EXPLANATORY MEMORANDUM TO

THE COMMUNITY INFRASTRUCTURE LEVY (CORONAVIRUS) (AMENDMENT) (ENGLAND) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the Community Infrastructure Levy Regulations 2010, ("the 2010 Regulations") by inserting new regulations 72A, 72B and 72C. The 2010 Regulations are concerned with the operation of the Community Infrastructure Levy ("CIL"); a levy which local authorities can impose on the new development of land. New regulations 72A, 72B and 72C make provision to enable a CIL collecting authority (in certain circumstances and if it is considered appropriate), to defer CIL payments, to credit late payment interest accrued, and to disapply, for a limited time, late payment interest and surcharges for late payment. These provisions are a time-limited response to the economic impact of coronavirus and will only apply in respect of small/medium sized developers.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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

3.2 This entire instrument applies only to England.

3.3 In the view of the Ministry, for the purposes of Standing Order 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature. The subject matter of this instrument is local taxation which is a devolved matter. Most of the Secretary of State's functions under Part 11 of the Planning Act 2008 were transferred to Welsh Ministers on 1st April 2018.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

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

"In my view the provisions of the Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2010 Regulations, which are made under Part 11 of the Planning Act 2008, provide that a charge may be levied on new development of land in an area. Development is liable to CIL where a charging schedule is effective in the area on the date the planning permission for that development is granted.

6.2 CIL payments are triggered by the commencement of development. A charging authority (as defined in regulation 10 of the 2010 Regulations) can publish an instalment policy which determines when CIL payments must be made (see regulation 69B of the 2010 Regulations). In the absence of a published instalment policy, a CIL payment must be made in full within 60 days of commencement of the development. An instalment policy must be in place at the commencement of development to apply to that development. The 2010 Regulations allow for certain stipulated exemptions and relief from CIL payments (see Part 6 of the 2010 Regulations) but otherwise do not provide for time-limited flexibility or deferment of CIL payments.

7. Policy background

What is being done and why?

7.1 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. Following the lockdown imposed to limit the spread of coronavirus, which began on 21 March 2020, many CIL charging authorities asked the Government for guidance on whether they could defer CIL payments for developers in financial difficulty. For example, because they had to stop operations on a development site and furlough their workers.

7.2 The Government published guidance on 13 May 2020 on the flexibilities available to CIL charging and collecting authorities to defer CIL payments as part of a wider package of Coronavirus-related planning guidance: https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance. This explained the option of publishing new or amended instalment policies and making use of the discretionary nature of the enforcement powers provided for in Part 9 of the CIL Regulations. However, the guidance was clear that the terms of an instalment policy would only apply to development that commences while that policy is in effect. A charging authority would not be able to apply a new instalment policy to development that had already commenced. The guidance also made clear that while a collecting authority had discretion over whether to start enforcement proceedings for late CIL payments, and could choose not to charge a surcharge for late payments (see regulation 85 of the 2010 Regulations), they are required to charge late payment interest under regulation 87 of the 2010 Regulations.

7.3 The purpose of this statutory instrument is to give CIL collecting authorities a time limited discretion to defer certain CIL payments for developers with an annual turnover of £45 million or less, in specified circumstances. The instrument defines the period during which the CIL payment must be payable (i.e. the "material period") in order to be eligible for a deferral request (see new regulation 72A(1) and (10)). A person/developer who (i) is experiencing financial difficulties for reasons connected to the effects of coronavirus, and is having difficulty making a CIL payment and, (ii) fits the criteria set out in new regulation 72A(1), may request that the CIL collecting authority defer that payment by no more than six months from the day the request is received.

7.4 The number of deferrals made in respect of a CIL payment (which is payable within the material period) is not limited – for example, a local authority could choose to defer a payment for 3 months, and the developer could make a second deferral request for that deferred payment, if it fell due in the material period. But a local authority may only grant a deferral request if it considers it appropriate to do so.

7.5 The instrument also disapplies late payment surcharges and late payment interest whilst a deferral request is being considered, and it enables collecting authorities to credit interest accrued on late payments where they consider it appropriate. Persons who make a request for a deferred CIL payment or interest credit must supply the collecting authority with any information that it may require in order to carry out its functions and decide such a request. In regards to CIL charged by the Mayor, a request to defer a CIL payment and to credit interest may only be considered by the collecting authority if the Mayor is of the view that it is appropriate as a matter of policy (i) for Mayoral CIL to be deferred and (ii) for interest accrued on outstanding Mayoral CIL payments to be subject to an "interest request".

7.6 The measures to grant a deferral request or an interest credit are discretionary and enable the collecting authority to consider each case on its merits. It will help developers that are struggling with cash-flow and make it more likely that payments will be made, albeit over a longer period, rather than being lost altogether because a developer could not survive financially.

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

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

10. Consultation outcome

10.1 These are coronavirus related measures and a formal consultation has not been carried out. However, the Government's policy intentions were announced in the guidance published on 13 May 2020 (see paragraph 7.2 above). Ministry officials have liaised with CIL charging authorities and developer representatives during their preparation.

11. Guidance

11.1 Guidance on the operation of the 2010 Regulations has been published in the Community Infrastructure Levy section of the Ministry's Planning Practice Guidance and is available at: https://www.gov.uk/guidance/community-infrastructure-levy. Copies can be requested from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF. The Ministry has published guidance relating to this instrument which can be found at https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies. The impact on business is limited to those who develop or own land and are small/medium sized developers. The measures give CIL collecting authorities the discretion to defer CIL payments for such businesses. It will help developers with short-term cash-flow problems resulting from the coronavirus outbreak. It will make it more likely that payments will be made, albeit over a longer period, rather than being lost altogether because a developer could not survive financially. It will improve transparency, flexibility and fairness in terms of the application of CIL

12.2 The main impact on the public sector is to give local authorities further flexibility in the application of CIL and to assist securing CIL payments albeit over a longer time scale.

12.3 As this is a financial instrument the Ministry is not required to undertake a formal Impact Assessment. However, we have considered impacts throughout policy development, and have tested proposals with industry and local authority practitioners.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The purpose of the regulations is to help small and medium sized businesses so any effects will be positive and assist with their financial viability.

14. Monitoring & review

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

14.2 The instrument will only apply to CIL payments that fall due within "the material period", as defined in the instrument.

15. Contact

15.1 Tom Simpson at the Ministry for Housing, Communities and Local Government (telephone: 0303 444 1704 or email: cil@communities.gov.uk) can answer any queries regarding the instrument.

15.2 Simon Gallagher, Director for Planning, at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.