schedule to any substantive review of the evidence base for the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). Even if the original charging schedule was not examined together with the relevant Plan, there may be advantages in coordinating the review of both.

2:2:7 Can authorities stop charging the levy?

A charging authority that wishes to stop charging the levy may do so at any time by making a formal resolution to do so. If an authority ceases to charge, any levy liability relating to a development that has not yet commenced will be dissolved, and no levy will be payable for it [add link to Regulation 129(2)]. See Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development'.

In London, where there may be more than one charging authority for any area, if one charge ceases, development will still be liable for the remaining charge.

2:3. How is the Community Infrastructure Levy collected?

The charging authority sets the charging schedule. The collecting authority calculates individual levy payments and is responsible for ensuring that payment is made. The charging and collecting authority is usually the same body, except in London, where the boroughs collect the levy on the Mayor's behalf.

2:3:1 What are the stages in the collection process?

Part 8 of the Community Infrastructure Levy Regulations (http://www.legislation.gov.uk/uksi/2010/948/part/8/made), as amended, sets the legal framework for calculating and collecting the levy.

The collection process steps are:

- in areas where the levy is in force, applicants for planning permission should include a completed copy of the **Additional CIL Information form** with their application – this will help the collecting authority to calculate the amount payable
- where planning permission is granted for development by way of a general consent - such as via the General Permitted Development Order or through a Local Development Order, the developer or landowner submits a **notice of chargeable development** to the collecting authority (unless the development is less than 100 square metres, or the levy rate for the development is £zero per square metre)
- where planning permission is necessary, or permission is granted for development by way of a general consent, the collecting authority will expect the developer, landowner or another interested party to assume liability for the levy by submitting an **assumption of liability form**. It may speed up the process of issuing a liability notice if this form is submitted before planning permission is granted
- the collecting authority then issues a **liability notice** to the applicant, the developer, and whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure
- the relevant person(s) then submit a notice to the collecting authority setting out when development is going to start - a **commencement notice**
- the collecting authority issues a **demand notice** to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure
- on commencement of the development, the landowner, or whoever has assumed liability, should follow the correct **payment procedure** (see section 2:3:9)
- the collecting authority must issue a **receipt** for each payment received, and transfer the funds to the charging authority (if that is a different body).

Anyone wishing to claim relief or an exemption from the levy should make sure that they submit their claim in good time. Most forms of relief or exemption must be claimed and approved prior to the commencement of development. Further details are available in section 2:7. See section 2:9 for links to all the relevant forms and template notices.

2:3:2 When does a development become liable to pay the levy?

Part 4 of the Community Infrastructure Levy Regulations (see http://www.legislation.gov.uk/uksi/2010/948/part/4/made) sets out how liability for a levy charge is attributed to the relevant person or people.

Charges will become due from the date that a chargeable development is commenced. The definition of commencement of development (see section 56(4) of the Town and Country Planning Act1990) for levy purposes is the same as that used in planning legislation (i.e. 'material operations' on the site), unless planning permission has been granted after commencement, in which cases the development may be deemed liable when permission is granted..

If a charging authority wishes to set its own levy payment deadlines and/or offer the option of paying by instalments (see section 2:3:9 on instalments), it must publish an instalments policy on its website and make it available for inspection at its principal offices. If the charging authority wishes to publish a new instalments policy, or withdraw the policy, it must give at least 28 days notice before the new policy takes effect and/or old policy is withdrawn.

Some planning permissions may be implemented in phases, in which case charges may be payable over an extended period of time (see 2:3:10 for more on phased payments).

2:3:3 What information may be requested to help calculate the levy liability?

Local planning authorities are entitled to ask for relevant information when the planning application is submitted. Applicants should submit the 'Additional CIL Information' form alongside their planning application (see section 2:9 for details). Planning authorities may refuse to validate the planning application if this information is not provided.

When a local planning authority grants planning permission for what it considers to be a chargeable development, it must pass the details to the collecting authority within 14 days. In most cases, the planning authority and the collecting authority will be the same body, so this is simply an internal matter.

If a local planning authority is unsure whether a planning permission is chargeable or not, it may wish to discuss details of the permission with the collecting authority or team.

Collecting authorities may request relevant information from charging authorities, local planning authorities, or the Secretary of State. Collecting authorities may also use any other information to determine the correct charge, as long as it was not obtained by an authority elected member in their capacity as a member of a police and crime panel, or obtained by the authority in its capacity as an employer.

For further details, see Regulations 77 and 78.

2:3:3a What is indexation and how does it affect the levy calculation?

In calculating individual charges for the levy, Regulation 40 (as amended by the 2014 Regulations) requires collecting authorities to apply an index of inflation to keep the levy responsive to market conditions. The index is the national All-In Tender Price Index of construction costs published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors.

This index presents forecast figures, which are updated and finalised periodically. Some collecting authorities seek to reduce the need for repeated re-calculation by applying the most recent finalised figure published before the previous 1 November.

2:3:4 What is a notice of chargeable development?

Most developments are liable to pay the levy. This includes new developments that are granted permission by way of a general consent (see section 2:1:5).

Where development is granted by way of a general consent, the landowner, or other person(s) liable to pay, must issue a notice of chargeable development to the collecting authority. This requirement does not apply if the development is less than 100 square metres, or the levy rate for the development is £zero per square metre.

The purpose of the notice is to give the collecting authority enough information to calculate the amount of the charge due. The procedural requirements are set out in Regulation 64 (amended by the Community Infrastructure Levy (Amendment) Regulations 2011).

Where the collecting authority does not receive a notice of chargeable development but is aware that development has started, it must prepare the notice and serve it on each person known to them as an owner of land – Regulation 64A covers this situation.

Development granted permission by a development order , a local development order , or an enterprise zone scheme (under section 32 of the Local Government, Planning and Land Act 1980) is liable to pay the levy if it commenced on or after 6 April 2013.

2:3:5 How does someone assume liability for the levy?

Anyone may assume liability to pay the levy for a proposed development scheme. For example, this may be the developer who has applied for planning permission or the development’s major landowner.

If no party assumes liability to pay the levy before development commences, the owners of land will be liable to pay the levy and will not be able to benefit from any instalment regime the authority may have in place – see Regulation 33 for further details. If no party comes forward to assume liability, collecting authorities may wish to contact potential persons who may wish to assume liability and point out the benefits of assuming liability.

Any party wishing to assume liability should submit an ‘Assumption of Liability’ form to the collecting authority. Once the form has been received, the collecting authority must send an acknowledgement to the liable person(s)

Where no-one has assumed liability to pay and the collecting authority is aware that development has started, the liability defaults to the owner(s) of any material interest in the land (under Regulation 4). Where it is one person, they are responsible for all payments. Where it is more than one person, the authority must apportion liability following the formula set out in regulation 34(2).

Under Regulation 35 , collecting authorities can require any relevant information from owners of a material interest in the land in order to determine how to apportion liability.

Where a party has assumed liability yet failed to pay all its charge (despite the collecting authority making all reasonable efforts), the collecting authority may issue a default liability notice to the owners of any material interest in the land within the chargeable development. Further details of enforcement action can be found at section 2:8.

Parties may transfer liability to pay at any time up to the day before the date when final payment is due. This is done by submitting a ‘Transfer of Assumed Liability’ form to the collecting authority. The collecting authority must send an acknowledgement to both the person liable to pay, and the person applying for the transfer of liability.

For further details, see Regulations 31 to 39. For links to relevant forms, see section 2:9 of this guidance.

2:3:6 What is a liability notice and when is it issued?

Once a collecting authority has determined the amount due, based on information in the planning permission documents or the notice of chargeable development, they must issue a liability notice to the parties that are liable to pay the charge.

Collecting authorities should use the ‘Liability Notice’ template published by the Secretary of State (available here: http://www.planningportal.gov.uk/planning/infoforlpas/cil). The details required in the notice are set out in Regulation 65 .

The collecting authority must serve the liability notice on the person(s) who have assumed liability to pay, the owners of any material interest in the relevant land and the person who applied for the planning permission or submitted the notice of chargeable development.

Regulation 65 covers the processes for issuing revised liability notices or withdrawing a notice. A collecting authority must issue a revised liability notice where circumstances relating to the development or the chargeable amount change, and must inform the recipient of their intention to withdraw a notice. This way, collecting authorities may correct the details of a charge if it becomes necessary to do so. Where a collecting authority issues a revised liability notice, any previous notice is automatically cancelled.

2:3:7 What is a commencement notice and when is it issued?

Once the liability notice has been issued by the collecting authority, the liable parties must submit a commencement notice (see section 2:9). Once they have received the notice, the collecting authority must send an acknowledgement to the sender.

The purpose of the commencement notice is to inform the collecting authority about the start date of the development. The collecting authority must receive this notice at least one day before development is due to commence. Otherwise, the liable parties may be liable for a surcharge and may lose any ability to pay by instalments. Regulation 67 sets out the detailed requirements for parties who must submit a commencement notice.

If a collecting authority knows development has commenced, but has not received a commencement notice – or has received a notice, but considers that the development began earlier – it must determine when the development commenced. This is known as "the deemed commencement date" (under Regulation 68). The authority uses this date as the basis for subsequent demand notices.

2:3:8 What is a demand notice, and how can it be challenged?

The next stage in the process is for the collecting authority to issue a demand notice. This is a reminder to liable parties of how much they owe and by when. A collecting authority must serve a demand notice following the receipt of a commencement notice, or a decision by the collecting authority to deem that development has commenced.

Collecting authorities should use the 'Demand Notice' template published by the Secretary of State (available at http://www.planningportal.gov.uk/planning/infoforlpas/cil). Regulation 69 sets out in detail what this notice must cover.

A collecting authority may issue a revised demand notice under certain circumstances. A revised notice must be issued where the commencement date, levy amount or instalment options subsequently change. It may also be revised in other circumstances, for example if the liable parties change, or if there is any change to the amount payable.

Challenge and suspension

The planning system in England and Wales allows people to apply for planning permission regardless of whether they own the land in question, and without the consent of the actual owner(s). Landowners are liable to pay the levy where no one has assumed liability before development commences. This means that it is possible that landowners could find themselves liable to pay the levy because planning permission for a development which includes their land has been obtained and work commenced on nearby land, and no-one has assumed liability (or the person who assumed liability has defaulted).

To address this situation, regulation 69A allows a person who has been served with a demand notice to ask their collecting authority to suspend it. The person requesting the suspension must own a material interest in the land (as defined in Regulation 4). The effect of suspending a demand notice is that no levy is due under that notice until development is commenced upon that person's land.

The authority may only agree to a request for suspension if it is satisfied that the strict conditions set out in Regulation 69A(3) are met. These conditions are that:

- no development has commenced on the part of the chargeable development owned by the person requesting the suspension, and
- the person has not agreed to transfer ownership of his/her material interest to another party.

2:3:9 Can payment be made in instalments?

The demand notice must explain the payment periods. Where a charging authority wishes to allow payment by instalments, they must have published an instalment policy on their website (under Regulation 69B). Instalment policies can assist the viability and delivery of development. Few if any developments generate value until they are complete either in whole or in phases. Willingness to allow an instalments policy can be a material consideration in assessing the viability of proposed levy rates. The authority has freedom to decide the number of payments, the amount and the time due. The authority may revise or withdraw the policy when appropriate.

Regulation 70 provides for payment by instalment where an instalment policy is in place. Where no instalment policy is in place, payment is due in full at the end of 60 days after development commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').

If instalment terms are broken, or payment is not made after 60 days where there is no instalment policy, the authority must issue a demand notice (see section 2:3:8) requiring the full amount of money immediately.

Where an authority has to set the "deemed commencement" date (under Regulation 68), the demand notice must require the full amount of money immediately. Regulation 71 provides further details.

Collecting authorities must acknowledge receipt of any money received.

2:3:10 Is there another way to allow phased payments?

Where the planning authority is willing to accept it, a planning application can be subdivided into 'phases' for the purposes of the levy (see section 2:1:5 for further details).. This is expected to be especially useful for large scale, locally planned development, which is an essential element of increasing housing supply.

Large scale developments which are delivered over a number of years face particular issues in relation to cashflow and the delivery of on-site infrastructure. The regulations allow for both detailed and outline permissions (and therefore 'hybrid' permissions as well) to be treated as phased developments for the purposes of the levy. This means that each phase would be a separate chargeable development and therefore liable for payment in line with any instalment policy that may be in force.

The principle of phased delivery must be apparent from the planning permission. Local authorities should work positively with developers to allow such developments to be delivered in phases.

Phased developments may also benefit from abatement – see section 2:3:13:3 for further details.

2:3:11 Can the levy be paid 'in kind' rather than in cash?

There may be circumstances where the charging authority and the person liable for the levy will wish land and/or infrastructure to be provided, instead of money, to satisfy a charge arising from the levy. For example, where an authority has already planned to invest levy receipts in a project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party liable for payment of the levy. Payment in kind can also enable developers, users and authorities to have more certainty about the timescale over which certain infrastructure items will be delivered.

Subject to relevant conditions, and at its discretion, an authority may enter into an agreement for a land payment to discharge part or all of a levy liability. Charging authorities may also enter into agreements to receive infrastructure as payment.

Further details are provided below.

2:3:11:1 Under what conditions may a land or infrastructure agreement be entered into?

Where a charging authority chooses to adopt a policy of accepting infrastructure payments, they must publish a policy document which sets out conditions in detail. This document should confirm that the authority will accept infrastructure payments and set out the infrastructure projects, or types of infrastructure, they will consider accepting as payment (this list may be the same list provided for the purposes of Regulation 123).

Before a land payment agreement is entered into, relevant charging authorities must be satisfied that the criteria in Regulation 73 are met. Similarly, before entering into an infrastructure payment agreement, they must be satisfied that the criteria in Regulation 73A (inserted by the 2014 Regulations) are met.

Where the levy is to be paid as land or infrastructure, a land or infrastructure agreement must be entered into before development commences. This must include the information specified in Regulation 73A.

2:3:11:2 What can be covered by a land or infrastructure agreement?

Land that is to make up a payment in kind may contain existing buildings and structures.

Land or infrastructure must be valued by an independent valuer who, in the case of land, will ascertain its 'open market value', and in the case of infrastructure the cost (including related design cost) to the provider. This will determine how much liability the ‘in-kind’ payment will off-set.

Payments in kind must be provided to the same timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other state aid considerations. See section 2:7:7 for further details about state aid.

Land and infrastructure may be given to charging authorities in instalments, in the same way as cash can be given in instalments (see section 2:3:9). The same rules on payment periods apply.

2:3:11:3 Who needs to be party to land or infrastructure agreements?

Payments in kind may only be made with the agreement of the liable party, the charging authority, and any other relevant authority that will need to assume a responsibility for the land or infrastructure. Charging and collecting authorities and any other relevant authorities should agree the infrastructure projects or types which will form part of an authority’s infrastructure payment policy and the terms of any relevant infrastructure payment agreement entered into.

Authorities must refer back to the relevant regulations (including Regulations 73 and 73A) when considering adopting a policy on accepting payments in kind and in considering entering into and in drawing up relevant land or infrastructure agreements. An authority wishing to amend or withdraw its policy on land or infrastructure payments must give appropriate notice, in line with the regulations.

2:3:12 Can existing buildings be taken into account when calculating a new levy charge?

In certain circumstances the floorspace of an existing building can be taken into account in calculating the chargeable amount. Each case is a matter for the collecting authority to judge.

Where part of an existing building has been in lawful use for a continuous period of 6 months within the past three years, parts of that building that are to be demolished or retained can be taken into account. The way those parts are taken into account is set out in the formula in Regulation 40(7) (as amended by the 2014 Regulations).

Where an existing building does not meet the six-month lawful use requirement, its demolition (or partial demolition) is not taken into account. However, parts of that building that are to be retained as part of the chargeable development can still be taken into account if the intended use matches a use that could have lawfully been carried out

without requiring a new planning permission. The detailed requirements are set out in Regulation 40 (as amended by the 2014 Regulations). Because there must be a lawful use, parts of that building where the use has been abandoned cannot be taken into account here.

When is a use considered to have been abandoned?
The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:

- the condition of the property
- the period of non-use
- whether there is an intervening use; and
- any evidence regarding the owner's intention.

Each case is a matter for the collecting authority to judge.

2:3:13 Can past levy payments be credited against future levy liability?

Levy payments made in respect of a development that has commenced but has not been completed can be credited against the levy liability for a revised scheme under a new planning permission, on all or part of the same land. This levy credit is known as abatement. This provision is to ensure that the charge is not inappropriately levied twice (or more) as schemes change during the course of development of a site. However, once a development is completed, a developer cannot apply for abatement of levy paid.

2:3:13:1 When can abatement be applied for?

Development must have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development') under one planning permission, but not been completed, and the levy must have been paid in relation to that development. Abatement can be sought in relation to a different planning permission that covers all or part of the same land. Abatement can only be sought before development commences under the alternative planning permission.

Where a person has assumed liability to pay the levy in relation to a new planning permission, they can ask the charging authority to credit the levy paid in relation to the earlier scheme. The request must be accompanied by proof of the amount of levy already paid.

Further detail is set out at Regulation 74B as inserted by the Community Infrastructure Levy Regulations 2014.

Separate arrangements apply to permissions granted under section 73 of the Town and Country Planning Act 1990.

2:3:13:2 If a revised development has a lower liability than the earlier planning permission, is a refund payable?

No refund is payable under the abatement provisions if a later development scheme has a lower levy liability than the one which was first paid on the site. This is to avoid potentially significant and long term financial liabilities to charging authorities on schemes which are not completed.

2:3:13:3 Can abatement apply to phased development?

Abatement can apply to phased development. Where the amount to be credited to the new development is greater than the amount due for the first phase of the new development, the remainder must be credited against the next phase or phases until there is none left. Any excess will not be refunded by the charging authority..

2:3:13:4 What about buildings that were demolished in relation to the first development on site?

The floorspace of a building which is demolished during the development of a previous scheme can be taken into account in calculating the levy charge for the revised scheme, in certain circumstances (see section 2:3:12 for details).

This demolition 'credit' can be carried forward to an alternative development on the same land under a new planning permission, provided that abatement is granted in relation to this new development. Two main criteria must be met in order for this 'credit' to be claimable. First, the request for abatement must be made within 3 years of the date of grant of the original planning permission under which the buildings were demolished. Second, the demolished buildings would have been taken into account in calculating the levy liability for the alternative development if they had not already been demolished.

2:3:13:5 What happens if some or all of the original development is completed after abatement is granted?

A developer may complete buildings which were commenced under an earlier planning permission, after abatement has been claimed for levy paid on these buildings. However, in those circumstances, the person granted abatement must pay to the collecting authority an amount equal to the abatement granted for the levy paid on these buildings.

2:3:14 Can I claim back any overpayment?

Collecting authorities are required to pay back any overpayments, unless the overpayment is so small that it would cost more in administrative costs, is the result of a land or infrastructure payment, or the payment was credited against a new liability in accordance with the abatement provisions. Regulation 75 provides full details.

Where a person is entitled to a repayment, the authority must pay interest. The interest rate is either 0.5 per cent per annum, or a percentage equal to the Bank of England base rate less one percentage point, whichever is higher.

Where an overpayment has arisen because a Section 73 consent (see section 2:1:5) has been granted and this has reduced the levy liability of the scheme, no interest is payable.

2:3:15 Payments to charging authorities in London

In most cases the charging authority and the collecting authority are the same body. An exception is in London, where local authorities are collecting the money for a charge put in place separately by the Mayor.

In all circumstances where the charging authority and collecting authority are different, the collecting authority must transfer the money received during each financial quarter to the charging authority by the end of that quarter (see Regulation 76 for details). However, the collecting authority is allowed to retain a portion relating to administrative expenses. The amounts that may be retained for administrative expenses are set out in Regulation 61 and discussed in section 2:4:5 of this guidance.

2:4 What can the Community Infrastructure Levy be spent on (and by whom)?

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see Section 216(2) of the Planning Act 2008, and Regulation 59). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.

Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

In London, the regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail, to ensure a balance between the spending priorities of the boroughs and the Mayor.

Local authorities must allocate **at least 15%** of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This can increase to a minimum of 25% in certain circumstances (see below for further details).

2:4:1 What is the neighbourhood portion of the levy?

Fifteen per cent of Community Infrastructure Levy charging authority receipts are passed directly to those Parish and Town Councils (in England) and Community Councils (in Wales) where development has taken place (see Regulation 59A for details). Where chargeable development takes place within the local council area, up to £100 per existing council tax dwelling can be passed to the Parish, Town or Community Council (see Regulation 58A for details) this way each year to be spent on local priorities (see Regulation 59C for details). Areas could use some of the neighbourhood pot to develop a neighbourhood plan (see National Planning Policy Guidance section 41/001/20140120 on neighbourhood plans), where it would support development by addressing the demands that development places on the area.

In England, communities that draw up a neighbourhood plan or neighbourhood development order (including a community right to build order), and secure the consent of

local people in a referendum, will benefit from **25 per cent** of the levy revenues arising from the development that takes place in their area. This amount will not be subject to an annual limit. For this to apply, the neighbourhood plan must have been made (see section 61E of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38C of the Planning and Compulsory Purchase Act 2004) before a relevant planning permission first permits development (as defined by Regulation 8 of the Community Infrastructure Levy Regulations). This higher amount will also apply when the levy is paid in relation to developments which have been granted permission by a neighbourhood development order (including a community right to build order) (see related guidance here: http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/what-is-neighbourhood-planning). Neighbourhood planning does not apply in Wales, so neither does the enhanced neighbourhood funding element linked to it.

Figure: relationship between the levy and neighbourhood plans in England

Parish council ✓ Neighbourhood Plan ✓ = 25% uncapped, paid to Parish	Parish council ✓ Neighbourhood Plan X = 15% capped at £100 / dwelling, paid to Parish
Parish council X Neighbourhood Plan ✓ = 25% uncapped, local authority consults with community	Parish council X Neighbourhood Plan X = 15% capped at £100 / dwelling, local authority consults with community

In areas where there is a neighbourhood plan or neighbourhood development order in place, charging authorities can choose to pass on more than 25% of the levy, although the wider spending powers that apply to the neighbourhood funding element of the levy will not apply to any additional funds passed to a Parish, Town or Community Council. Those additional funds can only be spent on infrastructure, as defined in the Planning Act 2008 for the purposes of the levy.

Charging authorities do not have to pass on a neighbourhood portion of a levy charge if they issued the liability notice (see section 2:3:6) for that development before 25 April 2013.

2:4:1:1 Where there is no Parish, Town or Community Council, who receives the neighbourhood portion?

Communities without a Parish, Town or Community Council will still benefit from the 15% neighbourhood portion (or 25% portion, if a neighbourhood plan or neighbourhood development order has been made). If there is no Parish, Town or Community Council, the charging authority will retain the levy receipts but should engage with the communities

where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans.

The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. This should include working with any designated neighbourhood forums preparing neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.

Where the charging authority retains the neighbourhood funding, they can use those funds on the wider range of spending that are open to local councils (see section 2:4:2 of this guidance, and Regulation 59C). In deciding what to spend the neighbourhood portion on, the charging authority and communities should consider such issues as the phasing of development, the costs of different projects (e.g. a new road, a new school), the prioritisation, delivery and phasing of projects, the amount of the levy that is expected to be retained in this way and the importance of certain projects for delivering development that the area needs. Where a neighbourhood plan has been made, the charging authority and communities should consider how the neighbourhood portion can be used to deliver the infrastructure identified in the neighbourhood plan as required to address the demands of development. They should also have regard to the infrastructure needs of the wider area.

The charging authority and communities may also wish to consider appropriate linkages to the growth plans for the area and how neighbourhood levy spending might support these objectives.

2:4:1:2 When is the neighbourhood portion paid?

Charging authorities and Parish, Town and Community Councils are free to decide the timing of neighbourhood funding payments themselves. However, in the absence of such an agreement, Regulation 59D specifies that the neighbourhood portion of levy receipts must be paid every six months, at the end of October and the end of April.

2:4:1:3 Can the neighbourhood portion be paid ‘in kind’, as land or infrastructure, as well as cash?

Developers may offer to pay the levy as land or infrastructure as well as by cash, if the charging authority chooses to accept these alternatives (see section 2:3:11 for details). However, the relevant percentage of the cash value of levy receipts must be passed on to a Parish, Town or Community Council in cash.

2:4:1:4 What happens where development straddles a Parish, Town or Community Council administrative boundary?

Where development straddles the boundaries of Parish, Town or Community Councils' administrative areas, each council receives a share of the levy which is proportionate to the gross internal area of the development within their administrative area. For example, if a development crosses two Parish, Town or Community Council administrative areas with 50 per cent in one parish and 50 per cent in the other, each council receives 50 per cent of the neighbourhood portion, up to the level of the annual limit for their area. The total Levy liability across the development is used to calculate the neighbourhood funding figure, to take account of sites with variable rates.

There may be occasions when development crosses more than one Parish or Town Council administrative area and where one or more of those areas has a neighbourhood development plan in place (so receives 25 per cent) and one or more of those areas does not. There may also be occasions where part of a development is granted planning permission by a neighbourhood development order, and part is not. In these cases, the Parish or Town Council receives a proportionate amount of the levy payment based on how much of the gross internal area of the development is in an area for which there is a neighbourhood plan, or was granted permission by a neighbourhood development order .

2:4:1:5 Is the Mayor of London also required to pass a share to neighbourhoods?

The Mayor of London is not required to allocate any levy receipts to neighbourhoods. The Mayor must only spend the levy on strategic transport infrastructure.

2:4:1:6 What can neighbourhood funding be spent on?

The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to 'support the development of the area' (see 59C for details). The wider definition means that the neighbourhood portion can be spent on things other than infrastructure (as defined in the Community Infrastructure Levy regulations). For example, the pot could be used to fund affordable housing where it would support the development of the area by addressing the demands that development places on the area.

Parish, Town and Community Councils should discuss their priorities with the charging authority during the process of setting the Levy rate(s).

Once the levy is in place, Parish, Town and Community Councils should work closely with their neighbouring councils and the charging authority to agree on infrastructure spending priorities. If the Parish, Town or Community Council shares the priorities of the charging authority, they may agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. It may be that this infrastructure (e.g. a school) is not in the Parish, Town or Community Council's administrative area, but will support the development of the area.

If a Parish, Town or Community Council does not spend its levy share within five years of receipt, or does not spend it on initiatives that support the development of the area, the

charging authority may require it to repay some or all of those funds to the charging authority (see Regulation 59E(10) for details).

2:4:1:7 Do the planning obligations restrictions apply to neighbourhood funds?

Regulation 123(2) of the Community Infrastructure Regulations prevents section 106 planning obligations being used in relation to those things that are intended to be funded through the Levy by the charging authority. While Parish, Town and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, we expect Parish, Town and Community Councils to work closely with the charging authority to agree priorities for spending the neighbourhood funding element.

Parish, Town and Community Councils should consider publishing their priorities for spending the neighbourhood funding element, highlighting those that align with the charging authority. Where a neighbourhood plan has been made, it should be used to identify these priorities.

2:4:1:8 How should the Parish, Town or Community Council report on its levy spending?

Parish, Town and Community Councils must make arrangements for the proper administration of their financial affairs (see Section 151 of the Local Government Act 1972). They must have systems in place to ensure effective financial control (see Accounts and Audit (England) Regulations 2011 and Accounts and Audit (Wales) Regulations 2005). These requirements also apply when dealing with neighbourhood funding payments under the levy.

For each year when they have received neighbourhood funds through the levy, Parish, Town and Community Councils must publish the information specified in Regulation 62A . They should publish this information on their website or on the charging authority's website. If they haven't received any money they do not have to publish a report, but may want to publish some information to this effect in the interests of transparency.

There is no prescribed format. Parish, Town and Community Councils may choose to combine reporting on the levy with other reports they already produce. The levy neighbourhood funding income and spending will also be included in their overall published accounts but are not required to be identified separately in those accounts.

Where a charging authority holds and spends the neighbourhood portion on behalf of the local community, it should ensure that it reports this as a separate item in its own accounts (see section 2:4:6 of this guidance for details).

2:4:2 Can the levy be used to deliver Suitable Alternative Natural Greenspace ?

European legislation (the Habitats and Wild Birds Directives), transposed into the Conservation of Habitats and Species Regulations 2010

(http://www.legislation.gov.uk/uksi/2010/490/pdfs/uksi_20100490_en.pdf), as amended, requires local authorities to avoid or mitigate the impact of increased human activity on certain habitats and species in European protected areas, namely Special Areas of Conservation (see http://www.naturalengland.org.uk/ourwork/conservation/designations/sac/ for details) and Special Protection Areas (see http://www.naturalengland.org.uk/ourwork/conservation/designations/spa/ for details). For more information on legal obligations regarding European sites, see National Planning Policy Guidance (section headed 'What are the legal obligations on local planning authorities and developers regarding European sites designated under the Birds or Habitats Directives, protected species and Sites of Special Scientific Interest?' http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/) [Reference ID: 8-011-20140120].

Local authorities are responsible for securing adequate mitigation for European site impacts. They may choose to use their levy income to provide new or improved areas of open space (such as Suitable Alternative Natural Greenspace (SANGS) or similar approaches) which provide recreation space to deflect visitors, as part of a suite of measures to reduce the impacts on protected sites arising from development. Suitable Alternative Natural Greenspaces are open space and are within the levy definition of infrastructure.

If delivering Suitable Alternative Natural Greenspace, local authorities must put in place a system which ensures that mitigation is delivered at a time and place when it will be effective. In order to ensure compliance with the Directives, the local authority must be clear that it intends to prioritise the use of the levy to deliver Suitable Alternative Natural Greenspace and maintain their effectiveness in the long term. Where it is appropriate to do so, this should be set out in the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) and could also be included in the published Regulation 123 list.

2:4:3 Can the levy be spent outside a charging area?

Charging authorities may pass money to bodies outside their area to deliver infrastructure that will benefit the development of the area. For example, these bodies may include the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure.

If they wish, charging authorities may pool funds from their respective levies to support the delivery of infrastructure that benefits the wider area, for example, a larger transport project where they are satisfied that this would also support the development of their own area. This could include, for instance, funds to support the delivery of Suitable Alternative Natural Greenspace (see section 2:4:2). Authorities are strongly encouraged to consider growth planning priorities for their area at Local Enterprise Partnership or equivalent broad area level in determining levy spending priorities.

2:4:4 Are charging authorities allowed to borrow against future levy income?

Charging authorities are not currently allowed to borrow against future levy income. However, the levy can be used to repay expenditure on infrastructure that has already been incurred. Charging authorities may not use the levy to pay interest on money they raise through loans.

2:4:5 What about administrative costs?

Charging authorities can use funds from the levy to recover the costs of administering the levy. Regulation 61 allows them to spend up to five per cent of their total levy receipts on administrative expenses. This is to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision.

Where an authority spends less than its permitted allowance on administrative expenses, it must transfer the remaining allowance for use on capital infrastructure projects.

2:4:5:1 What can administrative expenses include?

Administrative expenses associated with the levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability or the costs of the levy examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring and reporting on levy activity.

To help charging authorities with initial set up costs, the regulations allow for a ‘rolling cap’ on administrative expenses (see Regulation 61). This covers the period comprising the first part year that an authority sets a levy and the following three financial years taken as a whole. From year four onwards of an authority’s levy operation, the restriction works as a fixed in-year cap, meaning that an authority may spend up to five per cent of receipts received in-year by the end of that year on its administrative expenses.

2:4:5:2 What about areas where the collecting authority and the charging authority are different?

In London, where boroughs collect the levy on behalf of the Mayor, a borough may keep up to four per cent of those receipts to fund its administrative costs. The remainder is passed to the Mayor, up to the five per cent cap.

2:4:6 How do charging authorities report their levy income and spending?

To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy. Charging authorities must publish a report on their website by 31

December each year, for the previous financial year. They may prepare a bespoke report or use an existing reporting mechanism, such as the annual monitoring report which reports on their development plan. Where a charging authority holds and spends the neighbourhood portion on behalf of the local community, it should ensure that it reports this as a separate item.

Regulation 62(4) (as amended by the 2013 levy regulations to include the neighbourhood share) sets out what charging authorities must include in their reports.

Authorities may pool levy funding, and/or combine it with other sources of funding for investment in strategic infrastructure, such as the Growing Places Fund. In such cases, charging authorities should report on committed funding in a way that illustrates the respective contributions from different sources

Parish, Town and Community Councils must also report on their levy income and spending (see section 2:4:1:8 for further details).

2:5 Is there a right of appeal against a Community Infrastructure Levy charge?

Appeals can be lodged against some aspects of a levy charge.

2:5:1 What kind of appeals are possible?

The full range of appeals is shown in the table below:

Type of appeal	**Who should appellants contact?**	**Who may appeal, and on what grounds?**	**What time restrictions apply?**
Calculation of chargeable amount (Regulation 114)	First: ask the levy collecting authority for a review, in accordance with the procedures in Regulation 113 Second: appeal to the Valuation Office Agency	The Valuation Office Agency can only accept an appeal from the person who asked the collecting authority to review the chargeable amount under Regulation 113. An appeal to the Valuation Office Agency can only be made on the ground that the chargeable amount has been calculated incorrectly.	Development must not have commenced. The first review to the charging authority must be made within 28 days A subsequent appeal to the Valuation Office Agency must be made within 60 days of the date when the original liability notice was issued. An appeal to the Valuation Office Agency cannot be made until at least 14 days after the collecting authority has been asked for a review.

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Apportionment of liability (Regulation 115)	First: ask the levy collecting authority for a review Second: appeal to the Valuation Office Agency	The appeal can only be made by the 'owner of a material interest' (defined in Regulation 4(2)) in the 'relevant land' (defined in Regulation 2). An appeal to the Valuation Office Agency can only be made against an apportionment of the liability made under Regulation 34.	Within 28 days of the date when the demand notice stating the amount payable by the appellant was issued.
Charitable relief (Regulation 116)	First: ask the levy collecting authority for a review Second: appeal to the Valuation Office Agency	The appeal can only be made by an 'interested person' (defined in Regulation 112(2)(b)). An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined the value of the interest in land used in an apportionment assessment.	Within 28 days of the collecting authority's decision on the claim for charitable relief. Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Residential annexe exemption (Regulation 116A, inserted by the 2014 Regulations)	Appeals can be lodged directly with the Valuation Office Agency	The appeal can only be made by the person who was granted the exemption. An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined that the annexe is not wholly within the grounds of the main dwelling.	Within 28 days of the collecting authority's decision on the claim for an exemption. Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').
Self build exemption (Regulation 116B, inserted by the 2014 Regulations)	Appeals can be lodged directly with the Valuation Office Agency	The appeal can only be made by the person who was granted the exemption for self-build housing , on the grounds that the collecting authority has incorrectly determined the value of the exemption allowed	Within 28 days of the collecting authority's decision on the claim for an exemption. Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development')
Surcharges (Regulation 117)	Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a surcharge	Within 28 days of the surcharge being imposed

Type of appeal	Who should appellants contact?	Who may appeal, and on what grounds?	What time restrictions apply?
Commencement of development (Regulation 118)	Planning Inspectorate	The appeal can be made by a person on whom a demand notice is served, on the grounds that the date of commencement has been wrongly determined	Within 28 days of the date the demand notice was issued
Issuing of a stop notice (Regulation 119)	Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a levy stop notice	Within 60 days of the date when the stop notice takes effect

Relevant Regulations can be found here:
http://www.legislation.gov.uk/uksi/2010/948/regulation/114/made
http://www.legislation.gov.uk/uksi/2010/948/regulation/115/made
http://www.legislation.gov.uk/uksi/2010/948/regulation/116/made
http://www.legislation.gov.uk/uksi/2010/948/regulation/117/made
http://www.legislation.gov.uk/uksi/2010/948/regulation/118/made
http://www.legislation.gov.uk/uksi/2010/948/regulation/119/made

(Link to Regulations 116A and 116B to be added when online version becomes available)

2:5:2 What are the requirements for lodging appeals?

A liable person can ask the levy collecting authority for a review of the chargeable amount, within 28 days from the date on which the liability notice (that outlines the chargeable amount) was issued. The collecting authority is required to review the calculation. This review must be carried out by someone who is senior to the person who made the original calculation, and who had no involvement in that original calculation. A decision must be issued within 14 days, and this decision cannot be reviewed again. Following this review, the liable person may submit an appeal to the Valuation Office Agency (see http://www.voa.gov.uk/cil/index.html for details).

Appeals made in connection with the calculation of the chargeable amount, an apportionment of liability, charitable relief and self build exemptions should be submitted to the independent Valuation Office Agency, on a form provided by the Agency (see http://www.voa.gov.uk/cil/index.html for details.

Appeals related to enforcement (surcharges, commencement notices and stop notices) should be submitted to the Planning Inspectorate (see http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals for details). All appeals to the Planning Inspectorate must be made using the form published by the Secretary of State (or forms substantially to the same effect). This can be found on the Planning Portal website (as above).

2:5:3 Can an appeal be made if development has already started?

If a person intends to request a review of a liability notice (under Regulation 113), or lodge an appeal under Regulation 114(4) (except in respect of retrospective apps), Regulation 116(3), Regulation 116A or Regulation 116B, they must do this before development begins. The appeal will lapse if development is commenced before the appeal decision is received. See Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').

In some circumstances, however, this may not be possible. For example, if an apportionment of liability has been made after development has commenced or where planning permission is sought retrospectively, the liability notice can only be issued once the scheme is underway or complete. In such circumstances, relevant people may still request a review or appeal of the chargeable amount or the apportionment of liability. This applies to appeals lodged under Regulation 114 in respect of retrospective planning permissions, and Regulation 115.

2:5:4 Are levy appeal decisions published?

Appeal decision notices issued by the Valuation Office Agency are published in redacted form on the agency's website (see http://www.voa.gov.uk/cil/cil-Appeals.html for details).

Appeal decision notices issued by the Planning Inspectorate will be published in redacted form on the Portal website (see http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals for details).

2:6 How does the Community Infrastructure Levy relate to other developer contributions?

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements (see National Planning Policy Guidance on planning obligations: http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/when-can-planning-obligations-be-sought-by-the-local-planning-authority/) and section 278 highway agreements (under section 278 of the Highways Act 1980 as amended). Developers will also have to comply with any conditions attached to their planning permission (see National Planning Policy Guidance on planning conditions: http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/what-is-the-governments-policy-on-the-use-of-conditions-in-planning-permissions/). Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan (see paragraph 173 of the National Planning Policy Framework for details).

Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

2:6:1 When can planning obligations be used?

The levy is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. As a result, some site specific impact mitigation may still be necessary in order for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated.

However, in order to ensure that planning obligations and the levy can operate in a complementary way, the levy Regulations 122 and 123 place limits on the use of planning obligations in three respects:

- they put the Government's policy tests on the use of planning obligations (also found in paragraph 204 of the National Planning Policy Framework)on a statutory basis, for developments that are capable of being charged the levy
- they ensure the local use of the levy and planning obligations does not overlap; and
- they impose a limit on pooled contributions from planning obligations towards infrastructure that may be funded by the levy.

A planning obligation can only be taken into account when determining a planning application for a development, or any part of a development, if the obligation meets all of the following tests:

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

2:6:2 How can planning obligations and the levy operate together?

The levy delivers additional funding for charging authorities to carry out a wide range of infrastructure projects that support growth and benefit the local community. It cannot be expected to pay for all the infrastructure required, but it is expected to make a significant contribution.

Charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be no actual or perceived 'double dipping', with developers paying twice for the same item of infrastructure.

2:6:2:1 What is a regulation 123 infrastructure list?

Regulation 123 of the Community Infrastructure Levy Regulations provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund, or may fund, through the levy. This list should be based on the draft list that the charging authority prepared for the examination of their draft charging schedule.

2:6:2:2 How does the regulation 123 list relate to section 106 contributions?

When a charging authority introduces the levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets. Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London).

When the levy is introduced (and nationally from April 2015), regulation 123 limits the use of planning obligations (see section 2:6:3 for further details). An agreement entered into for the purposes of section 106 may contain more than one planning obligation to which regulation 123 relates.

Where the regulation 123 list includes a generic type of infrastructure (such as 'education' or 'transport'), section 106 contributions should not be sought on any specific projects in that category. Site-specific contributions should only be sought where this can be justified with reference to the underpinning evidence on infrastructure planning which was made publicly available at the charging schedule examination (see section 2:2:5 for details).

The charging authority's proposed approach to section 106 contributions should be set out at examination and should be based on evidence. Where a regulation 123 list includes project-specific infrastructure, the charging authority should not seek any planning obligations in relation to that infrastructure.

2:6:2:3 How should a regulation 123 list be amended?

When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate local consultation. See sections 2:2:2:1 and 2:6:3 for further details on the relationship between the levy and infrastructure planning.

Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Authorities may amend the regulation 123 list without revising their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule.

2:6:3 Is there a limit on the pooling of section 106 contributions?

When the levy is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

For provision that is not capable of being funded by the levy, such as affordable housing, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies on planning obligations set out in the National Planning Policy Framework (in England) and Planning Policy Wales (in Wales).

2:6:3:1 How does this work in relation to an individual infrastructure project?

Individual projects on the charging authority's list of infrastructure that it proposes to fund from the levy (commonly known as a 'Regulation 123 list' in reference to the relevant levy regulation) cannot be funded by s106 contributions.

Contributions may be pooled from up to five separate planning obligations for a specific item of infrastructure (e.g. a local school) that is not included on the charging authority's infrastructure.

Site-specific contributions like this should only be sought through planning obligations where this can be justified with reference to the underpinning evidence on infrastructure planning that was presented at the charging schedule examination.

2:6:3:2 How does this work in relation to generic tariffs and funding pots for types of infrastructure?

In effect, the levy regulations restrict the use of generic section 106 tariffs for items that are capable of being be funded by the levy. Authorities who refer to generic types of infrastructure (e.g. 'education'), rather than specific projects, in their s106 agreements, will be unable to collect more than 5 contributions towards those generic funding pots once the pooling restriction is in force.

2:6:3:3 Which section 106 agreements count towards the pooling limit?

All section 106 agreements that have been entered into since 6 April 2010 must be counted towards the pooling limit. Planning obligations attached to applications made under Section 73 to vary a planning condition must also be included.

2:6:3:4 Does the pooling restriction apply to Crossrail?

Crossrail will bring benefits to communities across London and beyond and its funding will be met by a range of sources, including contributions from the levy and planning obligations. To effectively maintain the ability of planning obligations to raise monies for Crossrail, this restriction will not apply to planning obligations that relate to the funding of Crossrail.

2:6:3:5 Does the pooling restriction apply to section 278 highway agreements?

Contributions for highway works that are secured through section 278 of the Highways Act are not subject to the pooling restriction. The interaction between the levy and section 278 agreements is discussed in section 2:6:5.

2:6:3:6 How do section 106 agreements relate to items that are funded through the neighbourhood portion of the levy?

Please refer to section 2:4:1:7 of this guidance.

2:6:4 How can planning conditions and the levy operate together?

In England, the National Planning Policy Framework (paragraph 206) sets out that planning conditions (including Grampian conditions) should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In Wales, Planning Policy Wales (paragraph 3.6) sets out the same tests for the use of conditions. When setting conditions, local planning authorities should consider the combined impact of those conditions and any Community Infrastructure Levy charges that the development will be liable for.

2:6:5 What is the relationship between the levy and section 278 highway agreements?

Section 278 agreements (under the Highways Act 1980) are made between a highway authority and a person who agrees to pay all or part of the cost of highways works. The regulations help to ensure that section 278 agreements cannot be required for works that are intended to be funded through the levy. The regulations do this by placing restrictions on the use of planning obligations and conditions where a local authority has an infrastructure list. Planning obligations and conditions should not be used to require a developer to enter into section 278 agreements to provide items that appear on the charging authority's Regulation 123 infrastructure list (see 2:6:2:1 for more on infrastructure lists).

These restrictions do not apply to highways agreements drawn up by the Highways Agency (or any subsequent body on behalf of the Secretary of State for Transport), the Welsh Ministers or Transport for London. These bodies are responsible for the strategic road network, undertaking works that in terms of their scale and nature are not suitable for funding through receipts from the levy.

Charging authorities should take care to ensure that their existing or forthcoming infrastructure list does not inadvertently rule out the use of section 278 agreements for highway schemes that are already planned or underway, or where there would be clear merit in retaining the ability for developers to contribute towards specific local highway works through s278 agreements. This is especially important in two-tier areas where the charging authority and the local highway authority are separate bodies: in such areas, charging authorities should discuss and seek to agree their intentions with the highway authority prior to publishing their infrastructure list. Any necessary amendments to an existing infrastructure list should be considered in light of the guidance provided at section 2:6:2:3.

Where section 278 agreements are used, there is no restriction on the number of contributions that can be pooled.

2:7 What forms of relief are available from the Community Infrastructure Levy?

The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. Some types of relief are compulsory; others are offered at the charging authority's discretion. 'Community Infrastructure Levy relief' means any exemption or reduction in liability to pay the levy.

People who are considered to be an 'owner of a material interest in the relevant land' can claim relief.

A 'material interest' is a freehold interest or a leasehold interest the term of which expires more than seven years after the date on which planning permission first permits development (as defined in Regulation 4(2)).

The 'relevant land' in which such an interest must be owned is the land which will be developed when building the chargeable development. Specifically:

- for general consents (such as via the General Permitted Development Order (see http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights for details) or through a Local Development Order (see related National Planning Policy Guidance on Local Development Orders http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-types-of-area-wide-local-planning-permission-are-there/ for details)) : the land which is identified in the plan submitted to the collecting authority as part of the Notification of Chargeable Development
- for outline planning permissions, and full permissions to be implemented in phases: the land to which the phase relates
- for other cases: the land to which the planning permission relates

Depending on the circumstances, the following forms of relief may be available:

- minor development exemption (see section 2:7:1)
- mandatory charitable relief (see section 2:7:2)
- discretionary charitable relief (see section 2:7:2:5)
- mandatory social housing relief (see section 2:7:3)
- discretionary social housing relief (see section 2:7:3:1)
- exceptional circumstances relief (see section 2:7:4)
- self build exemption (for a whole house) (see section 2:7:5)
- self build exemption (for a residential annexe or extension) (see section 2:7:6)

A collecting authority must satisfy itself that by granting relief or an exemption it is not breaching State aid rules (see section 2:7:7 for further information about State aid).

2:7:1 What is a minor development exemption?

Minor development, with a gross internal area of less than 100 square metres, is generally exempt from the levy. However, where minor development will result in a whole new dwelling, it will be liable for the levy unless it is built by a 'self builder' (see section 2:7:5 for details).

2:7:2 What relief is available for charities?

Two forms of relief may be available for charities.

First, a charitable institution which owns a material interest in the land (a charity landowner) will get full relief from their share of the liability where the chargeable development will be used 'wholly, or mainly, for charitable purposes' and they meet the requirements of Regulation 43.

A charging authority can also choose to offer discretionary relief (see section 2:7:2:5 for details about discretionary charitable relief) to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes (see Regulation 44 for details). The charging authority must publish its policy for giving relief in such circumstances.

Second, the regulations provide 100 per cent relief from the levy on those parts of a chargeable development which are intended to be used as social housing. Charitable Private Registered Providers (alongside other providers set out in Regulation 49) will be eligible for this reduction (Private Registered Providers are defined in the Housing and Regeneration Act 2008 as amended: see the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 for details: http://www.legislation.gov.uk/uksi/2010/844/schedule/1/made). Social housing relief may also be available to parties that are not charities. See section 2:7:3 for details about social housing relief.

Relief must not be claimed as a way of avoiding proper liability for the levy. Any relief must be repaid, a process known as 'clawback', if a 'disqualifying event' (defined in Regulation 48)] happens within seven years of the commencement of the chargeable development. See Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development'.

2:7:2:1 What is charitable relief?

Charitable relief is the collective term for all Community Infrastructure Levy relief offered to charities under the Community Infrastructure Levy Regulations 2010.

To qualify for any charitable relief, the following criteria must be fulfilled:

- the claimant must be a charitable institution
- the claimant must own a material interest in the relevant land and
- the claimant must not own this interest jointly with a person who is not a charitable institution

Relief is not limited to only one charitable institution. Where charitable relief conditions are met, every charitable institution owning a material interest in the relevant land can benefit from relief from their portion of the charge.

There is a difference between a mandatory exemption offered via Regulation 43 and discretionary relief offered via Regulations 44 and 45 . If a claimant meets the criteria in Regulation 43(1) and (2), a collecting authority must grant that claimant an exemption on its share of the land.

2:7:2:2 Who can claim charitable relief?

Charitable reliefs apply only to 'charitable institutions'. This is defined in Regulation 41 as either:

- a charity (defined as "any person or trust established for charitable purposes only") - for a definition of 'charitable purposes', see section 2 of the Charities Act 2011)
- a trust of which all the beneficiaries are charities or
- a unit trust scheme in which all the unit holders are charities

More detailed information on charitable purposes can be found on the Charity Commission website (http://www.charitycommission.gov.uk/).

In practice there are three main groups of charities which may benefit from relief:

- registered charities: charities which are registered with the Charity Commission
- exempt charities: charities which cannot register under the Charities Act 2011 and are not subject to the Charity Commission's supervisory powers. They are listed in Schedule 3 of the 2011 Charities Act (see http://www.legislation.gov.uk/ukpga/2011/25/schedule/3) and include some educational institutions, and most universities and national museums
- excepted charities: charities excepted from the need to register but which are still supervised by the Charity Commission.

Bodies which do not fall into these categories may still be eligible for relief where they are established for charitable purposes only. A body which has a Her Majesty's Revenue and Customs charity reference number will usually meet this requirement. Academy and Free School Trusts which are not yet exempt charities but which are charitable institutions as defined in Regulation 41 are also exempt from the levy.

Levy charging and collecting authorities must treat EU charities in the same way as UK charities for the purposes of charitable relief. The levy regulations do not preclude non-UK charities from the definition, so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.

Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of this type are collective investment schemes – for example, unit trusts and common investment funds. The Claiming Exemption and Relief form (available at http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf) requires a claimant to indicate whether it qualifies for relief in this context – in particular whether all beneficiaries or unit holders are charities – and supply detail on the

type of organisation that it is. It is then for the collecting authority to determine whether the claimant qualifies for the relief.

The Claiming Exemption and Relief form requires the claimant to demonstrate what its charitable purposes are – for example through production of its constitution or articles of association.

2:7:2:3 How is charitable relief claimed?

Charitable institutions wishing to claim relief should use this form (http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf). The claim form should be submitted with the planning application or notification of chargeable development. However, a claim for relief will lapse if works are commenced on the chargeable development before the collecting authority has notified the claimant of its decision.

If there is more than one material interest in the relevant land, the claimant must submit an 'apportionment assessment' alongside its claim. Apportionment must be carried out in accordance with Regulation 34.

A claimant must inform the collecting authority if a disqualifying event (defined in Regulation 48(1)) occurs prior to commencement of the chargeable development.

When it determines a claim for relief, the collecting authority must write to the claimant setting out its decision, the reasons for it, and the amount of relief granted.

A party claiming charitable relief must submit a commencement notice to the collecting authority for development that is granted charitable relief. The date of commencement determines when the seven-year clawback period expires. If development begins without a commencement notice, the claimant is no longer eligible for charitable relief and the full charge plus any surcharge is immediately payable. The claimant may be eligible to pay its portion of this charge, plus any surcharge, where no party has assumed liability for the development (see section 2:3:5 on assumption of liability).

2:7:2:4 What are the specific requirements for a mandatory charitable exemption?

To qualify for a mandatory charitable exemption under Regulation 43 the following criteria must be met:

- a material interest in the land must be owned by a charitable institution;
- the chargeable development will be used wholly or mainly for charitable purposes (whether of the claimant or of the claimant and other charitable institutions)
- that part of the chargeable development to be used for charitable purposes will be occupied by, or under the control of, a charitable institution;
- the material interest cannot be owned jointly with a person who is not a charitable institution; and
- the exemption must not constitute a state aid

These criteria apply alongside any procedural requirements.

Under the mandatory charitable exemption, the chargeable development must be used 'wholly or mainly for charitable purposes' once it is completed. This is a similar formulation to that used for business rates charitable relief. There is no statutory definition of this requirement. However, the courts have held 'mainly' to mean 'more than half.' The chargeable development must be used to 'directly facilitate the carrying out of the charitable institution's charitable purposes' – or those of itself and other charitable institutions. Use of a chargeable development for trading could qualify, but is unlikely where the link to furthering charitable purposes is purely through raising money. Qualifying use could also include a charity using the chargeable development to house its employees, under certain circumstances.

In practice, a charitable institution is likely to have control over a portion of a development where it has a right of entry to that portion.

2:7:2:5 What are the specific requirements for discretionary charitable relief?

A charging authority may give discretionary relief from the levy where:

- a charitable institution will claim the relief, and the whole or greater part of that institution's share of the chargeable development will be held as a charitable investment, or
- a charitable institution has been refused a mandatory charitable exemption on state aid grounds, but granting relief for the institution's share of the chargeable development would not constitute a notifiable state aid

Regulation 45 sets out the qualifying criteria in more detail.

2:7:2:6 What are the specific requirements for discretionary charitable investment relief?

A charging authority may decide to operate a policy for giving discretionary charitable investment relief, under Regulation 44.

A collecting authority may give discretionary investment relief where:

- the charging authority has given notice that discretionary charitable investment relief is available in the area and
- the whole or 'greater part' of the chargeable development will be held by the claimant, or by the claimant and other charitable institutions, as an investment from which the profits will be applied for charitable purposes and
- that portion of the chargeable development to be held as an investment will not be occupied by the claimant for ineligible trading activities and
- relief does not constitute a notifiable state aid

'Greater part' - 51 per cent or more of the monetary value of the chargeable development is likely to constitute its 'greater part'.

Only charitable investment activities are eligible for this relief. Regulation 44 specifies that relief cannot apply where a charity intends to occupy the greater part of the chargeable development and use it for any trading activity, other than to sell donated goods to use the proceeds for its charitable purposes.

A charging authority may choose to further narrow the scope of this relief through its relief policy.

2:7:2:7 How do discretionary charitable relief policies operate?

A charging authority that decides to introduce or revise a discretionary charitable relief policy must publish a document setting out that policy. The document is not part of the charging schedule. The charging authority may publish the relief policy separately and at a different time to the publication of the charging schedule. The document must:

- give notice that discretionary relief is available in its area (or is available under a revised policy), and whether it is available under Regulation 44 , Regulation 45 or both
- state the dates the collecting authority will begin accepting claims for relief under its latest policy and
- include a policy statement setting out the circumstances in which discretionary charitable relief will be granted in its area.

It is at the discretion of the charging authority to decide what percentage of relief from the levy it will provide. The charging authority also has the flexibility to develop the criteria it considers suitable to assess eligibility for discretionary relief. Examples could include:

- the benefit the charitable institution gives to the local community
- the annual income of the charitable institution
- the annual rent payable on the charitable investment (a minimum threshold may protect against abuse)

In London, where the Mayor and a London borough have opted to charge the levy, both bodies could legitimately have policies for giving discretionary charitable relief. It is for the collecting authority (in most cases the London borough) to apply each policy to the appropriate portion of the claimant's charge. The claimant's share – of either the Mayor or borough's levy – will be the same percentage as its overall share of the charge.

Discretionary charitable relief is only available where the charging authority has published its policy. The collecting authority must not consider claims for discretionary charitable relief where the charging authority has no policy on offering such relief.

A charging authority wishing to withdraw discretionary relief must publicise on its website the last date on which it will accept claims for relief.

2:7:2:8 Under what circumstances can charitable relief be 'clawed back'?

For seven years after the commencement of development (the 'clawback period'), a charitable relief claimant must inform the collecting authority where a disqualifying event happens. This must be done within 14 days of the disqualifying event. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied.

A disqualifying event is one or more of the following:

- change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief (i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use),

- change of ownership: the whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief, or
- change of leasehold: the lease under which the interest in the land is held is terminated, and the owner of the reversion is not eligible for charitable relief

If a disqualifying event happens before the development commences, the relief is cancelled and the full levy charge applies, unless a new claim is submitted by the charitable institution. If the disqualifying event occurs after commencement, the claimant's share of the charge becomes due. In either instance, the collecting authority must issue a revised liability notice showing what is payable and must issue a demand notice to collect the relief that is clawed back.

If a claimant does not inform the collecting authority in writing of a disqualifying event within 14 days of the disqualifying event occurring, they will immediately be liable to pay back the charitable relief and a surcharge.

2:7:2:9 What are charitable relief appeals?

A charitable relief claimant, or the party who has assumed liability for the chargeable development, may appeal to the Valuation Office Agency if they consider that the collecting authority has incorrectly determined the value of the charity's interest in the land. An appeal must be submitted within 28 days of the date of the collecting authority's decision on the claim. See section 2:5 for further details on appeals.

2:7:2:10 How does State aid apply to charitable relief?

A mandatory charitable exemption cannot be granted where it would constitute a state aid. However, if a mandatory charitable exemption would otherwise have been allowed, and such a policy on discretionary charitable relief under Regulation 45 exists, a charitable institution could benefit from relief which was not a notifiable state aid.

Charging authorities may wish to formulate policies which automatically ensure that mandatory charitable exemption claims which fail solely on state aid grounds are considered for relief under Regulation 45. Discretionary charitable investment relief can also be given where relief is not a notifiable state aid.

More detail on this and the de minimis block exemption can be found in section 2:7:7.

2:7:2:11 How does the default of liability apply to charitable relief?

Where a party assuming liability for the levy fails to pay the full amount that is owed, the collecting authority may transfer the liability to the owners of the relevant land within the chargeable development. This is known as 'default of liability' – see Regulation 36 for details. A collecting authority may only transfer the liability after it has taken all reasonable efforts to recover the outstanding amount.

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land. ('Material interest' is defined in Regulation 4(2)). A charity benefiting from discretionary charitable relief may be liable to pay a share of the outstanding amount based on its material interest in the

land. In order to manage the risk of a default of liability by another party, charities should carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

A charity receiving a mandatory charitable exemption (under Regulation 43) will continue to be exempt from any liability to pay the outstanding charge.

2:7:3 What relief is available for social housing?

Social housing relief is a mandatory discount that will benefit most social rent, affordable rent, intermediate rent provided by a local authority of Private Registered Provider, and shared ownership dwellings. Regulation 49 defines where social housing relief applies.

A collecting authority must give full relief from the levy on the portions of the chargeable development which are intended for social housing (in line with Regulation 50, as amended by the 2014 Regulations). To qualify for social housing relief, the claimant must own a material interest (defined in Regulation 4(2)) in the relevant land (the area granted planning permission) and have assumed liability to pay the levy for the whole chargeable development.

A charging authority may offer further, discretionary, relief for affordable housing types which do not meet the criteria required for mandatory social housing relief and are not regulated through the National Rent Regime.

When applying for relief, a claimant must provide evidence that the chargeable development qualifies for social housing relief. The Regulations provide that dwellings no longer meeting these requirements must pay the levy.

2:7:3:1 What is discretionary relief for social housing?

If a charging authority wishes to offer discretionary social housing relief, it must set out what is required to qualify for this relief, including the criteria governing who is eligible to occupy the homes and how these will be allocated. Discretionary social housing relief will apply to affordable dwellings which meet the criteria set out in Regulation 49A (inserted by the 2014 Regulations). Anyone can provide these homes, as long as measures are in place to ensure that the homes, if sold, will continue to be affordable for future purchasers at a maximum of 80% of market price.

2:7:3:2 What is the procedure for claiming mandatory or discretionary social housing relief?

The levy collecting authority handles claims for social housing and discretionary social housing relief. In most cases (except in London), the collecting authority and the charging authority are the same.

A claimant wishing to apply for social housing relief should use this form (http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf). To qualify for relief, the claimant must be an owner of a material interest in the relevant land (defined by Regulation 4(2)) and have assumed liability to pay the levy on

the chargeable development (see section 2:3:5 for details on assumption of liability). The claimant must provide a map showing where on the chargeable development the social housing will be built, and a 'relief assessment' which is part of the form.

Social housing relief is calculated according to three formulae in Regulation 50 (as amended by the 2014 Regulations). The 'index' referred to in Regulation 50(5) is the national All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors. The figure for a given year is the figure for 1 November of the preceding year. In the event that the index ceases to be published, the Retail Prices Index must be used instead.

When it determines a claim for relief, the collecting authority must write to the claimant setting out its decision, the reasons for it, and the amount of relief granted.

A party claiming social housing relief must submit a commencement notice to the charging authority for a development that is granted relief. The date of commencement determines when the seven-year clawback period expires. If development begins without a commencement notice, the claimant is no longer eligible for social housing relief and the full charge plus any surcharge is immediately payable.

A claim for relief will also lapse if development commences before the collecting authority has notified the claimant of its decision.

Can mandatory or discretionary social housing relief be claimed for communal areas?
The 2014 Regulations provide relief for communal areas that are associated with social housing developments. Regulation 49C sets out the formula for calculating this.

How is the beneficiary identified when disposing of land?

The effective enforcement of social housing relief – which applies to social housing and discretionary social housing relief – relies on identifying the beneficiary or beneficiaries of that relief.

The initial beneficiary of all social housing relief on a chargeable development is the party who submitted the claim – regardless of whether he or she owns some or all of the land on which the social housing will be built. However, the relief attached to each qualifying dwelling is transferred if the land on which they sit, or will sit, is sold before they are ready for occupation. The relief for those dwellings is calculated and transferred from the old to the new beneficiary under Regulation 52.

The seller must notify the collecting authority in writing of the sale, copying this to the buyer and the previous beneficiary of relief for those dwellings (if this is not the seller). As the claimant may only own one of the material interests in the relevant land, the seller of the land might not be the current beneficiary of relief. He or she will in most cases know about the social housing relief attached to that land, however, through the liability notice.

The notification must give details of:

- the gross internal area of the qualifying dwellings that will be situated on the land being sold
- the location of those dwellings through a map or plan and

- the name and address of the seller, the buyer and the former beneficiary of relief from those dwellings (if not the seller)

The new owner's relief is then calculated, as is the revised relief (if any) of the former beneficiary. Under Regulation 54, a collecting authority may serve an information notice on the claimant to enable it to calculate this. After calculating the revised relief, the collecting authority must issue an updated liability notice that identifies all social housing relief beneficiaries and what relief they benefit from. The charging authority can choose to include within the liability notice a map demonstrating where the beneficiaries' qualifying dwellings sit within the chargeable development.

2:7:3:3 What happens if the social housing no longer qualifies for relief?

Social housing relief can be withdrawn for any qualifying dwelling if a disqualifying event occurs up to seven years from the commencement of development (known as the "clawback period"). The relief for that dwelling must be repaid by the beneficiary. The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

If a disqualifying event occurs before the commencement of development, social housing relief will cease to apply.

A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief – Regulation 53 provides further details. The sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on another dwelling that qualifies for the relief. Transferring the sale proceeds to the Secretary of State, the Welsh Ministers, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Welsh Ministers or the Regulator of Social Housing.

2:7:3:4 Does state aid apply to social housing relief?

The UK Government considers that the provision of social housing is a Service of a General Economic Interest. Relief from the levy for social housing has been designed so that it complies with the requirements of the EU Block Exemption for Services of a General Economic Interest. Charging and collecting authorities will need to be aware of this block exemption when implementing these regulations. Please see section 2:7:7 for more information on state aid.

The European Commission recognises the importance of State support for social housing, which is deemed to be 'a service of general economic interest' meaning that relief from a tax or levy can be granted without breaching the State aid rules. However, to fit within the exemption, any housing benefiting from the State aid (relief) must meet three criteria:

- Entrustment – there must be legislative provision, a contract or other legally binding method to ensure that the housing is used in a certain way;
- The housing must be for those people whose needs are not met by the market - "disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions"; and
- The total aid must not exceed the cost of providing the social housing.

Local policies granting discretionary social housing relief need to comply with the European Commission criteria set out above.

2:7:3:5 When does the default of liability for social housing relief apply?

Where a party assuming liability for the levy fails to pay the full amount that is owed, the collecting authority may transfer the liability to the owners of the relevant land within the chargeable development. This is known as 'default of liability' – see Regulation 36 for details. A collecting authority may only transfer the liability after it has taken all reasonable efforts to recover the outstanding amount.

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land (defined in Regulation 4(2)). A person or organisation building or owning social housing within the development will still be required to pay a share of the amount based on its material interest in the land. In order to manage the risk of a default of liability by another party, social housing providers should carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

2:7:4 What is exceptional circumstances relief?

Charging authorities may offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy.

A charging authority wishing to offer exceptional circumstances relief in its area must first publish a notice of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 (as amended) are met:

- a section 106 agreement must exist on the planning permission permitting the chargeable development and
- the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability and
- the relief must not constitute a notifiable state aid (see 2:7:7 for more on state aid)

2:7:4:1 When can exceptional circumstances relief be offered?

The powers to offer relief can be activated and deactivated at any point after the charging schedule (see section 2:2:1) is approved. If a charging authority wishes to offer exceptional circumstances relief, it must specify a date from when this will apply, and must follow the procedures for offering relief set out in Regulations 55 – 58.

2:7:4:2 What are the eligibility considerations for exceptional circumstances relief?

A claim cannot be made after development has commenced.

Exceptional circumstances relief can be considered where a Section 106 agreement [add link to definition] is in place as well as a levy charging schedule. A charging authority can give relief from the levy if it deems that the levy would have an unacceptable impact on the

economic viability of a development. There is no statutory definition of what constitutes the economic viability of a development. The charging authority has the discretion to make judgements about the viability of the scheme in economic terms (for example, see National Planning Policy Guidance on viability http://planningguidance.planningportal.gov.uk/blog/guidance/viability-guidance/how-should-viability-be-assessed-in-decision-taking/). However, it is important to ensure that any exceptional circumstances relief is based on an objective assessment of economic viability.

Relief is granted for a chargeable development. This can mean the whole development or a part of a scheme where a development proceeds in phases as separate chargeable developments.

Even if exceptional circumstances relief is available in a charging authority area, each case is considered individually by the authority and it is at their discretion whether they wish it to apply in that case or not. However, use of an exceptions policy enables charging authorities to avoid rendering sites with specific and exceptional cost burdens unviable.

Regulations 55-57, as amended by Regulation 7(11) of the levy 2014 Regulations, set out the requirements for claiming and granting exceptional circumstances relief.

How do the eligibility considerations for exceptional circumstances relief apply to London?

London boroughs and the Mayor of London may each offer exceptional circumstances relief. Where only the borough offers relief, the above general procedure applies. Where the Mayor decides to make relief available on his levy, additional procedures apply - these are set out in Regulation 58.

All claims for exceptional circumstances relief in London must be made to the relevant borough. If only the Mayor makes exceptional circumstances relief available, the borough must refer the claim and supporting documentation to the Mayor as soon as possible. If both the Mayor and the borough make relief available, the borough must first consider whether to offer relief and if so how much. The borough only needs to refer the claim to the Mayor where the relief it proposes to give would still result in an unacceptable overall impact of levy charges on the economic viability of the development.

In either situation, where a claim is referred, the Mayor must determine whether to give relief and if so how much to give, and must inform the borough of his decision as soon as possible. The borough is not bound to any proposal it originally made to the Mayor on how much relief it may grant. It could, for instance, increase its offer to ensure the total relief given by the borough and the Mayor returns the development to an acceptable level of viability. The borough could withdraw its offer if the Mayor is not willing to offer sufficient relief along with the borough's proposed relief to bring the scheme back into viability.

2:7:4:4 What are the disqualifying events for exceptional circumstances relief?

Exceptional circumstances relief must be withdrawn if there is a 'disqualifying event' as defined in Regulation 57(11). These include the granting of charitable or social housing

relief to the chargeable development, the sale of relevant land, or if the chargeable development does not commence within one year.

If there is a disqualifying event, the owner of the material interest in the relevant land must notify the charging authority in writing within 14 days. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied to the claimant. He or she must also send a copy of the notification to all owners of material interests in the relevant land. When it receives this notification, the charging authority must copy it to the collecting authority, if this is not the same body. If the person responsible for enforcing the section 106 agreement is not the charging or collecting authority, the charging authority must also send a copy of the notification to that person.

2:7:4:5 Does State aid apply to exceptional circumstances relief?

Exceptional circumstances relief cannot be granted if it would constitute a notifiable state aid (see section 2:7:7 on state aid).

2:7:5 How does the self build exemption work (for a whole new home)?

The Government is keen to support and encourage individuals and communities who want to build their own homes, and is taking proactive steps to stimulate the growth of the self build market. One measure to help self builders has been to grant them an exemption from the Community Infrastructure Levy.

The exemption will apply to anybody who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor. Individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed.

2:7:5:1 Who can claim a self build exemption?

The exemption is applicable to homes built or commissioned by individuals for their own use. Community group self build projects also qualify for the exemption where they meet the required criteria.

There is also an exemption for people who extend their homes or build residential annexes: see section 2:7:6 for details).

2:7:5:2 When can a self build exemption be claimed?

Applicants can apply for a self build exemption at any time, as long as their development has not commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of ‘commencement of development’).

The self build exemption does not apply retrospectively: if a levy payment has already been made before the 2014 regulations come into force, no refund will be given.

2:7:5:3 What are the specific requirements to qualify for a self build exemption?

A self build exemption is available to anyone who builds or commissions their own home for their own occupation. On completion, they must provide the requested supporting evidence, and the property must remain their principal residence for a minimum of three years.

If personal circumstances change and the applicant wants to dispose of the property before the three year occupancy limit expires, they can do so, but they must notify the charging authority and the levy then becomes payable in full. Failure to notify the charging authority will result in enforcement action against the applicant and surcharges will become payable. See section 2:7:5:8 for more on disqualifying events.

Full details are set out in Regulations 54A, 54B, 54C and 54D as inserted by the 2014 Regulations.

2:7:5:4 What is the procedure for claiming a self build exemption?

Applicants wishing to claim must take two steps before commencing their development.

Firstly, the applicant must assume the liability to pay levy in relation to the development (see section 2:3:5 on assumption of liability). This is done by completing an **Assumption of Liability form** (www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf). If the original levy liability was in the name of a developer, the self build applicant must complete a **Transfer of Assumed Liability form** (http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf) and submit this to the collecting authority.

Secondly, the applicant must certify that the scheme will meet the criteria to qualify as a 'self build' development. He or she must submit a **Self Build Exemption Claim Form – Part 1** to the collecting authority (available at http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil). At this stage, the applicant must self certify:

- the name and address of the person(s) claiming liability
- that the project is a "self build project" for purposes of the exemption set out within the regulations
- that the applicant will occupy the premises as their principal residence for a period of 3 years from completion
- that the applicant will provide the required supporting documentation on project completion to confirm their development qualifies for relief; and
- the amount of de minimis State aid received by the applicant in the last three years prior to the submission of the application for relief (see section 2:7:7 for more information on state aid).

On receipt of the form, the charging authority must notify the applicant in writing as soon as practicable, confirming the amount of exemption granted.

If the development commences before the collecting authority has notified the claimant of its decision on the claim, the levy charge must be paid in full within the time period specified by the charging authority. See Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development'.

Further information must also be provided by the applicant once their self build home is complete: see section 2:7:5:6 below for details.

2:7:5:5 If a self build exemption is granted, what happens next?

The chargeable amount (i.e. the levy that would have been payable if the exemption had not been granted) will be registered as a 'local land charge' on the property for three years from completion.

Before commencing the development, the applicant must submit a **Commencement Notice** to the charging authority (http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf) . This must state the date on which the development will commence, and the collecting authority must receive it on or before that date. An applicant who fails to submit the commencement notice in time will immediately become liable for the full levy charge.

2:7:5:6 What evidence does the applicant need to provide on completing the building?

Within six months of completing the home, the applicant must submit additional supporting evidence to confirm that the project is self build. Completion for the purposes of the self build exemption is defined as the issuing of a compliance certificate for this development under either Regulation 17 of the Building Regulations 2010 or Section 51 of the Building Act 1984. If the evidence is not submitted to the collecting authority within the 6 month time period, the full levy charge becomes payable.

The applicant must provide further supporting evidence that the levy exemption granted prior to commencement should be upheld, along with a **Self Build Exemption Claim Form – Part 2** (available at http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil).

This evidence must comprise:

- Proof of the date of completion - a copy of the building completion or compliance certificate for the home issued by Building Control
- Proof of ownership – a copy of the title deeds (freehold or leasehold)
- Proof of occupation of the dwelling as the applicant's principal residence – a Council Tax certificate - and two further proofs of occupation of the home as a principal residence (a utility bill or bank statement or confirmation that the applicant is on the local electoral roll)

In addition to the above, applicants must also provide a copy of one of the following:

- An approved claim from HM Revenue and Customs under 'VAT431C: VAT refunds for DIY housebuilders'; or
- A Specialist Self Build Warranty; or
- An approved Self Build Mortgage from a bank or building society.

What is a self build warranty?

A Self Build Warranty is warranty and Certificate of Approval issued by a Warranty provider which provides a 'latent defects insurance' policy and which is accompanied by certified Stage Completion Certificates issued to the owner/occupier of the home.

What is a self build mortgage?

A Self Build Mortgage is an approved mortgage arranged to purchase land and/or fund the cost of erecting a house where the loan funds are paid out to the owner/occupier in stages as the building works progress to completion.

2:7:5:7 How does the self build exemption work for multi-unit schemes?

For multi-unit schemes (for example, where a builder sells serviced plots or a community group works with a developer), applicants should consider applying for a phased planning permission, to allow each plot to be a separate chargeable development. This will prevent the charge being triggered for all plots within the wider development as soon as development commences on the first dwelling. This will also ensure that if a disqualifying event occurs affecting one unit, it does not trigger a requirement for all to repay the exemption. Under the 2014 Regulations, schemes can be 'phased' for levy purposes even if they do not benefit from 'outline' planning permission. See also: section 2:3:10 on phased payments.

Is self build communal development covered by this exemption?

Self build communal development benefits from the levy exemption if it is for the use of the occupants of more than one self build home. Such development may include, for example, shared facilities or guest accommodation. An exemption from the levy will not be granted to communal development for the use of the general public or for commercial development such as a retail unit.

How is the amount of exemption for self build communal development calculated?
The self build communal development exemption is calculated using the formula in Regulation 54A. The gross internal area of the communal development is apportioned to the individual self build units on the site, based on the gross internal floor space of the self build dwellings.

2:7:5:8 What happens in the case of a disqualifying event?

A self build exemption is revoked if a disqualifying event occurs during the three year occupancy period.

A disqualifying event for self build exemption is:

- any change in relation to the self build housing or self build communal development such that it ceases to meet the criteria set out in regulations;
- failure to comply with the evidence requirements on completion;
- the letting out of a whole dwelling or building that is self build housing or self build communal development; or
- the sale of the self build housing or self build communal development

If a disqualifying event occurs, the claimant of the self build exemption must notify the charging authority in writing within 14 days. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied to the claimant in addition to the chargeable levy amount. A copy of the notification must be sent to all owners of material interests in the relevant land. When it receives this notification, the charging authority must copy it to the collecting authority, if this is not the charging authority.

The only exception is where the claimant of the exemption fails to comply with the evidence requirements on completion. In such cases, the collecting authority must give the claimant at least 28 days to submit the necessary form and evidence before taking any further action.

2:7:5:9 Is there a right of appeal?

Applicants have a right to appeal against the amount of levy exemption granted, under Regulation 116B. Appeals should be lodged with the Valuation Office Agency (see section 2:5 for further information on appeals).

2:7:5:10 Are there any State aid considerations?

A self build exemption cannot be granted if it would constitute a notifiable state aid (see section 2:7:7 for further details).

2:7:6 How does the self build exemption work (for extensions and residential annexes)?

People who extend their own homes or erect residential annexes within the grounds of their own homes are exempt from the levy, provided that they meet the criteria laid down in Regulations 42A and 42B (inserted by the 2014 Regulations):

- the main dwelling must be the self builder's principal residence, and they must have a material interest in it (as defined in Regulation 4(2));
- residential annexes are exempt from the levy if they are built within the curtilage of the principal residence and comprise one new dwelling; and
- residential extensions are exempt from the levy if they enlarge the principal residence and do not comprise an additional dwelling

There is no requirement for the occupier of the annex to be related to the owner of the main dwelling, or to commit to staying there for a specified period.

Residential extensions under 100 square metres are already exempt from the levy under the minor development exemption (see section 2:7:1).

What evidence is required?

The applicant must submit a claim for the exemption to the charging authority before development commences (see Regulation 7, and section 56(4) of the Town and Country

Planning Act 1990, for the definition of 'commencement of development'). This claim must be submitted on the **Self Build Annex or Extension Claim Form** (available at http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil). Upon receipt of a valid application, the collecting authority must notify the applicant of the amount of exemption that is granted, as soon as practicable.

In order to benefit from the exemption, the applicant must submit a **commencement notice** (http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf) to the authority before starting work on site.

Under what circumstances can the exemption be withdrawn?

Someone who is granted an exemption for a residential extension or annex will cease to be eligible if a commencement notice is not submitted to the collecting authority at least one day before work begins on site.

A residential annex ceases to qualify for a self build exemption if any of the following disqualifying events occur within three years of completion:

- the main house is used for any purpose other than as a single dwelling,
- the annex is let, or
- either the main residence, or the annex, is sold separately from the other

Completion for the purposes of this exemption is defined as the issuing of a compliance certificate for the annex under either Regulation 17 of the Building Regulations 2010 or Section 51 of the Building Act 1984.

If there is a disqualifying event, the person benefitting from the exemption must notify the charging authority in writing within 14 days. The exemption will be withdrawn and that person is then liable for the levy charge specified by the charging authority that would have been payable at the time when the exemption was first claimed (or the amount of relief granted, if lower).

Is there a right of appeal?

An interested party may appeal against the grant of self build relief for a residential annex under Regulation 116A. Such appeals are submitted to the Valuation Office Agency (see section 2:5 for more information on appeals). There is no right of appeal in relation to extensions.

Further details

Regulations 42A, 42B and 42C (inserted by the 2014 Regulations) set out the legislative provisions for residential extensions and annexes.

2:7:7 State aid

This section is only an overview of state aid matters. It is the responsibility of aid givers to reassure themselves that the actions they take are state aid compliant.

The Government's primary guidance on state aid can be found here (https://www.gov.uk/state-aid). Further references are set out below.

2:7:7:1 What is state aid?

State aid is a European Union member state's support to 'undertakings' which meets all the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (Lisbon Treaty 2009). Article 107(1) declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain parties or the production of certain goods, is incompatible with the common market, unless the Treaty allows otherwise. A copy of the most recent advice on state aid can be found at: https://www.gov.uk/state-aid.

All exemptions or relief from the Community Infrastructure Levy must be given in accordance with state aid rules. A collecting or charging authority must determine whether or not giving the exemption or relief would constitute a state aid.

2:7:7:2 How does state aid relate to the levy?

The state aid criteria need to be considered carefully when deciding whether an exemption or relief is a state aid.

The collecting authority must bear the following in mind:

- Criterion 1: Is the relief granted by the state or through **state resources**? Relief from the levy will always be granted by the State and therefore this criterion is always met.

- Criterion 2: Does the relief **favour certain undertakings** or the production of certain goods? Charging and collecting authorities should determine whether the claimant is an entity engaged in economic activity i.e. the putting of goods or services on a given market.

- Criterion 3: Does relief distort or threaten to **distort competition**? Relief from the levy is by its nature a selective aid and will invariably have the potential to distort competition where a body is engaged in economic activity. Where criterion 2 is met it is likely that this criterion is also met.

- Criterion 4: Does relief **affect trade** between Member States? Again, where criterion 2 is met, it is likely that this will also be met. It may be possible to argue that aid will not affect trade between Member States, as the organisation's activities are purely local, but charging and collecting authorities will need to manage this risk. While the European Commission's interpretation of this test is broad and the legal threshold low there are examples of Commission decisions which identify certain economic activities as local. They include small scale businesses serving the local community only such as local garages, retail shops, hairdressers, childcare facilities and cafes. Local small scale cultural or heritage venues are also

considered not to affect trade between Member States. However, it is rare to find a good or service that is traded that is purely local. A charity, for example, is most likely not to be operating as an undertaking at all where its activities are purely local.

The Claiming Exemption or Relief form (http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf) contains a questionnaire designed to elicit information that will help the charging or collecting authority in identifying state aid. The information will not always provide a clear indication of relief constituting state aid. The collecting authority may need to ask the claimant for further information.

2:7:7:3 Permissible state aid

If a public authority wants to give an identified state aid, it must usually notify the European Commission and obtain its prior approval before giving the aid. This is not permissible for relief from the levy. A mandatory charitable exemption cannot be given at all where relief would constitute a notifiable state aid. Meanwhile discretionary charitable relief and exceptional circumstances relief can only be given where relief would not need to be notified to, and approved by, the European Commission. State aid in these situations is not notifiable because it uses **block exemption regulations** designed for this purpose. These block exemptions have specific requirements. Charging authorities using them must be careful to ensure these requirements are met.

The latest version of the **de minimis exemption regulations** is the European Commission Regulation (EC) No 1998/2006, which can be found here (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:EN:PDF).

Further information is available from the European Commission. For example, see http://ec.europa.eu/competition/state_aid/legislation/block.html.

2:7:7:4 What is the de minimis block exemption?

This is only a summary of the requirements of the de minimis block exemption.
De minimis is a generic term for small amounts of public funding to a single recipient. The de minimis block exemption makes relief permissible in the following circumstances:

- discretionary relief under Community Infrastructure Levy Regulation 45 (where a mandatory charitable exemption is prohibited because it would constitute a state aid)
- discretionary charitable investment relief where this would constitute a state aid and
- discretionary exceptional circumstances relief where this would constitute a state aid
- self build exemption where this would constitute a state aid

Charging authorities may formulate policies which automatically ensure mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45.

How does the de minimis block exemption work?

De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 (€100,000 for undertakings active in the road transport sector) over a rolling three fiscal year period. The threshold is gross, applying before the deduction of tax or any other charge. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects. The block exemption does not apply in certain sectors, including fisheries and coal sector, certain agriculture and transport activities.

What sources of aid should be considered as part of the threshold?

All de minimis aid for any purpose, including relief from the levy, must be cumulated. Recipients must be informed of the de minimis nature of any aid they have previously received. For example this could include business rates relief to charitable institutions. Recipients are responsible for keeping records of any de minimis aid they receive over any rolling three fiscal year period.

What must an authority do to comply with this block exemption?

European Commission guidance requires public bodies giving de minimis relief to do three things:

- inform the recipient in writing of the prospective amount of aid and of its de minimis character, referring to the de minimis Regulation
- obtain from the recipient full information about any other de minimis aid received during the previous two fiscal years and the current fiscal year and
- only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the undertaking during the relevant period of three years to a level above the permitted ceiling

Charging or collecting authorities wishing to apply the de minimis block exemption to relief from the levy must write to the claimant asking what de minimis aid it has already received. Further information is available on the Planning Portal website (http://www.planningportal.gov.uk/planning/infoforlpas/cil)

What records must be kept?

The de minimis regulation requires member states to record information necessary to demonstrate that the de minimis Regulation has been complied with. Records of all de minimis aid paid must be retained for ten years from the last payment.

On written request, Member States must provide the European Commission with all the information that the Commission considers necessary for assessing whether the conditions of the de minimis regulation have been complied with. This must be provided within 20 working days, or within a longer period fixed in the request. The Department for Communities and Local Government would co-ordinate any such request in relation to the Community Infrastructure Levy. **Charging and collecting authorities must therefore ensure that information on all de minimis relief granted is readily available at short notice**.

Further information about the de minimis exemption can be found here: https://www.gov.uk/state-aid#de-minimis-aid-regulations .

2:7:7:5 What is the Service of a General Economic Interest Block Exemption (for social housing relief)?

The Service of a General Economic Interest Block Exemption is used to give **social housing relief** from the levy. It is applied automatically. The relief procedures and documentation have been designed to comply with this block exemption but charging and collecting authorities must still be aware of their responsibilities (see below and in section 2:7:3).

This is only a summary of the requirements of the Service of a General Economic Interest Block Exemption. Further information can be found here: https://www.gov.uk/state-aid#general-block-exemption-regulation.

Charging and collecting authorities should familiarise themselves with the terms of the Service of a General Economic Interest Block Exemption before using it.

Which relief systems is the Service of a General Economic Interest Block Exemption applicable to?

The Service of a General Economic Interest Block Exemption is used to give social housing relief from the levy. **The Service of a General Economic Interest Block Exemption could also be used in the event that housing provided by charities cannot qualify for social housing relief.** Where such housing qualified for discretionary charitable relief under Regulation 45, a collecting authority could use the Service of a General Economic Interest Block Exemption to give relief beyond the de minimis block exemption.

What is the Service of a General Economic Interest Block Exemption?

A Service of a General Economic Interest is usually a service which the market does not provide or does not provide to the extent or at the quality which the state requires. It must also be in the general and not the particular interest. This means that the **beneficiaries of the service should be the community at large and not a specific sector of industry**. **Social housing is a well established example** of a Service of a General Economic Interest.

Three criteria need to be fulfilled for the Service of a General Economic Interest Block Exemption to be complied with:

- the undertaking must have been 'entrusted' to perform this public service obligation
- the state aid may compensate the undertaking for the costs of performing this public service obligation, allowing for a reasonable profit and
- it cannot however overcompensate for these costs and where it does, arrangements must exist for the repayment of this overcompensation

How does the Service of a General Economic Interest Block Exemption work in relation to social housing relief?

The Community Infrastructure Levy's social housing regime is designed to comply with the requirements of the Service of a General Economic Interest Block Exemption. A claimant will be informed through the liability notice that it has a public service obligation to deliver where it chooses to build out the planning permission. The public service obligation is the building of the quantity of social housing for which it has been given relief from the levy. This 'entrustment' is updated to include all future beneficiaries of social housing relief on that chargeable development. The charge arising from the levy on its own will never be sufficient to exceed the costs of building the development. However, total aid could potentially exceed those costs where social housing grant, or other state assistance, has also been claimed. The Homes and Communities Agency will take into account the value of relief from the levy and other state assistance when giving social housing grant and will adjust the amount of grant accordingly.

What must an authority do to comply with this block exemption?

No additional action is necessary from collecting authorities to comply with the Service of a General Economic Interest Block Exemption when giving social housing relief itself. However, collecting authorities must ensure they rigorously administer and enforce the terms of social housing relief. Where the claimant of relief changes, or there are additional claimants, the liability notice must be updated to reflect this and ensure these beneficiaries are entrusted to provide that housing. Clawback must be enforced properly so that no one benefits from relief for buildings which are not social housing units. Finally a thorough monitoring regime is advisable to guard against the misuse of relief in a way that creates unfairness and deprives authorities of funding for infrastructure.

What records must be kept?

As with the de minimis block exemption, collecting authorities should keep accurate records of all relief given under the Service of a General Economic Interest Block Exemption – in practice, all social housing relief from the levy. These records must be retained for 10 years from the payment of relief. The UK Government is required to report every three years on the sources and quantities of aid paid through the Service of a General Economic Interest Block Exemption. Charging and collecting authorities must ensure that this information is readily available at short notice.

What is the Financial Transparency Directive and why is it relevant to Service of a General Economic Interest Block Exemption relief?

The European Commission's Financial Transparency Directive has a number of requirements. One of these relates to public or private **bodies engaged in commercial activities and in receipt of certain aid** from public authorities for carrying out services of general economic interest. Such bodies must ensure that their management accounts are sufficiently separate to **distinguish between these activities**. The directive underpins the state aid regime by requiring Service of a General Economic Interest aid to be made transparent. Without such transparency, there is a risk that legitimate state support may seep into an organisation's commercial activities, thereby cross-subsidising those areas with public funds. It is essential the directive is complied with when giving aid under

Service of a General Economic Interest. **Consequently, no social housing relief can be given to an organisation which does not keep separate accounts for its public service and commercial activities**. Claimants are asked to confirm they comply with directive when they apply for relief but collecting authorities should request further evidence if necessary.

2:7:7:6 Sources of further information

The Government has published ‘state aid: the basics’, available here: https://www.gov.uk/government/publications/state-aid-the-basics. Further guidance on state aid is available on the Government website www.gov.uk/state-aid.

2:8 How is payment of the Community Infrastructure Levy enforced?

Enforcement procedures are set out in Part 9 of the Regulations.

Almost all parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. However, where there are problems in collecting the levy, it is important that collecting authorities are able to penalise late payment and discourage future non-compliance.

The regulations provide for a range of proportionate enforcement measures, such as **surcharges** on late payments (as set out in Regulations 80 – 86). In most cases, these measures should be sufficient.

In cases of persistent non-compliance, collecting authorities may take more direct action to recover the amount due. For example, a collecting authority may issue a **Community Infrastructure Levy Stop Notice** (under Regulations 89 – 94), which prohibits development from continuing until payment is made and the stop notice is withdrawn.

The collecting authority may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates' court to make a liability order allowing it to **seize and sell assets** of the liable party. A party may also apply for a charging order if there is at least £2,000 owing. The court can issue an order imposing a charge on a relevant interest to secure the amount due.

In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, they may apply to a magistrates court to send the liable party to **prison** for up to three months (under Regulations 100 and 101).

2.9 Where are the relevant forms?

In areas where the levy is operational, applicants for planning permission should submit the **Additional CIL Information form** (http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf) alongside their application, to enable the collecting authority to establish whether or not the proposed development will be liable for CIL.

Applicants should refer to the **associated guidance note** (http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf) when completing this form.

The other relevant forms are listed below.

In all cases, it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (under Regulation 110).

Form 1: Assumption of Liability
www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf
This form should be used by parties wishing to assume liability for the levy, before a specified development commences.

Form 2: Claiming Charitable Relief, Exceptional Circumstances Relief or Social Housing Relief
http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf
This form should be used to claim Charitable Relief, Exceptional Circumstances Relief or Social Housing Relief, before a specified development commences.

Self build forms (for whole dwellings, residential annexes or extensions)– available from the Planning Portal website:
http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil
These forms should be used by parties wishing to claim a Self Build Exemption for either a whole dwelling, a residential annex or extension. Claimants for a whole house exemption should note that they will need to submit **Part 1** before they start work on site, and **Part 2** within 6 months of completing the project.

Form 3: Withdrawal of Assumption of Liability
http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf
This form should be used by parties wishing to relinquish liability for the levy in relation to a specified development.

Form 4: Transfer of Assumed Liability
http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf

This form should be used by parties wishing to transfer liability for the levy in relation to a specified development, and by the parties willing to assume the liability.

Form 5: Notice of Chargeable Development
http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf
This form should be used by landowners wishing to notify a charging authority that they intend to start work on a development which does not need planning permission but which may be liable for the levy (see Regulation 64 for details).

It should also be used by charging authorities wishing to notify all known owners of a development site that for the purposes of the levy, the charging authority believes that development has commenced there and is liable for the levy (see Regulation 64A for details).

Form 6: Commencement Notice
http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf
This form should be used by parties wishing to notify a charging authority of their intention to start work on a development which is liable for the levy (see Regulation 67 for details).

Information for levy authorities

The Secretary of State also provides templates for three further documents: liability notices, demand notices and default of liability notices. Details on how these should be used are provided on the Planning Portal web page
http://www.planningportal.gov.uk/planning/infoforlpas/cil

Template 1: Liability Notice
http://www.planningportal.gov.uk//uploads/1app/forms/cil_template_1_liability_notice.doc
A liability notice must be sent to all those parties who have assumed liability to pay the levy, following receipt of an assumption of liability form.

Template 2: Demand Notice
http://www.planningportal.gov.uk/uploads/1app/forms/cil_template_2_demand_notice.doc
A demand notice must be issued on commencement of development to all those parties who have assumed liability.

Template 3: Default of Liability
http://www.planningportal.gov.uk/uploads/1app/forms/cil_template_3_default_of_liability.doc
A default of liability notice must be sent to all persons known as having a material interest in the land when the collecting authority has been unable to recover the outstanding levy charge in connection with the chargeable development.