



COMMUNITY INFRASTRUCTURE LEVY

Collection and Enforcement Guidance

CIL Implemented September 2013

The Charging Authority	The Charging Authority is Chorley Council.
Date of Schedule Taking Effect	The Charging Schedule came into effect on 1 September 2013.
Version and Date	Version 2: Implemented 01 September 2019

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Please Note

The information relating to CIL contained in this guide is intended to assist developers and land owners to understand and determine their CIL liability and potential enforcement and penalties. It should, however, not be regarded as definitive advice.

It is not intended to replace the need to read and understand the CIL Regulations and Governmental Advice on CIL. If in doubt, developers and land owners are advised to seek their own professional advice.

INTRODUCTION

The Community Infrastructure Levy Regulations 2010 (as amended), include several provisions that enable the application of surcharges and ensure the effective enforcement to recover CIL monies once there is a delay within the collection process, or a breach of the CIL procedures. This guidance note provides an easy to read summary of Part 9 Enforcement of the Community Infrastructure Levy Regulations identifying the penalties and enforcement powers that will be taken by the Council.

Please check our CIL Process Charts published on our website in order to mitigate against the following surcharges and penalties.

DEFINITIONS

Commencement of Development

With regards to the references to commencing development throughout this guidance note, development is to be treated as commencing from the date on which any material operations begin to be carried out on site.

Commencements of development and material operations are defined within Regulation 7.

Under Regulation 7, development is to be treated:

- 7(2): As commencing on the earliest date on which any material operation begins to be carried out on the relevant land.
- 7(6): In this regulation, 'material operation' has the same meaning as in section 56(4) of TCPA 1990 (time when development begun).

In accordance with section 56 (4) of the Town and Country Planning Act 1990 (as amended) a material operation is:

- (4) In subsection (2) "material operation" means—
 - (a) any work of construction in the course of the erection of a building;
 - (aa) any work of demolition of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land which constitutes material development.

Disqualifying Event

Prior to commencement, applicants are able to apply for certain exemptions or relief from CIL (see our [CIL Process Charts](#) for how to request relief/exemptions).

If an exemption or relief from CIL is requested, and subsequently granted by Chorley Council, then the value of the CIL Levy on that development is subject to a clawback period.

If a disqualifying event occurs within the clawback period, then the CIL will fall due, in full.

See our Frequently Asked Questions document published on our website within the Planning Policy section for information on what constitutes a disqualifying event for each type of exemption/relief.

When Payment is Due

Regulation 70(1) – CIL Procedure has been followed correctly;

Where a person has Assumed Liability, a Commencement Notice has been received by the Chorley Council, and Chorley Council has not had to determine a deemed commencement date;

- a) payment is due on, or before, the date stated in the CIL Demand Notice, in-line with our [instalment policy](#); or
- b) if no instalment policy is in place, payment is due in full no later than 60 days from date of commencement.

Regulation 71(1) – Nobody has assumed Liability;

Where nobody has Assumed Liability, but a Commencement Notice has been received by the Chorley Council, and Chorley Council has not had to determine a deemed commencement date;

- c) Payment is due in full on the date of the intended commencement.

Regulation 71(2) – Chorley Council must determine a deemed commencement date;

Where Chorley Council has had to determine a deemed commencement date (i.e. a commencement notice has not been submitted, or a commencement notice has been submitted fraudulently);

- d) Payment is due in full on the deemed commencement date.

Regulation 71(3) – Chorley Council transfers the liability to the land owners;

Where Chorley Council transfers liability to pay an amount to the owners of the relevant land (as per Reg.36(2))

- e) Payment is due in full immediately.

Regulation 71(4) – A disqualifying event occurs;

If the CIL payment becomes due because of a disqualifying event, payment of the CIL is due in full as follows:

- f) if Chorley Council is notified of the disqualifying event, payment is due by no later than seven calendar days from the date of the CIL Demand Notice.
- g) if Chorley Council is NOT notified of the disqualifying event, payment is due immediately.

Receipt of Payment

As per Regulation 72, payment is only considered as being received by Chorley Council on the day on which it receives the cleared funds.

If the payment has been made by cheque, then payment is not considered as received until the cheque has cleared.

Cheques runs only occur once a week at Chorley Council, and it is not the responsibility of the Council to ensure that your cheque is processed in time to clear by your due date. Therefore, if a cheque has been submitted on, or within 9 working days prior to the due date, it will be considered as a missed payment as the cheque may not be processed and cleared in time.

Day

Unless preceded by the word 'working', the term 'day' applies to all calendar days, including non-business days /public holidays.

REVOCATION OF THE RIGHT TO PAY BY INSTALMENTS

Chorley Council has an adopted [instalment policy](#); however, the person who has assumed liability to pay CIL may pay the outstanding CIL (in whole or in part) in advance of the instalment period/s.

Where an instalment payment is not received in full on or before the day on which it is due, the right to pay by instalments will be lost and the total outstanding CIL liable amount becomes payable in full immediately.

ENFORCEMENT - SURCHARGES AND INTEREST

Failure to Assume Liability - £50

If development has commenced and nobody has assumed liability to pay CIL by submitting CIL Form 1: Assumption of Liability in respect of the chargeable development then a surcharge of £50 can be imposed on each person or party* liable to pay CIL.

Apportionment of Liability - £500

Where the Council must apportion liability to pay CIL between each material interest in the relevant land, it can impose a surcharge of £500 per person / party to ensure the costs of this apportionment are accounted for by the liable parties*.

*Where no person or party has assumed liability, then liability is apportioned between each person / party with a material interest in the relevant land, as per Regulation 33;

Reg33. Default liability;

- (1) This regulation applies where a chargeable development is commenced in reliance on planning permission and nobody has assumed liability to pay CIL in respect of that development.
- (2) Liability to pay CIL must be apportioned between each material interest in the relevant land.
- (3) Paragraph (2) is subject to paragraph (4).
- (4) A person (P) is liable to pay the whole amount of CIL payable in respect of the chargeable development if—
 - (a) P, or a person acting on behalf of P, has entered on and taken possession of the relevant land (in whole or in part)—
 - (i) pursuant to a power conferred by or under statute, and
 - (ii) without the agreement of the owners of the relevant land;
 - (b) P, or a person acting on behalf of P, carries out works on the relevant land which cause the chargeable development to be commenced; and
 - (c) at the time the chargeable development is commenced P is not an owner of the relevant land.

Failure to Submit a Notice of Chargeable Development - £2,500.00

Where a CIL liable development does not require planning permission (such as a general consent under permitted development), the landowner is required to submit CIL Form 5 – Notice Of Chargeable Development.

Failure to submit CIL Form 5 prior to commencement of development can result in the following surcharge:

- 20% of the CIL Liability due; or £2,500.00, whichever is lowest.

Failure to Submit a Commencement Notice Prior to Commencement - £2,500.00

Where a chargeable development has commenced, but Chorley Council has not received a valid commencement notice CIL Form 6 – Commencement Notice at least one day prior to the commencement date, then the following surcharge may be applied:

- 20% of the CIL Liability due; or £2,500.00, whichever is lowest.

Where a development granted any CIL Relief or Exemptions has commenced, but Chorley Council has not received a valid commencement notice CIL Form 6 – Commencement Notice at least one day prior to the commencement date, then the following surcharge WILL be applied:

- 20% of the CIL Liability due; or £2,500.00, whichever is lowest.

Surcharge on Disqualifying Events - £2,500.00

Where Chorley Council has not been informed of a disqualifying event within 14 days of the disqualifying event, the following surcharge may be applied;

- 20% of the CIL Liability due; or £2,500.00, whichever is lowest.

Surcharge for Late Payment - £200 upwards

When a payment is not paid by the due date, the following surcharges may be applied;

- 1) If the full payment is not received within 30 days of the due date:
 - 5% of the payment due; or £200, whichever is the greater amount.
- 2) If any part of the payment is not received within 6 months of the due date:
 - 5% of the unpaid amount; or £200, whichever is the greater amount.
- 3) If any part of the payment is not received within 12 months of the due date:
 - 5% of the unpaid amount; or £200, whichever is the greater amount.

Surcharge for Failure to Comply with an Information Notice - £1,000.00

Where a person (P) fails to comply with any requirement of an information notice within 14 calendar days of the date it is served, the following surcharge may be applied;

- 20% of the relevant amount; or £1,000.00, whichever is lowest.
- Relevant amount means the amount of CIL (P) is liable to pay in respect of the chargeable development.

Late Payment Interest

This is not to be confused with Late Payment Surcharges, which are detailed above. This is a mandatory charge. Where a payment is not received by Chorley Council by the date it is due, the person (P) liable to pay that amount must pay late payment interest as follows;

- 1) Late Payment Interest must be calculated:
 - for the period starting on the day after the day payment was due; and
 - ending on the day the unpaid amount is received by Chorley Council; and
 - at an annual rate of 2.5% above the Bank of England base rate.

Late Payment Interest is calculated on all outstanding amounts, including the value of any surcharges that may have been applied.

ENFORCEMENT – CONSTRUCTION STOP NOTICES

CIL Stop Notice

If an amount which has become payable under CIL has not been paid, then Chorley Council may issue a CIL Stop Notice when it considers this to be the most expedient and pragmatic method for recovery of the unpaid amount.

A CIL Stop Notice prohibits development from continuing until payment is made.

Continuing to develop in these circumstances is a criminal offence. If a person is convicted of such an offence, then they will face a fine, the value of which the court must determine. There is no maximum cap on the value of the fine in this situation.

Prior to issuing a CIL Stop Notice, Chorley Council will serve a CIL Warning Notice, which will detail the amount due, the reasons it has been issued, the date it was issued, the possible consequences of failure to comply, and the date upon which the CIL Warning Notice will expire.

If payment has not been made by the expiration of the CIL Warning Notice, then a CIL Stop Notice will be issued.

CIL Stop Notices, and CIL Warning Notices are served on:

- the person liable for the unpaid amount; and
- each person known to us as an owner of the relevant land; and
- each person known to us as an occupier of the relevant land; and
- any other person whom we consider to be materially affected by a CIL Stop Notice.

whenever practicable.

Copies of CIL Warning Notices and CIL Stop Notices are also displayed on the relevant land.

ENFORCEMENT – RECOVERY OF CIL

The following sections are a sample of some of the other mechanisms the CIL Regulations set out to enable collecting authorities to recover charges that are due. These mechanisms can be used alongside CIL Stop Notices, but can also be used separately – for example, where development has finished. Part 9 of The Community Infrastructure Levy Regulations details all enforcement mechanisms available to Chorley Council.

If Chorley Council seeks to use any of these mechanisms to recover any unpaid amounts, then we must first issue a Liability Reminder to the relevant person(s).

At the end of seven days from the date of the Liability Reminder, Chorley Council may then seek to employ the following mechanisms.

Liability Orders

Chorley Council may apply to the Magistrates Court for a liability order against the relevant person(s). This is done by making a complaint to the justice of the peace and requesting that a Court summons is sent to the person(s) asking them to attend Court to explain why they have not paid the relevant amount.

This cannot be applied for more than 6 years after the unpaid amount became due.

In cases where the amount is paid after the order has been applied for (but before it is made), the Court must, if requested by the authority, make the order in respect of the reasonable costs of the application.

Taking Control Of Goods

Where a Liability Order has been made, payment may be enforced by using the procedure detailed in Schedule 12 of the Tribunals, Courts and Enforcement Act 2007.

Committal to Prison

Where Chorley Council is unable to recover the amounts due, it may ask a magistrates' court to commit the debtor to prison for up to three months.

This can only be applied in the case where the debtor is an individual.

ENFORCEMENT – SUPPLY OF FALSE INFORMATION

It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to Chorley Council in response to any requirement under the CIL Regulations.

A person guilty of this offence is liable;

- on summary conviction, to a fine; or
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

APPEALS

Appeals can be made against aspects of the CIL collection and enforcement system, from the council's calculation of the amount due to any enforcement actions it may take. There are two exceptions where an appeals system does not exist, social housing relief and exceptional circumstances relief.

Please see our [CIL Appeals Guidance](#).