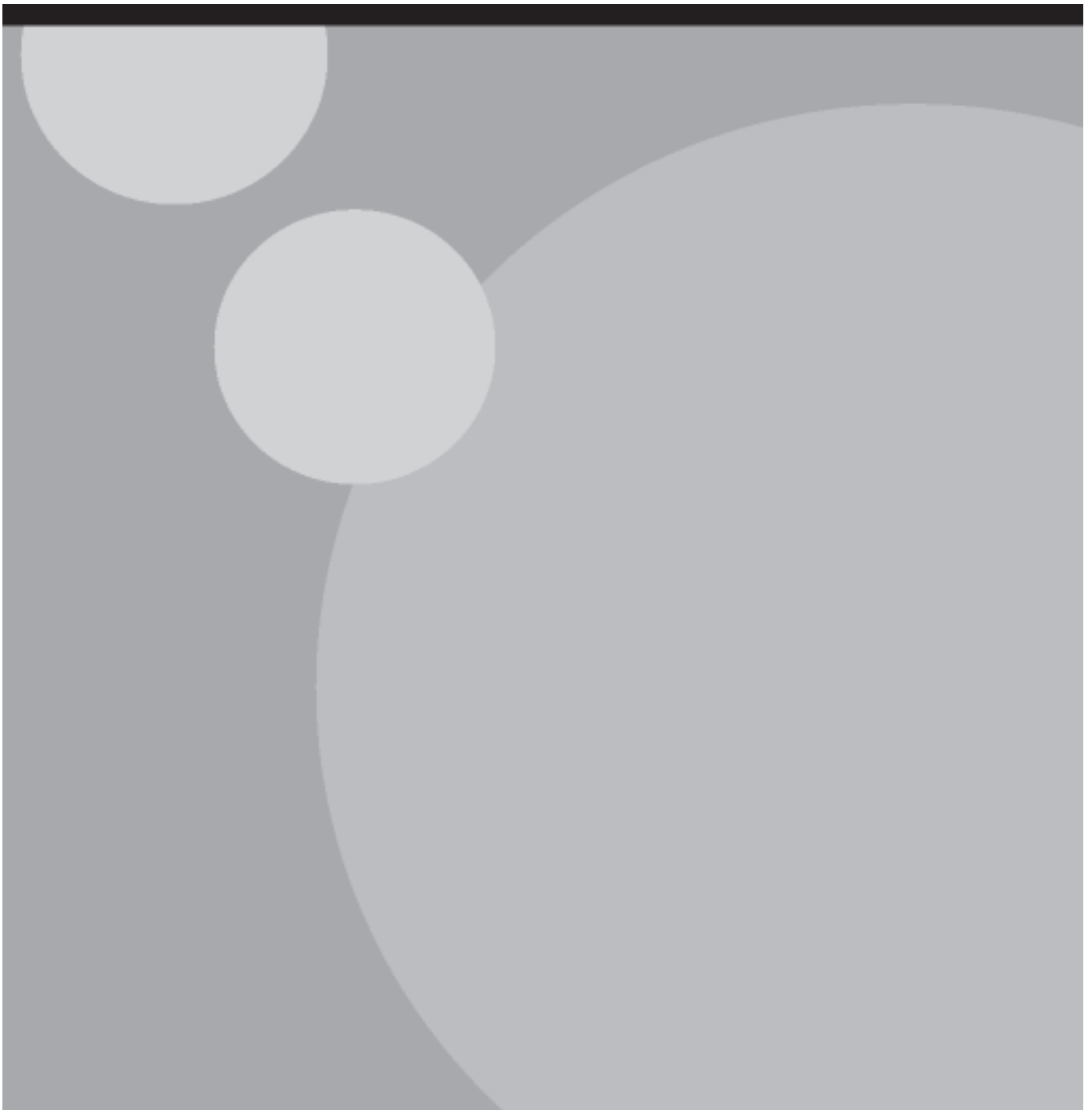




Community Infrastructure Levy Guidance

Charge setting and charging schedule procedures



Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 0303 444 0000
Website: www.communities.gov.uk

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This guidance note is issued by the Secretary of State under section 221 of the Planning Act 2008.

Part 1: Charge setting

The charging authority

1. Section 206 of the Planning Act 2008 (The Act) confers the power to charge CIL on certain bodies known as charging authorities. The charging authority's responsibilities, if they decide to levy CIL, will be to:
 - prepare and publish a document known as the "charging schedule" which will set out the rates of CIL which will apply in the authority's area. This will involve consultation and independent examination
 - apply the CIL revenue it receives to funding infrastructure to support the development of its area, and;
 - report to the local community on the amount of CIL revenue collected, spent and retained each year.
2. In most cases charging authorities will also collect CIL in their areas. However, these collection functions (along with the associated enforcement responsibilities) might be undertaken by other public authorities in certain instances as set out in CIL regulation 10. For example, the London Boroughs will be required to collect the CIL charged by the Mayor of London and in some cases an Urban Development Corporation may be able to collect CIL on behalf of a charging authority.

The charging authority is the local planning authority

3. The Act sets out which bodies are charging authorities. **A local planning authority is the charging authority for its area** (within the meaning of 'local planning authority' defined by section 37 of the Planning and Compulsory Purchase Act 2004 for England and section 78 for Wales), except that the Broads Authority and the Council of the Isles of Scilly are the only charging authorities in their areas. In Greater London the Mayor of London is also a charging authority.

The charging schedule

4. A charging authority must set out its proposed CIL rate(s) in a charging schedule (see section 211(1) of the Act). A charging schedule will sit within the Local Development Framework in England¹ and alongside the Local Development Plan (LDP) in Wales² and the Spatial Development Strategy (SDS) in the case of the Mayor of London's CIL. However, charging schedules will not form part of the statutory development plan nor will they require inclusion within a Local Development Scheme.
5. Charging authorities must express CIL rates as pounds per square metre, as CIL will be levied on the gross internal floorspace of the net additional liable development. The published rate(s) within an authority's charging schedule will enable liable parties to anticipate their expected CIL liability.

Deciding the rate of CIL

6. The initial stage of preparing a charging schedule focuses on determining the CIL rate(s). When a charging authority submits its draft charging schedule to the CIL examination, it must provide evidence on economic viability and infrastructure planning (as background documentation for the CIL examination). Charging authorities are required (under section 212 (4) of the Act) to provide an accompanying declaration confirming that they have:
 - Complied with the requirements under Part 11 of the Act, including the requirements governing the setting of CIL rates (under section 211(2) and (4) and regulations 13 and 14). Regulation 14 requires that a charging authority, in setting CIL rates, '*must aim to strike what appears to the charging authority to be an appropriate balance between*' the desirability of funding infrastructure from CIL and '*the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area*'; and
 - '*Used appropriate available evidence to inform the draft charging schedule*' (section 212(4) (b)).

What is meant by the appropriate balance?

7. By providing additional infrastructure to support development of an area, CIL is expected to have a positive economic effect on development across an area in the medium to long term. In deciding

¹ See Planning Policy Statement 12 for more details on the Local Development Framework.

² See Local Development Plans Wales 2005 for more details on the Local Development Plan.

the rate(s) of CIL for inclusion in its draft charging schedule, a key consideration for authorities is the balance between securing additional investment for infrastructure to support development and the potential economic effect of imposing CIL upon development across their area. The CIL regulations place this balance of considerations at the centre of the charge-setting process. In view of the wide variation in local charging circumstances, it is for charging authorities to decide on the appropriate balance for their area and 'how much' potential development they are willing to put at risk through the imposition of CIL. The amount will vary. For example, some charging authorities may place a high premium on funding infrastructure if they see this as important to future economic growth in their area, or if they consider that they have flexibility to identify alternative development sites, or that some sites can be redesigned to make them viable. These charging authorities may be comfortable in putting a higher percentage of potential development at risk, as they anticipate an overall benefit.

8. In their background evidence on economic viability to the CIL examination, charging authorities should explain briefly why they consider that their proposed CIL rate (or rates) will not put the overall development across their area at serious risk. It is for charging authorities to decide what evidence they include. But, they might, for example, explain that they expect to be able to bring forward more sites (for authorities in England this might involve using their SHLAA evidence) or development to offset part of the risk to development as a result of the imposition of CIL, such that the imposition of CIL will not put the overall development of their area at risk.

The CIL Examination

9. The independent examiner should check that:
 - the charging authority has complied with the required procedures set out in the Planning Act 2008 and the CIL Regulations (see paragraph 6 above)
 - the charging authority's 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 would not put at serious risk overall development of the area.
10. The examiner should not use the CIL examination to question a charging authority's choice in terms of 'the appropriate balance', unless the evidence available to the examination shows that the proposed rate

(or rates) will put the overall development of the area at serious risk. The examiner should be ready to modify or reject the draft charging schedule if it puts at serious risk the overall development of the area. In considering whether the overall development of the area has been put at serious risk, the examiner will want to consider the implications for the priorities that the authority has identified in its Development Plan (for example planned targets for housing supply and affordable housing), or in the case of the Mayor's CIL, the implications for the London Plan. In considering whether the Development Plan and its targets have been put at serious risk, the examiner should only be concerned with whether the proposed CIL rate will make a material or significant difference to the level of that risk. It may be that the Development Plan and its targets would be at serious risk in the absence of CIL.

The need for an up-to-date development plan

11. The Government expects that charging authorities will implement CIL where their 'appropriate evidence' includes an up-to-date development strategy for the area in which they propose to charge. It is for the local authority to decide whether the adopted development plan for the area is sufficiently up-to-date to implement CIL. This development strategy should normally be set out in a draft or adopted core strategy DPD in England; LDP in Wales; or the SDS in the case of the Mayor of London. A draft plan would be suitable where a charging authority submitted its draft charging schedule alongside its proposed core strategy, LDP or London Plan for 'joint examination' (see Charging Schedule Procedures below).

Infrastructure planning

12. A charging authority needs to identify the total cost of infrastructure that it desires to fund from CIL. In order to do this, the charging authority will want to consider what additional infrastructure is needed in its area to support development and what other funding sources are available (for example, core Government funding for infrastructure, which will continue following the introduction of CIL).

13. Information on the charging authority area's infrastructure needs should, wherever possible, be drawn directly from the infrastructure planning that underpins their Development Plan, as that planning identifies the quantum and type of infrastructure required to realise their local development needs and in many cases will comply with the principles set out in PPS12.³

³ Planning Policy Statement 12: Creating Strong Safe and Prosperous Communities through Local Spatial Planning: see paragraphs 4.8 - 4.12. PPS12 does not cover the Mayor's Spatial Development

14. In determining the size of its total or aggregate infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other sources of funding available, or likely to be available, to meet those costs. This process will identify a CIL infrastructure funding target. This target may be informed by a selection of infrastructure projects or types (drawn from infrastructure planning for the area) which are indicative of the infrastructure likely to be funded by CIL in that area. The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. The focus should be on providing evidence of an aggregate funding gap that demonstrates the need to levy CIL.
15. The role of this evidence is not to provide absolute upfront assurances as to how authorities intend to spend CIL (although if an authority is in a position to produce a list of projects on that basis, they are welcome to do so), but to illustrate that their intended CIL target is justifiable given local infrastructure need and is based on appropriate evidence. Authorities may spend their CIL revenues on different projects and types from those identified as indicative for the purpose of charge setting. The Government also recognises that the indicative infrastructure types or projects envisaged here may differ from those placed on any list that the charging authority may subsequently decide to publish on its website in relation to regulation 123 on the limitations to the use of planning obligations, because, for example, priorities can change over time.
16. If an authority considers that the infrastructure planning underpinning its development plan is weak or does not reflect its latest priorities, it may undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. This work may be limited to those projects requiring funding from CIL, rather than covering all the potential infrastructure projects for the area.
17. Where infrastructure planning has been undertaken specifically for CIL and was not tested as part of another examination, the CIL examiner will only need to test that the evidence is sufficient in order to confirm the aggregate infrastructure funding gap and total target amount that the authority proposes to raise through CIL.
18. The CIL examination should not re-open infrastructure planning that has already been submitted in support of a sound core strategy DPD or LDP (or in London, a formally published spatial development strategy or alteration thereto). It is not the role of the CIL examination to challenge the soundness of an adopted development plan.

Strategy, which is governed by Government Office for London Circular 1/2008. PPS 12 also does not cover LDPs in Wales: see LDP Wales 2005, paragraph 2.20.

Applicability of Sustainability Appraisal to charging schedules and the evidence base

19. Charging schedules will be short financial documents so will not require a Sustainability Appraisal.

Preparing the evidence base on economic viability

20. It is for charging authorities to decide how to present appropriate evidence on how they have struck an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL on the economic viability of development across their area. It is likely, for example, that charging authorities will need to summarise evidence as to economic viability in a document (separate from the charging schedule) as part of their background evidence that shows the potential effects of their proposed CIL rate (or rates) on the economic viability of development across their area.

Area based approach

21. Charging authorities should use an area-based approach, which involves a broad test of viability across their area as the evidence base to underpin their charge. Charging authorities should take a strategic view across their area and should not focus on the potential implications of setting a CIL for individual development sites within a charging authority's area. Regulation 14 recognises that the introduction of CIL may put some potential development sites at risk. It is for charging authorities to decide what CIL rate, in their view, sets an appropriate balance between the need to fund infrastructure, and the potential implications for the economic viability of development across their area.

Economic valuation

22. There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of CIL on the economic viability of development across their area. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their CIL rates to use one of them.

Appropriate available evidence

23. The legislation (section 212 (4)(b)) requires a charging authority to use '*appropriate available evidence*' to inform their draft charging schedule. It is recognised that the available data is unlikely to be fully comprehensive or exhaustive. Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.
24. A charging authority should thus draw on existing data wherever it is available. Charging authorities may consider a range of data, including:
- values of land in both existing and planned uses (see, for example, VOA Property Market Reports); and
 - property prices (e.g. house price indices and rateable values for commercial property).
25. In addition, a charging authority may want to sample directly a few sites across its area in order to supplement existing data. The focus should only be on a limited number of sites, particularly those sites where the impact of CIL on economic viability is likely to be more significant. Where a charging authority is proposing to set differential rates, they may want to undertake more fine-grained sampling (of a higher percentage of total sites), to identify a few data points to use in estimating the boundaries of particular zones, or different categories of intended use. The focus in regulation 14(1)(b) on an area based approach to viability means that charging authorities need rely only on a limited approach to sampling, whether they are setting a uniform or a differential rate.
26. In considering the effect of CIL on residential development, charging authorities in England may want to draw on the work done to inform their Strategic Housing Land Availability Assessments (SHLAAs) on maintaining a deliverable supply of land for housing, as required by PPS3.⁴ The methodology undertaken for the SHLAA and the knowledge it has given of viability in the local area should inform an authority's approach, but a charging authority may need to revisit their SHLAA to update it to reflect more recent changes that have an impact on viability across their area, (usually without changing the methodology). Charging authorities will also need to supplement their SHLAA with information about non-housing sectors, such as the retail and commercial sectors (for example, information on rental yields and property values), depending on the balance of development within their area.

⁴ PPS3: Planning Policy Statement on Housing.

Evidence should inform the draft charging schedule

27. The legislation (section 212 (4) (b)) only requires a charging authority to use appropriate available evidence to '*inform* the draft charging schedule'. A charging authority's proposed CIL rate (or rates) should appear reasonable given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence, for example, if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism.

Factors to consider

28. In proposing a CIL rate (or rates), charging authorities should take into account other development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the Development Plan (in particular those for affordable housing). In proposing the rate(s) of CIL to charge, a charging authority should consider the potential impact of exemptions or reductions relating to social housing and many developments by charities, as these will reduce the amount of CIL revenue that they can collect.

Evidence that reflects the changing economic situation over time

29. Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should also seek to illustrate, using appropriate available evidence, that their proposed charging rates would be robust over time. In setting a CIL rate, charging authorities will need to bear in mind that the economic circumstances and land values could change significantly during the lifetime of the charging schedule. They might do this by considering their proposed CIL rates in the context of projected trend levels, over the longer term, of property prices and land values in their area.

30. Charging authorities can rely largely on existing published data to prepare the evidence on viability to inform their charging schedule, but they may also want to ensure that their proposed CIL rate (or rates) takes account of recent changes in land values over the last 12 months before they publish a charging schedule (for example by supplementing published data with limited sampling information from recent market transactions), particularly if land values have been significantly falling or rising.

Charge setting in London

31. London is the only place where a strategic tier authority may also set a CIL. The two-tier charging system is intended to ensure that strategic infrastructure, that is important for economic growth, is delivered in London as well as local infrastructure. The Government expects the Mayor and the Boroughs to work closely in setting and running CIL in London, including through mutual co-operation and the sharing of relevant information.
32. In having regard to the potential effects of the imposition of CIL on the economic viability of development across their areas, the London Boroughs are required (by regulation 14(3) and (4)) to take into account any CIL rates set by the Mayor (in the most recent charging schedule already approved by the Mayor). The purpose of this requirement is to ensure that rates are set in a manner that retains viability across London for both local and strategic infrastructure, permitting both the boroughs and the Mayor to realise their development strategies. The Mayor's CIL will be mandatory once set, so as a matter of good practice, the Boroughs in proposing a draft CIL rate for consultation, should also take into account any draft Mayoral CIL rate (or rates) that has been published in a draft or preliminary draft charging schedule. If a Borough introduces a draft charging schedule before the Mayor sets a CIL, it would be prudent for the Borough to write to the Mayor and ask whether he has any plans for setting a CIL, to enable them to make some assumptions about the potential effect on development in their area if the Mayor subsequently sets a CIL.
33. In proposing a CIL rate (or rates), there is no explicit requirement on the Mayor to take account of a CIL rate already set by a Borough (in an approved charging schedule), but as a matter of good practice, the Mayor should consider any CIL rate already set by a London Borough.

Setting differential rates of CIL

34. There is no requirement on charging authorities to set differential rates and some charging authorities may prefer to set uniform rates, because they are simpler. However, charging authorities may want to consider setting differential rates as a way of dealing with different levels of economic viability within the same charging area (see regulation 13), for example a charging authority containing a Growth Area and several regeneration zones, or charging authorities with a mixture of urban and rural land. This is a powerful facility that makes CIL more flexible to local conditions. Differences in rates need to be justified by reference to the economic viability of development. Charging authorities should not set differential rates by reference to the costs of infrastructure, either in different zones or for different classes of development.

35. Charging authorities can set differential CIL rates for different geographical zones in their area, provided that those zones are created and defined by reference to the economic viability of development within them. Where a Charging authority sets differential rates in this way, the regulations require them to attach a map (see regulation 12(2)(c)) to the formal charging schedule, which defines the location and boundaries of the charging zones that the authority has selected for differential rates. The map must have an Ordnance Survey base, because it needs to be sufficiently precise to ensure that it is immediately clear in which charging zone any particular development fits, in order to provide developers with certainty about what rate they need to pay.
36. Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development (for example residential and commercial development) across their charging area provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. Where an authority has applied differential rates in this way, the charging schedule should reflect those rates by reference to the intended use of development.
37. An authority could set differential rates by reference to both zones, and the categories of development within its area. For instance, an authority might choose to divide its area into a higher and lower value zone and set differential rates by reference to those zones. It could go further and set differential rates for residential and commercial development within both the higher and lower value zones. However, charging authorities should be mindful that it is likely to be harder to ensure that more complex patterns of differential rates are State aid compliant, so for example, charging authorities need to be consistent in the way that appropriate available evidence on economic viability informs the treatment of a category of development in different zones.
38. Charging authorities that plan to set differential CIL rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area. Charging authorities should not exempt or set a zero rate for a particular zone or category of development from CIL, unless they can demonstrate that this is justifiable in economic viability terms (which would require evidence of very low (i.e. at the margins of viability, such that any charge would be *de minimis*), zero or negative viability across that zone or category of development). However, if the evidence shows that their area includes a zone or category of development of low viability, charging authorities should consider setting a low CIL rate in that area or for that category (consistent with the evidence). Charging authorities should not seek to exempt individual development sites from CIL through setting a differential rate. CIL is based upon broad assessments and it will not

be appropriate to seek to draw zones on the basis of the individual sites.

39. Resulting charging schedules should not impact disproportionately on a particular sector or small group of developers.
40. Differential rates must be set in such a way so as not to give rise to notifiable State aid – one element of which is selective advantage. Thus, authorities who choose to differentiate rates by class of development or by reference to different areas, should do so only where there is consistent evidence relating to economic viability that constitutes the basis for any such differences in treatment. It will be the responsibility of charging authorities to ensure that their charging schedules are State aids compliant.

Administrative costs

41. The CIL regulations permit authorities to use CIL receipts to finance administrative expenses in connection with CIL. Administrative expenses in connection with CIL include the costs of the functions required to establish and run a CIL charging scheme. These functions include CIL set-up costs, such as consultation on the CIL charging schedule, preparing evidence on viability or the costs of the CIL examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing CIL, the legal costs associated with payments in-kind and monitoring and reporting on CIL activity.
42. The amount of CIL proceeds that a charging authority can use to finance its CIL administrative expenses is restricted in the CIL regulations to a maximum of 5% of total receipts. To help charging authorities with initial set up costs, the regulations allow for a rolling cap over the period comprising the first part year that an authority sets a CIL and the following three financial years taken as a whole. From year four onwards of an authority's CIL operation, the restriction works as a fixed in-year cap, meaning that an authority may spend up to 5% of receipts received in-year by the end of that year on its administrative expenses. Where an authority spends less than its permitted allowance on administrative expenses, it must transfer the remaining allowance for use on capital infrastructure projects.
43. Where a collecting authority has been appointed to collect CIL on behalf of a charging authority, as will be the case in London, the borough collecting authority may keep up to 4% of receipts to fund their admin costs, with the remainder available to the Mayor as charging authority up to the 5 per cent cap.

44. Regulation 14(2) allows a charging authority to have regard to administrative expenses connected with CIL when setting their CIL rates. So, for example, an authority might set CIL rates slightly higher than the levels required to meet their infrastructure funding needs in order to cover administration costs. Charging authorities should seek to strike an appropriate balance between securing additional investment for infrastructure (including their administrative expenses) and the potential effect of imposing CIL upon development across their area.

Part 2: Charging schedule procedures

Consulting on the charging schedule

Public consultation on the preliminary draft charging schedule

45. Charging authorities must consult on their proposed CIL rates in a **preliminary draft charging schedule**. This should go beyond broad proposals for CIL and the Government encourages authorities to prepare a draft charging schedule that is evidence based and that will reduce the need for subsequent modifications, so speeding up the process of introducing CIL.
46. Regulation 15 makes certain requirements about who the charging authority should consult. This includes a need to consult bodies such as the Homes and Communities Agency or an Urban Development Corporation, but only where such bodies exercise the functions of a local planning authority within or adjoining the charging authority's area.
47. The regulations do not specify how charging authorities should consult, as they are best placed to decide how to engage most effectively with their local communities and stakeholders. Equally, no length of consultation is stipulated in the regulations, although charging authorities are encouraged to consult for at least six weeks in order to ensure that local communities and stakeholders have sufficient opportunity to make their views known.

Public consultation and the right to be heard on a draft charging schedule

48. When a charging authority considers that a draft charging schedule is ready for examination, it must publish the draft schedule and the appropriate available evidence on infrastructure costs, other funding sources and economic viability. The authority must then call for representations to be made within a **period of at least four weeks** (regulation 17(3)). Any person may make representations about a draft charging schedule and that person **must be heard before the examiner at the CIL examination**, if they have requested to be heard and the request has been made as set out in regulation 21.

Modifications to the draft charging schedule after publication

49. The intention in publishing the draft charging schedule is to allow stakeholders and the local community to make representations on what the charging authority considers to be its firm proposals for CIL. Consultation will already have taken place during the preparation of the draft schedule and **charging authorities should avoid making modifications** between the publication of the draft and submission to the examiner. Substantive changes should always be avoided, unless they have been sufficiently consulted on.
50. Where any modifications are made, the regulations require the authority to produce a '**statement of modifications**' (as set out in regulations 11 and 19) and to allow requests to be heard on the modifications to be made within a **period of four weeks** beginning with the day on which the draft charging schedule is submitted to the examiner (regulation 21(5)).
51. Regulation 19 requires a statement of modifications to be published and distributed and in complying with these requirements, authorities should take the steps considered necessary to inform those persons invited to make representations under regulation 15 that the statement has been published.
52. Regulation 21(5) provides that any persons making a request to be heard in relation to modifications must provide details of the particular modification(s) on which they wish to be heard. Authorities may also ask those requesting to be heard to include any additional details considered appropriate, for example, whether they support or oppose the modification(s) and why. Such details may be submitted to the examiner, along with the requests to be heard, where the authority considers it will help the examiner or if the examiner has requested such details.

The charging schedule examination

Appointing the examiner and the examiner's assistants

53. The charging authority must appoint a person ('the examiner') to examine a draft charging schedule and this examiner must, in the opinion of the charging authority, **be independent and have appropriate qualifications and experience**. The Government considers that a Planning Inspector is likely to fulfil these criteria.
54. Where both the charging authority and the examiner agree it is necessary, an assistant could be appointed by the charging authority – for instance, this might be an expert assessor from the Valuation Office

Agency (VOA) or another appropriately qualified and experienced independent person. Where a charging authority appoints an assistant, an exchange of letters should be sufficient to satisfy this procedural requirement.

The costs of the examiner and assistants

55. The cost of the independent examination will be borne by the charging authority, following the practice in relation to other documents tested in this way. The regulations do not specify what the examiner's fees should be. Since the charging authority has the ability to choose any suitably qualified, independent person, it will be for the market to determine what rates are appropriate.
56. Where the appointed examiner or assistant is an employee of the Crown or is under contract to an executive agency of Government, such as the Planning Inspectorate, regulation 30 provides for the Secretary of State to recover his or her costs for the CIL examination. In practice, the examiner should be able to provide a reasonable estimate of the likely costs prior to the CIL examination based on their assessment of its anticipated length and complexity. In all other cases, the independent person should simply agree their fees and expenses with the charging authority prior to the examination, as set out in regulation 29.
57. Where there is a 'joint examination' of one or more charging schedules and a DPD (in England), LDP (in Wales) or the London Plan, the Secretary of State is only able to recover costs for the CIL examination to the extent that these costs will not be recovered under other statutory powers. For example, where the same Inspector examines a core strategy and a CIL charging schedule at a 'joint examination', the Secretary of State would first recover costs of the core strategy examination using the statutory daily rate.⁵ Subsequently, any additional costs would be recovered under the CIL regulation 30. The effect of this apportionment will be to ensure that **any cost savings achieved by carrying out a joint examination are passed to the charging authority** or split between the authorities where more than one charging schedule is being examined.

Preparation for the examination

58. In preparing for the CIL examination charging authorities are encouraged to carry out the notifications required by regulation 21 as early as possible and **at least four weeks before an examination hearing session(s) takes place**. However, in order to avoid delays to

⁵ Set out in the Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006 and the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007.

the CIL examination, **this period may be reduced to two weeks where a statement of modifications has been published and one or more requests to be heard were made** during the four-week period allowed for such requests.

59. Unless there are only a small number of representations and requests to be heard, examiners may, where they consider it is appropriate and likely to expedite the examination, hold a **pre-hearing meeting (PHM)**. The examiner is likely to use the PHM to perform an initial check that, in preparing its charging schedule, the authority has complied with the legislation 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 is also likely to use a PHM to discuss how the examination will be managed and to identify the main issues to be considered and also to outline the structure and draft programme. Whether or not a PHM is held, examiners are encouraged to 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.

Format of the CIL examination

60. Experience with examining DPDs suggests that **an informal hearing format** will usually be the most appropriate form of examination for CIL. If no person has requested the right to be heard, the examiner would also have the option of conducting the examination by written representations.
61. In order to reduce the risk of delays at the CIL examination and to ensure that the hearings are conducted in an efficient and effective manner, regulation 21 allows the examiner to **decide how the hearing is to be conducted and to set time limits** for such representations. An examiner may also refuse to allow representations at any given hearing if they consider that these may be repetitious, irrelevant, vexatious or frivolous. However, the legislation does not allow an examiner to deny a participant's right to be heard altogether. In deciding how the hearing is to be conducted the examiner may, for example, decide whether cross-examination of participants will be allowed and determine any necessary arrangements to accommodate those who are unable to attend the examination during normal working hours.

Joint examinations

62. Charging authorities may decide to work collaboratively on introducing CIL and regulation 22 provides the option of a **joint examination** to consider two or more charging schedules. This option is also available where a charging authority wants to prepare a draft CIL charging

schedule at the same time as a core strategy DPD, a local development plan (LDP) or the London Plan.

63. Joint examinations of a charging schedule and a DPD, LDP or the London Plan provide an opportunity for issues of mutual concern to the charging schedule and development plan examinations to be considered in a holistic way. This could involve submitting joint evidence documents or holding a joint pre-hearing meeting (PHM). Joint hearing sessions could also be held covering issues such as infrastructure planning and the economic viability evidence. Finally, the CIL examiner (and the planning inspector, where this is a different person) may decide to write the final examination reports in a collaborative process.
64. An important consideration in joint examinations is the need for transparency so that all the participants are aware of exchanges of information between the two examinations and have the opportunity to comment where this is appropriate. A joint PHM and hearing sessions will help to ensure that this can be achieved. However, where other exchanges of information occur, for instance after the hearings have ended, steps should be taken to ensure that relevant information is placed on the authority's website and that examination participants are made aware of the exchange.
65. Joint examinations are optional and so under regulation 22 each of the charging authorities and the Secretary of State (in England) or Welsh Ministers (in Wales) must agree to a joint examination. An exchange of letters should normally suffice for this requirement, so regulations do not make further provision.

Procedure after the CIL examination

The examiner's report

66. The examiner's recommendations on the draft charging schedule will fall into one of three categories. The examiner should **approve** the charging authority's draft charging schedule if a charging authority has complied with the requirements of the Act and the regulations, used appropriate available evidence, and its proposed CIL rate (or rates) are informed by and consistent with the evidence and the proposed CIL rate (or rates) would not put at serious risk the overall development of the area.
67. The examiner should **modify** the charging authority's draft charging schedule if a charging authority has complied with the requirements of the Act and the regulations, used appropriate available evidence, but the proposed CIL rate (or rates) is not informed by the evidence, or is

inconsistent with the evidence, and a modification would result in the proposed rate (or rates) being informed by and consistent with the evidence. Similarly, the examiner should modify the proposed CIL rate (or rates) if the evidence suggests that without some modification, the proposed CIL rate would put at serious risk the overall development of the area.

68. The examiner should **reject** a charging authority's draft charging schedule for any one of a number of reasons. A charging schedule should be rejected if a charging authority has not complied with the requirements of the Act and the regulations in preparing it, or if a charging authority has not used appropriate available evidence to inform the draft charging schedule. A charging schedule should also be rejected if the conclusions that the charging authority has reached in setting the draft CIL rate are either not informed by, or are inconsistent with the evidence, or would put the overall development of the area at serious risk, and in either case, it would be impossible for the examiner to set reasonable rates either given the evidence or that would reflect the evidence.

Correction of errors in the examiner's report

69. In order to ensure that the independent examiner's binding recommendations are accurate, the Government strongly encourages examiners to provide charging authorities with a **period of 'fact check'** before the final report is published. After the fact check, but before approval of the charging schedule, any 'correctable errors' within the examiner's recommendations, may be corrected by the examiner, as set out in regulation 24. However, after correcting an error the authority will need to republish the recommendations and notify those persons required by the regulation.
70. A '**correctable error**', for the purposes of regulation 24, includes two types of errors. First, any error which would not affect the substance of the examiner's recommendations or reasons, for example, by giving rise to a change in the rate of CIL or in any differential rates. For instance, this could include a minor typographical or factual error, but not one that would affect CIL liability. Second, more significant errors which would give rise to a different CIL rate or affect CIL 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.

Approval and coming into effect of the charging schedule

71. Once any modifications recommended by the examiner have been made, the charging schedule should be formally **approved by a**

resolution of the full council of the charging authority. In London, section 213(3) of the Act requires the Mayor to make a formal decision to approve his or her CIL charging schedule in accordance with the Greater London Authority's decision making framework.

72. The charging authority must insert an appropriate commencement date into the charging schedule before it is formally approved. The schedule will come into effect and CIL will become chargeable on development from that date and so regulation 28 requires this date to be no earlier than the day after the approved charging schedule is published as set out in regulation 25.

Correction of errors in the approved charging schedule

73. For a period of six months after approving a charging schedule, any 'correctable errors' that are made known to the charging authority must be corrected as set out in regulation 26. Again, a '**correctable error**' under this regulation includes two types of errors. First, any error which, when corrected, would have no effect on the CIL rate or any differential rates. Second, any error which would have an impact on the CIL rate, but which must be corrected in order to make the charging schedule consistent with the published examiner's recommendations. This second type of error may be a simple transcription error which should be easily identifiable from the examiner's recommendations and reasons.
74. Where any error is corrected by a charging authority, regulation 26 requires a number of actions to be taken, including republishing the charging schedule and issuing a '**correction notice**'. If an error correction causes the CIL liability for any particular chargeable development to decrease, regulation 27 requires the charging authority to **recalculate the chargeable amount payable** as well as any relief given and to **notify the affected person of the recalculation and decrease in CIL liability**. If the result of the error correction is an overpayment of CIL by any liable party, regulation 75 sets out how repayments should be made. It should be noted that the recalculation of the chargeable amount required by regulation 27 does not apply where the effect of an error correction is to increase the CIL liability for any particular chargeable development. In such cases a collecting authority will not be entitled to pursue the increase in CIL liability.

Reviewing and revising the charging schedule

75. The Government has not specified a recommended lifetime for charging schedules and there is no requirement in the Act placing charging authorities under a duty to review their charging schedules. However, charging authorities are strongly encouraged to keep their

charging schedules under review. This is important to ensure that that CIL charges remain appropriate over time – for instance, as market conditions change, and also so that they remain relevant to the gap in the funding for the infrastructure needed to support the development of their area.

76. The Act allows charging authorities to revise a part of their charging schedule. However, any revisions, in whole or in part, must follow the same process as that applied to the preparation, examination, approval and publication of the initial schedule, as specified under sections 211 to 214 of the Act and Part 3 of the CIL regulations.

Effect of the adoption of a revised charging schedule or a draft charging schedule: transitional arrangements

77. Charging schedules apply to planning permissions which first permit development between the point that a charging schedule takes effect and the time it is superseded by a revised schedule, or the point at which an authority decides to stop charging CIL and its charging schedule ceases to have effect. Regulation 8 defines the time at which a planning permission is treated as first permitting development. In most cases it will be when planning permission is granted but in the case of permitted development, for example, it is the time at which the 'Notification of Chargeable Development' notice is acknowledged.

Ceasing to charge

78. Charging authorities will have the discretion to decide when and why they cease to charge CIL. Thus, CIL regulations do not specify any criteria or process to follow before an authority is able to terminate CIL beyond that specified by the Act – namely, that the authority must formally resolve to cease charging.
79. In the event of a charging authority ceasing to charge, any outstanding CIL liability relating to a development that is yet to commence will be dissolved and no CIL will be payable, in accordance with regulation 129 (2). In London, where there may be more than one charging authority for any area, each CIL charge will be recognised individually. Therefore, if one charge were to cease, the remaining charge would still be payable.