

Community Infrastructure Levy - enforcement

Community Infrastructure Levy Regulations 2010 contain enforcement provisions, aimed at ensuring that the collection process runs smoothly, by giving collecting authorities the power to issue a range of surcharges, stop notices, and if necessary to recover funds by appropriate legal action. Collection and enforcement arrangements are supported by the right to appeal certain decisions.

References:

Community Infrastructure Levy Regulations 2010, 2010/948, Pt 9

Surcharges

Collecting authorities can impose a range of financial penalties ('surcharges') on person(s) when the liability, collection and/or payment processes have not been followed correctly. These penalties are designed to ensure that authorities do not lose out financially by having to carry out additional tasks. Authorities can charge:

References:

Community Infrastructure Levy Regulations 2010, 2010/948, regs 80-86

- o a £50 surcharge on each person liable to pay the levy in the event that liability is not assumed before development commences
- o an additional £500 to each person with a material interest in land (ie a freehold estate or a leasehold estate with more than seven years remaining from the date of planning permission), where the authority apportions liability
- o an amount equal to 20 per cent of the chargeable amount, or £2,500 (whichever is the lower) where development starts without the authority having received a notice of chargeable development
- o an amount equal to 20 per cent of the chargeable amount, or £2,500 (whichever is the lower) where development starts without the authority having received a commencement notice
- o five per cent of any payment due, or £200 (whichever is the greater), where that payment is not received after the end of 30 days beginning with the day that payment is due. An authority may then impose a further five per cent charge if payment is still not received after six months, and a further five per cent after 12 months
- o 20 per cent of the chargeable amount, or £1000 (whichever is the lower) where a person fails to provide further relevant information as requested by a collecting authority

Late payment interest

In addition to the surcharge for late payment, a collecting authority must charge interest on any late payments.

References:

Community Infrastructure Levy Regulations 2010, 2010/948, reg 87

Late payment interest must be calculated:

- o for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received, and
- o at an annual rate of 2.5 percentage points above the Bank of England base rate

Stop notices

Where:

References:

Community Infrastructure Levy Regulations 2010, 2010/948, regs 89-94

- o development has started, and
- o CIL has not been paid, and
- o the authority thinks it expedient to stop the development from progressing any further until payment is made

the authority may issue a 'stop notice'

Warning notice

If the authority decides to issue a stop notice, it must first issue a 'warning notice', warning of its intention to impose the stop notice.

A warning notice must be served on the 'relevant persons' ie:

- o the person who is liable for the unpaid amount
- o every owner of the land
- o every occupier of the land, and
- o any other person whom the collecting authority considers may be materially affected by the stop notice

The warning notice must be in writing and state:

- o the date of the notice
- o the authority's reasons for issuing it
- o the unpaid amount
- o that payment of the unpaid amount is due in full immediately
- o the period after which a CIL stop notice may be issued if the unpaid amount is not paid (which must not be less than three days or more than 28 days after the warning notice is issued)
- o the effect of, and possible consequences of failure to comply with, a CIL stop notice

A copy of the warning notice must be displayed on the relevant land.

Service of stop notice

If the recipient of the warning notice does not pay in line with the terms in the notice, the authority can issue a stop notice. This must be sent to the relevant persons and contain the same information as required for a warning notice. A copy of the notice must be displayed on site.

When the date in the stop notice is reached without payment, then no further specified activity must take place although works necessary in the interest of health and safety may not be the subject of a stop notice). It is an offence to contravene the notice, with the potential for a fine of up to £20,000 (or more on indictment). An authority may also apply to the Courts for an injunction if necessary to enforce a stop notice.

An authority must withdraw a stop notice if payment is made, or can withdraw it for other reasons.

Stop notices must be registered in the register of enforcement and stop notices.

References:

TCPA 1990, s 188

Recovery of CIL

Collecting authorities have powers to recover charges that are due. These mechanisms can be used alongside stop notices, but can also be used separately, eg where development has finished.

References:

Community Infrastructure Levy Regulations 2010, 2010/948, regs 96-107

Reminder notice

Collecting authorities who wish to use these mechanisms to recover charges due must first serve a 'reminder notice' on the person against whom the application is to be made. This must state every amount in respect of which the authority is to make the application. A reminder notice may be served in respect of an amount at any time after it has become due.

Liability order

At the end of a seven day period after the reminder has been issued, the authority can apply to the Magistrates Court for a 'liability order' against the person by whom it is payable. This is done by complaining to the justice of the peace (ie the Magistrate's Court) 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.

The application for an order cannot be made after six years from the date the amount becomes due. Additionally, if 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 an order in respect of the reasonable costs of the application.

Once the Court is satisfied that the amount is payable, it must make the liability order.

Distress

After the liability order has been made, the authority can levy the appropriate amount by distress and sale of goods of the debtor against whom the liability order was made.

The procedure for distress is set out in reg 98. The debtor can still make full payment right up to the point before goods are sold.

Charging order

as an alternative to distress, where a liability order is made and more than £2000 is still owed, the authority can ask the Court to serve a 'charging order' on the debtor, to ask them to secure the outstanding amount. The procedure in regs 103-104 must be followed.

Charge over the land

Authorities can secure payment by way of a charge over the land, especially where development has been stopped, as an alternative to pursuing distress of goods or a charging order against an individual. Authorities can ask the Court to enforce a local land charge.

Commitment to prison

Where an authority is unable to recover the amounts due, it may ask the Court to commit the debtor to prison. This is likely to be a very rare situation, but provides a useful last option for an authority who has exhausted all other options.