# Infrastructure Levy for Scotland – Discussion Paper

May 2024

Scottish Government
Riaghaltas na h-Alba

# Infrastructure Levy for Scotland – Discussion Paper

The Planning (Scotland) Act 2019 ("the 2019 Act") provides powers for the Scottish Ministers to make regulations to introduce an Infrastructure Levy, that is, a charge payable to a local authority on development in that local authority's area, to be spent on the provision of infrastructure. This is intended to provide an additional stream of funding for infrastructure which is needed to support growth on a wider scale than individual developments.

The Programme for Government 2023-24 committed to implementing new infrastructure levy regulations by Spring 2026 – in advance of the next Scottish Parliament election. The infrastructure levy powers in the 2019 Act are subject to a "sunset clause", meaning that they will lapse if regulations establishing the levy are not made by July 2026.

This paper is intended to be used to support discussions about the Infrastructure Levy for Scotland (ILS) and to draw out views on how it could operate, prior to a full consultation on draft Regulations. After setting out some background issues, the paper describes existing mechanisms for securing developer obligations, summarises previous research and reviews relevant to the ILS, and sets out the relevant provisions in the 2019 Act. It then describes the key issues to be considered for regulations and puts forward proposed approaches and points for discussion.

If you would like to arrange a discussion with the Scottish Government team, or submit any comments on the discussion points, please contact Infrastructure.Levy@gov.scot. Discussions need to be concluded and any comments submitted by 30 September 2024.

## Contents

1 Introduction ........ 3
2 Infrastructure First approach ........ 3
3 Development viability ........ 4
4 Existing mechanisms ........ 5
4.1 Planning obligations ........ 5
4.1.1 Cumulative impacts of development and the limits of planning obligations 6
4.2 Community Infrastructure Levy (England and Wales) ........ 6
5 Infrastructure Levy for Scotland – research and reviews ........ 8
6 Provisions of the Planning (Scotland) Act 2019 ........ 11
7 Core criteria for an Infrastructure Levy for Scotland ........ 12
8 Issues for discussion ........ 14
8.1 Setting the payable amount ........ 14
8.1.1 Unit of charge ........ 14
8.1.2 Setting the Levy amount ........ 16
8.1.3 The ILS and other demands on value ........ 17
8.2 What kinds of development should pay the Levy? ........ 18
8.2.1 Exemptions ........ 19
8.3 When should the Levy be calculated, and paid? ........ 20
8.4 Who should be liable to pay? ........ 21
8.5 Appeal process ........ 22
8.6 Penalties and enforcement ........ 22
8.7 What should the Levy be spent on? ........ 23
8.8 Accounting for levy income and expenditure ........ 24
9 Summary proposal ........ 25
Annex A: Text of Planning (Scotland) Act 2019 ........ 27

# 1 Introduction

Development and the creation of better places requires interaction between the private sector and the public sector. The planning system guides where development should take place, whether that is residential or commercial. The majority of development is financed and carried out by the private sector, but the public sector needs to facilitate or respond to growth and development by ensuring necessary infrastructure is provided and maintained. This includes transport, education, healthcare facilities, open space etc. Developments are likely to be more attractive to purchasers or tenants where they have good transport links and public facilities nearby. The provision of high quality, accessible infrastructure is also central to local living and the establishment of 20 minute neighbourhoods, as set out in policy 15 of NPF4.

The fact that new development typically creates demand for new or upgraded public infrastructure raises questions of how this is to be paid for – and, in particular, the extent to which landowners / developers should contribute. Through the identification of sites in development plans, the granting of planning permission, and investment in infrastructure, the actions of the public sector can increase land value. The concept of an infrastructure levy is that an element of that land value uplift should be used more directly to contribute to the costs of providing the infrastructure which supports development.

Over the years, a number of mechanisms have been used for this purpose – not just in Scotland but across the whole UK. At present, planning obligations under section 75 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") are the principal planning mechanism used in Scotland to secure contributions to, or provision of, infrastructure. Planning obligations are an established and well-understood part of the planning landscape; they have a number of important strengths but also some acknowledged limitations. The overarching aim of the ILS is to create an additional, fair and effective mechanism for securing contributions to infrastructure on a wider scale.

The ILS is intended to complement rather than replace section 75 planning obligations, and other mechanisms for securing developer contributions, which will continue to be used to secure site-specific mitigation, on-site infrastructure and affordable housing. It is intended to supplement rather than replace existing national and local government funding; in most cases it will be one element in a mix of funding for any particular project.

We recognise that land values and the conditions for development vary widely across Scotland. The Scottish Government will work in partnership with COSLA and local government to ensure the regulations provide sufficient flexibility for local authorities to implement the ILS (or not) in a way that supports appropriate development to benefit their communities

# 2 Infrastructure First approach

The National Planning Framework (NPF4) advocates an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of

placemaking. In particular, it seeks to ensure that infrastructure needs are understood and identified early in the development planning process as part of an evidence based approach.

NPF4 makes clear that Local Development Plans and their delivery programmes should:

- be informed by evidence on infrastructure capacity, condition, needs and deliverability within the plan area, including cross boundary infrastructure;
- set out the infrastructure requirements to deliver the spatial strategy, informed by the evidence base, identifying the infrastructure priorities, and where, how, when and by whom they will be delivered; and
- indicate the type, level (or method of calculation) and location of the financial or in-kind contributions, and the types of development from which they will be required.

This approach will help to provide information to support the introduction of the ILS, by identifying the infrastructure which is needed in an area and how and when it will be delivered. It will also strengthen the plan-led nature of Scotland's planning system by targeting infrastructure investment and delivery in a way that works with the spatial strategy of the development plan.

# 3 Development viability

It will be important to ensure that any charge made on development considers its impact on viability, taking local factors into account, otherwise it may discourage rather than support development. It should also be predictable, so that a prospective developer can take it into account in their early calculations of whether a site is viable.

A site is viable if the value generated by a development is more than the cost of developing it, including land value, landowner premium, and developer return[1].

The value of a development is the income generated from sales and lettings. For housing built for sale, which constitutes most development, there is little flexibility in the value: people pay what they can afford (usually, what they can afford to borrow as a mortgage) and prices are set by the local market. Values of commercial and industrial premises are calculated differently, usually on the basis of long-term letting returns, or on the value of the facility to the operator's business.

Costs include build costs, professional fees etc and planning obligations. They also include the developer's profit. Profit represents the return on risk, therefore a more difficult site is likely to require a greater level of profit to persuade the developer to take it on, and anything that increases risk, such as uncertainty over the costs to be paid, may also increase the profit required. Landowner premium is the amount required to persuade a landowner to sell the land, over and above the value of the land in its current use.

[1] Viability – UK Government Planning Policy Guidance

Viability assessment is typically carried out in the form of residual valuation, either for land or for profit. This sets the costs against the value to derive the residual amount available to pay for the land, or if the cost of the land is already known (or already paid), the amount available as profit. Early assessments will normally set the amount of profit that is considered acceptable, in order to calculate the amount that can be paid for the land. Where possible, this will include the anticipated costs of developer contributions including s.75 planning obligations and any other charges such as an infrastructure levy. This means that, if charges are predictable at an early stage, they are reflected in lower land prices realised by the landowner, allowing the development itself to remain viable.

# 4 Existing mechanisms

## 4.1 Planning obligations

Planning obligations are legal agreements entered into under section 75 of the 1997 Act. Although they can be entered into unilaterally by the landowner / developer, they are typically negotiated between them and the local authority. Their role is to secure mitigation required to overcome obstacles to the grant of planning permission – in order to make a proposed development "acceptable in planning terms".

Their use is subject to five tests set out in Scottish Government Planning Circular 3/2012. In summary, these provide that planning obligations should be relevant to planning and proportionate to the scale and specific impacts of the particular development in question. There should be a direct connection between the proposed development and the matters secured or provided for in an obligation. These safeguards are intended to ensure that planning permission cannot be bought and sold, helping to uphold confidence in the system.

Subject to these tests, planning obligations can be used to seek financial contributions to (or in-kind provision of) infrastructure and affordable housing. As set out in section 5, research completed in 2021 estimated that in 2019/20 alone, £0.5bn was agreed through planning obligations in Scotland, of which £300m was for affordable housing and £200m for infrastructure. In many cases it is more straightforward for the developer to provide necessary infrastructure on site themselves, scheduled in as part of the development, rather than making a financial payment to the local authority which then has to undertake and co-ordinate the work. This flexibility, and responsiveness to site-specific circumstances, is one of the key strengths of planning obligations.

Where a planning obligation is recorded or registered with the Registers of Scotland (RoS), it becomes binding on successors in title (runs with the land). Former landowners can remain liable for obligations unless the obligation specifically says otherwise.

The circular recognises that planning obligations can have financial consequences for developers and may make proposals uneconomic. It therefore makes clear that in developing planning obligations, consideration should be given to the economic viability of proposals and alternative solutions should be considered alongside

options of phasing or staging payments. The importance of viability to the design of the ILS is explored further in section 3.

#### 4.1.1 Cumulative impacts of development and the limits of planning obligations

Some infrastructure needs can be directly related to the impact of an individual development, such as a new junction onto the adjoining road, open space within the development, active travel links or primary school expansion. However, others are prompted by the cumulative impacts of growth in an area, such as a new rail line / station, a secondary school, medical centre or larger scale open space or wildlife corridors. The need for such facilities is likely to be created by (and benefit) developments across a wide area, which come forward across an extended period of time. It is therefore difficult to attribute the need for, and cost of, such infrastructure solely to the impacts of individual developments.

As noted above, the tests in Circular 3/2012 make clear that the role of planning obligations is to mitigate the direct impacts of a development, with any mitigation secured being proportionate to those impacts. This position was re-emphasised in 2017 by the Elsick Supreme Court case[2], which held that Aberdeen City and Shire's policy of requiring developers to make financial contributions (using section 75 planning obligations) to strategic transport infrastructure that had no more than a *de minimis* connection to the particular development in question was unlawful.

This added to the arguments for developing a form of contribution which can fund infrastructure which is not directly related to an individual development. The powers for an infrastructure levy in the 2019 Act are a recognition of the limitations of planning obligations, as outlined in the Elsick judgement, which concluded by noting that "(i)f planning authorities in Scotland wish to establish a local development land levy in order to facilitate development, legislation is needed to empower them to do so".

Other mechanisms used to secure developer contributions include planning conditions and s.69 of the Local Government (Scotland) Act 1973 (a very broad power for local authorities "to do anything … which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions"). Each of these has its own limitations, and are unlikely to fill the gap relating to cumulative impacts.

### 4.2 Community Infrastructure Levy (England and Wales)

In England and Wales, the Community Infrastructure Levy (CIL) was introduced in 2010, under the Planning Act 2008, with the intention of supplementing planning obligations (under section 106 of the Town and Country Planning Act 1990[3]) and replacing their use for funding cumulative infrastructure needs. Guidance on what the CIL is and how it operates is available on the UK Government's website. The CIL Regulations have been amended frequently.

[2] Aberdeen City and Shire SDPA v Elsick Development Company Limited (Scotland) [2017] UKSC66
[3] Section 106 planning obligations are the English/Welsh equivalent of section 75 planning obligations

Scotland's planning system is similar to those of England and Wales. Moreover, the introduction of CIL was prompted by some of the same issues and considerations that led to infrastructure levy powers being included in the 2019 Act in Scotland. As such, it will be important to draw upon – and learn from – the lessons that are provided by CIL as we design and develop the ILS.

A review of CIL was commissioned by the UK Government in 2015 to "Assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government's wider housing and growth objectives." Its final report was published in 2016 and its key observations included that:

- CIL has proved highly complex – leading to a system that is difficult to understand, expensive to operate and uncertain in its implementation. The regulations had, in 2016, been amended every year since introduction to deal with policy changes and technical issues linked to the myriad circumstances faced by developers and authorities (and have now been amended 6 times since 2016).
- Exemptions and reliefs from CIL, and their administration, had caused particular issues, adding significant bureaucracy and further complexity.
- The relationship between CIL and s106 planning obligations can be problematic, with the distinction between what infrastructure projects are to be funded by which mechanism not always clear – exacerbating overall complexity.
- CIL did not provide the universal approach to developer contributions that was originally envisaged. Not all authorities had introduced CIL, and a combination of low rates and increasing scope of exemptions meant it had not raised as much as anticipated.
- The overall role of CIL in meeting infrastructure costs was often overstated, with it yielding between 5% and 20% of the funding required for new infrastructure.
- CIL did not work well where the burden of providing site specific infrastructure was transferred to the local authority.
- The cumulative nature of collection, and inability of local authorities to borrow against CIL, can lead to a "Catch 22" situation where local authorities have not accumulated sufficient CIL revenues to fund key elements of enabling infrastructure that will unlock house building, so the house building does not take place and the related CIL payments needed to deliver infrastructure are not made.
- "The examination process is largely a viability exercise which takes much time and occupies too much resource for little purpose." The burden of managing the system aggravated existing capacity issues both in the private sector and local authorities.

The review recommended "a streamlined low-level tariff", named Local Infrastructure Tariff (LIT), charged to all developments in addition to s.106 contributions for larger developments, and supplemented where appropriate by a "Strategic Infrastructure Tariff" for major strategic infrastructure. These recommendations have not been taken forward by the UK Government.

In addition to considering the concerns that have been raised in relation to CIL, in developing our proposals we have also taken note of the Mayoral CIL, levied by the London Mayor's Office with the objective of contributing to the funding of Crossrail (now the Elizabeth Line). Mayoral CIL is charged in addition to Borough CIL levied by individual London Boroughs. It is charged at a very low level compared to other CIL rates, at a fee per square metre of new development set at three levels depending on the borough in which the development takes place, and appears to be generally well accepted.

Provision for a replacement for CIL in England, to be called an Infrastructure Levy, is made in the Levelling-Up and Regeneration Act 2023. We will refer to this as ILE, to distinguish from the proposed levy for Scotland (ILS). A Technical consultation on the Infrastructure Levy on options for the ILE ran from March to June 2023.

One of the concerns initially raised about the introduction of CIL was that it could lead to "double-dipping", where developers might be charged under both s.106 and CIL to contribute to the same infrastructure. This was partly because some local authorities in England and Wales at the time were using s.106 to collect "tariff-style" contributions to wider infrastructure needs. The original CIL Regulations sought to prevent "double-dipping" by limiting planning obligations in a similar way to the five tests set out in the Scottish Government Circular 3/2012 (regulation 122) and requiring local authorities to publish a list of infrastructure to be funded by CIL, which could not then be funded by planning obligations (regulation 123). However, regulation 123 was removed by an amendment in 2019 and replaced by a less restrictive Infrastructure Funding Statement. The technical consultation on ILE envisages "integral" site-specific infrastructure being funded and delivered by the developer under planning conditions and s.106 obligations, while levy funding contributes to infrastructure required as a result of cumulative impacts, provided by the local authority or third party infrastructure providers.

## 5 Infrastructure Levy for Scotland – research and reviews

A number of research projects or reviews have suggested that Scotland should introduce some form of infrastructure levy or development charge, in the context of improving the delivery of infrastructure to support or encourage development.

Note that these reports have been produced in parallel with the progress of planning reform leading up to and following from the 2019 Act, and therefore in some cases refer to mechanisms and structures that are no longer in use.

The "Planning for Infrastructure Research Project: Final Report" (archived link) , carried out for the Scottish Government by Ryden LLP in 2015 recommended that:

> "23. A standard development charge is not appropriate across Scotland's diverse economy. However, development charges may be justified where a basket of infrastructure is to be funded by multiple parties.
>
> The Scottish Government should enact policy / legislation (whichever is most appropriate) that allows an area-wide standard development charge.

> Authorities would apply for the ability to levy this charge via a business case demonstrating development, infrastructure and associated funding streams.
>
> Previous Scottish Government research identified the preferred model as front funding of infrastructure to be repaid through a development tariff. Development charges might sit at LDP level (for example to fund schools) or at SDP level (for example to fund regional transport), or potentially at both levels."

Interestingly this report found:

> "The research shows that the cumulative impact problem is at its most focused in areas of economic growth and development expansion where developers are expected to contribute to sub-national / regional transport projects or the provision or expansion of new schools."

This suggests that a funding mechanism for infrastructure separate from s.75 planning obligations may be most needed in areas of stronger growth, where there is therefore likely to be a greater uplift in land values to support the payment of an additional charge.

The Independent Review of the Scottish Planning System - Empowering planning to deliver great places published in May 2016 recommended:

> **"18. Options for a national or regional infrastructure levy should be defined and consulted upon.**
>
> This should draw on the lessons learned from the Community Infrastructure Levy in England and Wales and capture land value uplift. We recognise that there are both strengths and weaknesses in this model, but given the limitations of Section 75 agreements, there is much that could be gained from a well-designed mechanism which properly reflects market circumstances and takes into account development viability. Given variations in market confidence and its influence on the ability to charge for necessary infrastructure, scope to build a fund that has a redistributive role should be investigated further."

Following consultation, the Scottish Government published its conclusions in the Places, People & Planning consultation and Position Statement – June 2017

> **"14. Creating a fairer and more transparent approach to funding infrastructure.**
>
> We suggested that a new means of capturing land value uplift, in the form of an infrastructure levy, could be used to strengthen the scope for planning to support the delivery of development. We commissioned research and published a report of Stage 1 and 2 of this work[4] alongside the consultation

[4] Research Project to Identify and Assess the Options for the Introduction of an Infrastructure Charging Mechanism in Scotland (Stage 1 & Stage 2) (www.gov.scot)

paper in January 2017. […]

- There appears to be general support for the principle of introducing a levy, but views vary on the form it should take.
- Many consultees are seeking further information before reaching a view on whether or not it would be a positive change.
- The development industry are questioning what a levy would fund, with concerns that it would be used to replace central funding for infrastructure.
- Businesses are seeking more information on the impacts on project viability and are concerned that it could apply to development which has no impact on infrastructure.
- Public sector respondents consider that the amount of money a levy might raise may be limited, and that it may not help if it does not make funds available to support upfront costs.
- There is support for a mechanism which could supplement the contributions gathered through Section 75 planning obligations and a recognition of a need for different solutions."

As a result of this general support, provision for an Infrastructure Levy was included in the Planning (Scotland) Bill introduced to the Scottish Parliament in December 2017. Some changes were made to the provisions during the Bill's passage through Parliament, most notably the removal of proposals that the Scottish Government should be able to aggregate infrastructure levy income from local authorities and redistribute it to be spent in different areas. The power for Scottish Ministers to establish an Infrastructure Levy through regulations was also made subject to a "sunset clause", so that the power will lapse if the first regulations are not made within 7 years of the Act receiving Royal Assent, that is by 24 July 2026.

The final report of the research mentioned in Places, People and Planning was published in November 2017: "Introduction of an Infrastructure Charging Mechanism in Scotland". This work was led by Peter Brett Associates (PBA), with a remit to identify and assess the options for the introduction of an infrastructure charging mechanism across Scotland. This research ultimately proposed two options for an "Infrastructure Growth Contribution", one collected and distributed centrally and the other managed locally. While the central co-ordinated option is not now supported by the legislation, we have taken account of points raised within the research and they have informed the discussion in section 8 of this paper.

The PBA research proposed a levy based on Gross Development Value (GDV) per square metre of the floor area of the development, with a buffer to avoid impacting viability. The charge would be calculated by a non-linear, logarithmic formula. This was found to be the most progressive option, ensuring that higher-value developments pay the highest amount of levy. It was estimated that the non-linear formula could secure £75m per annum (at 2017 prices), compared with £39m per annum for a flat rate levy. A linear percentage rate was found to secure even less than the flat rate option.

Work carried out by the Scottish Land Commission and Scottish Futures Trust in 2018, the "Enabling Infrastructure Interim Report" considered a range of issues relating to infrastructure provision, including mechanisms for land value capture. This

reviewed the PBA research and agreed that the proposed “Infrastructure Growth Contribution” approach could be effective and would raise more than the CIL approach.

The Scottish Government commissioned research on “The value, incidence and impact of developer contributions in Scotland”. This research, carried out by the London School of Economics, University of Sheffield, Stefano Smith Planning and Rettie & Co, was published on 9 July 2021. It estimated that almost £0.5bn was agreed through planning obligations in Scotland in 2019/20 – of which approximately £300m was for affordable housing and £200m for infrastructure. This had increased by more than a third over the preceding three years, which is helpful to keep in mind when considering earlier reports. However, the value of such contributions is highly concentrated in a few locations – mainly in the central belt – where land values are comparatively high. In many areas of Scotland, development values are insufficient to support substantial contributions, either through planning obligations or a new mechanism such as an infrastructure levy.

The research also identified that the developer contribution system is generally accepted and is working well in operational terms (although improvements could be made). Affordable housing contributions in particular are well understood and accepted. There was general agreement that planning obligations should focus on site-specific mitigation, and are not generally an effective means of addressing the cumulative impacts of development, or securing funding for wider infrastructure requirements.

# 6 Provisions of the Planning (Scotland) Act 2019

The full provisions of the 2019 Act relating to the infrastructure levy are set out in Annex A.

The main provisions are at sections 54-58. Note that these provisions stand alone in the 2019 Act and do not amend the 1997 Act. They give Scottish Ministers powers to make regulations to “establish, and make provision about, an infrastructure levy”, which is a levy:

> (a) payable to a local authority,
> (b) in respect of development wholly or partly within the authority’s area,
> (c) the income from which is to be used by local authorities to fund, or contribute towards funding, infrastructure projects.

This power will lapse unless regulations are made within 7 years of the Act receiving Royal Assent, that is by 24 July 2026

Section 56 defines that:

> ““development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997,

"infrastructure" includes—
(a) communications, transport, drainage, sewerage and flood-defence systems,
(b) systems for the supply of water and energy,
(c) green and blue infrastructure,
(d) educational and medical facilities, and
(e) facilities and other places for recreation,

"green and blue infrastructure" means features of the natural and built environments (including water) that provide a range of ecosystem and social benefits,

"infrastructure project" means a project to provide, maintain, improve or replace infrastructure."

Section 57 allows Ministers to change or clarify the meaning of "infrastructure" through regulations.

Section 54 allows the Scottish Ministers to issue guidance to local authorities about the infrastructure levy, which local authorities must have regard to.

Schedule 1 makes further provision about what the infrastructure levy regulations may do. However, this is almost all permissive, it does not specify anything that the regulations must do. This means that there is a wide scope for how the Levy can be designed, and many issues to be considered in developing the regulations.

# 7 Core criteria for an Infrastructure Levy for Scotland

Having considered the research and evidence summarised in section 3, we propose some core criteria for the ILS.

We recognise that an infrastructure levy will not raise all the funding needed for infrastructure related to development in an area; in fact it may raise a relatively small amount. Research in 2017 suggested that it might raise £75m per year, compared with the sum of £200m for infrastructure agreed through planning obligations in 2019/20. However, we believe a levy can still make a helpful contribution, specifically to support the provision of infrastructure required as a result of cumulative development or to facilitate planned growth in an area.

In light of the research on *"The value, incidence and impact of developer contributions in Scotland"*, we propose that the ILS should operate alongside s75 planning obligations and other forms of developer contributions rather than replacing them. Developer contributions should continue to be used to deliver infrastructure which is required to mitigate the impacts of an individual development, and affordable housing. The levy will contribute to wider infrastructure needs that cannot readily be funded through planning obligations, including regional projects. The levy will not replace national investment in major infrastructure projects or planned local authority investment, but will augment the funds available.

Many of the issues raised in the following sections require a balance to be struck between different options. Taking account of the previous work undertaken, in designing the Levy we want to ensure as far as possible that it is:

- Simple for planning authorities to implement – we are conscious of the resourcing pressures on planning authorities;
- Predictable and straightforward for developers to calculate – the intention is that the Levy should be reflected in land prices, and this can only be the case if developers are able to estimate the charge in advance;
- Set in a way that takes account of viability, considering other demands and costs on a development;
- Fair and proportional in how contributions are required from developments of different sizes and types, including allowing flexibility and exemptions where appropriate;
- Complementary to existing mechanisms – serving a distinct purpose from s75 planning obligations; funding infrastructure for which such obligations are less suitable or where it is appropriate to gather contributions across a wider area; avoiding double-dipping.

These aims also align with the principles for tax policy making set out in the Framework for Tax published by the Scottish Government in 2021, of:

- Proportionality
- Efficiency
- Certainty
- Convenience
- Engagement, and
- Effectiveness

We are conscious that the Scottish Government is also considering the creation of a Scottish Building Safety Levy, following agreement from the UK Government to devolve the necessary powers to the Scottish Parliament. This means there are an increasing number of demands on residual land values, which could impact on the viability of some developments. The setting of the ILS will need to take account of this.

We also recognise that particular provision may need to be made in relation to development within National Parks, to ensure that levy setting, collection and expenditure is co-ordinated and agreed between the relevant local authorities and the National Park Authority, taking account of the Park's Local Development Plan.

# 8 Issues for discussion

The following issues are based on the provisions in Schedule 1 of the 2019 Act, in order to inform what should be included in draft infrastructure levy regulations. Many of the issues are interconnected but we have tried to separate them out for clarity. Each section sets out the key considerations and possible options, followed by points for discussion. The final summary sets out our initial proposals for the ILS (section 9), but this is not fixed and we would be interested to hear arguments for alternative approaches.

The points for discussion are not intended to be restrictive and any additional comments or suggestions are welcome.

## 8.1 Setting the payable amount

The legislation requires that the infrastructure levy is to be collected and spent by local authorities. Under paragraph 5 of schedule 1 of the 2019 Act ("the schedule"), regulations may set out:

> "(d) The amount to be paid by way of infrastructure levy in respect of a development ("the payable amount") either by –
>
> (i) stating the amount, or
>
> (ii) setting out how it is to be calculated."

Following the PBA research published in 2017, it seems unlikely that a simple flat rate for the Levy could be stated in regulations that would produce a reasonable result across Scotland. Such an approach is likely to overcharge lower value developments, potentially impacting on viability, and significantly undercharge higher value ones which could contribute more. We therefore assume that some form of calculation will be required to tailor the payable amount to individual developments.

The regulations will need to set out the elements of the calculation, it would be outwith these powers to simply allow local authorities to freely determine how to set the Levy in each area. However, flexibility can be provided, for example by allowing local authorities to determine key elements of the calculation. The Scottish Government will work in partnership with local authorities and COSLA to establish an appropriate level of flexibility.

The following sections therefore consider approaches that could allow a standard methodology to be applied with local variation. This also needs to avoid placing excessive burdens on local planning authorities or creating too much inconsistency for developers who operate in more than one area.

### 8.1.1 Unit of charge

The next issue is whether the charge should be based on the size or value of developments and how that is measured. This is a key area where a balance is required between proportionality, simplicity and predictability.

For residential developments, the number of units would be the simplest approach. However, this would charge the same amount for a one-bedroom flat as for a six-

bedroom house, and therefore would not take sufficient account of the development's value. It could impact the viability of some developments and could inadvertently disincentivise the provision of smaller units.

The size of houses could be taken into account by charging by the number of bedrooms, or total number of rooms. While this would not account for larger room sizes, it would provide some reflection of the difference in value.

A more precise approach would be a charge per square metre of development, as for CIL. This would be more complicated to calculate, but it has the advantage that it could also be applied to commercial development, whereas per unit or per room calculations could only apply to housing. This would be our preferred option. There are various approaches to measuring the area of a development, for which RICS provides guidance. A charge per square metre of Gross Internal Area is the approach used by CIL, while fees for planning applications (for non-residential buildings) are based on an external measurement of gross floor space.

The most precise, but also most complicated, option would be to base the charge on the actual residual value of the development. The 2017 research found that GDV, which is ultimately expressed in the price achieved for the completed development, is the major factor in calculating the difference between residual land values and existing use values of the land. GDV therefore effectively reflects differences in land value uplift between areas and can be used as a proxy for residual value. Decisions would need to be made about when the value is assessed, by whom and on what basis. This is particularly important given that the actual GDV of any given development will not be known until it has been completed and units have been sold/let. While the valuation of housing for sale is relatively straightforward, valuation of commercial and rental property is more complex, and a standard approach would need to be prescribed. Requiring a valuation of the development would introduce additional cost to the process, as well as more potential for disputes and appeals.

Consideration will need to be given to how redevelopment of brownfield sites is treated. Policy 9 of NPF4 encourages the reuse of brownfield, vacant and derelict land and empty buildings, and clearly redevelopment of property in the same use is unlikely to increase the demands on infrastructure. CIL discounts the area of any existing property that is demolished or renovated, but this is subject to a complex determination of whether the property is in appropriate use. It may be simpler to allow the planning application system to deal with the implementation of this policy.

Points for discussion

- Do you agree that the charge should be based on a calculation per square metre of development? Are there any options or issues we have not considered above?
- Should the area of the development be calculated by internal or external measurement?
- How should existing property that is demolished or redeveloped be treated in the calculation?

### 8.1.2 Setting the Levy amount

We recognise that the return available on development, and therefore the viability of development, varies widely across Scotland, including within local authority areas. The amount of the ILS therefore needs to reflect this, to avoid the risk of making development unviable.

If the Levy is charged as a proportion of the value of each development, this would automatically reflect the differing values of development across Scotland. The PBA research provides a formula for such a charge, based on value per square metre of development[5], which works out at between 1.7% and 3% of GDV. However, this approach requires a valuation of each development, which we have identified as the most complex option for the unit of charge.

We have noted that CIL is charged as a set amount per square metre of development, but the rate is set by each local authority and is usually differentiated for different types of development and in particular zones. This is based on local calculations of viability and development value.

To reduce the burden on local authorities of carrying out multiple viability assessments, an alternative to using the actual value of each development might be to use average values for different areas, to determine a set amount per square metre for each development type. While this is less precise than using actual values, it would provide some reflection of local variation.

It would be possible to set the amount according to average values in each local authority area, or regionally. However, market areas and development values vary at a very local scale, both within and across local authority boundaries. Planning authorities are therefore best placed to understand this variation, including through the LDP / delivery programme process and their work with neighbouring authorities to identify regional spatial priorities, regional transport strategies, and in future on Regional Spatial Strategies. This will also include joint work between local authorities and National Park Authorities.

Potentially the Scottish Government could set a formula for the Levy, in the regulations, which planning authorities would apply to average values across relevant zones in their area, to determine a set amount per square metre. It would be for the planning authority to determine the boundaries of the zones and to calculate the average values. If there are areas where the local authority considers it would not be appropriate to charge the Levy, taking account of market conditions, incentives for development etc, this could be allowed for either through zero rating or by an exemption – see section 8.2.1.

Sale prices for houses are widely available and there are generally enough sales in any given area to be able to determine an average. Commercial and industrial developments are more difficult to value and there may not be enough of any particular category coming onto the market each year to provide an average. An alternative mechanism may therefore be needed to set a levy rate. For CIL this is

---

[5] Introduction of an Infrastructure Charging Mechanism in Scotland: research project - section 6.3

often done by setting the rate for commercial property at a percentage of the rate for housing. Some types of development may be zero rated because it is considered that they are never likely to provide sufficient value to pay a levy – although this also links to the issue of what types of development should pay a levy (see section 8.2). Zero-rating for the purposes of the ILS would not preclude use of planning obligations or conditions to deal with site-specific impacts of commercial or industrial developments.

Points for discussion

- Do you agree that the Levy should be charged as a set amount per square metre?
- Is it helpful to use average sale values to set the amount of the Levy? What other methods could be used?
- How can a set amount best reflect local variation in development value? Do you agree that local authorities should set the zones across which the amount is set?
- Should local authorities be allowed to charge the Levy only in parts of their area (or not at all)?
- How could amounts for commercial and industrial development be set?

#### 8.1.3 The ILS and other demands on value

The powers to make regulations include an option to permit planning authorities to grant relief from liability for the Levy where it considers that it would duplicate a contribution required under a s.75 planning obligation. However, as noted in section 7, we propose that the Levy should in general be charged in addition to any s.75 obligations, and for a separate purpose. Further detail on what the Levy could be spent on is set out in section 8.7 below.

It is intended that the ILS will be set at a low enough level that it should not impact viability in the majority of cases. Monitoring will be needed to ensure that it does not impact on levels of affordable housing or other on-site infrastructure being provided. We consider it may be helpful to allow local authorities discretion to waive or reduce the Levy in individual cases where they believe that charging it would inhibit development, taking account of other costs such as planning obligations and, in the future, the Scottish Building Safety Levy. This could also be used to avoid duplication of contributions to the same infrastructure. However, planning obligations are already flexible and could potentially be adjusted to reduce the overall demands on a particular development. Any discretionary reduction of the ILS would need to take account of the requirements of the Subsidy Control Act.

Points for discussion

- Would it be helpful for local authorities to have discretion to waive or reduce the ILS in individual cases?
- Should the impact of planning obligations and other charges / requirements be considered in this assessment?

## 8.2 What kinds of development should pay the Levy?

Our thinking at the time of the primary legislation had been that the ILS should not be charged on developments which are themselves infrastructure or do not increase demands on infrastructure. The developments that would most likely be chargeable are sometimes described as "buildings used by people", and excludes structures which are not buildings (such as bridges, pipelines, pylons, masts, wind turbines) and buildings which people do not go into, or only go into to maintain equipment. Infrastructure buildings that are used by people would include, for example, railway or bus stations, schools and medical facilities.

The majority of new development, and the type that most clearly drives the need for infrastructure, is residential. It is therefore clear that new build housing for market sale should pay the Levy. Residential institutions such as care homes, hospitals and residential schools or colleges would be excluded as being infrastructure, as would criminal justice accommodation and military accommodation.

There is a question as to whether affordable housing should pay the Levy, particularly when it is provided through a planning obligation. Affordable housing places demands on infrastructure just like any other housing, and the PBA research recommends that affordable housing should be charged, otherwise it could distort the market for land, as affordable housing providers could offer more than other developers. Providing an exemption could potentially conflict with subsidy control requirements. On the other hand, charging the Levy on affordable housing could potentially lead to reduced provision, impacting the Scottish Government's ambitious target of delivering 110,000 affordable homes by 2032 of which 70% will be for social rent and 10% in rural and island areas. There are a range of types of affordable housing, and it may be appropriate to exempt some and not others.

For other types of development the arguments are less clear. Developments which are not housing create less burden on infrastructure, although there is still some impact, particularly on transport. Commercial development is funded differently from housing, and may be built either for rental or for the developer's own use, such as a factory or company headquarters, which means there is not the same immediate financial return. Purpose-built student accommodation and build-to-rent housing may have similar issues. Some, but not all, of these developments also have very low margins of viability, although there may be profitable exceptions in high-value locations. There are options, therefore, to either exclude all or some types of commercial and rental development from the Levy, or to allow local authorities to give them a zero rating in zones where they are unlikely to be viable if charged the Levy.

We are open to exploring whether new energy infrastructure and associated development should be liable to pay the Levy. Whilst these developments are fewer in number, the transition to net zero means that we expect substantial levels of investment and development in the coming decades, opening up significant opportunities particularly for more rural parts of Scotland. This is also generating significant associated needs, for example for increased housing provision to provide choice in growing communities. New homes will also depend on the provision of additional infrastructure and community facilities, and charging a levy to help meet

such costs could be used to incentivise development by helping to overcome higher housing development costs in rural and island areas. We are therefore seeking views on whether the Levy should apply to these development types.

Onshore renewable energy developments are encouraged to provide community benefits on a voluntary basis, in line with Scottish Government guidance: Community benefits from onshore renewable energy developments. If the ILS were also to be charged for such developments, we would need to consider the interaction of the two schemes to ensure a continuing positive impact for local communities.

Points for discussion

- Do you agree that residential institutions should be excluded from the Levy?
- Should the Levy be charged on all or some types of affordable housing?
- How should commercial development, purpose-built student accommodation and build-to-rent housing be treated?
- Should renewable energy infrastructure and related development also be subject to the Levy? How might that impact on voluntary community benefits?

### 8.2.1 Exemptions

Since the purpose of the ILS is to fund infrastructure in response to increased demand, we would not expect the Levy to apply to “householder” development, such as an extension or renovation to an existing house.

There is a question as to whether very small developments should be exempt from the Levy, for example developments of 10 dwellings or less, and self-build homes. This could have a number of advantages; it could encourage redevelopment of gap sites, and provision of housing in small rural communities. It could also support small and medium sized enterprises (SMEs – defined as those with less than 250 employees) which are more likely to take on smaller sites. On the other hand, a number of small developments could have a cumulative impact that requires additional infrastructure.

Housing to 2040 recognises the challenges and diversity of housing delivery in rural areas and it also recognises the significant and generational impact that a small number of additional homes can make to the long-term resilience of rural communities. The Rural and Islands Housing Action Plan includes a strong focus on community-led housing and highlights that in remote, rural and island areas, small-scale actions can bring about significant impacts.

It may be most appropriate for local authorities to have the option whether to apply exemptions for very small developments and self-build in their area, enabling them to reflect local circumstances.

Other exemptions might apply to the character of the developer, for example for charities.

All exemptions will need to take account of the requirements of the Subsidy Control Act 2023 (replacing EU State Aid rules). The more flexibility local authorities have to grant exemptions, the more work is likely to be required to ensure they are compliant.

Points for discussion

- Do you agree that householder development should be excluded from the Levy?
- Should self-build housing and very small developments be exempt?
- Are there any other types of development that should be exempt?
- Should there be exemptions for charities or other types of developer?
- To what extent should exemptions be set nationally, or at local authorities' discretion?

## 8.3 When should the Levy be calculated, and paid?

The timing of the calculation and payment of the Levy needs to take into account potential changes to the development, and convenience to the developer and the local authority.

Whether the ILS is calculated on the basis of the size or the value of the development, both of these may vary during the progress of the development. An earlier calculation (and payment) can provide more certainty for both the developer and the planning authority, but could also fail to reflect later changes that impact on the value and viability of the development, which could either increase or decrease the amount of levy due. If the charge is based on floor area, any changes are generally within the developer's control and therefore the effect on the Levy can be predicted and allowed for when the change is made, whereas development value is more likely to be affected by external factors.

If the administration of the ILS is to be integrated with the planning system, it would be helpful if it became due at an identifiable point in the development management process. There are two main options:

- Payment could be required when planning permission was granted, or on commencement of development. This could provide earlier funds for the planning authority, but could create cashflow difficulties for the developer, as well as failing to allow for any changes during construction.
- Alternatively, the PBA research suggested that the Levy should become payable on completion of the development or of a phase of the development, described as "when floorspace is available to be used". Payment of the Levy at this stage could be triggered by the notice of completion required under section 27B of the 1997 Act. This would support the developer's cashflow, but could create risks in terms of who pays the Levy, and enforcement if it is not paid, as set out in the following sections.

If the Levy is to be charged on development that benefits from Permitted Development Rights, and does not require prior notification to the planning authority, other arrangements may need to be made to ensure the local authority is aware of

the development and able to charge the Levy. The majority of development under Permitted Development Rights would not be subject to the Levy, but some may be depending on what approach is taken, for example if very small developments are included.

Where the planning authority is not the local authority (ie in Loch Lomond and Trossachs National Park) arrangements will need to be made to manage charging and enforcement of the Levy.

Points for discussion

- When would be the best time for the Levy to be calculated and paid?
- What arrangements could be made in the case of development benefitting from PDRs?
- Is any special statutory provision needed to manage arrangements in LLTNPA?

## 8.4 Who should be liable to pay?

The intention is that the responsibility for paying the ILS will fall to the developer, who will take it into account in calculating how much they pay for land. However, it can be difficult to legally identify the developer, particularly in large developments where there may be a number of partners and agents involved. The owner of the land while it is being developed is probably the easiest person to identify, and if they are not the developer it may be assumed that they will have a relationship with the developer through which the apportionment of costs can be agreed.

Identifying who should pay is also linked to when the Levy becomes payable. The developer may take an option on land and wait until planning permission is granted before completing the purchase, and they may sell the development, or some parts of it, before construction is complete. Commencement of development may be the best time to identify the owner of the land, even if the charge is payable at a different time.

It is unlikely that the cost of the Levy will be transferred to homebuyers, because property prices are set by wider economic considerations rather than the developer's costs. However, if this is a concern, it may be possible to prevent the responsibility for the Levy being passed on to purchasers, as can be done with planning obligations. Homebuyers will normally seek to ensure that any such liabilities are cleared before concluding the purchase.

Points for discussion

- Do you agree that the owner of the land at commencement of development should be liable to pay the Levy?
- If not, who should be liable, and how (and when) should they be identified?
- Should there be specific provisions to prevent liability for the Levy being passed on to homebuyers?

## 8.5 Appeal process

Infrastructure levy regulations may make provision for appeals either against a decision that the Levy is payable in a particular case, or about the amount being charged. They can set out that the appeal is to be made either to the Scottish Ministers, or to a person appointed by them. There are existing appeals processes for planning matters, and also for valuation issues, for example in relation to council tax / non-domestic rates. The form of the appeal process will depend on choices made about the design of the Levy.

## 8.6 Penalties and enforcement

The 2019 Act allows for infrastructure levy regulations to make various provisions for enforcement of the Levy and for penalties if it is not paid.

They may allow or require local authorities to charge a financial penalty if the Levy is not paid on time. This could be a fixed amount or a proportion of the amount due, and it could increase over time if it is not paid. Any penalty fees become part of the "infrastructure-levy income" for the local authority to spend on infrastructure projects.

The regulations may also allow the local authority to require that development stops until the Levy has been paid in full (including any penalty fees). This again links to when the Levy becomes due; if the Levy is not charged until the development is ready for use, stopping development may have less impact, although it could be effective on large sites which will be completed in phases. The regulations may also set out the consequences if the developer does not stop work when required to do so, including making it an offence.

Powers need to be available in case any developer should try to evade payment of the Levy, or try to pay less than they should. Regulations may make it an offence to do so by withholding information, providing false or misleading information, obstructing the investigation of someone's liability to pay the Levy, or to cause anyone else to do any of these things. Regulations may also enable local authorities to confer powers on someone to enter premises for the purpose of investigating liability for infrastructure levy, and to seize things they may find in the process. This power does not allow entry into dwelling houses. Since the Levy could represent a significant amount of money for some developments, we would expect to implement these powers so that local authorities are able to enforce the ILS if necessary.

For any offences that may be introduced, the maximum penalty that can be set in the legislation would be a potentially unlimited fine or up to 2 years imprisonment (or both) if tried in the High Court, or up to £10,000 or 12 months imprisonment if tried in the Sheriff Court. The method of trial can be set in the legislation or may be left to be determined by the prosecutor.

Points for discussion

- Should there be a penalty fee if the Levy is not paid on time?
- If so, should it be a fixed amount or a proportion of the amount due?
- Should the penalty increase over time if the Levy is still not paid?
- Should the local authority be able to require development to stop if the Levy is not paid? Would this be effective?
- Do you have any views on offences relating to failure to pay, failure to stop work, or attempting to evade full payment?

## 8.7 What should the Levy be spent on?

The 2019 Act provides a broad definition of "infrastructure" on which levy income can be spent, as set out in section 6. We do not consider that any changes are needed to this list at present.

It seems that a levy is most likely to be well received when it is clear what it will be spent on. The intention of the ILS is to help fund infrastructure projects which are needed as a result of the cumulative impacts of development, or regional projects. These are projects which are less clearly connected to the impacts of particular developments, and therefore could not be readily be funded or provided through s.75 planning obligations. We would expect that these projects will normally be identified in local development plans and delivery programmes, in accordance with the Infrastructure First approach advocated by NPF4. If an authority wants to implement the Levy before an adopted LDP and delivery programme identifies expectations, they could perhaps publish a separate list of relevant infrastructure which the Levy income is to be put towards.

Infrastructure levy monies could also be used to pool funding or contribute to infrastructure which will be of benefit to more than one planning authority area, as identified through the regional spatial priorities in NPF4 and in future through Regional Spatial Strategies. Where the Levy is charged on development in a National Park, it would be expected that money would be spent in the Park or on regional infrastructure that will benefit communities in the Park.

The ILS is not expected to fully fund specified infrastructure; there will be a range of funding for any particular project, and the ILS is not intended to replace national funding or existing local authority funding. We propose that the Levy rate will be set by reference to development value and viability rather than to the costs of identified infrastructure. In addition, in most cases it will not be practical for levy income from a particular development to be put towards infrastructure needed by that development, because the developer will not have funds to pay the Levy until the development is completed, creating a "chicken and egg" situation. Local authorities will need to front-fund infrastructure projects at the start of the process, either from capital budgets or through borrowing, until levy receipts start to build up. There is no prohibition on borrowing against ILS income, if local authorities consider it prudent to do so. Over time the Levy income will become an ongoing stream of funding for infrastructure identified in subsequent LDPs.

Unlike CIL, the 2019 Act does not allow for infrastructure-levy monies to be used to cover the costs of administration of the scheme. Although our aim is to make the Levy as simple as possible to administer, we recognise that costs will still be an issue for local authorities. Once we have a clearer picture of how the Levy will operate, we will work with local authorities to estimate what the costs will be and how they could be covered, taking into account both the Verity House Agreement and our current consultation on resourcing Scotland's planning system.

Points for discussion

- Are any changes needed to the definition of infrastructure?
- Do you agree that the Levy should fund infrastructure identified in the development plan, or should local authorities provide a separate list?
- How could the costs of administering the Levy be covered?

## 8.8 Accounting for levy income and expenditure

The Act states that infrastructure levy regulations may make provision about the accounts that local authorities are to keep in connection with (a) the exercise of their functions under those regulations, and (b) their expenditure of infrastructure levy income (including any financial penalties for late payment).

Given the purpose of the ILS, it seems clear that the money collected should be accounted for separately and not subsumed into general local authority funding. We would propose that the local authority should provide an annual report showing the amount of infrastructure-levy income collected in the previous financial year and the amount spent, and what it has been spent on. Since delivery of development and of infrastructure will often stretch over multiple years, it would be helpful to show figures from previous years and predictions for future years (especially if the Levy is to be payable later in the development process). This will help to show how levy income is accumulated for later expenditure. Either three or five years in each direction might be appropriate.

Points for discussion

- Do you agree that the local authority should publish an annual report on infrastructure levy income and expenditure?
- How many years should reporting cover – six, ten, or a different period?
- Are any other provisions required on accounting or collection of the Levy?

Are there any other issues to be considered?
Additional comments are welcome.

# 9 Summary proposal

The following summarises our initial thoughts as to how the ILS could operate, as set out in the previous sections. However, this is a proposal for discussion and we are keen to hear alternative views.

**We propose:**

## 8.1 Setting the payable amount

- The regulations will set out a formula for calculation of the ILS.
- The ILS will be charged as a set amount per square metre of development.
- Developments could be measured by Gross Internal Area or by external area.
- There are a range of arguments as to whether the area of existing buildings that are demolished or redeveloped should be discounted.

- The formula will include elements which local authorities will determine, which will give them flexibility over where the Levy will be applied and how much it will be. This might be done by applying the formula to average development values within zones which the local authority identifies.
- It is expected that the charge will be in the range of 1.5% to 3% of GDV.
- Local authorities would not be required to charge the ILS in all (or any) parts of their area.
- Local authorities will have discretion to waive or reduce the amount of the Levy where they believe it could inhibit development, taking into account other costs such as planning obligations.

## 8.2 What kinds of development should pay the Levy?

- The standard rate of the Levy will be for residential development.
- We are interested in views on whether commercial / industrial development should pay the Levy, how that might operate in different areas, and particularly whether renewable energy infrastructure and related development should be charged.
- If commercial / industrial development is charged, this should be at a different rate from residential development.

- We propose that residential institutions, householder development and self-build housing will be excluded from the Levy.
- There are more questions to be considered as to whether (some or all) affordable housing, purpose-built student accommodation, and very small developments should be excluded.
- Some exemptions could be at local authority discretion, others could apply nationally.
- There could also be exemptions for different types of developer.

## 8.3 When should the Levy be calculated, and paid?

- We are open to views on when the Levy should be calculated and paid; either at the beginning of development or at the end.

- Arrangements will need to be made for development that benefits from Permitted Development Rights and those for which the planning application is made to LLTNPA.

## 8.4 Who should be liable to pay?

- We propose that the landowner at the point of commencement of development will be liable for the Levy.
- Provision may be needed to prevent liability being passed on to homebuyers.

## 8.5 Appeal process

- The form of the appeal process will depend on choices made about the design of the Levy.

## 8.6 Penalties and enforcement

- A penalty fee will be payable if the Levy is not paid on time. We are interested in views on how this should be calculated and whether it should increase over time.
- It would be possible to enable local authorities to require development to stop if the Levy is not paid. Whether this is an effective sanction may depend on when the Levy is due to be paid.
- The regulations will provide that it is an offence to take steps to try to evade payment of the Levy, or reduce the amount required, by withholding information, providing false or misleading information or obstructing investigations. Local authorties will have powers to enter premises and seize items in order to investigate liability for the Levy.

## 8.7 What should the Levy be spent on?

- We do not consider that any changes are needed to the definition of infrastructure.
- The levy is to be spent on infrastructure identified in the LDP and NPF4, and in future through Regional Spatial Strategies, for which s.75 planning obligations are less suitable or where it is appropriate to gather contributions across a wider area.

## 8.8 Accounting for levy income and expenditure

- Local authorities will be required to report annually on the amount of infrastructure levy income collected and spent, what it has been spent on and predictions for future years.

# Annex A: Text of Planning (Scotland) Act 2019

**PART 5**
**Infrastructure levy**

### 54 Power to provide for levy

(1) The Scottish Ministers may by regulations establish, and make provision about, an infrastructure levy.

(2) An infrastructure levy (within the meaning of this Act) is a levy—

(a) payable to a local authority,

(b) in respect of development wholly or partly within the authority's area,

(c) the income from which is to be used by local authorities to fund, or contribute towards funding, infrastructure projects.

(3) Schedule 1 elaborates on the regulation-making power conferred by this section.

### 55 Guidance

(1) The Scottish Ministers may issue guidance to local authorities dealing with—

(a) how they are to discharge the infrastructure-levy functions conferred on them by regulations under section 54, and

(b) how infrastructure-levy income should be spent.

(2) Local authorities must have regard to any guidance under subsection (1) that is addressed to them.

(3) Guidance under subsection (1) may be addressed to—

(a) an authority, or more than one authority, identified in the guidance, or

(b) all authorities.

(4) The Scottish Ministers must make guidance issued under subsection (1) publicly available.

(5) The power under subsection (1) to issue guidance includes the power to—

(a) issue guidance that varies guidance issued under that subsection, and

(b) revoke guidance issued under that subsection.

(6) In subsection (1)(b), “infrastructure-levy income” includes monies collected as financial penalties imposed by virtue of paragraph 9 of schedule 1.

### 56 Interpretation of Part and schedule

In this Part and schedule 1—

"development" has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997,

"infrastructure" includes—

(a) communications, transport, drainage, sewerage and flood-defence systems,
(b) systems for the supply of water and energy,
(c) green and blue infrastructure,
(d) educational and medical facilities, and
(e) facilities and other places for recreation,

"green and blue infrastructure" means features of the natural and built environments (including water) that provide a range of ecosystem and social benefits,

"infrastructure project" means a project to provide, maintain, improve or replace infrastructure.

### 57 Power to change meaning of "infrastructure"

The Scottish Ministers may by regulations modify section 56 so as to change, or clarify, the meaning of "infrastructure" for the purposes of this Part and schedule 1.

### 58 Lapsing of power to provide for levy

(1) The regulation-making power conferred by section 54 ceases to be exercisable if no regulations have been made under it within the period of 7 years beginning with the day that the Bill for this Act receives Royal Assent.

(2) If, by virtue of subsection (1), the regulation-making power conferred by section 54 ceases to be exercisable, the Scottish Ministers may by regulations repeal—

(a) this Part, and

(b) schedule 1.

## SCHEDULE 1

### INFRASTRUCTURE-LEVY REGULATIONS

*(introduced by section 54)*

*General*

1 In this schedule, “infrastructure-levy regulations” means regulations under section 54.

2 This schedule (apart from paragraphs 15(2) and 16) is without prejudice to the generality of the regulation-making power conferred by section 54.

3 Infrastructure-levy regulations may make incidental, supplementary, consequential, transitional, transitory or saving provision.

4 Any provision which infrastructure-levy regulations may make may be made by the regulations modifying another enactment.

*Who is liable for what*

5 Infrastructure-levy regulations may set out—

(a) the kinds of development in respect of which infrastructure levy is payable,

(b) who is liable to pay infrastructure levy in respect of a development,

(c) when liability to pay infrastructure levy in respect of a development arises, and

(d) the amount to be paid by way of infrastructure levy in respect of a development (“the payable amount”) either by—

(i) stating the amount, or

(ii) setting out how it is to be calculated.

*Relief where relevant planning obligation*

6 Infrastructure-levy regulations may make provision to grant relief from liability to pay infrastructure levy in respect of a development where—

(a) a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 has been entered into in respect of the development, and

(b) the planning authority in respect of the development considers that to require payment of infrastructure levy in respect of the development would constitute a duplication in any form of contribution by the person who is liable to pay infrastructure levy.

*Local exemptions and discounts*

7 Infrastructure-levy regulations may—

(a) confer on local authorities the power to waive or reduce infrastructure levy in respect of development in their areas, and

(b) set conditions on the exercise of any power so conferred.

*Collection and enforcement*

8 Infrastructure-levy regulations may—

(a) make provision about the collection of—

(i) payable amounts, and

(ii) penalties imposed by virtue of paragraph 9,

(b) enable local authorities to confer—

(i) powers of entry (except in relation to a dwelling-house) for the purpose of investigating liability for infrastructure levy, and

(ii) powers to seize things found in the course of investigating liability for infrastructure levy,

(c) make it an offence to evade, or reduce liability to pay, infrastructure levy (or attempt to do so) by—

(i) withholding information,

(ii) providing information that is false or misleading,

(iii) otherwise obstructing the investigation of someone's infrastructure-levy liability, or

(iv) causing another person to do any of those things.

*Financial penalty for late payment*

9(1) Infrastructure-levy regulations may allow, or require, local authorities to charge a financial penalty if the payable amount is not paid within a period specified in the regulations.

(2) The regulations may, in particular, provide for the charging of—

(a) a penalty of a specified amount (or amounts),

(b) a penalty that is calculated periodically as a proportion of the payable amount, or

(c) both kinds of penalty.

*Stopping development*

10(1) Infrastructure-levy regulations may—

(a) empower a local authority to direct that the carrying out of development stop until there has been payment in full of—

(i) the payable amount, and

(ii) any financial penalty imposed in connection with the development by virtue of paragraph 9, and

(b) prescribe the consequences of not stopping development when directed to do so.

(2) The regulations may, in particular, make it an offence not to stop development when directed to do so.

*Remission and repayment*

11 Infrastructure-levy regulations may provide for the remission or repayment (with or without interest) of the whole or part of—

(a) the payable amount, and

(b) any financial penalty imposed by virtue of paragraph 9.

*Appeals*

12 Infrastructure-levy regulations may—

(a) establish a process for appealing against a decision—

(i) that infrastructure levy is payable, or

(ii) about what the payable amount is,

(b) provide that such an appeal is to be made to—

(i) the Scottish Ministers, or

(ii) a person appointed by them,

(c) enable the person to whom such an appeal is made to set rules (or further rules, in addition to those set by the regulations) about the conduct of the appeal,

(d) in respect of such appeals—

(i) prescribe fees, and

(ii) make provision allowing expenses to be awarded.

*Accounting requirements*

13(1) Infrastructure-levy regulations may make provision about the accounts that local authorities are to keep in connection with—

(a) the exercise of their functions under infrastructure-levy regulations, and

(b) their expenditure of infrastructure-levy income.

(2) In sub-paragraph (1), “infrastructure-levy income” includes monies collected as financial penalties imposed by virtue of paragraph 9.

*Expenditure of levy income*

14(1) Infrastructure-levy regulations may make provision about the particular purposes for which local authorities may apply infrastructure-levy income.

(2) In sub-paragraph (1), “infrastructure-levy income” includes monies collected as financial penalties imposed by virtue of paragraph 9.

*Use of planning and development powers*

15(1) Infrastructure-levy regulations may make provision about how any of the following powers may or may not be exercised—

(a) section 75 of the Town and Country Planning (Scotland) Act 1997 (planning obligations),

(b) section 53 of the Roads (Scotland) Act 1984 (agreements as to use of land near roads),

(c) any other power relating to planning or development.

(2) But provision of the kind mentioned in sub-paragraph (1) may be made only if the Scottish Ministers consider it necessary or expedient for the purpose of—

(a) enhancing the effectiveness of infrastructure levy as a means of raising revenue to fund, or contribute towards funding, infrastructure projects, or

(b) preventing or restricting the use of powers, other than the power to charge infrastructure levy, in circumstances in which the Ministers think using the power to charge infrastructure levy would be more appropriate.

*Maximum penalties*

16(1) The maximum penalty that infrastructure-levy regulations can specify for an offence they create is—

(a) for a summary-only offence—

(i) a fine not exceeding level 5 on the standard scale,

(ii) a term of imprisonment not exceeding 12 months, or

(iii) both,

(b) for an either-way offence—

(i) a fine, which may not exceed the statutory maximum on summary conviction,

(ii) a term of imprisonment not exceeding—

(A) 12 months on summary conviction,

(B) 2 years on conviction on indictment, or

(iii) both.

(2) In sub-paragraph (1)(b), “either-way offence” means an offence that is triable either on indictment or summary complaint.

© Crown copyright 2024

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit **nationalarchives.gov.uk/doc/open-government-licence/version/3** or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: **psi@nationalarchives.gsi.gov.uk**.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at **www.gov.scot**

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83601-321-1 (web only)

Published by The Scottish Government, May 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1460938 (05/24)