EXPLANATORY MEMORANDUM TO

THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT ETC.) (ENGLAND) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

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

2. Declaration

2.1 Matthew Pennycook MP, Minister of State at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Will Karani, Deputy Director, Planning Strategy Division, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lydia Mihailovic at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2803 or email: DeveloperContributions@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations") so that developments which come forward via two planning permission routes can be subject to the Community Infrastructure Levy ("CIL"), if the levy is charged in the local area.

4.2 The first planning permission route ("the 62A route") is where permission is granted following an application made under section 62A of the Town and Country Planning Act 1990 ("TCPA 1990"). Paragraph 5.2 contains further explanation of section 62A of TCPA 1990. Regulations 5 and 122 of the 2010 Regulations are amended to reference this 62A route so that it is a planning permission for the purposes of the 2010 Regulations. In addition, incidental, consequential and supplemental amendments are made to The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 ("the section 62A Order") to secure the provision of relevant information about CIL liability where planning applications are submitted under section 62A of TCPA 1990.

4.3 The second route for the grant of planning permission concerns the development of Crown land, deemed to be of national importance. This "Crown land route" is inserted into TCPA 1990 by the Levelling-up and Regeneration Act 2023 ("LURA 2023"). New sections 293D to 293J of TCPA 1990 provide for this new route which allows

Crown bodies to apply for planning permission to the Planning Inspectorate ("PINS"), rather than the local planning authority ("LPA"), where development of Crown land is deemed to be of national importance. Regulation 5 and 122 of the 2010 Regulations are also amended in this regard, to make reference to this Crown land route so that it is a planning permission for the purposes of the 2010 Regulations. Regulation 122 of the 2010 Regulations places limitations on the use of planning obligations when such obligations constitute a reason for the grant of certain kinds of planning permission. Therefore, in regulation 122 reference must be made to the 62A route and the Crown land route so that the limitations set out in regulation 122(2) apply in such cases.

4.4 The amendments in this instrument which concern the 62A route relate to the consequences of the introduction of section 62A of TCPA 1990 by section 1(1) of the Growth and Infrastructure Act 2013 about three years after the 2010 Regulations were made. The policy intent is for the 62A route to be subject to CIL and the amendments made in this instrument achieve that. However, the 2010 Regulations were not defective and there is no earlier instrument which this instrument corrects. The department has consulted the SI Registrar (in accordance with paragraph 4.7.6 of Statutory Instrument Practice) and having done so has concluded that it is not necessary to apply the free issue procedure in this case.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The purpose of CIL is to ensure that the costs of providing infrastructure to support development of an area can be funded (wholly or partly) by levying a charge on the owners or developers of land when development takes place. CIL was first introduced in 2010 and is adopted voluntarily by local authorities, with approximately 162 (52%) local authorities in England charging it, as of November 2024.

5.2 Section 62A of TCPA 1990 gives the Secretary of State power to designate LPA's for poor performance. That section and sections 76C and 76D of that Act enables certain planning applications to be submitted directly to the Secretary of State for determination. In practice it is PINS, acting on behalf of the Secretary of State who make such determinations. At the time of publication of this document, five LPAs are currently designated (in special measures). If an LPA is so designated, and applicants choose to submit their planning permission applications directly to PINS, such developments should fall within scope of the 2010 Regulations and be liable for CIL. Currently they do not.

5.3 In recent years, government departments have also faced challenges securing planning permission for their own development. The existing framework for securing planning permission for nationally important and urgent Crown development (set out in section 293A of TCPA 1990 and introduced in 2006 when the Crown was made subject to planning control), has never been used. As part of the changes introduced by LURA 2023, the government provided for a new route to apply for planning permission directly to the Secretary of State where the development of Crown land in England is

deemed to be of national importance (see new sections 293D, 293H and 293I of TCPA 1990).

5.4 Therefore, this instrument amends regulation 5 the 2010 Regulations so that planning permissions granted pursuant to applications made under section 62A and section 293D of TCPA 1990 are planning permissions for the purposes of the 2010 Regulations. This means that such developments will be liable for CIL, if a LPA charges CIL in their area. The Regulations also make incidental, consequential and supplemental amendments to the Section 62A Order to ensure PINS has the information relating to CIL liability that it requires. This allows PINS to determine section 62A applications by having regard to the financial mitigation of the impacts of the development afforded by the levy.

5.5 Amendments are also made to regulation 122 of the 2010 Regulations which places limitations on the use of planning obligations when granting planning permission. Therefore, reference to the two routes to granting permission (namely, the 62A route and the Crown land route) must be made in regulation 122(3). This ensures that planning determinations made via these routes will be subject to the limitations set out in regulation 122(2) which apply to planning obligations. This reflects the policy intent. This limitation applies in the same way to other kinds of planning permission decisions made by an LPA or on appeal by the Secretary of State/PINS.

What was the previous policy, how is this different?

5.6 It is intended that CIL applies in respect of developments which are granted permission via the 62A route and the Crown land route, so that fair financial contributions to local infrastructure are made by such development. This is also important to maintain the integrity of the CIL charging regime. Sufficient information must also be provided to PINS about CIL liability in respect of any applications made under section 62A, so the application can be properly considered in light of the relevant financial mitigation afforded by CIL. Equivalent provision relating to information to be provided to PINS in respect of Crown development will be set out in a separate instrument (please refer to paragraph 11.1).

5.7 Without the amendments made by this instrument, the 2010 Regulations would not apply in the case of planning permissions granted via the 62A route. Therefore, developments which are built following such applications would not be subject to CIL. The amendment made in this regard ensures the regulations reflect the policy intent which is to make such development subject to the levy where CIL is charged in a local authority area.

5.8 Similarly without the amendments made by this instrument, the 2010 Regulations would not apply to planning permissions granted following an application under section 293D of TCPA 1990 for development of Crown land deemed to be of national importance. Applications for such Crown development are intended to be subject to the same requirements as applications submitted to the relevant LPA. This instrument ensures that CIL can apply to Crown development of national importance.

5.9 Conversely, CIL is not intended to apply to planning permissions granted under the urgent Crown development route also introduced by LURA 2023 (see sections 293B and 293C of TCPA 1990). This urgent route concerns expedited planning decisions where development is needed as a matter of urgency. Therefore it is the policy intent that CIL should not apply in such urgent cases. This mirrors the previous policy approach in respect of the former urgent Crown development route, (as it related to England), contained in section 293A of TCPA 1990.

5.10 If the amendments to be made by this instrument to regulation 122 of the 2010 Regulations were not made, the only constraint on the use of planning obligations when granting permission would be that set out in national policy – see the National Planning Policy Framework[1]. It is the policy intent that limitations on the use of planning obligations must be clear and set out in law. Regulation 122(2) of the 2010 Regulations provides for this. Therefore it is necessary to make reference to the 62A route and Crown land route in regulation 122(3) to ensure the legal position is clear. This reflects the approach taken for other kinds of planning permission decisions made by an LPA or on appeal by the Secretary of State/PINS.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2010 Regulations, which were made under Part 11 of the Planning Act 2008, provide that a charge may be levied on the development of land in an area. Development is liable to CIL where a charging schedule is in effect in the area on the date the planning permission for that development is granted. There are a number of exemptions from CIL, including for social housing.

6.2 From 1 October 2013, the Growth and Infrastructure Act 2013 inserted new provisions into TCPA 1990. Section 62A of TCPA 1990 gives the Secretary of State the power to designate LPA's for poor performance and allows applicants to submit certain planning applications directly to the Secretary of State. Sections 76C to 76E of TCPA 1990 make further enabling provision in relation to the procedures for determining applications submitted under section 62A, including enabling inspectors to make decisions on behalf of the Secretary of State.

6.3 Section 109 of LURA 2023 inserted new provisions into TCPA 1990 in respect of applications for planning permission for 'Crown land' (as defined in section 293 of TCPA 1990) which are submitted directly to the Secretary of State. New sections 293B and 293C of TCPA 1990 update the previous urgent Crown development route, as it applies in England; and new sections 293D to 293J of that Act provides for a new route which allows Crown bodies to apply for planning permission for development which is deemed of national importance.

6.4 Regulation 2 of the instrument amends the 2010 Regulations to ensure that planning permission granted following an application made under section 62A or section 293D of TCPA 1990 is a planning permission for the purposes of the 2010 Regulations. Regulation 3 of the instrument amends the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 so that sufficient information about CIL is provided when a planning application is submitted to PINS under section 62A of TCPA 1990.

6.5 The amendment to regulation 122(3) of the 2010 Regulations adds the relevant references to planning permissions that may be granted, following a section 62A application or a section 293D application, into the list of determinations to which the requirements in regulation 122(1), (2) and (2A) of the 2010 Regulations would apply.

Why was this approach taken to change the law?

6.6 The amendments to incorporate reference to determinations made under section 76C and 76D of TCPA 1990 (which follows a section 62A application) are made to ensure

[1] See paragraphs 58 of the NPPF - National Planning Policy Framework: https://assets.publishing.service.gov.uk/media/67aafe8f3b41f783cca46251/NPPF_December_2024.pdf

the policy intent is properly implemented and such developments can be charged CIL. The amendments to incorporate reference to determinations made under new sections 293H and 293I of TCPA 1990, (following an application made under section 293D of that Act) are made to ensure proper implementation of the new Crown land route which is inserted into TCPA 1990 by LURA 2023; so that such development can be charged CIL.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not undertaken for this instrument because the changes relating to the section 62A route are made to properly implement the policy for such developments and enable CIL to be charged. This is consistent with the original policy intent. The changes made to the section 62A Order are incidental, consequential and supplementary to this change. The changes relating to the Crown land route are required as a result of the implementation of LURA 2023 provisions and ensure CIL can be charged for such developments. CIL is a known aspect of the planning system and has been operative since 2010.

8. Applicable Guidance

8.1 Revised guidance for planning applications submitted under section 62A of TCPA 1990 for developments which are liable to CIL will be published when these Regulations come into force by PINS. The guidance for Section 62A Authorities in Special Measures is available online[2].

8.2 Existing Planning Practice Guidance[3] for Crown Development will be updated to coincide with the coming into force of the statutory instruments setting out the procedure to be followed in connection with applications made under the Crown Development and Urgent Crown Development routes. Therefore, the guidance will be updated by the time this instrument comes into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this is a financial instrument and therefore the Department is not required to undertake a formal Impact Assessment. However, we have considered impacts throughout policy development.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is limited to those who are proposing to develop land in an area of a local authority which has been designated under the section 62A regime and where CIL is charged, and a planning application is made direct to PINS for determination. CIL is a known aspect of the planning system and has been in place since 2010.

[2] www.gov.uk/government/publications/planning-applications-process-section-62a-authorities-in-special-measures

[3] https://www.gov.uk/guidance/crown-development

9.3 The legislation does impact small or micro businesses because planning legislation applies to such businesses; however submitting a planning application to PINS under section 62A of TCPA 1990 is optional.

9.4 The Crown land route to planning permission is only available to the Crown, and this change will have no direct or indirect impact on businesses, charities, or voluntary bodies.

9.5 The impact on the public sector is to give PINS the ability to consider CIL liability in planning permission applications where (i) an LPA is designated under section 62A of TCPA 1990, or (ii) development comes forward through the Crown land route.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The government will be continuing to work closely with industry, local government and PINS to ensure CIL is implemented effectively.

10.2 This instrument does not include a statutory review clause because the instrument amends the operation of a levy (a financial measure) and such instruments are excluded from the duty in the Small Business, Enterprise and Employment Act 2015 to include a review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are related instruments to this SI which concern implementation of the new Crown development route. The Town and Country Planning (Crown Development Applications) (Procedure and Written Representations) Order 2025 will make provision about information that must be provided to PINS regarding CIL liability when a planning application is submitted under section 293D of TCPA 1990.

11.2 In addition the following instruments concern the wider implementation of the new Crown development measures introduced by LURA 2023 and are mentioned here for completeness only: (a) The Town and Country Planning (Fees and Consequential Amendments) Regulations 2025; (b) The Town and Country Planning (Crown Development Applications) (Procedure and Written Representations) Order 2025; (c) The Town and Country Planning (Crown Development Applications) (Inquiries and Hearings) Rules 2025; (d) The Town and Country Planning (Consequential and Miscellaneous Amendments) Regulations 2025.

12. European Convention on Human Rights

12.1 The Minister of State for Housing, Planning and Building Safety, Matthew Pennycook MP has made the following statement regarding Human Rights:

"In my view the provisions of the Community Infrastructure Levy (Amendment etc.) (England) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").