



Ministry of Housing,
Communities &
Local Government

Supporting housing delivery through developer contributions

Reforming developer contributions to affordable housing and
infrastructure



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Ministry for Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Scope of the consultation

<p>Topic of this consultation:</p>	<p>This consultation seeks views on reforming developer contributions to affordable housing and infrastructure.</p> <p>It covers the following areas:</p> <ol style="list-style-type: none"> 1. Community Infrastructure Levy 2. Section 106 Planning Obligations 3. Strategic Infrastructure Tariff 4. Technical Clarifications to Regulations <p>Most of these changes were outlined as part of Autumn Budget 2017, available here:</p> <p>https://www.gov.uk/government/topical-events/autumn-budget-2017</p>
<p>Scope of this consultation:</p>	<p>This consultation looks at proposed reforms to the system of developer contributions.</p> <p>Others reforms, including in relation to viability, are covered by the National Planning Policy Framework (NPPF) consultation¹, published alongside this document.</p>
<p>Geographical scope:</p>	<p>These proposals relate to England only.</p>
<p>Impact Assessment:</p>	<p>The Community Infrastructure Levy does not fall within requirements for regulatory impact assessments.</p> <p>The consultation document sets out the level of developer contributions and refers to the accompanying research and analysis² and the independent CIL Review³ which set out the key evidence base that has informed this consultation.</p> <p>The responses to consultation will further inform proposed reforms and any changes brought forward as a result will be subject to appropriate assessment.</p>

¹ National Planning Policy Framework Consultation Document, March 2018
<https://www.gov.uk/government/consultations/Draft-revised-National-Planning-Policy-Framework-consultation>

² MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

³ The CIL review team: A new approach to developer contributions, February 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

Basic Information

To:	This consultation is open to everyone. We are keen to hear from a wide range of interested parties from across the public and private sectors, as well as from the general public.
Body/bodies responsible for the consultation:	Ministry of Housing, Communities and Local Government
Duration:	This consultation is open from 5 March to 10 May 2018.
Enquiries:	For any enquiries about the consultation please contact: developercontributionsconsultation@communities.gsi.gov.uk
How to respond:	<p>Consultation questions, and further details of the proposals, are set out in Annex A.</p> <p>Consultation responses should be submitted by online survey: https://www.surveymonkey.co.uk/r/TH577RP</p> <p>We strongly encourage responses via the online survey, particularly from organisations with access to online facilities such as local authorities, representative bodies and businesses. Consultations on planning policy receive a high level of interest across many sectors. Using the online survey greatly assists our analysis of the responses, enabling more efficient and effective consideration of the issues raised for each question.</p> <p>Should you be unable to respond online we ask that you complete the pro forma found at the end of this document. Additional information or evidence can be provided in addition to your completed pro forma.</p> <p>In these instances you can email your pro forma to: developercontributionsconsultation@communities.gsi.gov.uk</p> <p>Or send to:</p> <p>Planning and Infrastructure Division Ministry of Communities and Local Government 2nd floor, South East Fry Building 2 Marsham Street LONDON SW1P 4DF</p> <p>If you are responding in writing, please make it clear which questions you are responding.</p>

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

If on behalf of an organisation, please highlight which group you represent

Local Authorities (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

Neighbourhood Planning Bodies / Parish or Town Council

Private Sector Organisations (including housebuilders, housing associations, businesses, consultants)

Trade Associations / Interest Groups / Voluntary or Charitable Organisations

Academia / Private individual / Other

Foreword

The Government is determined to fix the broken housing market and restore the dream of home ownership for a new generation. There is no single solution to this problem and we are taking action on all fronts.

And these efforts are starting to bear fruit.

Since 2010, we have delivered more than a million homes and last year saw the biggest increase in housing supply in England – over 217,000 new homes – for almost a decade.

We have helped hundreds of thousands of people on to the housing ladder through Help to Buy and the cut in Stamp Duty announced at the recent Budget.

We have also cracked down on rogue landlords, abuse of leaseholds, taken steps to make renting fairer and to tackle homelessness through earlier intervention.

However, we know that there is much more needed to deliver the 300,000 homes a year in England we need.

And we are rising to the challenge.

We have set up a new, more assertive national housing agency, Homes England which will use investment and planning powers to intervene more actively in the land market.

We have launched an independent review, led by Sir Oliver Letwin, into the gap between planning permissions granted and homes built.

And we are giving local authorities the tools they need to build more homes more quickly, such as the £5bn Housing Infrastructure Fund, which is helping to fund vital physical infrastructure projects which could unlock up to 200,000 new homes. The first round of funding projects of up to £866m was announced in February 2018.

It is vital that developers who are building these homes know what contributions they are expected to make towards affordable housing and essential infrastructure and that local authorities can hold them to account. It is right to consider whether a higher proportion of affordable housing can be delivered where there is a higher uplift in land value created by development.

However, it is clear that the current system of developer contributions is not working as well as it should. It is too complex and uncertain. This acts as a barrier to new entrants and allows developers to negotiate down the affordable housing and infrastructure they agreed to provide.

This is why we are reforming the National Planning Policy Framework and developer contributions, as announced at Autumn Budget 2017 and as set out in this consultation. The reforms set out in this document could provide a springboard for going further, and the Government will continue to explore options to create a clearer and more robust

developer contribution system that really delivers for prospective homeowners and communities accommodating new development.

One option could be for developer contributions to be set nationally and made non negotiable. We recognise that we will need to engage and consult more widely on any new developer contribution system and provide appropriate transitions. This would allow developers to take account of reforms and reflect the contributions as they secure sites for development.

The proposals in this consultation are an important first step in this conversation and towards ensuring that developers are clear about their commitments, local authorities are empowered to hold them to account and communities feel confident that their needs will be met.

They are also a vital step towards fixing our broken housing market and ensuring that it delivers for everyone.

Reforming developer contributions

Summary

1. Last year saw a record number of planning permissions granted, and the highest level of housing completions since the recession. Thanks to the concerted efforts of Central and Local Government, last year 217,000 new homes were completed. However, to meet demand will require consistently delivering 300,000 homes every year across England.⁴
2. The government has invested £9bn through the Affordable Homes Programme to 2020-21 to support the delivery of a wide range of affordable homes. Overall since 2010, 357,000 affordable homes have been delivered.
3. Local authorities are being given the tools they need to bolster development. For instance, the £5bn Housing Infrastructure Fund is helping to fund vital physical infrastructure projects that could unlock up to 200,000 new homes. The first round of funding projects of up to £866m was announced in February 2018.
4. In addition, the Government is introducing a standardised step by step method of calculating housing need in local areas. The first step uses household growth projections, the second step increases the number of homes that are needed in the less affordable areas, and the third step will cap the level of increase relative to existing local plans to ease transitions. These three steps will provide a minimum for local authorities and an honest and transparent appraisal of how many homes an area needs
5. And if developers do not build homes quickly, the new housing delivery test will ensure that local authorities and wider interests are held accountable for their role in ensuring new homes are delivered in their area.
6. It is right that developers are required to mitigate the impacts of development, and pay for the cumulative impacts of development on the infrastructure in their area. New developments often create new demands on infrastructure. Public sector infrastructure investment and the granting of planning permission can also generate increases in land value.

⁴ For example: Barker (2004), "Review of Housing Supply - Delivering Stability: Securing our Future Housing Needs" Final Report; House of Lords Select Committee on Economic Affairs (2016), "Building more homes", July 2016; KPMG and Shelter (2015) "Building the Homes We Need"

7. In November 2015, the Government commissioned an independent review into the Community Infrastructure Levy (CIL)⁵, and its relationship with planning obligations. The Review was published in February 2017. It found that the system of developer contributions was not as fast, simple, certain or transparent as originally intended.
8. The Government announced a package of reforms at Autumn Budget 2017⁶ in response to the CIL Review. These reforms complement the proposed changes to viability in the National Planning Policy Framework (NPPF) and make the system of developer contributions more transparent and accountable by:
 - Reducing complexity and increasing certainty for local authorities, developers and communities;
 - Supporting swifter development;
 - Improving market responsiveness of CIL;
 - Increasing transparency over where developer contributions are spent; and
 - Introducing a new tariff to support the development of strategic infrastructure.
9. A number of technical amendments will also be made to support the operation of the current system.
10. This consultation sets out the proposals for these reforms. These changes will provide continuity and certainty for developers in the short term. In the longer term, the Government will continue to explore options for going further. One option could be for contributions to affordable housing and infrastructure to be set nationally, and to be non-negotiable.
11. Further consultation would be required and appropriate transitional arrangements would need to be put in place before any such approach was undertaken. This would allow for developers to take account of reforms and reflect the contributions as they secure sites for development.
12. The Government's 25 Year Environmental Plan⁷ has also set out a commitment to explore how tariffs could be used to steer development towards the least environmentally damaging areas and to secure investment in natural capital.
13. Alongside this consultation, we are publishing research commissioned from the University of Liverpool on "The incidence, value and delivery of planning

⁵ The CIL review team: A new approach to developer contributions, February 2017

<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

⁶ HM Treasury, Autumn Budget , November 2017 <https://www.gov.uk/government/topical-events/autumn-budget-2017>

⁷ <https://www.gov.uk/government/publications/25-year-environment-plan>

obligations and the Community Infrastructure Levy in England in 2016-17” (the research report).⁸

The current system of developer contributions

14. Contributions from development towards local infrastructure are collected primarily through two mechanisms, section 106 planning obligations and the CIL.
15. Section 106 planning obligations⁹ are negotiated legal agreements between developers and local authorities. They are used to make development acceptable through delivery of affordable housing or infrastructure, or requiring development to be used in a particular way.
16. A local planning authority should set out policies which indicate the level of contributions required, such as for affordable housing. Individual agreements taking account of these policies are then made on a site by site basis. All section 106 planning obligations are subject to statutory tests to ensure they are necessary, proportionate and directly related to the development.¹⁰
17. CIL was introduced in 2010. It was established on the principle that those responsible for new development should make a reasonable contribution to the costs of providing the necessary additional infrastructure. As a more standardised approach than section 106 planning obligations, it was intended to be faster, fairer, more certain and more transparent.
18. CIL allows authorities to set a fixed rate charge per square metre of new development, and is used to address the cumulative impact of development in an area. CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. The choice as to whether to apply CIL and the rate at which it is set rests with the local authority. A proportion of local CIL receipts are earmarked for local areas to spend on anything that addresses the demands that development places on their area.¹¹

⁸ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

⁹ So called as they relate to that section of the Town and Country Planning Act 1990

¹⁰ CIL Regulations as amended, 2010 (Regulation 122)

<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/122>

¹¹ Fifteen per cent of Community Infrastructure Levy charging authority receipts are passed directly to those parish and town councils where development has taken place. Communities with a neighbourhood plan or neighbourhood development order benefit from 25% of the levy revenues. 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.

Box 1: Examples of projects which have been funded through developer contributions

Norwich City Council has funded transport and environmental improvements.

Bristol City Council has funded a new MetroBus service.

London Borough of Islington Council has spent CIL on expanding a heat and power network.

Wycombe District Council is using CIL to fund an alternative route around High Wycombe Town Centre.

The level of contributions secured through CIL and section 106

19. Developer contributions are an important element towards meeting the cost of funding infrastructure. In 2016/17, an estimated £6.0bn was committed through section 106 planning obligations and CIL, a real terms increase of 50% since 2011/12 (see Table 1).

20. Of this, approximately £5.1bn was committed through section 106 planning obligations. However, not all planning permissions are built out, and planning obligations can be renegotiated, meaning the amount ultimately collected will likely be lower than the amount committed.

Table 1: The estimated value of developer contributions 2005-17 (in real terms), in (£) millions¹²

Contribution Type	2005-06	2007-08	2011-12	2016-17
CIL	-	-	-	£945
Affordable Housing*	£2,579	£3,221	£2,480	£4,047
Open Space	£278	£289	£122	£116
Transport & Travel	£467	£570	£453	£132
Community	£97	£237	£171	£146
Education	£199	£334	£219	£241
Land Contribution	£1,238	£1,109	£323	£330
Other Obligations	£193	£226	£32	£51
Total Value	£5,064	£6,006	£3,989	£6,007

Numbers may not sum due to rounding

¹² Figures in the table are extrapolated from a sample of responses from local planning authorities. The estimated value of developer contributions, adjusted for inflation to 2016/17 levels (using the Consumer Prices Index, CPI), are set out.

*This includes commuted sums (direct payments in lieu of in-kind provision) towards affordable housing.

21. There are significant differences between regions in the value of affordable housing contributions (see Table 2). The greatest value was levied in London and the South East, where land values and affordable housing need are highest, and the lowest value was levied in the North East.

Table 2: The estimated value of affordable housing and other developer contributions by region, 2016/17, in (£) millions

	Total value of in-kind affordable housing		Total value of (non-kind affordable housing) planning obligations and CIL		Total value of planning obligations (including affordable housing) and CIL	
	Value	%	Value	%	Value	%
East	£514	13%	£324	16%	£838	14%
East Midlands	£232	6%	£36	2%	£268	4%
London	£1,212	31%	£1,084	54%	£2,295	38%
North East	£78	2%	£28	1%	£106	2%
North West	£157	4%	£26	1%	£183	3%
South East	£876	22%	£314	16%	£1,190	20%
South West	£450	11%	£114	6%	£564	9%
West Midlands	£283	7%	£43	2%	£326	5%
Yorkshire & Humber	£170	4%	£67	3%	£238	4%
TOTAL	£3,972¹³	100%	£2,036	100%	£6,007	100%

Numbers may not sum due to rounding

22. There was also a significant increase in affordable housing as a proportion of the total value of developer contributions. In 2016/17, affordable housing made up 68% of total CIL and section 106 planning obligations levied, compared to 53% in 2007/08.¹⁴ This equates to £4.0bn levied on affordable housing in 2016/17 compared to £3.2bn in 2007/08.

23. Of the estimated £5.1bn agreed through section 106 planning obligations in 2016/17, around £4.0bn was allocated for affordable housing, enough to enable approximately 50,000 dwellings. This represents an almost 10,000 increase in the number of affordable housing dwellings agreed in 2016/17 planning obligations compared to 2011/12.¹⁵

¹³ This aggregate total does not include commuted sums (direct payments in lieu of in-kind provision) towards affordable housing, which amounts to £75.4 million nationally. This value is included in the Table 1

¹⁴ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

¹⁵ Ibid

Issues with the present system

24. A range of research including the research report¹⁶ accompanying this document and the CIL Review¹⁷ have identified the following consistent themes:
- The partial take-up of CIL has resulted in a complex patchwork of authorities charging and not charging CIL. Where CIL is charged, it is complex for local authorities to establish and revise rates. These can often be set at a lowest common denominator level;
 - Development is delayed by negotiations for section 106 planning obligations, which can be sought alongside CIL contributions;
 - Developers can seek to reduce previously agreed section 106 planning obligations on the grounds that they will make the development unviable. This renegotiation reduces accountability to local communities;
 - CIL is not responsive to changes in market conditions;
 - There is a lack of transparency in both CIL and section 106 planning obligations – people do not know where or when the money is spent; and
 - Developer contributions do not enable infrastructure that supports cross boundary planning.

Partial take up and lowest common denominator

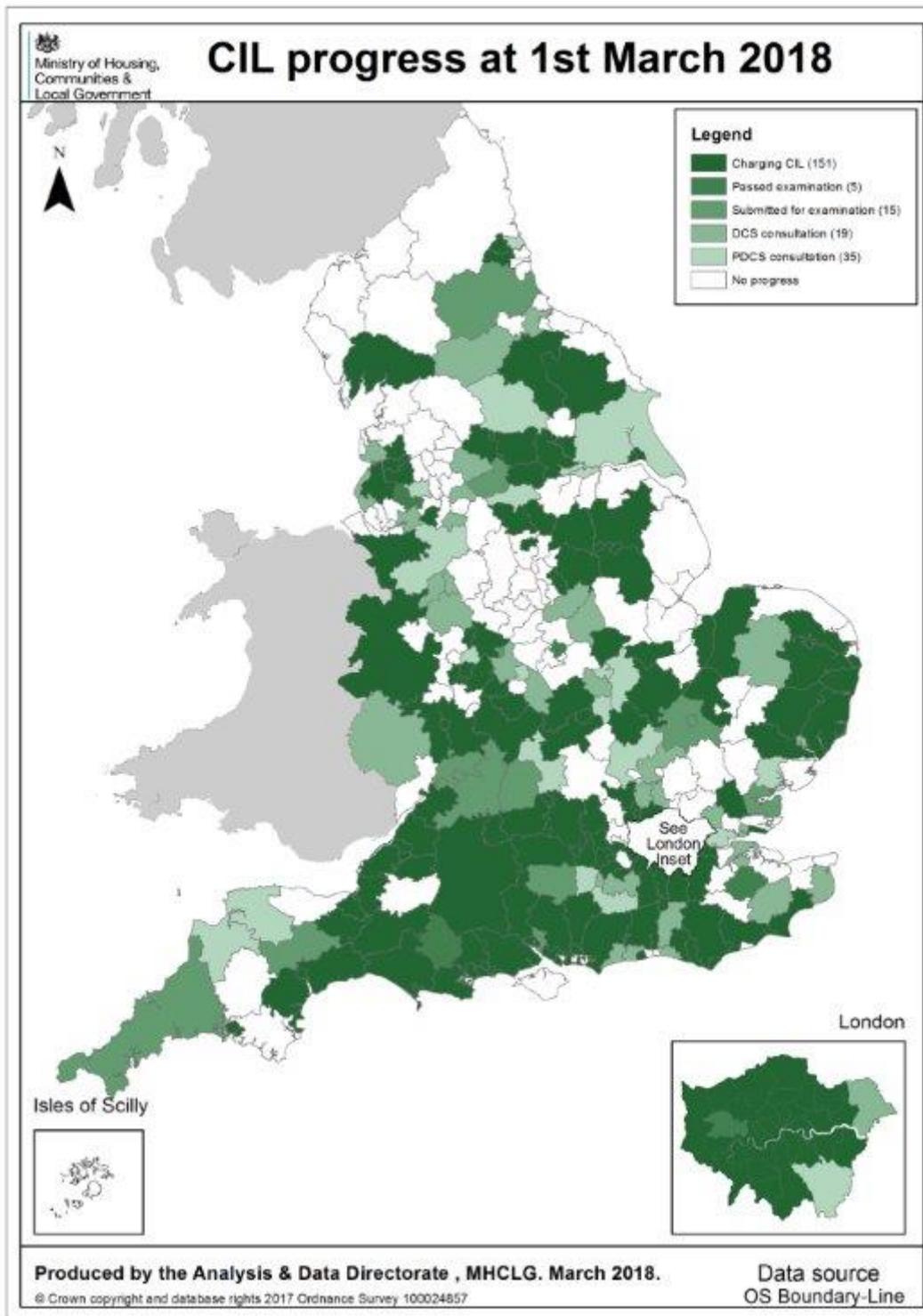
25. Take up of CIL by local authorities was initially slow, and by March 2015, 54 authorities had adopted the levy. However, this has increased significantly, with 151 authorities now charging CIL in England (44% of all potential charging authorities). A further 74 authorities have taken steps towards adopting CIL, meaning 225 authorities (66%) are either charging CIL or have taken steps towards doing so.
26. CIL uptake has been notably swifter where land values are higher. Many areas that have not adopted CIL have considered the approach and commissioned viability analysis. However they have concluded that they would need to set rates at a very low or zero rate in order for development to remain viable in their area when taking into account other requirements such as affordable housing.¹⁸

¹⁶ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

¹⁷ The CIL review team: A new approach to developer contributions, 2017 <https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

¹⁸ MHCLG, Section 106 Planning Obligations in England, 2011-12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314066/Section_106_Planning_Obligations_in_England_2011-12_-_Report_of_study.pdf

Figure 1: CIL uptake by local authorities



Development is delayed by negotiations for section 106 planning obligations

27. Stakeholders have told us that the use of viability assessments in planning permission negotiations has expanded significantly. This can delay the planning process causing complexity, uncertainty and increased risk for developers. It can also result in fewer contributions for infrastructure and affordable housing than required by local policies.
28. Over 80% of local authorities consider that section 106 planning obligations create a delay in the granting of planning permission and over 60% believe that this slows development completion.¹⁹

Developers can reduce previously agreed contributions reducing accountability

29. Planning obligations are frequently renegotiated. 65% of planning authorities renegotiated a planning agreement in 2016/17. Changes to the type or amount of affordable housing agreed is one of the most common reasons for renegotiations recorded.
30. Renegotiation can ensure that a development remains viable. However, this can lead to a lack of trust with local communities who feel they are unable to hold developers to account.²⁰

Not market responsive

31. The total amount of developer contributions committed has increased since 2011/12, although the number of houses built has also increased. The value of section 106 planning obligations and CIL per dwelling built has remained broadly the same over this time period.²¹ By contrast, house prices in England have increased by 30%.²²
32. This suggests that the current system of developer contributions can quickly become dated and may only have captured a small proportion of the increase in value that has occurred since 2011.

¹⁹ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

²⁰ Ibid

²¹ Internal MHCLG analysis. Figures adjusted for inflation, and to reflect changes in distribution of planning permissions across regions between 2011/12 and 2016/17.

²² Percentage increase in the Land Registry House Price Index http://landregistry.data.gov.uk/app/ukhpi?utm_medium=GOV.UK&utm_source=datadownload&utm_campaign=tool&utm_term=9.30_17_10_17

33. The lack of responsiveness can be exacerbated by the length it takes to implement CIL. The majority of CIL charging authorities report that initial CIL implementation took one to two years.²³

Lack of transparency

34. The proceeds of planning obligations are not clearly communicated to the public.²⁴ There is also little transparency on how section 106 planning obligations are negotiated, nor on how they have delivered the necessary infrastructure to support development. The way in which CIL contributions have been spent is also unclear.

35. Local authorities have reported they anticipate benefits in doing more to communicate with local communities, but often lack resources to do so.²⁵

Does not support cross boundary planning

36. In addition, the system does not encourage cross boundary planning to support the delivery of strategic infrastructure. In London, the Mayor has been able to collect funding for cross-boundary transport infrastructure through CIL. Since 2012, £381 million has been levied through Mayoral CIL towards Crossrail.²⁶ This model could be adopted elsewhere to support the delivery of strategic infrastructure.

Objectives of developer contributions reform

37. The Government has proposed to make a series of reforms to the existing system of developer contributions in the short term. These reforms will benefit the local authorities who administer them, developers who pay them and the communities in which development takes place.

38. The reforms that are being proposed in this consultation will enable the necessary supporting infrastructure to be built and to continue to support the delivery of affordable housing.

²³ Three Dragons / Reading University. The Value, Impact and delivery of CIL' 2017 <http://three-dragons.co.uk/value-impact-delivery-community-infrastructure-levy-three-dragons-university-reading-research-paper/>

²⁴ Ibid

²⁵ Mayoral Community Infrastructure Levy <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>

²⁶ Ibid

39. The key objectives that the Government is seeking to achieve through the reform of developer contributions and the NPPF are to make the system of developer contributions more transparent and accountable by:

- **Reducing complexity and increasing certainty** for local authorities and developers, which will give confidence to communities that infrastructure can be funded.
- Supporting **swifter development** through focusing viability assessment on plan making rather than decision making (when planning applications are submitted). This speeds up the planning process by reducing scope for delays caused by renegotiation of developer contributions.
- **Increasing market responsiveness** so that local authorities can better target increases in value, while reducing the risks for developers in an economic downturn.
- **Improving transparency** for communities and developers over where contributions are spent and expecting all viability assessments to be publicly available subject to some very limited circumstances. This will **increase accountability** and confidence that sufficient infrastructure will be provided.
- Allowing local authorities to **introduce a Strategic Infrastructure Tariff** to help fund or mitigate strategic infrastructure, ensuring existing and new communities can benefit.

40. We will also make a number of technical clarifications to support the operation of the current system.

41. In the longer term, the Government will continue to explore options for going further. One option could be for contributions to affordable housing and infrastructure to be set nationally, and to be non-negotiable.

42. Further consultation would be required and appropriate transitional arrangements would need to be put in place before any such approach was undertaken. This would allow developers to take account of reforms and reflect the contributions as they secure sites for development.

43. The Government's proposals to address these objectives are set out in this document. **Consultation questions, and further details of the proposals, are set out in Annex A.**

Reducing complexity and increasing certainty

44. Communities need assurance that developers will make contributions towards new infrastructure required by development. By reducing the complexity and increasing the certainty of developer contributions, local authorities will be able to more effectively secure these contributions. This will enable them to provide this confidence to communities. Increased certainty will also benefit developers, as they will be better able to price the cost of contributions into their business models.

Setting CIL charging schedules

45. Charging authorities introducing or revising a CIL charging schedule are currently required to undertake two consultations on their proposed CIL rates. Regulations set out minimum requirements, including the consultation period. This is followed by a statutory examination in public. The majority of CIL charging authorities report that initial CIL implementation took one to two years.²⁷

46. The statutory consultation process is the same whether setting CIL rates for the first time or making minor changes to existing rates. This creates a significant barrier to making targeted revisions to a charging schedule.

47. Local authorities have also suggested that resource constraints can affect their willingness to review charges. Some developers have also argued that rates should be reviewed more regularly than at present.²⁸ As such, there is an opportunity to streamline the process charging authorities must undertake in order to set or revise a CIL charging schedule.

48. There are also opportunities to further align the evidence requirements for plan making and for setting CIL charging schedules. National planning policy requires a consideration of viability as part of plan preparation. The draft NPPF is clear that plans should set out contributions expected in association with sites they allocate, and in association with particular types of development.²⁹ It sets out that policies should be supported by evidence regarding viability. Similar

²⁷ Three Dragons / Reading University. The Value, Impact and delivery of CIL, 2017 - <http://three-dragons.co.uk/value-impact-delivery-community-infrastructure-levy-three-dragons-university-reading-research-paper/>

²⁸ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

²⁹ Draft National Planning Policy Framework <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

information is required in order to establish that policies in a plan are viable, and to establish the rate at which a CIL can be set.

49. The Government's proposed reforms to how viability assessments are used also increase the emphasis on the need for clear infrastructure plans.³⁰ Proposals in this consultation include the use of an Infrastructure Funding Statement that sets out how authorities anticipate using funds from developer contributions, and how these contributions have been used (see paragraph 85).

To address these issues the Government proposes to:

50. Ensure that consultation **requirements for setting and revising a CIL charging schedule are proportionate**, by replacing the current statutory formal consultation requirements with a requirement to publish a statement on how an authority has sought an appropriate level of engagement. This would be considered through the examination process, and would allow authorities to set schedules more quickly, and to expedite revising them in response to changes in circumstance.
51. **Streamline the process for local authorities to set and revise CIL charging schedules** by aligning the requirements for evidence on infrastructure need and viability with the evidence required for local plan making. This will reduce the burden on local authorities and make introducing CIL more attractive.

Lifting the section 106 pooling restriction

52. Regulation 123 of the CIL regulations prevents local authorities from using more than five section 106 planning obligations to fund a single infrastructure project. The pooling restriction incentivises local authorities to introduce CIL in order to collect a fixed contribution towards infrastructure from a large number of developments. In contrast, planning obligations are individually negotiated to allow for site specific issues to be mitigated. Obligations must be directly related and reasonable in scale to the development and necessary to make it acceptable in planning terms.³¹
53. However, the CIL Review³² identified that the pooling restriction could have distortionary effects, and lead to otherwise acceptable sites being rejected for planning permission. The research report highlighted that the restriction was a

³⁰ Draft National Planning Policy Framework <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

³¹ Community Infrastructure Regulations 2010 Regulation 123
<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/123>

³² The CIL review team: A new approach to developer contributions, 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

key concern for both local authorities and developers, and that it was seen as making the process longer, slower and more difficult than before.³³ This can hold back development and has been found to cause particular problems for large or strategic sites. Reforms are proposed in order to address these issues, but also to encourage the use of CIL.

54. In particular the Government recognises that where authorities already have CIL in place, it is reasonable to allow them extra flexibility by lifting pooling restrictions. There may also be authorities where it is not feasible to charge CIL, as the amount forecast to be raised would not justify operating the costs of the system, or because an authority considers the viability impact of even a low CIL alongside section 106 planning obligations outweighs the desirability of funding the required infrastructure from CIL.

55. The Government also recognises that there may be rare circumstances where a CIL has not been adopted, and development of significant scale is proposed on large sites. In some of these areas, lifting of the pooling restriction could significantly aid the funding of the infrastructure needed to support development.

To address these issues the Government proposes to:

56. **Remove the pooling restriction** in areas:

- that have adopted CIL;
- where authorities fall under a threshold based on the tenth percentile of average new build house prices, meaning CIL cannot feasibly be charged;
- or where development is planned on several strategic sites (see Annex A).

57. **Retain the pooling restriction in other circumstances.** This will maintain simplicity by ensuring that other tariff based approaches are avoided by local authorities that have taken a policy decision not to implement CIL.

Improvements to the operation of CIL

58. We also propose a series of **improvements** to the operation of CIL. These include:

- a more proportionate approach to administering exemptions;
- clarifying how indexation is applied where a planning permission is amended; and

³³ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

- extending abatement provisions to phased planning permissions secured before the introduction of CIL.

Swifter development

59. Viability assessment is a process of assessing whether a site may be financially viable, by looking at whether the value generated by a development is more than the cost of developing it. The interpretation of existing policy has led to an increase in the use of viability assessment in planning application negotiations to such a degree that it causes complexity and uncertainty and results in fewer contributions for infrastructure and affordable housing than required by local policies. 81% of local authorities felt that negotiating section 106 planning obligations creates a delay in granting planning permission.³⁴
60. In addition, viability assessments are often withheld from the public, on the grounds of commercial confidentiality. This has generated concern over transparency and how viability assessments are used to inform decisions.

The Government proposes as part of the NPPF consultation to:

61. **Improve viability assessment in plan making** and ensure that where a proposed development accords with all relevant policies in the local development plan (e.g. provision of affordable housing) there is no need for a viability assessment to accompany the planning application. This will reduce scope for delays and protracted negotiations at the planning application stage. As such, we do not currently propose to take forward further development of dispute resolution mechanisms.
62. **Enable transparency and accountability** by expecting all viability assessments to be conducted on an open book basis, be publically available and to use the Government's recommended definitions of key factors, as set out in guidance.

Increasing market responsiveness

63. If CIL charging schedules do not respond to changes in the housing market, they may quickly become out of date. In a rising housing market, this can mean that local authorities do not capture as much value as they might otherwise secure. In a falling housing market, this can affect development viability and disincentivise landowners from making sites available for development.

³⁴ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

Setting CIL rates based on the existing use of land

64. Regulations currently allow different CIL rates to be set within different areas of the charging authority's boundary and on the basis of the type and scale of the proposed development.
65. However, this means that the rates that a charging authority sets do not necessarily reflect the increases in land value that can occur when planning permission is granted. This is because the value of the land in its existing use and new use will differ for each development.
66. For instance, there is likely to be a significantly bigger increase in value for agricultural land that receives planning permission for new homes, than for land which is in industrial use. This is because agricultural land has a lower existing value.
67. Local authorities can target differences in the increase in land values by setting different CIL rates in different parts of their authority. For instance, they can charge higher rates in areas with generally higher increases in land value (greenfield land) and lower rates in areas with generally lower values (brownfield land).
68. However, rates must take into account land with lower uplift in an area and evidence suggests that CIL rates tend to be set at a 'lowest common denominator' level, to accommodate the least viable proposals. This leads to some developments paying less than they might otherwise be asked to contribute.

To address these issues the Government proposes to:

- 69. Allow CIL charging schedules to be set based on the existing use of land.** This will allow local authorities³⁵ to better capture an amount which better represents the infrastructure needs and the value generated through planning permissions. Local authorities will continue to have the ability to set CIL at a low or zero rate to support regeneration.
70. Some complex sites for development may have multiple existing uses. This could create significant additional complexity in assessing how different CIL rates should be apportioned within a site, if a charging authority has chosen to set rates based on the existing use of land.

³⁵ Where they have good justification for differential or zonally rates, taking into account the balance between raising funding for infrastructure and the viability impacts on development across the area. Authorities will also need to have regard to State Aid rules in setting differential rates.

71. In these circumstances, the Government proposes to **simplify the charging of CIL on complex sites**, by:

- encouraging the use of specific rates for large strategic sites (i.e. with a single rate set for the entire site)
- charging on the basis of the majority use where 80% of the site is in a single existing use, or where the site is particularly small; and
- other complex sites could be charged at a generic rate, set without reference to the existing use of the land, or have charges apportioned between the different existing uses.

Indexation

72. CIL charges are applied at the point development is permitted. They are indexed to the Building Cost Information Service (BCIS) All-In Tender Price Index. This index reflects changes in contractor costs, and is used to account for changes in the costs of delivering infrastructure.

73. However, contractor costs do not necessarily increase at the same rate as house price inflation. Since 2001, average annual house prices across England and Wales have risen faster than contractor costs. This means the impact that a rate has on the viability of development reduces over time, and the local authority collects less than could otherwise be the case.

To address these issues the Government proposes to:

74. Index residential development to regional or local authority house prices. For non-residential development the Government could index commercial development to a factor of house prices and Consumer Price Index (CPI),³⁶ or to CPI alone.

75. By indexing to a measure which is more market responsive such as house prices, it can be ensured that charging schedules stay up to date in terms of the impact on viability. This reduces the need for local authorities to revise charging schedules, and creates more long-term certainty for developers. Indexation could be applied on a regional or local authority basis, to account for differing housing markets in different areas.

76. In addition, indexing to house prices would support developers in the event of a market downturn, as CIL charges on newly permitted development would reduce, reducing costs and risk.

³⁶ Further details included at Annex A

77. However, the Government recognises that house price inflation may not be an appropriate measure for non-residential development. Industrial land, for instance, has not increased in value at the same rate as residential land, in recent years. On the basis of historic data, a correlation can be identified between industrial land values, and a factor of house price inflation and CPI.

Improving transparency and increasing accountability

78. Support for local house building almost doubled between 2010 and 2016 from 29% to 57%, while opposition almost halved over the same period (46% to 24%).³⁷ Affordable housing, health facilities, transport, schools and green spaces, alongside new employment opportunities, are cited by communities as the primary benefits likely to increase support for new housing.³⁸

79. CIL charging authorities are required to report annually on how much CIL has been received, how much has been spent and what it has been spent on.³⁹ Recent research noted that better communication could do a great deal to adjust public attitudes to development.⁴⁰ Local authorities have reported that they would expect benefits from doing more to communicate to local communities what they have secured through developer contributions, but that they often lack resources to do so.⁴¹

80. Developers have also raised concerns about how much money is raised through CIL and where and how the money is spent.⁴² A series of recent case studies identified a clear absence of communication with the public about what developer contributions have paid for.⁴³

81. Regulation 123 of the CIL regulations enables local authorities to publish lists of infrastructure they intend to fund through CIL. This regulation also prohibits the

³⁷ NatCen Social Research [Homing in on housebuilding 2017](http://www.natcen.ac.uk/blog/natcen-on-the-election-homing-in-on-housebuilding) <http://www.natcen.ac.uk/blog/natcen-on-the-election-homing-in-on-housebuilding>

³⁸ NatCen Social Research's Public attitudes to new house building: 2014 <http://www.natcen.ac.uk/news-media/press-releases/2014/july/british-social-attitudes-opposition-to-house-building-falls/>

³⁹ Authorities are required to report by 31 December each year, for the previous financial year where they have collected or hold levy funds. Requirements for reporting are set out in the Community Infrastructure Levy Regulations 2010, (Regulation 62)

<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/62>

⁴⁰ MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17 <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

⁴¹ Ibid

⁴² For example, the British Property Federation evidence to the CIL Review Group stated that it is "far too difficult to understand how CIL money is being spent".

⁴³ Ibid

use of section 106 planning obligations to provide contributions to fund infrastructure on this list.⁴⁴

82. There is a considerable amount of confusion and variation in relation to Regulation 123 lists. In many cases they do not serve a useful purpose, as the restriction can encourage authorities to put as little as possible on the lists.⁴⁵ The lists can also be updated at any time without consultation.

83. Some Regulation 123 lists set out generic expenditure headings, while others list particular pieces of infrastructure. Some lists also have little relationship with local infrastructure plans.⁴⁶ The regulation therefore does not provide the certainty or clarity for local communities originally intended about how the levy is intended to be spent. A more standardised approach to setting out how authorities intend to use CIL, and how monies received has been spent, could provide greater accountability.

To address these issues the Government proposes to:

84. **Remove regulatory requirements for Regulation 123 lists** which do not provide clarity or certainty about how developer contributions will be used.

85. **Amend the CIL Regulations to require the publication of Infrastructure Funding Statements** that explain how the spending of any forecasted income from both CIL and section 106 planning obligations over the next five years will be prioritised and to monitor funds received and their use.

86. These changes are supported by the draft National Planning Guidance which is available alongside the NPPF consultation. In particular, the Government is encouraging local authorities to consider the viability of development at the plan making stage, and to set out clear policy requirements for the developer contributions that should be provided. Where viability assessments are undertaken for plan making, CIL or in support of a planning application, it should be in the expectation that they will be published, except in limited circumstances. The Government thinks it would be helpful to issue guidance setting out what these limited circumstances would include. We have asked this question as part of the draft revised NPPF consultation.⁴⁷ The Government is

⁴⁴ Where a local authority has not published a Regulation 123 list it is only permitted to use section 106 planning obligations to fund affordable housing

⁴⁵ The CIL review team: A new approach to developer contributions, February 2017

<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

⁴⁶ Ibid

⁴⁷ National Planning Policy Framework Consultation Document, March 2018

also interested in whether local planning authorities may need to seek a sum for monitoring planning obligations as part of a section 106 agreement.

Introducing a Strategic Infrastructure Tariff

87. The Mayor of London is able to charge CIL in addition to London boroughs. The Mayor's CIL is limited to collecting funding towards transport infrastructure, in particular Crossrail. CIL towards Crossrail 1 is a low level tariff charged across all London boroughs. It has proved to be successful, raising £381 million against a £300 million target since it was introduced in 2012.⁴⁸
88. The Government recognises the potential for other strategic authorities to have similar powers where they are seeking funding to support a piece of strategic infrastructure, or to address the cumulative impacts that the strategic infrastructure will have.
89. Following the success of the Mayoral CIL in London, the Government proposes to allow **combined authorities and joint committees,⁴⁹ where they have strategic planning powers, to introduce a Strategic Infrastructure Tariff.** This will increase the flexibility of the developer contribution system, and encourage cross boundary planning to support the delivery of strategic infrastructure.

<https://www.gov.uk/government/consultations/Draft-revised-National-Planning-Policy-Framework-consultation>

⁴⁸ Mayor of London, Annual receipt update 2012/13-2016/17 <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>

⁴⁹ Established under Section 29 of the planning and compulsory purchase act 2004 of the Planning Act 2008

Annex A: reform of the system of developer contributions

Reducing complexity and increasing certainty

Aligning the evidence for CIL charging schedules and plan making

90. The Government proposes to align the evidence requirements for making a local plan and setting a CIL charging schedule. This will avoid duplication, saving local authority resources and reducing complexity in the CIL-setting process. There are two areas where evidence can be aligned: impacts on the viability of development, and evidence on the need to fund infrastructure.

Impacts on the viability of development

91. The draft revised NPPF and guidance sets out the process for assessing viability through plan making. **The Government proposes** to make clear through regulations and guidance that:

- a) viability evidence accepted for plan making should usually be considered sufficient for setting CIL rates, subject to being endorsed as to being of an appropriate standard by an Examiner
- b) where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL. This could involve assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence.

Evidence on the need to fund infrastructure

92. **The Government proposes** to make clear through regulations and guidance that:

- a) evidence of local infrastructure need developed for plan making, including that set out through the Infrastructure Funding Statement (see paragraph 141 below), should be sufficient for the purposes of setting CIL rates.
- b) It is likely most authorities will have an infrastructure funding need that is greater than anticipated CIL income. Where evidence, including that prepared to support plan making, shows a funding gap significantly greater than anticipated CIL income, further evidence of infrastructure funding need should not be required.

93. There are benefits to undertaking infrastructure planning for the purpose of planmaking and setting CIL at the same time. However doing so can also create delays. The Government will seek to amend planning guidance to make clearer that there are benefits to preparing CIL charging schedules alongside plans, but that it is not necessary to do so.

Question 1

Do you agree with the Government's proposals to set out that:

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making? **Yes/No**
- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need? **Yes/No**
- iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence? **Yes/No**

Question 2

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

Ensuring that consultation is proportionate

94. There are currently statutory requirements to consult twice when introducing or amending charging schedules. This creates a barrier to introducing CIL or amending charging schedules to ensure they remain market responsive.
95. **The Government proposes** to replace the current statutory requirements for two rounds of consultation with a requirement to publish a statement on how the charging authority has sought an appropriate level of engagement – a 'Statement of Engagement'. This would be considered by an Examiner through the CIL examination process. If necessary, the charging authority could withdraw the draft charging schedule to undertake further consultation.
96. The Statement of Engagement would allow authorities to determine the most appropriate approach to consultation in a range of circumstances. In most circumstances it is expected that charging authorities will want to continue a broad consultation as now (perhaps reducing to a single round of consultation, for example when revising an existing charging schedule).

97. In some circumstances (for example where a limited number of landowners or developers may be impacted by a new charge) alternative approaches such as targeted consultation and workshops may be more appropriate. Guidance will stress the need for consultation to be proportionate to the scale of any change being introduced or amended.

Question 3

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement? **Yes/No**

Question 4

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

Removing unnecessary barriers: the pooling restriction

98. The pooling restriction continues to support the adoption of CIL. It avoids additional complexity that would occur if other tariff-based section 106 mechanisms were taken forward by local planning authorities. Any such tariffs would need to accord with the statutory tests for planning obligations.⁵⁰ However, the Government recognises that there may be particular circumstances where the pooling restriction can hold back development. Reforms are proposed in order to address these issues, but encourage the use of CIL as the Government's preferred tariff-based system for collecting developer contributions.

99. **The Government proposes** to allow local planning authorities to pool section 106 planning obligations in three distinct circumstances:

- a) Where the local authority is charging CIL;
- b) Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106; or
- c) Where significant development is planned on several large strategic sites.

⁵⁰ CIL Regulations as amended, 2010 (Regulation 122)
<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/122>

Where a local authority is charging CIL

100. The Government proposes to amend legislation to allow local planning authorities charging CIL⁵¹ to pool section 106 planning obligations. It is reasonable to give these authorities additional flexibility to fund infrastructure. The legal tests for securing planning obligations⁵² will continue to ensure section 106 planning obligations are only used where necessary to make a particular development acceptable in planning terms. If a charging authority stopped charging CIL, the pooling restriction would be reinstated.

Where it would not be feasible for an authority to adopt CIL

101. The Government recognises that it may not be feasible for some local authorities to adopt CIL. This may be because CIL could not raise enough to justify the costs of operating the system, or because, alongside section 106 planning obligations, it would have a disproportionate impact on the viability of development.⁵³

102. The Government proposes to lift the pooling restriction in local authority areas where it would not be feasible to levy CIL. Lifting of the restriction would be based on a nationally set threshold. The proposed threshold is based on the tenth percentile of average new build house prices. This means that those authorities where average new build house prices are within the lowest 10% of those in England would have the restriction removed.⁵⁴

103. Local planning authorities would test against the threshold annually and state on their website if they fall below it. In order to provide certainty, the Government proposes that once the restriction has been lifted in an authority, it should remain lifted for 3 years. If an authority has submitted a CIL charging schedule for examination by the end of the third year a further year where the restriction is lifted will apply. This is intended to ensure there is time for any charging schedule being introduced to come into effect, and removal of the pooling restriction to continue.

⁵¹ The pooling restriction would not be lifted where a Mayoral or combined authority CIL (or Strategic Infrastructure Tariff) is in place, but CIL had not been adopted by the local planning authority making the section 106 agreement.

⁵² CIL Regulations as amended, 2010 (Regulation 122)
<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/122>

⁵³ Recent research found that many authorities had considered CIL but viability evidence showed that only a zero rate, or very low rate, would be viable in their area: MHCLG, The incidence, value and delivery of planning obligations and the Community Infrastructure Levy in England in 2016-17
<https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

⁵⁴ The threshold will be based on publicly available data published in government statistics, or data from the Office for National Statistics

104. The Government recognises the particular priorities of national parks, where a small amount of development proposed across a wide geographic area may give rise to feasibility challenges with introducing CIL. The Government would be interested in views on whether a specific approach is needed to lifting the pooling restriction in national parks, and whether a particular threshold (such as a planned number of homes) should be introduced.

Where significant development is planned on several large strategic sites

105. The Government recognises that there may be rare circumstances where a CIL has not been adopted, and development of significant scale is proposed. In some of these areas, lifting of the pooling restriction could significantly aid the funding of the infrastructure needed to support development. The CIL Review⁵⁵ found that large, strategic sites are often brought forward under separate planning applications or by different landowners. This means that the restriction might prevent all parts of the site contributing to the infrastructure required to mitigate the impacts of the development.

106. **The Government proposes** to remove the restriction in areas where significant development is planned on several large strategic sites. The Government would welcome views on two alternative approaches that could be taken:

- a) remove the pooling restriction in a limited number of authorities, and across the whole authority area, when a set percentage of homes, set out in a plan, are being delivered through a limited number of large strategic sites. For example, where a plan is reliant on ten sites or fewer to deliver 50% or more of their homes;
- b) amend the restriction across England but only for large strategic sites (identified in plans) so that all planning obligations from a strategic site count as one planning obligation. It may be necessary to define large strategic sites in legislation.

Question 5

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:

- i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106? **Yes/No**

⁵⁵ The CIL review team: A new approach to developer contributions, February 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

ii. Where significant development is planned on several large strategic sites?

Yes/No

Question 6

i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices? **Yes/No**

ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

Question 7

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or

ii. all planning obligations from a strategic site count as one planning obligation?

Question 8

What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

Question 9

What further comments, if any, do you have on how pooling restrictions should be lifted?

Improvements to the operation of CIL

107. Since its introduction in 2010, CIL regulations have been subject to a number of changes and refinements. The Government further proposes improvements to how the levy operates and further clarity in legislation where needed. The Government also intends to revisit planning practice guidance on CIL.

A more proportionate approach to administering exemptions

108. CIL regulations allow for some development to be exempt from the levy. Exemptions available from CIL need to be granted by the charging authority prior to the start of works on site. A developer must submit a Commencement

Notice to the charging authority prior to the start of works on site to confirm the exemption. Failure to do so results in the exemption being removed. The full levy liability then becomes due immediately, and any ability to pay the levy in phases is removed.

109. Commencement of development marks the start of the claw-back period for several of the exemptions available from CIL. These are applied when a disqualifying event (e.g. sale of a self-build home) occurs within a certain period, which means the exemption is no longer appropriate and the full levy should be paid.

110. There have been a number of cases where developers have submitted Commencement Notices after starting work on site. They have consequently been required to pay the full CIL liability immediately. This issue has particular implications for smaller developers and self-builders that have less regular involvement with CIL. The Government believes that immediate application of this penalty is disproportionate to the failure to comply with requirements.

111. **The Government proposes** to relax the Commencement Notice requirement for exempted development by providing a grace period that will allow the Notice to be served within two months of the start of works. If a Notice is submitted within this period, the exemption would remain in place. Claw-back provisions would still apply as they do now (in most cases from date of commencement).

112. The requirement for developers to initially obtain the exemption prior to commencement would remain. The Government would welcome views on introducing a small penalty charge for submitting a Notice within the proposed grace period. Such a charge could help authorities monitoring development to inform developers that have started work on an exempted development but not submitted a Commencement Notice and that they need to do so before the end of the grace period.

Question 10

Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

Yes/No

Question 11

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

Question 12

How else can the Government seek to take a more proportionate approach to administering exemptions?

Extending abatement provisions to phased planning permissions secured before introduction of CIL

113. Where a development was permitted before CIL came into force in an area, and is then subsequently amended under section 73 of the Town and Country Planning Act 1990 (through a 'section 73 application'), changes secured through the amended permission are subject to CIL. However, in these circumstances, certain CIL provisions do not apply.
114. For particularly large or complex developments, a developer may implement a planning permission in a number of phases. Each phase is treated as a separate chargeable development and incurs its own CIL liability. In cases where planning permission is first secured *while CIL is in force* and subsequently amended, provisions exist to offset any resulting increases in CIL liabilities in one phase against any decreases in CIL liability in another phase.
115. However, for developments permitted *before a charging authority implemented CIL* the regulations limit the way in which such abatement can be employed. A change in one phase may lead to an increase in CIL liabilities, but cannot be offset by a decrease in liabilities in another phase. This can result in significant additional costs where a developer may, for example, switch two elements of a development between phases, even though the amount and type of floorspace proposed across the entire development may not have changed.
116. There is an opportunity to extend the circumstances in which developers are allowed to offset increases in CIL in one phase of a development against decreases in another phase. This will allow developers to balance payments and liabilities between different phases of a development where planning permission is first secured before a charging authority implemented CIL, and subsequently amended using a 'section 73 application' after CIL has been introduced.
117. **The Government therefore proposes** to amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development.

Question 13

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development? **Yes/No**

Question 14

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

Applying indexation where a planning permission is amended

118. Currently, CIL rates are indexed to a measure of contractor costs to account for changes in the costs of delivering infrastructure. The Government is seeking to amend this approach to ensure that the indexation applied to CIL is more market responsive (see paragraphs 132-136).
119. Recent legislation⁵⁶ provided greater clarification on how charging authorities should apply rates of indexation in relation to development permitted before CIL came into force in an area and then subsequently amended.⁵⁷ A similar issue exists for developments which were both originally permitted and then amended while CIL is in force. In some cases this can result in developers being charged for indexation on floorspace for which they have already paid CIL.
120. The Government believes further clarification is required in relation to how indexation applies to development permitted before CIL came into force in an area, and then subsequently through a section 73 application.
121. **The Government proposes** to amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force, to clarify that the approach taken should align with the approach taken in the recently amended CIL regulations.

Question 15

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?⁵⁸

Increasing market responsiveness

Setting charging schedules with reference to the existing use of land

122. Existing regulations do not allow charging schedules to be set based on the existing use of land. Where there is evidence to support such an approach, being able to do so could allow authorities to more effectively reflect the increases in land value created by a proposed development.
123. **The Government proposes** to change regulations to allow local authorities to set differential CIL rates based on the existing use of land. A charging authority may, for example, choose to set out different rates for residential development

⁵⁶ The Community Infrastructure Levy (Amendment) Regulations 2018
<https://www.legislation.gov.uk/ukdsi/2018/9780111163030>

⁵⁷ Amended under Section 73 of the Town and Country Planning Act 1990 (through a 'Section 73 application')

⁵⁸ Ibid

depending on whether the land was in agricultural or industrial use before receiving planning permission.

124. The charging authority would identify and define those existing uses for which it would set differential rates. However it is important to avoid unnecessary additional complexity in the system of developer contributions. For this reason, the Government recommends authorities only set differential rates based on the existing use of land where there is a strong case for doing so.

Calculating liabilities on individual sites

125. Some sites for development will have multiple existing uses. In order to apply multiple differential rates, it would be necessary to calculate liabilities that take account of the range of existing uses, and apportion the differential rates. This would create additional complexities for charging authorities and developers in how liabilities are calculated.

126. For example, a charging authority may have two residential rates based on whether the existing use is industrial or office. On a site with both office and industrial uses at present, which is being redeveloped for new homes, authorities would need to determine what proportion of the new residential development will be charged CIL at each of those rates.

127. In order to ensure rates better reflect increases in land value created by development, whilst avoiding unnecessary complexities on such sites, **the Government proposes** to:

- a) Use planning guidance to encourage authorities to set a single CIL rate (including a nil rate where appropriate) for strategic sites with complex uses, based on the approach to viability assessment in plan making encouraged by draft planning policy and guidance.⁵⁹
- b) Require that CIL liabilities should be calculated on the basis of the majority existing use for smaller sites. The threshold for determining smaller sites could be defined in the same way as the existing small sites national planning policy for planning obligations.⁶⁰
- c) Require that, on other sites where differential rates apply, but 80% or more of the site is in a single existing use, then the entire CIL liability should be charged on the basis of the majority use.

⁵⁹ National Planning Policy Framework Consultation Document, March 2018
<https://www.gov.uk/government/consultations/Draft-revised-National-Planning-Policy-Framework-consultation>

⁶⁰ Provision of affordable housing should not be sought for developments that are not on major sites, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).
Draft National Planning Policy Framework <https://www.gov.uk/government/collections/National-Planning-Policy-Framework-and-developer-contribution-consultations>

128. Where differential rates would apply to a larger site in multiple existing uses, but where no single existing use accounts for 80% or more of that site, two alternative approaches could be taken:

- a) CIL rates could be apportioned between existing uses (i.e. 40% of the CIL liability is charged at agricultural to residential, and 60% at industrial to residential);
- b) Charging authorities choosing to set differential rates could be required to set a distinct rate for larger sites in multiple existing uses, but where no single existing use accounts for 80% or more of that site.

129. Apportionment would be based on the site area of different existing uses. Where existing buildings are themselves in multiple uses, the floorspace of those buildings would be assessed to determine the apportionment of that area of the site.

130. Land in an ancillary use (e.g. car park) on the same development site would be classed the same as the main use (e.g. a car park for an industrial site would be classified as industrial use). Where it is not clear whether an area is in one use or another, the lower of those possible rates would apply.

131. The Government is interested in views on whether further requirements should be made to ensure that the system would not be open to gaming, for instance to avoid changing uses by demolishing existing buildings.

Question 16

Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land? **Yes/No**

Question 17

If implementing this proposal do you agree that the Government should:

- i. encourage authorities to set a single CIL rate for strategic sites? **Yes/No**
- ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? **Yes/No**
- iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use? **Yes/No**
- iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

Question 18

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

Indexing CIL rates to house prices

132. **The Government proposes** that CIL for residential development should be indexed to the House Prices Index (HPI).⁶¹ CIL is currently indexed annually to build costs. Seasonally adjusted regional HPI data is published monthly and local authority level data is published monthly without seasonal adjustment. **The Government proposes to** move to indexing residential CIL rates to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or
- b) The change in local authority-level house price indexation on an annual basis.

133. There is a trade-off between the greater frequency with which rates can be updated using regional-level indexation (due to the larger sample sizes and seasonal adjustment), and the degree to which indexation reflects local housing markets. The Government would welcome views on which approach is preferable.

134. As there is no clear link between the value of non-residential development and house price inflation **the Government proposes** that CIL for non-residential development should be indexed to a different metric. The Government is interested to hear views on two alternative approaches that could be chosen:

- a) Non-residential CIL rates could be indexed to the Consumer Price Index (CPI). This is a general measure of inflation and indexing to this measure is based on the expectation that price of non-residential land would indirectly reflect the general price level;
- b) Non-residential CIL rates could be indexed to a combined proportion of HPI and CPI. Historic data shows a correlation between changes in industrial land values and a combination of HPI and CPI.⁶² However this may not reflect more recent trends.

135. The Government is also interested in knowing whether other relevant data could be used for non-residential indexation. Data would need to be robust, apply nationally, and be both regularly updated and publicly available to support open data principles. This will ensure charging authorities and developers can be clear about what the index figure is.

136. In order to ensure clarity over charges, the new indexation metrics would apply from the date amended regulations come into force. Indexation would be applied under BCIS up to the point that the regulations came into force and under the new metric after the regulations came into force.

⁶¹ HPI data is published on GOV.UK. The proposed dataset is the seasonally adjusted index.

⁶² Until 2009 the VOA used to publish industrial land values annually. The correlation with industrial land values has been shown with combination of 40% HPI + 60% CPI has been shown between 2001 and 2009.

Question 19

Do you have a preference between CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or
- b) The change in local authority-level house price indexation on an annual basis

Question 20

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development? **Yes/No**

Question 21

If yes, do you believe that indexation for non-residential development should be based on:

- i. the Consumer Prices Index? **Yes/No**
- ii. a combined proportion of the House Price Index and Consumer Prices Index? **Yes/No**

Question 22

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

Question 23

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

Improving transparency and increasing accountability

137. The Government believes that there is a need for greater clarity on how CIL and section 106 planning obligations work together. The expectation is that all viability assessments will be conducted on an open book basis and published except under limited circumstances. The Government thinks it would be helpful to issue guidance setting out what these limited circumstances would include. We have asked this question as part of the NPPF draft text for consultation.⁶³

⁶³ National Planning Policy Framework Consultation Document, March 2018
<https://www.gov.uk/government/consultations/Draft-revised-National-Planning-Policy-Framework-consultation>

138. This will complement measures to remove the pooling restriction in authorities that have adopted CIL and measures to improve monitoring and reporting of developer contributions set out in draft Planning Guidance published alongside the draft NPPF.
139. Greater clarity can ensure developers and local communities have more certainty about how charging authorities intend to use CIL receipts and how monies raised has been spent. **The Government therefore proposes** to remove the restrictions on section 106 planning obligations in regulation 123. Regulation 123 lists will be replaced with a more transparent approach to reporting by charging authorities on how they propose to use developer contributions, through infrastructure funding statements.
140. The CIL Review also found concerns with transparency over how much money has been raised and where and how it has been spent. CIL charging authorities are required to report annually on how much CIL has been received, how much has been spent and what it is spent on. However, a desktop study of reports has shown significant variation in how authorities report. This is an important issue for developers, who want reassurance that their contributions will be spent to support development. It is also an important issue for local communities, who cite the provision of local infrastructure and facilities as likely to increase their support for development.
141. **The Government proposes** to introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement in an open data format. The Statement will provide a flexible tool to set out infrastructure priorities and delivery, and could provide a framework for improving communication with local communities about delivery of section 106 planning obligations.⁶⁴
142. It will set out priorities for how a charging authority proposes to use CIL and, where possible, section 106 contributions for the coming five years. It will also be used to report on the choices charging authorities have made regarding how developer contributions from CIL and section 106 planning obligations over the previous year have been used.⁶⁵
143. While CIL charging authorities can use a proportion of the levy to cover its administration (including meeting legislative requirements on reporting), there is no similar provision for section 106 planning obligations.
144. Greater transparency over planning obligations will complement the existing CIL monitoring regimes. This will mean local communities are better informed

⁶⁴ DCLG Consultation *Planning for the right homes in the right places question 17*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652888/Planning_for_Homes_Consultation_Document.pdf

⁶⁵ The Infrastructure Funding Statement would provide a mechanism by which charging authorities can meet reporting obligations under Regulation 62 of The Community Infrastructure Levy Regulations 2010 (as amended)

about the infrastructure and affordable housing that is being delivered alongside a new development and the timescales for delivery.

145. The Government is interested in views on whether local planning authorities may need to seek a sum for monitoring planning obligations as part of a section 106 agreement. The Government would particularly welcome views on potential impacts of seeking such fees.

Question 24

Do you agree with the Government's proposal to:

- i. remove the restrictions in regulation 123, and regulation 123 lists? **Yes/No**
- ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement? **Yes/No**

Question 25

What details should the Government require or encourage Infrastructure Funding Statements to include?

Question 26

What views do you have on whether local planning authorities may need to seek a sum as part of section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

A Strategic Infrastructure Tariff (SIT)

146. A key recommendation of the CIL Review⁶⁶ was that Combined Authorities should be enabled to set up an additional Mayoral type Strategic Infrastructure Tariff (SIT). The Government supports this recommendation as it is important that local authorities have a variety of mechanisms available to them to raise funding towards strategic infrastructure projects that unlock new development.

147. A SIT will operate in the same way as the London Mayoral CIL, including with the same exemptions and reliefs as set out in the CIL Regulations (2010) (as amended). It will operate alongside any localised form of developer contribution e.g. CIL and section 106 and contribute to the funding of strategic, large-scale

⁶⁶ The CIL review team: A new approach to developer contributions, February 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

infrastructure projects that cross administrative boundaries.

Who will be able to charge a Strategic Infrastructure Tariff?

148. Following the recommendations of the CIL review, the Government proposes that Combined Authorities should be eligible to charge a SIT. In order to do this, the Combined Authority would need to have strategic planning powers.

149. The Government also recognises that there may be other groups of authorities that wish to work together to collect a SIT. The Government is considering regulating to allow joint committees with strategic planning powers to implement a SIT. Joint committees can be agreed to on a voluntary basis by local authorities who wish to prepare joint policies or plans across their areas.

150. Allowing a SIT to be charged will increase complexity in an area, which is a criticism of the CIL review. In order to build acceptance in an area for the charging of a SIT, it is important that people understand the purpose of the tariff. Therefore, the Government proposes that a SIT should only be charged where there is a specific piece of strategic infrastructure that requires funding, or where the impacts of strategic infrastructure will need mitigating across local authority boundaries.

151. When discussing 'strategic' infrastructure, the Government considers this to be infrastructure projects with multiple benefits that have a direct impact on all the local areas across which the SIT is charged e.g. a piece of infrastructure that has impacts which cross administrative boundaries. Alternatively, strategic infrastructure could be defined by a fixed cost or size threshold.

152. Combined authorities or joint committees with strategic planning powers will also need to demonstrate an infrastructure funding gap for an identified strategic infrastructure project. There may also be scope for using a proportion of the funding for local infrastructure priorities that mitigate the impacts of strategic infrastructure.

Question 27

Do you agree that combined authorities and joint committees with strategic planning powers should be given the ability to charge a SIT? **Yes/No**

Question 28

Do you agree with the proposed definition of strategic infrastructure? **Yes/No**

Question 29

Do you have any further comments on the definition of strategic infrastructure?

Question 30

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

Yes/No

Question 31

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

How would a Strategic Infrastructure Tariff work in practice?

153.Strategic Infrastructure Tariffs would be informed by evidence and undergo independent examination in the same way as CIL. This provides an opportunity to consider the impacts of the proposed rate on the viability of development and the need for funding infrastructure. An independent examiner would consider evidence, including any impacts on viability, and make a decision on the acceptability of the proposed rate.

154.Following the model adopted by London Mayoral CIL it is proposed that the SIT should be set at a low level and would be collected by the local authority on behalf of the SIT charging authority. This is because the local authority is responsible for the planning functions to which the SIT would be calculated on.

155.**The Government proposes** that the local authorities would be able to keep up to 4% of the SIT receipts for administration costs. The SIT charging authority would then be responsible for receiving, accounting and setting the procedure for reporting.

Question 32

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority? **Yes/No**

Question 33

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT? **Yes/No**

Technical clarifications

156. **The Government also propose** to make other technical clarifications to the regulations. These include greater clarity on:

- a) Application of Regulation 128 in areas where the Mayor of London or a Combined Authority has introduced CIL. This will make clear that liability for borough/local authority CIL is not triggered for reserved matters applications unless a local authority charging schedule was in effect when the outline planning permission was granted;
- b) Application of exemptions and reliefs to Regulation 128A-related permissions. This will clarify that any liability calculated using Regulation 128A should include all exemptions and reliefs to avoid situations where liabilities for amendments to a planning permission are offset by exemptions or reliefs that relate to already permitted floorspace.
- c) Application of Regulation 128A to subsequent amendments under section 73 of the Town and Country Planning Act 1990 where an earlier amendment has already been secured. This will support existing guidance in clarifying that multiple section 73s can be applied to the original planning permission without triggering a CIL charge on the entire development.

Question 34

Do you have any comments on the other technical clarifications to CIL?

Planning guidance

157. Planning guidance is in place to support operation of CIL, and ensure those working with the system have clear advice on using it. The Government keeps planning guidance under review. Updated guidance will also be provided to support any reforms to CIL and the technical corrections and clarifications. This includes updates to help support in the administration of exemptions, taking account of unintended viability impacts (such as on agricultural buildings) when setting rates, and setting rates with reference to existing use.

Annex B: The CIL Review

158. In November 2015, an independent review panel was commissioned to assess the extent to which CIL provided an effective mechanism for funding infrastructure, and to make recommendations that would improve its operation in support of the Government's wider housing and growth objectives. The CIL Review was published in February 2017⁶⁷, alongside the Housing White Paper.⁶⁸

159. Particular issues that were identified, included:

- i. The partial take-up of CIL has resulted in a complex patchwork of CIL and non-CIL authorities across the country;
- ii. The amount raised through CIL has been lower than anticipated, an issue which has been exacerbated by the introduction of exemptions;
- iii. CIL is frequently set at a lowest common denominator level, so developers which could contribute more towards infrastructure do not do so;
- iv. Restrictions on local authorities ability to pool more than five section 106 planning obligations towards a single piece of infrastructure have created increased complexity, and can perversely disincentivise development;
- v. CIL is not market responsive, and charging schedules can be potentially be out of date on the day on which they are adopted;
- vi. It is complex and resource intensive for local authorities to set CIL charging schedules; and
- vii. That there is a lack of transparency in both CIL and section 106 planning obligations.

160. The CIL review panel considered a number of options for reform, including leaving the system as it currently is, abolishing CIL and reverting to section 106, making minor reforms to the existing system, and making more significant reforms. They concluded that, although they had seen places where CIL worked well, they had also seen places where, as currently configured, it could not work.

161. On this basis, the key recommendations of the review were:

- i. That the Government should replace the Community Infrastructure Levy with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and section 106 agreements for larger developments. The LIT would be set nationally, but collected and spent locally. As the tariff would be low level, this would reduce the need for exemptions and reliefs

⁶⁷ The CIL review team: A new approach to developer contributions, February 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

⁶⁸ MHCLG, Fixing our broken housing market, February 2017
<https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

- ii. That Combined Authorities should be enabled to set up an additional Strategic Infrastructure Tariff, based on the example of London Mayoral CIL
- iii. That Government should standardise and streamline its approach to section 106 planning obligations
- iv. That restrictions around the pooling of section 106 planning obligations should be lifted; and
- v. That complexities in the operation of CIL should be addressed through the development of its replacement

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Government receives a request for disclosure of the information it will take full account of your explanation, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how the process can be improved please contact us via the [complaints procedure](#).