

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 6: Planning

Chapter 2: Community Infrastructure Levy

Section 114: Community Infrastructure Levy: approval of charging schedules

254. This section makes amendments to Part 11 of the Planning Act 2008 concerning the Community Infrastructure Levy. The Community Infrastructure Levy may be charged by “charging authorities” (normally the local planning authority) in accordance with a charging schedule. A charging authority must, before approving a charging schedule, submit a draft to an independent examiner and was required to implement any recommendations made by the examiner. The draft charging schedule was required to be accompanied by a declaration that the charging authority has complied with all the relevant requirements in drafting the charging schedule.
255. The effect of this section is to change the relationship between the charging authority and the examiner. The charging authority will no longer be required to submit a declaration to the examiner with the draft charging schedule. The examiner will now consider whether the charging authority has complied with the relevant requirements within Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations, which will now be referred to as “drafting requirements”. Any recommended modifications to the draft charging schedule made by the examiner will no longer be binding on the charging authority.
256. One of these drafting requirements is that the charging authority must have used appropriate available evidence to inform the charging schedule. The section enables the Secretary of State to make regulations that set out how this test is to be applied.
257. Where the examiner considers that the charging authority has not complied with the drafting requirements and that no modifications are capable of securing compliance, the examiner must recommend that the draft charging schedule should be rejected and a charging authority will continue to be bound by this recommendation. Otherwise, the section requires the examiner to recommend approval and the charging authority will have discretion over how they respond to any recommended modifications.
258. If the examiner has identified a failure to comply with the drafting requirements, the charging authority may only approve the charging schedule after they have had regard to the examiner’s recommendations and reasons and have made such modifications as are necessary to secure compliance. But these modifications need not be the same as those recommended by the examiner. In such a case, the section requires the charging authority to draft a report saying how they have amended the draft charging schedule so as to comply with the drafting requirements. The section enables the Secretary of State to make regulations about the form or content of such a report.

Section 115: Use of Community Infrastructure Levy

259. This section amends Part 11 of the Planning Act 2008, concerning the Community Infrastructure Levy. The section extends the permitted uses of levy receipts, in specified situations, so that they may be applied to any matter that supports development by addressing the demands that it places on the areas that host it.
260. The section also amends the purpose of the Community Infrastructure Levy to explicitly require that regulations must aim to ensure that the imposition of a levy charge in an area will not make the development of the area economically unviable. The section also allows for regulations to require charging authorities to consider the costs of, and other sources of funding for, the matters that may be funded through the extended permissible uses of levy receipts when setting a charge in their area.
261. The section provides clarification that permitted spending on infrastructure includes providing it initially, improving or replacing infrastructure, and operating and maintaining it, where doing so supports development. Provisions for regulations to set out activities relating to maintenance, operation and promotion that may or may not be funded by the Community Infrastructure Levy are also included.
262. This section also provides regulation-making powers for requiring charging authorities to pass funds raised through the Community Infrastructure Levy to other bodies to spend. Where regulations require a local authority to pass funds to another person, those funds may be applied to infrastructure or any other matter that supports development by addressing the demands that it places on the areas that host it. This section sets out the framework for this process, providing for regulations to set out the details including: the area in which it will apply; the bodies it will apply to; the amount and timings of payments; things that may or may not be funded; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority. The section also provides that regulations may allow a charging authority to apply some or all of their levy receipts raised in an area to the same extended matters, but only where they are not required to pass a proportion of their levy receipts to other bodies.