

EXPLANATORY MEMORANDUM TO
THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) (ENGLAND)
(NO. 2) REGULATIONS 2020

2020 No. 1226

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Community Infrastructure Levy Regulations 2010 (“the 2010 Regulations”) to provide for relief from the community infrastructure levy for First Homes.
- 2.2 First Homes are the Government’s new flagship home ownership policy designed to provide a supply of homes for sale at a discount of at least 30% from market value, targeted at first-time buyers.
- 2.3 This instrument extends the existing relief for social housing to incorporate First Homes. This creates a level playing field between the various affordable housing products that developers are expected to provide through planning obligations under section 106 of the Town and Country Planning Act 1990.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument only applies to England.
- 3.3 In the view of the Ministry, for the purposes of Standing Order 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature. The subject matter of this instrument is local taxation which is a devolved matter. Most of the Secretary of State’s functions under Part 11 of the Planning Act 2008 were transferred to Welsh Ministers on 24th May 2018 (S.I. 2018/644).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister of State for Housing and Planning, the Rt Hon Christopher Pincher MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The 2010 Regulations, which are made under Part 11 of the Planning Act 2008, provide that a charge may be levied on new development of land in an area. The Community Infrastructure Levy (CIL) enables charging authorities to extract value from development projects to support local infrastructure.
- 6.2 The 2010 Regulations provide that development is entitled to relief from CIL if and to the extent it incorporates social / affordable housing of various defined kinds. This instrument amends the 2010 Regulations to include within the scope of such relief a new tenure, First Homes, which aims to use developer contributions to subsidise homes for sale to first time buyers by at least 30%. This instrument will ensure developers are not disadvantaged in delivering this kind of tenure by securing the same relief from CIL charges as other forms of affordable housing.
- 6.3 First Homes were a manifesto commitment. A consultation on First Homes was published in February 2020 which proposed exempting First Homes from CIL. The responses were (in the majority) supportive and as part of the response to the consultation (published in August 2020) the Government committed to bring this instrument forward.

7. Policy background

What is being done and why?

- 7.1 Regulation 49 of the 2010 Regulations provides for relief from CIL for housing units which fall into certain categories of affordable housing, such as social rent, affordable rent and shared ownership. This relief helps fund the sale of these properties by the developer below the value they may be able to achieve on the open market.
- 7.2 First Homes is the Government’s new flagship home ownership policy designed to provide a supply of homes for sale at a discount of at least 30% from market value, targeted at first-time buyers, where the discount stays with the property and is passed on to all future purchasers. This instrument extends the existing social housing relief from CIL to incorporate First Homes. This creates a level playing field between the various affordable housing products developers are expected to provide through planning obligations under section 106 of the Town and Country Planning Act 1990 (“s106”).
- 7.3 In order to secure developer contributions (including affordable housing) via the planning system, local planning authorities will, as a pre-requisite to the grant of planning permission, require those with an interest in the relevant land to enter into a deed of planning obligation under s106. This is the usual means of securing developer contributions other than through CIL at present, and this instrument does not change that position.
- 7.4 Where First Homes are to be secured as developer contributions, it is envisaged that the relevant deed of planning obligation will contain obligations (i) restricting the first

sale price of the relevant dwelling to (at most) 70% of its market value, and (ii) requiring a covenant to be entered into on its first sale in respect of that dwelling which will prohibit it being subsequently sold for more than 70% of its market value. It may also contain other obligations, e.g. relating to who may be a qualifying purchaser for a First Home.

- 7.5 The Government is proposing to introduce national policy for First Homes stating that 25% of all homes delivered through developer contributions via s106 should be First Homes. Without this instrument, these First Homes would be subject to a charge through CIL. It is vital that developers are not penalised for delivering this tenure as this could affect the viability of the development project as a whole, having a detrimental effect on other affordable housing tenures and wider housing supply.
- 7.6 This instrument amends regulation 49 to add an additional criterion for the CIL relief. This criterion is that the home must be sold for no more than 70% of its market value, and that a s106 planning obligation is entered into designed to ensure that this will be the case on all future sales.
- 7.7 Additionally, this instrument specifies the ‘clawback period’ for homes sold as First Homes. Clawback allows charging authorities to charge CIL if the relief conditions are not adhered to within the clawback period. This instrument states that the clawback period for First Homes will end on the date of first sale, assuming all the conditions have been met.
- 7.8 Finally, this instrument also makes a small amendment to regulation 49A and the definition of clawback period for the purpose of that regulation. Regulation 49A allows charging authorities to apply a discretionary relief from CIL for homes which are sold with a discount of at least 20% off market value, where the sale is in accordance with a policy adopted by the charging authority for that purpose. Under the existing 2010 Regulations, the clawback period for such CIL relief expires seven years after the commencement of development (that is, if the home were first or subsequently sold in a way that did not comply with the criteria during this seven year period, the CIL relief would become repayable by the person who was granted the relief). This instrument provides that where, optionally, a s106 planning obligation is entered into designed to ensure that the discount applies to all future sales, the clawback period will end on the date of first sale. This is line with the equivalent relief to be provided for First Homes.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Government intends to fully consolidate the 2010 Regulations when a suitable opportunity arises.

10. Consultation outcome

- 10.1 The proposal to exempt First Homes from the Community Infrastructure Levy (CIL) was considered as part of the consultation ‘First Homes: Consultation on the Design and Delivery of First Homes’. This public consultation was published on 7 February

2020. The consultation was initially planned to close after 8 weeks, but was extended by a further 4 weeks in recognition of the additional pressures on some respondents caused by the impacts of coronavirus. The consultation closed on 1 May 2020 after 12 weeks.

- 10.2 We received a total of 797 responses, of which 50% (402) were organisational responses and 46% (369) were from individuals.
- 10.3 Question 27 of the consultation asked “Do you agree that the proposal to exempt First Homes from the Community Infrastructure Levy would increase the delivery of these homes?”. 405 of the respondents answered this question, with 313 (77%) agreeing and 92 (23%) disagreeing. In the comments, a significant number of respondents raised concerns about whether this proposal would reduce funding for local infrastructure. The Government does not believe this will be the case, because the purpose of First Homes is not to create additional units delivered through s106, but to repurpose some of those already delivered as First Homes. Because these units would not have been chargeable through CIL anyway, there should be no additional pressure on infrastructure funding.
- 10.4 The consultation responses evidenced majority support for introducing an exemption from CIL for First Homes in order to increase delivery. In the response to the consultation (‘Summary of responses to the consultation and the Government’s response’ published on 6 August 2020) the Government stated ‘We also intend to introduce a mandatory exemption from the Community Infrastructure Levy for First Homes’.

11. Guidance

- 11.1 Guidance on the operation of the 2010 Regulations has been published in the Community Infrastructure Levy section of the Ministry’s Planning Practice Guidance and is available at: <https://www.gov.uk/guidance/community-infrastructure-levy>. Copies can be requested from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This instrument will maintain the current policy whereby developers are not charged a CIL levy on homes delivered through their contributions under s106.
- 12.2 There is no, or no significant, impact on the public sector. This instrument will facilitate the delivery of more affordable homes for sale.
- 12.3 As this is a financial instrument the Ministry is not required to undertake a formal Impact Assessment. However, we have considered impacts throughout policy development.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The purpose of this instrument is to facilitate the delivery of affordable homes by developers and will have an overall positive effect on the viability of such projects by small developers.

14. Monitoring & review

- 14.1 This instrument amends the operation of a levy (a financial measure) therefore the duty in the Small Business, Enterprise and Employment Act 2015 to undertake a review does not apply.

15. Contact

- 15.1 Laurence Martindale at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2803 or email: Laurence.martindale@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Simon Gallagher, Director of Planning, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Christopher Pincher, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.