EXPLANATORY MEMORANDUM TO

THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) REGULATIONS 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These draft Regulations make amendments to the Community Infrastructure Levy Regulations 2010 (S.I. 2010/948 as amended by S.I. 2011/987).

2.2 Amendments include corrections to the way liability to community infrastructure levy and eligibility for social housing relief are calculated. They also make provision in relation to developments granted consent under a neighbourhood development order. These Regulations make specific provision for applications made under section 73 of the Town and Country Planning Act 1990, or article 18(1)(b) and (c) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184). These Regulations also make amendments to reflect changes to the community infrastructure levy made by the Localism Act 2011. These are explained in more detail below.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 The Community Infrastructure Levy Regulations 2010, as amended, provide for a charge to be levied on development under Part 11 of the Planning Act 2008. These draft Regulations make amendments to the community infrastructure levy (CIL) regime, including amendments to accommodate provisions brought forward in the Localism Act 2011.

4.2 Section 114 of the Localism Act 2011 amended the way that draft charging schedules are examined. Section 114(3) amended section 212 of the Planning Act 2008, removing the requirement for a charging authority to submit a certificate of compliance to the inspector with their draft charging schedule. Section 114(6) amended section 213 of the Planning Act 2008,

requiring the charging authority to publish a report setting out how they had remedied defects identified by the inspector.

4.3 Section 115 of the Localism Act 2011 clarifies what CIL can be spent on. Section 115(5) amended section 216 of the Planning Act 2008 to say that CIL must be spent on the provision, improvement, replacement, operation or maintenance of infrastructure.

4.4 Chapter 3 of Part 6 of the Localism Act 2011 provides for neighbourhood planning, including neighbourhood development orders. These Regulations apply the CIL regime to consents granted by neighbourhood development orders (including community right to build orders).

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

Nick Boles, Parliamentary Under Secretary of State (Planning) for the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Community Infrastructure Levy (Amendment) Regulations 2012 are compatible with the Convention rights.

7. Policy background

7.1 Part 11 of the Planning Act 2008 provides for regulations to allow the imposition of CIL. The purpose of CIL is to ensure that the costs of providing infrastructure to support the 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.

7.2 The CIL Regulations 2010 came into force on 6 April 2010 and enabled local planning authorities (and the Mayor of London) to raise a levy on new development in their area. This levy is to be used to fund infrastructure to support the development of the area where it is collected – such as roads, schools, hospitals and parks.

Regulation 3(1) Neighbourhood Development Orders

7.3 To ensure consistency with other forms of general consents CIL will now be chargeable on development granted consent by Neighbourhood Development Orders, including Community Right to Build Orders.

Regulations 3(2), 8(1), (3) and (4) and 9(1) amending the relationship between CIL and section 73 applications

7.4 There are a number of amendments to make specific provision for applications made under section 73 of the Town and Country Planning Act 1990. These changes are to ensure that applicants cannot be double charged CIL.

7.5 These regulations ensure that where planning permission is granted under section 73, it is clear that the liable permission is only that which is actually implemented. They also provide for payments made in relation to a previous planning permission to be offset against the liability in relation to the section 73 planning permission, and for where overpayment has occurred.

7.6 In transitional cases, where the original planning permission was granted prior to a CIL charge being brought in, the section 73 consent will not trigger full CIL liability.

Regulation 4 charging schedules

7.7 Regulation 4(1) to (3) reflects changes made in the Localism Act 2011. Regulations 4(1) removes a reference to "responsible regional authorities" which no longer exist. Regulation 4(2) removes the reference to submission of a declaration to the examiner alongside a draft charging schedule as this requirement has been removed. Regulation 4(3) requires the charging authority to publish their response to the examiner's recommendations alongside their charging schedule, reflecting the new relationship between the examiner and the charging authority established in the Localism Act 2011.

Regulation 5 calculation of chargeable amount and regulation 6 social housing relief: qualifying amount

7.8 These regulations correct the operation of the main CIL liability formula for sites where some existing building will be demolished and some will continue to be used. Under the existing formula there is a possibility that the liability to CIL will be greater than it should be in some cases.

7.9 These regulations also correct the operation of the formula to determine the amount of social housing relief a development qualifies for. This formula has been amended to correct an error which means that social housing relief may be wrongly being granted where a development includes retained housing, some of which will be used for social housing. Under the existing formula there is a possibility that in some cases greater relief may be granted than should be the case.

Regulation 7 application of CIL

7.10 Regulation 7 reflects changes made in the Localism Act 2011 by clarifying the ways charging authorities can apply CIL. This provides great flexibility and ensures CIL can be used to fund local infrastructure priorities.

Regulation 8(2) instalment policies

7.11 This amendment ensures that instalment policies set by the Mayor and London Boroughs will operate in a complementary way. This is needed as currently the regulations inadvertently prevent the Mayor from allowing payment in instalments in areas where a London Borough does not charge CIL.

Regulation 8(5) payments between collecting and charging authorities

7.12 This change ensures that a collecting authority will not have to repay any overpayment they receive to the levy payer, while also having to pass that amount on to the charging authority.

Regulation 9(2) amending the relationship between CIL and article 18 applications

7.13 Developers can make applications under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 to extend planning permissions granted before October 2009. These Regulations make similar transitional provision for such applications as they make for applications made under section 73 of the Town and Country Planning Act 1990. That is, where the original consent was granted prior to a CIL charge being brought in, no liability to CIL will arise in respect of the application under article 18. This brings the position in England on time extensions in line with the position in Wales which is already covered in the CIL Regulations. Without this proposed change "extensions to consents" would trigger a full CIL liability, a significant disincentive to take advantage of this pro-growth provision. Although no planning permission granted before October 2009 could have been liable to CIL, we have included a transitional provision as the intention is to expand article 18 to cover more recent permissions.

8. Consultation

These changes have not been subject to a full public consultation, but we have worked with a number of key interested parties in preparing these Regulations to ensure they operate correctly. Their constructive comments and feedback have been taken into account and these Regulations reflect the views and suggestions we received.

9. Guidance

Alongside these Regulations, the Department will publish a note to supplement the existing CIL guidance to explain these changes.

10. Impact

10.1 The impact on business is limited to those who develop land or own land that is developed. The changes improve the operation of CIL and correct technical errors which should help those liable to pay CIL.

10.2 The amendments in these Regulations have no impact on charities or voluntary bodies.

10.3 These changes improve the operation of CIL and correct technical errors, so should help those charging and collecting CIL.

10.4 The Department is not required to undertake a formal Impact Assessment however we have considered impacts throughout our policy development.

11. Regulating small business

The legislation applies to small business as set out in paragraph 10.1.

12. Monitoring & review

The Community Infrastructure Levy will be reviewed in 2015; five years after the regulations enabling it came into force. The review will assess whether CIL has increased the funds available to local authorities for infrastructure, and the extent to which this has supported development.

13. Contact

The CIL team at the Department for Communities and Local Government can answer any queries regarding this instrument. Email: cil@communities.gsi.gov.uk