

Implementation of CIL

This part of the seminar series provided a high-level overview of various aspects of implementing CIL.

It covers the administration issues that have changed under the 2014 CIL guidance and regulations, and the basic policies you need to set in place.

Preparing for the implementation / administration of CIL is at least as complex and time-consuming as setting rates. In fact it is almost certainly more complex and involves well-orchestrated corporate working.

Implementation - What you need to know

Implementation is technically more complicated than developing a charging schedule.

The 2014 regulations have introduced some useful amendments such as the delay in the pooling restriction until April 2015 and the ability for the charging authorities to accept payments in kind; these are covered in more detail in the [DCLG presentation](#). There remains a number of policies that are discretionary and require a decision to 'turn on'. These are decisions for you the charging authority to make.

When it comes to spending, there is little in the regulations regarding how to spend CIL which means you have a reasonable degree of flexibility, which is important for you to be able to respond to local circumstances. Nevertheless, spending remains a corporate matter for your Authority that requires careful business planning.

In your preparations you will need to map the CIL collection process in detail and then compare that against existing processes within your authority for collecting s106 and council tax. Then you are well placed to consider how the existing process may be able to collect CIL. You will inevitably find gaps, which will need to be addressed by adapting the processes. Start by looking at this basic CIL collection process [flow chart](#). There are hundreds of permutations that will need to be considered in practice.

CIL administration notices

There are a series of Administrative Notices that need to be issued by you the Charging Authority or received by you from the developer. Standard forms are available on the [Planning Portal](#).

Many Charging Authorities have adapted the standard forms and sought to fully integrate the forms for the early stages of CIL into their Planning Application administrative process. We recommend all Authorities explore this from a point of view of keeping this as simple as possible for the customer.

CIL Enforcement

The Community Infrastructure Levy Regulations make provision for the collection of money and, where necessary, enforcement of collection of money. Schedule of surcharges are captured in [CIL Regulations 80 to 86](#).

Collecting authorities are able to impose a range of financial penalties on person(s) when the liability, collection and/or payment processes have not been followed correctly. These penalties are designed to ensure that authorities do not lose out financially. In addition to the surcharge for late payment, a collecting authority must charge interest on any late payments.

Where development has started, the Levy has not been paid and the authority thinks it expedient to stop the development from progressing any further until payment is made, it may issue a stop notice. The process includes first issuing a warning notice.

Ultimately the authority may apply to the Magistrates Court for a liability order against the relevant person.

CIL Appeals

There are a number of appeals that you need to be aware of and prepare to administer.

- Appeal against chargeable amount
 - within 28 days from date of liability notice
 - Calculation check undertaken by a person 'more senior' than the person who originally calculated the amount.
- Appeal against apportioned liability
- Appeal against surcharges
- Appeal against deemed date of commencement
- Appeal against a stop notice
- Appeal for grievance against levy or attempt to levy to magistrates court.

CIL Infrastructure In kind contribution

Land and infrastructure in-kind are discretionary policies. Regulation 73A(7)(b) allows the developer to pay for some or all of its CIL through the provision of infrastructure in-kind. This means the Charging Authority (CA) receiving infrastructure rather than cash. This is only allowed to happen if the infrastructure supports development of the CA area (maybe outside of area), is relevant infrastructure, is identified on the charging authority's regulation 123 list, and is not necessary to make the development granted consent acceptable in planning terms.

Infrastructure In kind contribution- the process

Where a charging authority chooses to adopt a policy of accepting infrastructure payments, they must publish a 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

The CIL liable party must issue an agreement in writing stating:

- Value of infrastructure
- Date by which infrastructure will be provided
- That the CIL cash amount + interest that will be paid if the infrastructure is not delivered by that date (or otherwise the value of the infrastructure (including related design costs) is determined by an independent person (joint appointed and suitability qualified).

In the case of land, an independent person will ascertain its 'open market value'. 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.

CIL - Phased Payments Overview

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.

CIL - Phased Payments Process

The process must be set out in the planning permission and each phase treated as separate chargeable development.

Previously Instalments policy was the only means of phased payments. It needed to be constructed around the variables of:

- Number of payments
- Proportion of CIL due at each payment
- Time from commencement of development
- Threshold (s) when instalments apply.

Now, where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes. This may apply to schemes which have full planning permission as well as to outline permissions.

This is designed to ease cash flow for developers.

CIL and Self Build

One of the more hotly debated changes in the 2014 regulations has been the provision of relief for "self- built' homes because some feel it is open to abuse. The exemption is specifically 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. Applicants can apply for the exemption at any time up to date of commencement. To qualify for the exemption there are specific condition that need to be met:

- The property must remain principal residence for three years
- Proof of self- build can take several forms including Self-Build mortgage certificates.

You should note that for multi-unit developments recommendation is that phased planning application is used to make each unit a separate chargeable development.

CIL Vacancy Test

The regulation relating to the vacancy test has changed in response to public consultation. Where a building has been in lawful use for a continuous period of 6 months within past 3 years can be considered when calculating the amount of net additional development that is liable to pay CIL. Parts of an existing building that are to be demolished or retained can be taken into account when calculating the chargeable amount.

Instalment Policy

Instalments policy constructed around the variables of:

- number of payments
- proportion of CIL due at each payment
- time from commencement of development
- threshold (s) when instalments apply.

The Charging Authority must publish an instalments policy to allow payment [by instalments](#).

Where no instalments policy in place default is full payment at end of 60 days after development has started.

Threshold of CIL Charge	Proportion of CIL Charge	Time from start of development
£0	100%	60 days

Exceptional Circumstance Relief

The pre-conditions for granting exceptional circumstances relief has changed: The charging authority must still publish a statement giving notice that relief for exceptional circumstances is available in its area.

In terms of the specific development, the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability. As previously, a planning obligation must have been entered into in respect of the planning permission which permits the chargeable development **but** this no longer has to be greater than the CIL amount.

The relief claim has to be submitted in writing on the appropriate form, this must also be sent to any other owners or holders of a material interest in the land. An assessment has to be carried out by an independent person of the economic viability of the chargeable development. An independent person is one who has appropriate qualifications and experience and who is appointed by the claimant with the agreement of the council. An explanation needs to

be provided as to why, in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of that development.

Most importantly the relief must not constitute a notifiable state aid: Limitations on application of €200,000 over three year period for any one company.

Implementation of CIL - What the regulations say

The rules relating to the spending of CIL remain flexible so long as CIL is spent on the provision, improvement, replacement, operation or maintenance of infrastructure that supports the delivery of growth in your local area, in line with the local plan for the area.

The charging authority has to specify in their Reg. 123 list, the infrastructure categories/ projects for which S106 will not be sought. Note that there is no need to prioritise provision for infrastructure prioritisation on your regulation 123 list. Furthermore, you are not strictly required to spend CIL on the items listed in the Reg 123 list.

A minimum of 15% (25% where there is a neighbourhood plan) must be allocated as neighbourhood funding and can be spent on anything else that is concerned with addressing the demands that development places on an area.

The Charging Authority is required to report annually on CIL spending. Where it is not the Local Authority spending CIL (i.e. it is the County or Parish) you will need to ensure they are geared up to provide the correct monitoring data in a timely manner.

Implementation of CIL - What local authorities are doing

There is a wide variety of practice in setting Reg 123 list.

Linking the Reg 123 list to corporate capital spending priorities & processes:

- There is no reason why there should not be a strong overlap between capital spend priorities in a Charging Authority and its Infrastructure Delivery Plan (and therefore its Reg 123 list). This is even more the case for unitary authorities who are directly responsible for a wider range of infrastructure items.
- Consequently, many local authorities are integrating the process of taking spending decision on CIL with their corporate capital investment decision-making process. Capital budgeting usually happens annually – this may be called the annual budget challenge or ‘star chamber’ or something similar.
- In the case of the authorities that integrate CIL into their capital programme, they simply see CIL as just one of many forms of funding.
- This process has not stopped some from adapting the Reg 123 list during the year if required.

Generic v Specific regulation 123 lists... How specific should you make your reg123 list?

- Given that a Reg 123 list specifies the infrastructure categories/projects for which S106 will not be sought, local authorities are increasingly creating specific lists because these give flexibility for negotiating s106. This approach leaves maximum flexibility for s106 to be used to mitigate unforeseen issues that cannot be dealt with through normal development. However, it is very important that this does not result in an unreasonable burden on development.

Linking neighbourhood CIL income to local infrastructure priorities

- Many councils are concerned about the requirement for 15% (or 25%) to be passed to the Parish, where this is perceived to have a negative impact on that area's ability to deliver the infrastructure requirements necessary to implement the Local Plan. However, in our view this creates more of a reason for the various tiers of Government to work together. For example, several councils are exploring Service Level Agreements between all tiers of local government to formalise their joint processes of prioritising CIL expenditure.

Preparing for the Implementation of CIL

So how do you go about preparing for implementing CIL? -It needs to be treated as a project. This includes:

- Set it up as a defined project with a project manager, project sponsor, governance etc.
- Define the existing resources, systems, processes and procedures that you have in place to collect and enforce development contributions.
- Define the required systems, processes and procedures that you will require to implement an efficient CIL collection
- Defining the administration regime and how it might need to be adapted to support CIL (i.e. this things we've previously discussed such as your Annual Budget Challenge, or S106 collection mechanism and your council tax collection mechanisms)
- Map the specific activities required to implement CIL
- Ensure you plan in sufficient time to test the systems before you go live

The main activities are set out in a table '[Stages actions and deliverables](#)' – this is not an exhaustive list.

Implementation conclusions

In summary, you should start planning for implementation at an early stage. It is helpful to use the good news story from CIL to energise the implementation process (including the estimated income). This is a corporate project not one that rests solely with planning.