



Detailed proposals and draft regulations for the  
introduction of the Community Infrastructure Levy –  
*Consultation*

**Summary of responses**



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Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 0303 444 0000  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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# Section 1

## Introduction

On 30 July 2009 the Government commenced a formal public consultation on its detailed proposals for the introduction of a Community Infrastructure Levy (CIL), including a set of draft Regulations which the Secretary of State is empowered to make by Part 11 of the Planning Act 2008. The consultation document invited views on the generality of the Government's proposals and asked 54 specific questions. The analysis in this summary is structured on the same basis as the consultation document.

The consultation exercise concluded on 23 October 2009. Before, during, and after the consultation, officials from Communities and Local Government (CLG) have been active in engaging with a wide variety of stakeholders on the development of CIL. CLG chairs a number of informal working groups with membership drawn from local government and development industry, including a Practitioners Group which has met regularly in order to inform the Government's policy in detail. During the consultation period CLG officials presented proposals to a number of well-attended conferences and held a series of regional events in conjunction with the Planning Advisory Service to raise awareness of the consultation. CLG is grateful to all those who have provided their views.

Alongside this summary of consultation responses, the Government is publishing final Regulations (which have been laid before the House of Commons for consideration); an Explanatory Memorandum which provides a brief summary of the main changes which the Government has made to the Regulations in the light of the consultation; and a revised Impact Assessment of its proposals. These documents, plus the original consultation document and other documents of interest, are available through CLG's website.

## Types of respondent

A range of stakeholders responded to the consultation. We received 392 responses by post, email and online. Of these, 49 per cent were from local authorities; 18 per cent from developers and infrastructure providers; 8 per cent were planning specialists and legal experts; 7 per cent were from the voluntary and community sector; and 18 per cent from other sources.

# Section 2

## Analysis of consultation responses

### Questions from Chapter 2 – Spending

#### Infrastructure

**Question 1: Do you agree with the proposal that the draft CIL regulations do not define 'infrastructure' further?**

Almost two-thirds of the respondents answered question 1 and views as to whether the regulations should provide a firm, statutory definition of infrastructure were finely balanced. Of those who answered the question, just over half supported the Government's preference for a broad definition in order to provide sufficient flexibility for local planning authorities to apply CIL in a way that best addresses local circumstances. Several respondents stressed the need for the CIL infrastructure planning process to be complemented by robust testing to ensure that charges were not set unnecessarily high, respected development viability and responded directly to the infrastructure needs flowing from development.

#### Format of reports

**Question 2: Is any further reporting required for CIL?**

**Question 3:**

**(a) Is the 1 October deadline for reporting on the previous year's activity sufficient for local planning authorities?**

**(b) Will this timescale enable developers and local communities to understand how CIL revenue has been applied?**

Under half of the respondents answered question 2 and of these, around three-fifths thought that no further reporting requirements were necessary beyond those set out in the consultation document and draft regulations. Some who held this view commented on the need to ensure that the accountability and transparency achieved by reporting on CIL was balanced by the need to avoid imposing excessive burdens on local authorities. A number of respondents suggested additional reporting with a recurring proposal that those bodies to which a charging authority had transferred CIL for infrastructure provision should be required to report the spending of this CIL.

Almost two-thirds of respondents who answered question 3 considered that the 1 October deadline for reporting was sufficient for local authorities and around three-quarters considered that the timescale would enable developers and local communities to understand how CIL revenue had been applied. Of those who disagreed with the 1 October deadline, most argued that the deadline should be aligned with that for the Annual Monitoring Report, which local authorities already have to prepare each year by 31 December, as this would enable CIL and development plan implementation reporting to be brought together. A smaller number of responses thought that a shorter timescale was desirable to enable a faster reporting of CIL and a few considered that reporting should be ongoing or ‘drip-fed’ throughout the year.

### Other comments

**Question 4: Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above?**

There was support for the proposal to further explore the use of forward funding mechanisms to facilitate the timely delivery of infrastructure and to help secure financial backing for infrastructure delivery. Some respondents also welcomed the Government’s proposal to spend CIL on projects located outside a charging authority’s boundary in order to deliver sub-regional projects that unlock development within their area. Others welcomed the flexibility to use CIL to renovate or expand existing infrastructure where such activity was required to meet the needs created by new development. Some stakeholders called for CIL to be mandatory so to be secure additional investment in infrastructure.

## Questions from Chapter 3 – Setting the CIL charge

### Charging authorities

**Question 5: Are there any circumstances where a CIL charging authority would not be able to fulfill its charging authority functions effectively?**

Around one third of respondents answered question 5. Just over half felt that there would be circumstances in which a CIL charging authority would not be able to fulfil its functions effectively. Local authorities cited a number of concerns which would limit an authority’s effectiveness including the cost of putting in place a charging schedule and the lack of required skills in authorities. The link between CIL and the development plan processes in England and Wales was another concern raised – in particular that delays in infrastructure planning and the costs involved in that process might limit what was possible through CIL. Some authorities expressed concerns that the relationships between different tiers such as districts and counties, National Parks, and the London boroughs and

the Mayor of London could make infrastructure planning and delivery more complicated. The complexity of infrastructure planning and concerns about the final delivery of infrastructure were the main concerns expressed by respondents from the development sector. Several respondents from county councils in England thought that CIL would operate more effectively if county councils were CIL charging authorities.

**Question 6:**

**(a) In deciding whether to use the power at section 207 of the Act, should the Government apply different criteria?**

**(b) Which functions should a joint committee perform?**

This question related to section 207 of the Planning Act 2008 which gives the Secretary of State the power to set out in the CIL regulations that a committee can exercise specified functions on behalf of a charging authority. Less than a quarter of all respondents answered question 6 and more than half of those agreed that the proposed criteria for deciding whether a joint committee should take on some or all of the functions from a charging authority were the right ones. Some of the respondents who disagreed with the proposed criteria suggested alternatives – for example that all constituent authorities should have started preparations for charging CIL so that relevant information could feed in to the joint committee CIL process. The question also asked which functions a joint committee could perform on behalf of a CIL charging authority. Responses suggested a widening of the range of functions so that the committee could facilitate sub-regional infrastructure planning and delivery most effectively. Some respondents also thought that joint committees should determine how the CIL raised should be spent, and that they should monitor and report that spend.

## Differential rates

**Question 7: Do you agree that differential rates should be based only upon the economic viability of development?**

Just over half of the respondents answered this question. Just over half of these agreed with the consultation proposal that differentiation should be based only upon the economic viability of development. Respondents did however highlight the need for clarity as to what is intended by the term 'economic viability of development'. Several respondents agreed that economic viability should be one of several considerations informing decisions on differentiation, with the commercial sector calling for the premise also to reflect the impact that different classes of development have upon infrastructure, with rates apportioned accordingly.

## Metrics

**Question 8: Do you agree that CIL charges should be based on a metric of pounds per square metre?**

**Question 9: Would you prefer to have a choice of charging metrics, and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions?**

**Question 10: Do you agree with the Government's proposal to apply the charging metric to the gross internal area of development or do you think there are advantages to levying CIL on the gross external area?**

**Question 11: Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development?**

Just over half of the respondents answered question 8 and around two-thirds of these were content with the Government's proposal to base CIL charges on pounds per square metre of development, recognising the simplicity brought by a uniform metric. Almost a third of respondents answered question 9 and a majority of these were content that a fixed metric would be preferable to allowing a choice of different metrics because it maximises simplicity and prevents any confusion or loopholes that could arise if variable metrics were permitted.

Less than half of the respondents answered question 10 but, around two-thirds of those expressed support for the proposal to levy CIL on the gross *internal* area of development, rather than the external area because of its consistency with the planning application process and its closer correlation to impact, given that internal area is a better proxy for liveable and useable space. There were however mixed views as to whether CIL should be levied on the gross or net development, with a majority of those answering question 11, preferring to levy on the net additional increase in development, in contrast to the consultation proposal. In particular, respondents felt that a net-based levy more closely reflects the impact of development upon infrastructure and so complements CIL's intention to finance the infrastructure needed to support growth. They felt that a gross approach would indicate that CIL was being levied to address pre-existing deficiencies in infrastructure delivery. It was also felt that a net levy would be a fairer approach where redevelopment occurs to meet new regulatory standards.

## Indexation

**Question 12: Should authorities be required to index CIL charges?**

**Question 13:**

**(a) Should indexation be based on a national index to provide simplicity, consistency and a readily understood index.**

**(b) Alternatively, should charging authorities be allowed to choose different indices in different places?**

**Question 14: Do you agree with the Government's proposed choice of an index of construction costs?**

**Question 15: Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences?**

**Question 16: Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?**

**Question 17: Do you agree that charging authorities should be able to index their charges from 1 January each year (taking the November index)?**

Under half of respondents answered question 12, although the overwhelming majority of these agreed that CIL charges should be indexed to a measure of inflation to retain their market responsiveness, with around three-quarters of the respondents to question 13 agreeing that indexation should be based on a readily understood and nationally set index to provide simplicity. There was also strong support, amongst those answering question 14, for using a construction costs index, with respondents noting that it would provide consistency for Local authorities and clarity for developers, while capturing the fluctuations in prices of building materials and associated costs.

Those answering question 15 had mixed views about the proposal to index charges to the point of planning position. Respondents were split, with approximately half of those who answered the question preferring indexation to the point when development commences. These respondents felt that because the commencement of development is the point at which CIL liability crystallises and the infrastructure need arises, it would be a more appropriate stage at which to index charges. In particular, respondents believed that this approach ensured that charges capture any changes in costs since the grant of permission and would avoid any consequent funding shortfall. The consultation document advocated indexation to the point of planning permission because of its simplicity – coinciding with the point at which CIL liability is made known – and, crucially, for the certainty it offers to developers, which is an important feature of CIL.

The majority of respondents who answered question 16 agreed with the Government’s proposal for annual indexation. Some respondents advocated more frequent indexation (such as monthly or twice yearly) but these responses also recognised the administrative burden that frequent indexation could entail. While some respondents suggested that the index year should dovetail with the financial year, the majority of respondents answering question 17 favoured the consultation proposal of indexing charges from 1 January each year (taking the index at November of the preceding year).

### Charging schedule procedures

**Question 18: Do you agree with the Government’s proposal to allow joint charging schedule/development plan examinations?**

**Question 19: Do regulations or guidance need to cover any additional matters relating to joint examinations?**

**Question 20: Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate?**

Just under half of the respondents answered question 18 and of these, an overwhelming majority agreed with the Government’s proposal to allow joint charging schedule and development plan examinations. Some of these responses thought that such an approach would allow the sharing of resources between examinations and could save time overall. Others thought that a formal link between examinations for a charging schedule and for the development plan was important due to the need for CIL to be set within the context of wider planning policy requirements for the area, such as targets for affordable housing provision.

Just under half of the respondents answering question 19 felt that it might be beneficial to provide further details in regulations or guidance on joint charging schedule and development plan examinations. For instance, some respondents requested guidance on how the CIL examination would be run or how the examiner would go about assessing the charging schedule at the joint examination. A few respondents requested provisions to ensure that the examination kept to relevant matters and avoided delays to the examination, for example, by repetitious or vexatious submissions.

Just under half of the respondents answered question 20 and just over two-thirds of these considered that a CIL examiner should be able to modify a draft charging schedule to increase the proposed CIL rate. Many respondents suggested that the examiner should have the power to modify the CIL rate, in either direction, in accordance with the evidence at an examination. Others argued that the flexibility to increase the CIL rate was required to ensure that CIL funded infrastructure could be delivered where evidence had emerged at the examination that infrastructure costs had been underestimated. However, a number

of those agreeing that the examiner should be able to increase the CIL rate also cautioned that this ability should be carefully limited and that an examiner should clearly demonstrate the justification for an increase.

Of the quarter of respondents who thought that a CIL examiner should not be able to increase the CIL rate, the main reason cited was that it was not the role of the examiner either to seek to capture the maximum development value for CIL or to substitute their discretion for that of the charging authority in setting the CIL rate.

### Other comments

**Question 21: Do you have comments on any other matters raised in Chapter 3 which are not covered by the questions above?**

Just over half of respondents made additional comments on Chapter 3. Comments related to a number of charge setting issues such as how a charging authority should determine that a development plan was sufficiently up-to-date to be able to introduce CIL and how economic viability evidence should be gathered. Other responses welcomed the reference to the infrastructure planning principles in PPS12 as the standard to which infrastructure planning for CIL should broadly conform.

There was support for the Government's proposals for consultation on a draft CIL charging schedule and for the CIL examination, although a range of suggestions were made for additional mandatory consultees or longer minimum consultation periods. Conversely, others proposed more flexibility for charging authorities with fewer consultees, for example, removing the requirement to consult parish councils in adjoining authorities.

## Questions from Chapter 4 – Paying CIL

### Paying CIL

**Question 22:**  
**(a) Do you agree with the chosen definitions of building, planning permission and 'first permits'?**  
**(b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?**

Respondents expressed concerns over the Government's proposal to collect CIL from permitted development, and stated that such development has a small impact.

Some respondents also raised concerns that CIL could not be collected for developments where the use of land was the biggest impact, for example golf courses and caravan parks.

Respondents had mixed views on whether CIL should be charged on change of use. Most respondents agreed with the definition of ‘first permits’, but some had concerns over the liability of outline permissions granted during the period before a CIL schedule is introduced.

**Question 23:**

**(a) Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions.**

**(b) If not, what changes would you wish to see that deal fairly with these types of permissions?**

Approximately three-quarters of respondents agreed that where an outline planning permission was granted prior to a CIL schedule being adopted, the subsequent reserved matter permissions should not be CIL liable. These respondents also agreed that CIL liability should arise from reserved matters approval, including where this resulted in phasing of development.

Some respondents sought further clarification including express transitional provisions in the regulations to deal with the timing of the adoption of a CIL schedule, and outline permissions, particularly where an outline permission would already be contributing to infrastructure through planning obligations.

A small number of respondents suggested that CIL should not be paid on commencement but on completion of development. This theme was explored further in discussion about payment by instalments (question 35).

### **Exemptions and discounts**

**Question 24:**

**(a) What are your views on the principle of providing a reduced rate of CIL for affordable housing development?**

**(b) What do you think the likely consequences of providing such a discount might be?**

**Question 25: If the Government were to provide a reduced rate of CIL for affordable housing development, do you think that the proposed definition of affordable housing is workable in practice?**

**Question 26: If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity's charitable purposes?**

**Question 27:**

**(a) Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback?**

**(b) If LCHO properties where receipts are not recycled are subject to clawback of the CIL discount, should there be a time limit up till when staircasing to full ownership would invoke clawback?**

**(c) How should such a clawback operate?**

**Question 28: Is 7 years an acceptable time period for clawback to operate over?**

For question 24, a small number of respondents argued that affordable housing created as much need for infrastructure as any other form of development and therefore should be subject to the same CIL charges as other types of developments. However, others argued that affordable housing should be treated differently from other forms of housing as it is in itself community infrastructure.

Overall, the majority of respondents supported the principle that affordable housing development should attract some form of relief from CIL charges. This was considered essential by many respondents in order to safeguard the delivery of affordable housing. Several respondents stated that, particularly during the current economic downturn, a significantly reduced rate of CIL would be necessary to maintain the economic viability of affordable housing development.

Many respondents felt the consequence of providing a discount would be significant support for the continued delivery of affordable homes across the country.

Several respondents commented that distortions could arise within the affordable housing sector if charitable providers of affordable housing could receive a proposed full exemption from CIL while non-charitable providers benefited only from a reduced rate of CIL charges. As such, there were a number of calls for a 'level playing field' in terms of how CIL liability applied to charitable and non-charitable providers of affordable housing.

There were some concerns that providing a discount for affordable housing development would reduce the amount of funds raised through CIL which in turn could reduce its effectiveness in delivering local infrastructure.

The majority of respondents answering question 25 agreed that use of the definition for affordable housing provided by the Housing and Regeneration Act 2008 was an appropriate basis for a definition for CIL purposes.

While respondents mostly considered that this proposal provided a suitable starting point, a number suggested that additional detail would be required to ensure a workable definition, and in particular to ensure that the regulation could not be misused as a route for CIL avoidance.

Several respondents noted that under the proposed definition, affordable homes delivered through section 106 agreements without social housing grant would not qualify for the reduction. Many respondents considered that this would represent an unfair double charge whereby a developer could be asked to make a section 106 contribution for new affordable homes and be charged a CIL contribution on top for those homes.

For question 26, two-thirds of respondents felt that the same definition of affordable housing should apply to any organisation receiving an exemption or discount from CIL regardless of the organisation's status. This was considered important to ensure consistency across the sector and avoid distortion. If different approaches to claiming relief for charitable and non-charitable providers of affordable housing were provided, then some respondents were concerned that charitable housing providers could gain a competitive advantage in building new homes, or conversely, local authorities might favour non-charitable housing providers to maximise CIL revenue.

In addition, some respondents suggested that having two different exemptions mechanisms for affordable housing developments could lead to confusion or delay as charging authorities had to identify the status of each potential development partner for every new scheme.

The majority of those who commented on question 27 suggested that there should be no clawback of CIL relief on low cost home ownership (LCHO) properties where existing receipts from affordable housing are recycled. At the same time, most respondents agreed that a clawback should apply to LCHO homes that were quickly converted to market housing (by being 'staircased' out to full ownership through purchase of the full equity share of the property by the resident) where there was no recycling of receipts.

A number of respondents commented that any clawback should be levied upon the original applicant for CIL relief rather than any subsequent resident of the property. In addition, we received some technical points about how a clawback mechanism could operate should it be desired – for example that it should only apply at the point the final percentage of equity in a LCHO property was acquired rather than at every incidence of staircasing. Some respondents said that eligibility criteria for applicants for LCHO products were already effectively enforced, and places prioritised for those who could not afford housing on the open market. As such most LCHO residents were unable to quickly to staircase out to full ownership.

For question 28, just over a quarter of all respondents gave their views on how long clawback should operate for but there was some divergence of opinion. Around two-thirds of those who expressed an opinion agreed that 7 years was an acceptable time period, considering it particularly essential to deter any misuse of an affordable housing discount for CIL avoidance purposes.

Of the third of respondents that thought seven years was unacceptable, one in four – although barely any local authorities – thought this could be too long. A common concern was that it represented a significant period of time in which the personal circumstances of LCHO residents could change and that such a clawback could deter them from seeking full ownership. Focussing on the implications of clawback for charity relief, the charity sector, who formed a small proportion of respondents to this question, almost universally favoured a reduction to 3 years with a few favouring as an alternative a ‘tapered’ clawback system where the amount payable reduced progressively in every year of the clawback period. The majority of those who disagreed with 7 years, however, favoured a longer clawback time-span: their suggestions varied from between 10 years and an unlimited period with many recommending 25 years, as this was consistent with the standard length of a mortgage term. The vast majority of responses calling for a longer clawback period came from local authorities.

**Question 29: Is it reasonable to ask a claimant to submit an apportionment of liability in this way?**

This question referred to the proposed solution for calculating relief in situations where a charity may be only one of the interests in the land being developed. The amount of relief would be the charity’s apportioned share of the overall CIL charge, with remaining non qualifying parties paying the remainder. A condition of relief would be that the claimant charity must submit an assessment of its CIL share in such circumstances.

A quarter of all respondents gave a view on this proposal – most of them local authorities with developers and charities also commenting. Overall there was strong support for this proposal from respondents with all developers and most of local authorities voicing their agreement.

Of the three from the charity sector who expressed an opinion, only one thought it would add an undue burden on claimants. The small number of local authorities who disagreed with this proposal, meanwhile, expressed concerns that it would add undue complexity or be difficult for a local authority to check.

**Question 30: Do you agree that it is best not to have a special procedure for developments that have difficulty in paying the advertised rate of CIL? If not, how could it be done in a way that is fair, non-distortionary and not open to abuse?**

Just over a quarter of all respondents answered question 30 and of those who did a majority felt that a procedure for exceptional circumstances should not be included in the final regulations. However, the views of the local authorities and the development industry were in clear contrast to each other with a strong majority against the inclusion of a procedure in the case of local authorities and a very large majority seeking the inclusion of a procedure in the case of the development industry, including national housing groups (Home Builders Federation, National Housing Federation). Authorities opposing the inclusion of a procedure referred to the complexity and delays that it could introduce into CIL. Those authorities that supported the inclusion of a procedure and responses from the development sector highlighted the need for flexibility in order to ensure that in exceptional circumstances where site conditions were particularly unfavourable or there were unforeseen costs, authorities could use their discretion to reduce the amount of CIL to be paid to permit the scheme to proceed.

### The liable party

**Question 31: Do you agree with the Government’s proposals for liable parties and assumption of liability?**

The majority of respondents agreed with the Government’s proposals on liable parties and assumption of liability. Respondents who disagreed to proposals for liable parties often sought exemptions for particular classes of landowners.

Others felt that the process for assuming liability was bureaucratic, and that liability should simply run with the land.

### Collecting CIL

**Question 32: Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?**

About a quarter of consultees answered this question. Outside London, a significant majority felt that it was right for collection authorities outside London to transfer CIL revenues to the charging authority on a quarterly basis. In London of those Boroughs that replied, in addition to the Greater London Authority, thought that the Boroughs should only transfer funds on a quarterly basis, rather than monthly.

### Payment of CIL in kind

**Question 33: Do you think that the final regulations should provide for the payment of CIL in-kind?**

**Question 34: If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?**

A little under half of the respondents answered question 33 and amongst these approximately two-thirds of respondents agreed that the final regulations should provide for payment of CIL in kind. Many respondents pointed to the common existing practice of securing in-kind contributions through planning obligations. The benefits of in-kind payments cited included their role in allowing the delivery of necessary infrastructure before a CIL chargeable development was completed. Other respondents did however recognise the difficulties that this approach incurred, such as questions of valuing the in-kind offer. And indeed, respondents opposed to an in-kind system cited its potential unfairness and complexity. Only a few respondents made suggestions about how a payment in kind system might operate and several of these suggested that a provision to pay CIL in kind by transferring land only might be an alternative solution because it is capable of capturing some of the benefits of in-kind payments whilst avoiding its trickier complexities.

### Payment by instalments

**Question 35:**

**(a) Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development?**

**(b) How should the instalments be structured?**

**Question 36: Do you agree that payment on account should not be provided for in the final CIL regulations?**

Almost two-fifths of consultees answered question 35. A strong majority of these consultees thought that payment by instalments should be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of commencement. Industry representatives in this group argued that requiring full payment soon after commencement of development would be unworkable and that as phased development did not always proceed on the basis of outline permission and reserved matters, ability to pay in instalments was essential if major development was not to be hindered. For their part, some local authorities and other stakeholder groups felt that allowing for payment in instalments would help developer cashflows and help to ensure a scheme's viability. Around a tenth of consultees opposed the provision of payment of CIL in instalments. The local authorities in this group felt that providing for instalments would increase monitoring costs and would introduce unnecessary complexity in the regulations, while the industry representatives in this group felt that the provision included for payment in line with commencement of reserved matters in outline permissions should be sufficient.

Despite the broad support for the provision for payment of CIL in instalments, consultees were divided as to the manner in which instalment schemes should be structured. Some industry representative groups and local authorities thought that the timing and length of instalment schemes should be agreed between the collecting authority and liable party on a case by case basis. Conversely, other consultees felt that the payment of instalments should be linked to certain trigger points in the development process such as occupation of the new buildings.

A third of consultees answered question 36, with over two-thirds of them in favour of the proposal that payment on account should not be provided for in the final CIL regulations. Local authorities in this group felt that providing for payment on account by developers would not benefit either the collecting authority or liable party, while industry stakeholder groups felt that providing for it would undermine the effectiveness of regulations.

Of those consultees who felt that payment of account should be provided for, local authorities thought providing for payment on account could make development more likely to proceed while others felt such provision should be at the discretion of the collecting authority. Similarly, some industry representatives argued that where payment was made in kind, payment of account could occur where the value of the in-kind payment exceeded the liability due, with the excess needing to be credited against any future liabilities or repaid.

### **Duty on the authority to remove the local land charge upon request**

**Question 37: Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability?**

Just over a third of consultees answered this question, with the overwhelming majority of those who responded in favour of the proposal that the collecting authority be under a duty to remove the local land charge automatically on payment of the full CIL liability. Of those in favour of the local land charge being removed in these circumstances, local authorities argued that removing the local land charge on payment of full CIL liability would prevent subsequent landowners from having any doubt as to CIL liability, while other stakeholder groups felt that removing the local land charge in these circumstances would greatly aid the conveyancing process. Local authorities opposing this proposal felt that it could be useful to have some notification on the local land charge register that CIL had been paid.

### **Enforcement of CIL liabilities/compensation**

**Question 38: Should the draft regulations be amended to require collecting authorities to have to issue a warning to liable parties (in writing and possibly by posting a warning on the site in question) before being able to impose a late payment surcharge?**

**Question 39: Are the means of recovering CIL debts sufficient or would further methods, such as the ability to impose attachment of earnings orders, be helpful?**

**Question 40: Should the Government provide for specific enforcement measures in regulations to allow collecting authorities to penalise and deter breaches of the conditions for relief?**

**Question 41: Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice?**

A third of all consultees replied to question 38, of which over half were in favour of collecting authorities being required to issue a warning to liable parties before being able to impose a late payment surcharge. Those in favour of the need to issue a warning, including industry representatives and other stakeholder groups argued that reminding liable parties that payment had not been received could result in the CIL being paid without such a surcharge or other enforcement action having to be imposed. Consultees opposing this proposal on the other hand felt that requiring such a warning to be issued would impose further administrative burden on collecting authorities.

Just over a quarter of consultees answered question 39, with around three-quarters of them agreeing that the means provided in the regulations of recovering CIL debts were sufficient. A small minority disagreed, with a few local authorities stating that further methods, such as imposing trading restrictions on companies or attachment of earnings orders, may be useful in certain circumstances.

Over a quarter of consultees answered question 40, with around three-quarters in favour of the provision in regulations of specific enforcement measures to allow collecting authorities to penalise and deter breaches of the conditions for relief. Of the minority of consultees that opposed the provision of such enforcement measures, some representatives of the charity sector felt that the addition of any penalties for such a breach would be unnecessary, as becoming liable for payment of CIL on such a breach would already be sufficiently onerous for the affected party.

Over a quarter of consultees answered question 41, with around two-thirds in favour of relying on the Local Government Ombudsman to compensate parties affected by inappropriately taken CIL enforcement action. Of the minority in favour of a bespoke compensation regime, some industry representatives and other stakeholder groups thought that as decisions by the Ombudsman are not binding, a bespoke compensation regime would be more appropriate.

## Other comments

**Question 42: Do you have any comments on any other matters raised in chapter 4 which are not covered by the questions above?**

Some respondents proposed changes to the definition of a building, the 100 square metres threshold and definitions of planning permission in order to secure exemptions for particular types of development. Clarification was sought over whether certain types of development would be classed as buildings for the purposes of CIL.

A small proportion of respondents – largely from the charity sector – chose to make general comments on the CIL charity relief proposals. A number of largely technical issues were raised which included concerns about the proposed definition of a charitable institution; requests that the beneficial, not the legal, owner of the land be taken into account and requests that there be fewer restrictions on when a mandatory exemption could apply.

Question 42 also attracted a variety of comments on the proposed CIL payment system. Of those that responded, many local authorities queried how the administrative cost of the collection and enforcement system would be met, adding that the cost of any forward funding should be included in this cost.

The development industry representatives were concerned about a number of other issues: some felt that the commencement of development should exclude development necessary for reasons of health and safety such as site works, arguing that as CIL was proposed to be charged on the basis of a building, commencement of development should equally apply to the construction of a building. Other industry representatives expressed disappointment with the Government's intention that developer-investors would not be entitled to any tax relief for CIL, fearing that it would discourage necessary capital investment. Further concerns were that the regulations contained too much emphasis on enforcement and actions for non-payment and too little on seeking to ensure the delivery of infrastructure.

## Questions from Chapter 5 – Planning Obligations and Other Powers

### Planning obligations and other powers

**Question 43: What do you think about the Government's proposal as set out in draft regulation to scale back the use of planning obligations?**

The majority of respondents thought that planning obligations should remain available to local authorities to help make developments acceptable in planning terms and facilitate the granting of planning permission.

The CIL consultation indicated the Government's intention to retain the use of planning obligations for these purposes, alongside a draft regulation to further clarify the use of planning obligations in light of the introduction of CIL (see question 44 below). Most respondents considered that there was indeed such a need to clarify the boundaries between the use of planning obligations and CIL.

Respondents largely asserted that they always sought to comply with the Circular tests and that the draft regulation would represent no departure from existing practice for them. However, a small number of respondents raised concerns that putting the Circular 5/05 policy tests on a better statutory basis would limit how planning obligations could be used in the future.

### **The Circular 5/05 tests to be made statutory**

**Question 44: Do you think the wording of the five tests as set out in draft regulation 94 is appropriate? Is each of the five tests meaningful and workable in practice, or could any be expressed in a better way?**

The Government set out in draft regulation 94 five tests which it proposed to put into law, to govern the future use of planning obligations. The tests required that the person making the determination was of the opinion that the relevant obligation was: (a) relevant to planning; (b) necessary to enable them to conclude that the CIL development is acceptable in planning terms; (c) directly related to the CIL development; (d) fairly and reasonably related in scale and kind to the CIL development; and (e) reasonable in all other respects.

Around two-thirds of respondents agreed that the wording of the five tests was appropriate and workable. A large number of respondents commented that the five tests were based upon long-standing principles that have stood the test of time and were well known and understood by practitioners.

Some respondents highlighted that there remained a degree of overlap between tests (b), (c) and (d), but that each of these tests were however useful and justifiable in their own right. Many respondents agreed with the proposition that tests (a) and (e) were unnecessary.

**Question 45: Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests? And if so what should it be and why is such a period required?**

There was some disagreement among respondents as to whether or not there was a need for a transitional period for this regulation to come into effect.

Some respondents were concerned that local authorities would need some time to adjust existing practice. Alternatively, a small number of respondents suggested that authorities would need sufficient time to establish a CIL to continue seeking contributions that were incompatible with the existing policy tests. However, other respondents confirmed that as the proposed statutory tests were the same principles for how existing planning obligations should be sought then there should be no need for any transitional period at all.

**Question 46: Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not?**

There was disagreement about where the effects of this regulation should apply. Some considered the regulation to simply reinforce existing practice, but others thought that it would constrain their existing use of planning obligations. Those fearful that the regulation would change their existing practice argued that it should only apply in areas using CIL. Overall, however, the majority of respondents agreed that the regulation should apply universally to provide consistency across the country.

### **Preventing the use of planning obligations for pooled contributions**

**Question 47: Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs?**

In principle, a majority of respondents disagreed with the proposition that the use of planning obligations in the form of pooled contributions and tariffs should be restricted in the future. There was no overriding consensus among types of respondents, although around two-thirds of respondents from local government disagreed with the proposition, while two-thirds of developers agreed with it.

Among the local government sector there was a degree of reluctance to stop existing practice in terms of seeking pooled planning obligation contributions that were considered to be working well. Among those respondents that supported further restrictions for planning obligations many considered that CIL would be a better alternative mechanism for such contributions as it would provide greater transparency and certainty for developers and provide a more flexible source of funding for local authorities. In addition, a number of respondents stressed that scaling back the use of planning obligations was central to the effectiveness of CIL.

However, in light of the introduction of CIL, many respondents favoured tighter restrictions upon how planning obligations could be used. There was serious concern, particularly from the development sector, that developments could unfairly be charged twice by being asked to make a contribution towards an item of infrastructure through both planning obligations and CIL. This was considered to be unjustifiable and offer potential for abuse. As such there were a number of calls for reform of the planning obligations system to provide clarity about what either planning obligations or CIL could be used for in an area, and ensure that they could not be used in tandem to 'double charge' developers.

**Question 48: Do you think the Government's proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development is workable in practice?**

**If not, please state why not. Can you think of an alternative which would have the same or similar effect?**

A key concern expressed by a number of respondents was whether a given development could be asked to pay for an item of infrastructure through use of both planning obligations and CIL, and effectively be charged twice. As such many respondents supported the intentions of this proposal and sought clarity between what contributions should be sought through either CIL or planning obligations.

The majority of respondents felt that the specific proposal to further restrict the use of planning obligations, based upon a 'solely' criteria, would be unworkable in practice and result in a undesirable loss of flexibility in terms of how planning obligations can be used to facilitate development to proceed. In particular, many respondents argued that there could be significant potential for dispute over what constituted a 'sole' impact.

Responses from developers tended to suggest that CIL should be the only mechanism through which a local authority can seek a pooled contribution towards infrastructure. However, responses from some local authorities argued that there should remain some flexibility for planning obligations to secure pooled contributions for a small number of related development sites to facilitate the granting of planning permission.

**Question 49: What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to mitigate impacts 'solely' caused by CIL chargeable developments?**

There was no overall consensus about how long a transitional period should be provided before this aspect of the regulations should take effect. The majority of respondents felt that the two year transitional period suggested in the consultation would not provide sufficient time for all the local authorities that may wish to establish a CIL as an alternative to continue to collect developer contributions restricted by this reform.

In particular, a number of responses from local authorities suggested that in some areas the lack of an up to date development plan could delay the introduction of CIL and therefore a longer transitional period should be provided. Other bodies such as Urban Development Corporations also called for a longer transitional period, while some respondents suggested that the reform should only take effect in an individual authority when they established a CIL.

**Question 50: Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has a CIL or not?**

Respondents were split over whether this aspect of the reform of planning obligations should apply equally to authorities that chose to use a local CIL or not. Many respondents were keen to preserve as much flexibility regarding the use of planning obligations regardless of the consequences for the use of CIL. Alternatively, a large portion of respondents said that developers and landowners required certainty and clarity over how planning obligations will be used wherever located in the country and therefore this reform should apply universally.

**Question 51: What transitional period in London do you think would be required before a scale back of the use of planning obligations which prevented the use of pooled contributions and tariffs could take effect, to ensure a smooth transition from the existing to the new planning obligations regime, taking account for the need to use planning obligations for Crossrail purposes?**

Some respondents thought that there should be no special provisions made for London regardless of any consequences this might have for the funding of Crossrail, and that there should be a consistent approach to any scale back of planning obligations across the country. However, a number of respondents considered that planning obligation contributions towards Crossrail funding should be safeguarded through either a longer transitional period for any scale back to take effect or otherwise an exemption for Crossrail purposes.

## Further guidance

**Question 52: In revising Circular 5/05 in light of the introduction of CIL what further policy or areas of clarification do you think might be required with regards to the use of planning obligations?**

**Question 53: Do you think any additional further guidance (additional to a revised Circular 5/05) is required to support the use of planning obligations or CIL, and if so who would be best to provide it?**

The majority of respondents called for new policy and guidance to assist practitioners to effectively set planning obligations policies and practice in light of any reform of the regime, as well as to smooth the operation of planning obligations alongside the use of CIL. In particular, a number of respondents felt that best practice guidance and the sharing of expertise among practitioners would be particularly beneficial.

Some respondents stressed that any new guidance should be 'rural proofed' to ensure that the circumstances or needs in rural areas were adequately taken into account. There were also calls for new guidance with regards to assessing the economic viability of developments to assist both with the use of planning obligations as well as CIL.

Many respondents considered that the Department for Communities and Local Government or one of its partner agencies such as the Planning Advisory Service would be best placed to provide any new policy or guidance.

## Other comments

**Question 54: Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above?**

Some concern was raised that a particularly restrictive scale back of planning obligations could undermine the principle that CIL was a voluntary mechanism for local authorities. It was stated by a number of respondents that if authorities wished to continue to seek particular contributions that were prevented under a new planning obligations regime, but possible via CIL, then they would have little choice but to adopt a CIL or cease to seek those contributions.

# Annex

## Alphabetical list of respondents

4NW

Action with Communities in Rural England

Advantage West Midlands

Anglian Water

Ashford Borough Council

Aspinall Verdi

Associated British Ports

Association of Chief Police Officers and the Association of Police Authorities  
(Joint response)

Association of Electricity Providers

Association of English Cathedrals

Association of Great Manchester Authorities

Association of London Borough Planning Officers

Aylesbury Vale District Council

BAA Heathrow

Barnado's (via Andrew Martin Associates)

Barnsley Metropolitan Borough Council

Barratt Developments Plc

Basingstoke and Deane Borough Council

Bassetlaw District Council

Bates Wells and Braithwaite London LLP

Bell Cornwell LLP

Bircham Dyson Bell LLP

Blaenau Gwent County Borough Council

Blake Laphorn Solicitors

BNP Paribas Real Estate

Bovis Homes Ltd

Bracknell Forest Council

Bradford District Council

Brethrens Gospel Trusts

Bridgend County Borough Council

Bristol City Council  
British Council of Shopping Centres  
British Gliding Association  
British Holiday and Home Parks Association  
British Property Federation  
British Retail Consortium  
British Waterways  
British Wind Energy Association  
Broadland District Council  
Broads Authority  
Buckinghamshire County Council  
Buckinghamshire Planning Officer's Group  
Business in Sport and Leisure  
Caerphilly County Borough Council  
Cambridge Colleges Bursars' Environment and Planning Sub Committee  
Cambridge University Hospitals NHS Foundation Trust  
Cambridgeshire Horizons  
Campaign to Protect Rural England  
Canary Wharf Group  
Capital and Counties  
Carlisle City Council  
Carter Cameron  
CBI Minerals Group  
Central Association of Agricultural Valuers  
Central Bedfordshire Council  
Centre for Civil and Political Rights  
Ceredigion County Council  
Charity Law Association Standing Committee on Taxation  
Chartered Institute of Taxation  
Chelmsford Borough Council  
Cheltenham Borough Council  
Cheshire West and Chester Council  
Chesterfield Borough Council  
Chief Fire Officers Association  
Chorley Borough Council  
Churches' Legislation Advisory Service, The Charities' Property Association,

The Charity Tax Group and Community Matters (Joint response)

Citizens Advice Bureau

City and Provincial Properties Plc

City of London Corporation

City of London Law Society

City Property Association

Commission for Rural Communities

Community and Regional Planning Services

Construction Products Association

Conwy County Borough Council

Co-operative Group

Corby Borough Council

Cornwall Council

Countryside Council for Wales

Countryside Properties Plc

Country Land and Business Association

County Surveyors Society

Coventry City Council

Crawley Borough Council

Cumbria County Council

Cycling England

Dacorum Borough Council

Dartford Borough Council

Daventry District Council

Deepings Trading Co Ltd

Denton Wilde Sapte LLP

Derby City Council

Derbyshire County Council

Derbyshire Fire and Rescue Service

Development Trust Association

Devon County Council

DLA Piper LLP

Dorest County Council

DP World

Dudley Metropolitan Borough Council

Dwr Cymru Welsh Water

E.ON UK  
East Northamptonshire District Council  
East of England Regional Assembly  
East Riding of Yorkshire Council  
East Staffordshire Borough Council  
East Sussex County Council  
Eastleigh Borough Council  
EDF Energy  
England and Wales Cricket Board  
England's Regional Development Agencies  
English Heritage  
English National Park Authorities Association and Welsh Association of National Park Authorities (Joint response)  
Environment Agency  
Environmental Protection UK  
Environmental Services Association  
Epsom and Ewell Borough Council  
Essex County Council  
Estates Business Group  
FE Peacock Construction Ltd  
Federation of Master Builders  
Ferndown Town Council  
Fields in Trust  
Frederic Chadburn  
Gateshead Metropolitan Borough Council  
Gloucester City Council  
Gloucestershire County Council  
Gravesham Borough Council  
Greater London Authority  
GlaxoSmithKline (via Nathaniel Lichfield and Partners)  
Hampshire County Council  
Harrogate Borough Council  
Haslams  
Hastings District Council  
Haven Gateway Partnership  
Hawksmead Ltd

Healthy Urban Development Unit  
Herefordshire County Council  
Hertfordshire Infrastructure Planning Partnership  
Hertfordshire County Council  
Highbury Group  
Hinckley and Bosworth Borough Council  
Historic Houses Association  
Home Builders Federation  
Homes and Communities Agency  
House Builders Association  
Hull and Humber Ports City Region  
Hull City Council  
Independent Land Acquisition  
Institute of Directors  
Institute of Historic Building Conservation  
IXIA – Public art Think Tank and Arts Council England  
J.M Milner  
John Lewis Partnership  
Kent County Council  
Kestrel Timber Frame Ltd  
Kirklees Council  
Lancashire County Council  
Lancaster City Council and The Association of Chief Estates (Joint response)  
Land Registry  
Land Securities  
Land Trusts Association  
Landscape Institute  
Larkfleet Group  
Larkfleet Land Co Ltd  
Larkpoint Ltd  
Law Society  
Leeds City Council  
Legal and General Investment Management  
Legal Office of the National Institute of the Church of England  
Leicester County Council  
Leicestershire Police

Lewes District Council  
Lincolnshire County Council  
Liverpool City Region and Merseyside Policy Unit (Joint response)  
Living Places Partnership  
Local Government Association  
London Biggin Hill Airport  
London Borough of Barnet  
London Borough of Bexley  
London Borough of Brent  
London Borough of Bromley  
London Borough of Camden  
London Borough of Ealing Council  
London Borough of Enfield  
London Borough of Havering  
London Borough of Hillingdon  
London Borough of Islington  
London Borough of Lambeth  
London Borough of Merton  
London Borough of Newham  
London Borough of Redbridge  
London Borough of Richmond Upon Thames  
London Borough of Southwark  
London Borough of Tower Hamlets  
London Borough of Waltham Forest  
London Councils  
London First  
London Thames Gateway Development Corporation  
Low Emissions Strategies Partnership  
Luton and South Bedfordshire Joint Committee  
Luton Borough Council  
Major Developers Group  
Manchester Airports Group  
Manchester City Council  
Marks and Spencer  
Marshall Commercial Development Projects  
McCarthy and Stone Retirement Lifestyles Ltd

Merseytravel  
Metro (West Yorkshire Passenger Transport Executive)  
Metropolitan Police  
Mid Devon District Council  
Mid Sussex District Council  
Middlesbrough Council  
Miller Homes  
Mills and Reeve LLP  
Milton Keynes Council  
Mineral Products Association Ltd  
Milton Keynes South Midlands Emergency Services Group  
Mobile Operators Association  
Morgan Cole Solicitors  
National Archives  
National Farmers Union  
National Forest  
National Grid  
National Housing Federation  
Natural England  
Neath Port Talbot County Borough Council  
Network Rail  
Neville Summerfield  
Newcastle City Council  
National Farmers Union, Country Land and Business Association, Central Association of Agricultural Valuers, Tenant Farmers Association (Joint response)  
National Trust  
NHS Confederation Primary Care Trust Network  
NHS Hampshire  
NHS London Healthy Urban Development Unit  
NHS Newham  
NHS North Somerset  
NHS Peterborough  
Norfolk County Council  
North Dorset District Council  
North East Chamber of Commerce  
North Hertfordshire District Council

North Kesteven District Council  
North Lincolnshire Council  
North Northamptonshire Joint Planning Unit  
North Somerset District Council  
North Yorkshire County Council  
Northampton Borough Council  
Northamptonshire County Council  
Northamptonshire Police  
Northumberland County Council  
Northumbrian Water Ltd  
Northwest Regional Development Agency  
Nottingham City Council  
Nottinghamshire County Council  
O&H Properties Ltd  
Oxfordshire County Council  
Partnership for Urban South Hampshire  
Passenger Transport Executives Group  
Peel Group  
Pembrokeshire County Council  
Planning Aid England  
Planning and Environment Bar Association  
Planning Inspectorate  
Planning Officers Society  
Planning Officers Society Wales  
Plymouth City Council  
Poole Borough Council  
POSW Vale of Glamorgan Council  
Powys County Council  
Preston City Council  
Prince's Regeneration Trust  
Prudential Property Investment Managers Limited  
Reading Borough Council  
Redcar and Cleveland Council  
Reigate and Banstead Borough Council  
Renewable Energy Association  
REO Battersea Power Station

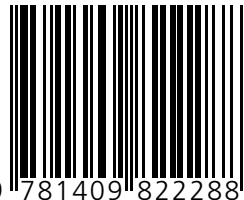
Rhondda Cynon Taf County Council  
Ribble Valley Borough Council  
Rossendale Borough Council  
Rotherham Metropolitan Borough Council  
Royal Borough of Kingston upon Thames  
Royal Borough of Windsor and Maidenhead  
Royal Institute of Chartered Surveyors  
Royal Society for the Protection of Birds  
Royal Town Planning Institute  
Runnymede Borough Council  
Rushmoor Borough Council  
RWE Npower Plc  
Savills  
Scottish Power  
Scottish Southern Energy  
Sefton Council  
Severn Trent Water Ltd  
Sheffield City Council  
Sheffield Hallam University  
Shelter  
Solihull and Warwickshire Partnership Ltd  
Somerset County Council  
South Kesteven District Council  
South Lakeland District Council  
South Oxfordshire District Council  
South Somerset District Council  
South Staffordshire Council  
South West Councils Secretariat  
Southampton and Fareham Chamber of Commerce  
Southfield Business Park Ltd  
Sport England  
St Edmundsbury Borough Council  
Staffordshire County Council and Stoke on Trent City Council (joint response)  
Staffordshire County Council  
Stanhope Plc  
Star Planning

Stoke on Trent City Council  
Stone King Sewell LLP  
Strategic Land Partnerships  
Suffolk Coastal District Council  
Suffolk County Council  
Surrey County Council  
Surrey Heath Borough Council  
Surrey Planning Officers Association  
Swale Borough Council  
Swindon Borough Council  
Sworders Agricultural Rural Chartered Surveyors  
Tandridge District Council  
Taunton Deane Borough Council  
Taylor Wimpey  
Teignbridge District Council  
Tesco  
Tess Valley Local Authorities (Darlington Borough Council, Hartlepool Borough Council, Middlesbrough Council, Stockton Council) (Joint response)  
Test Valley Borough Council  
Tetlow King South West RSL Planning Consortium  
Tetlow King West Midlands RSL Planning Consortium  
Tewkesbury Borough Council  
Thames Basin Heaths Joint Strategic Partnership Board  
Thames Water  
Thames Water Utilities Ltd  
Thames Gateway Development Corporation  
Torbay Council  
Torfaen Borough Council  
Town and Country Planning Association  
Trevor Roberts Associates  
Trowers and Hamlins LLP  
Tunbridge Wells Borough Council  
Turley Associates  
UK Business Council for Sustainable Energy  
UK Major Ports  
United Utilities Water Plc

Universities UK  
University of Cambridge  
University of Exeter  
University of Oxford  
University of Surrey  
Warrington Borough Council  
Warwickshire County Council  
Water UK  
Waterloo Community Development Group  
Waveney District Council  
Waverley Borough Council  
Wellcome Trust  
Welsh Local Government Association  
Welwyn Hatfield Borough Council  
West Berkshire District Council  
West Dorset District Council  
West Mercia Police  
West Northamptonshire Development Corporation  
West Sussex County Council  
Westminster City Council  
West Midlands Planning and Transportation Committee  
Westminster Property Association  
Wildlife Trusts in the South East and the RSPB  
William Davis Ltd  
Wiltshire Council  
Winchester City Council  
Wm Morrison Supermarket Plc (via Peacock and Smith Ltd)  
Woking Borough Council  
Wood Wharf Ltd  
Woodland Trust  
Wrigleys Solicitors LLP

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