

SOCIAL HOUSING RELIEF – CIL GUIDANCE NOTE

This guidance note does NOT set out the CIL Regulations in detail. It is intended as a summary of the relevant provisions. For detailed guidance, you should always refer to the CIL Regulations. You should also seek your own advice if you are in any doubt as regards how CIL operates or affects your own position.

Introduction

Development that incorporates social housing is entitled to mandatory relief from CIL on the social housing element of the development. It benefits most social rented, affordable rented, intermediate rented dwellings provided by a local authority, private registered provider or a non-registered provider. It also benefits shared ownership dwellings.

Applicants **may** also be expected to enter into a planning obligation (Section 106) agreement for the affordable housing provision.

Discretionary Social Housing relief is not available in the District

Definition of Social Housing

Regulation 49 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the conditions that must be met for a dwelling to be considered as social housing.

For a dwelling to qualify as social housing for CIL relief, it must satisfy at least one of the following five conditions.

Condition 1

The dwelling is let by a local housing authority on one of the following:

1. A demoted tenancy
2. An introductory tenancy
3. A secure tenancy
4. An arrangement that would be a secure tenancy but for paragraph 4ZA or 12 of Schedule 1 to the Housing Act 1985 (a)

Condition 2 (all the following criteria are met)

1. The dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008(b)

2. The percentage of the value of the dwelling is paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75% of the market value (where market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market)
3. On the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than 3% of the value of the unsold interest
4. In any given year the annual rent payable does not increase by more than the percentage increase in the retail price index for the year to September immediately preceding the anniversary of the day on which the lease was granted plus 0.5%

Condition 3

1. The dwelling is let by a private registered provider of social housing on one of the following
 - (a) An assured tenancy (including an assured shorthold tenancy)
 - (b) An assured agricultural occupancy
 - (c) An arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 of the Housing Act 1988 (c)
 - (d) A demoted tenancy
1. One of the criteria below
 - (a) The rent is
 - I. Subject to the national rent regime
 - II. Regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008
 - (b) The rent is
 - I. Not subject to the national rent regime
 - II. Not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008
 - III. No more than 80% of market rent
 - (c) The rent is
 - I. Not subject to the national rent regime
 - II. Not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008 which requires the initial rent to be no more than 80% of the market rent of the property (including service charges)

Condition 4 only applies to development in Wales

Condition 5

- a) The dwelling is let by a person who is not a local housing authority, or a private registered provider of social housing or a registered social landlord (within the meaning of Part 1 of the Housing Act 1996) on one of the following
 - I) An assured tenancy (including an assured shorthold tenancy)
 - II) An assured agricultural occupant
 - III) An arrangement that would be an assured tenancy or an assured agricultural tenancy but for paragraph 12(1)(h) of Schedule 1 of the Housing Act 1988

And

- b) The following criteria are both met
 - I) The dwelling is let to a person whose needs are not adequately served by the commercial housing market and;
 - II) The rent is no more than 80% of market rent (including service charges)
- c) A planning obligation under S106 TCPA 1990 designed to ensure compliance with both criteria at sub-paragraph (b) has been entered into in respect of the planning permission which permits the chargeable development.

Social Housing Communal Development

Qualifying communal development is defined as the amount of communal development which is for the benefit of the occupants of more than one qualifying dwelling.

Development is not communal development if it is

- a. Wholly or partly made up of one or more dwellings
- b. Wholly or mainly for use by the general public
- c. Wholly or mainly for the benefit of occupants of development which is not relevant development; or
- d. To be used wholly or mainly for commercial purposes

Homes not considered to be Affordable Housing

Homes that do not fall under the definition of affordable housing set by Regulation 49, for example low cost housing, cannot be considered as affordable housing for the purposes of CIL Relief.

How to claim Social Housing Relief

Please note that in the event that a dwelling which qualifies for social housing relief changes in tenure or type, so as to cease qualifying for social housing relief, clawback may apply.

Please ensure you understand the process for the notification of disqualifying events (see further within this guidance note).

Regulation 51 of the CIL Regulations 2010 (as amended) sets out the procedures for claiming social housing relief. It is important that these requirements are adhered to otherwise development will cease to be eligible for social housing relief.

In order to claim social housing relief, the person/organisation claiming must

(a) Have assumed liability to pay CIL through the submission of **Assumption of Liability form (Form 1)**

And

(b) Be the owner of the relevant land.

The Council may check ownership details against Certificate A and B of the planning application. If ownership has changed since the Certificate(s) were submitted then you must notify the Council of the change of ownership in writing.

The claim for social housing relief must

I) Be submitted using **Claiming Exemption of Relief form (Form 2)** prior to the commencement of the development

II) Include a relief assessment that identifies on a plan the location of the dwellings for which social housing relief applies, sets out the Gross Internal Area (GIA) of each of those dwellings, and include a calculation of the chargeable amount.

III) Provide evidence that the chargeable development qualifies for social housing relief (reference to the conditions in Regulation 49c)

Evidence should be in the form of a signed letter confirming the tenure and type of affordable housing provision to be provided, including direct reference to which condition of Regulation 49 each tenure type meets.

Please note that within the Council's Charging Schedule apartments have a nil charging rate and will therefore not incur a CIL Charge. Subsequently it will not be necessary to apply for social housing relief on apartments which will be used for social housing.

A claim for social housing relief will lapse if the development is commenced before the Council has notified the claimant of its decision on relief. In addition, development will cease to be eligible for social housing relief if any of the following apply.

(a) **A commencement notice (Form 6)** is not submitted to the Council prior to commencement of the development

(b) The claimants Assumption of Liability is withdrawn or ceases to have effect – the Council has received a **Withdrawal of Assumed Liability form (Form 3)** prior to the commencement of the development

- (c) The claimant transfers liability to another person – the Council has received a **Transfer of Assumed Liability form (Form 4)** prior to the commencement of the development.

Before commencement, relief cannot be transferred to one party to another. Where liability is transferred or withdrawn, **the new liable party must make a claim** for social housing relief but **this must be made and determined prior to the commencement of the development.**

The claimant must submit a **Commencement Notice (Form 6)** to the Council **before commencement** of the development. The Commencement Notice sets out the date on which development will commence. This fixes the commencement date of the development for the clawback period (see disqualify events).

Where a claim for social housing relief is submitted, the Council, will as soon as possible, notify the claimant in writing of its decision. If relief is refused the reason for this will be provided.

It is important that development does not commence until this decision has been made and the claimant has been informed in writing. If development commences before the Council has notified the claimant of their decision the claim for relief will not be applied/lapse.

Easy steps for claiming social housing relief

The person/organisation claiming relief must be the owner of the relevant land
Development must not have commenced

Prior to commencement

1. Assumption of Liability form submitted (Form 1)
2. Claiming Exemption or Relief form submitted (Form 2) along with required evidence
3. The Council will assess claim and where required issue a revised Liability Notice
4. Commencement Notice submitted (Form 6)
5. Commencement Notice acknowledged

Only once the claimant receives a valid liability notice which details the social housing relief **and** an acknowledgment of Form 6 should work commence – if the claimant is in any doubt if relief has been applied they should contact the Council **BEFORE** commencing the development.

Disposal of land before occupation

Once social housing relief has been granted, Regulation 52 of the CIL Regulations 2010 (as amended) allows for the relief attached to each qualifying dwelling to be transferred whenever the land on which the dwelling sits, or will sit, is sold before they are ready for occupation.

Such disposal relates to a material disposal of land, defined in Regulation 41 as

- a) Transfer of a legal estate
- Or
- b) The grant of a lease for a term of more than seven years from the date of the grant

For example, this will allow a landowner who claims social housing relief, and commences the development, to then materially dispose of the land/dwellings to a registered provider.

If the land is sold, the beneficiary must provide a notification, in writing, to the Council that

- i. Notifies the Council of the sale
- ii. States the Gross Internal Area of the qualifying dwellings which will be situated on the land which has been disposed of
- iii. Provide a plan identifying the location of those dwellings, or development
- iv. States the name and address of the seller, the buyer and any other former beneficiary of the relief

On receipt of the notification, the Council will acknowledge receipt, recalculate the relief and issue a revised Liability Notice to the new beneficiaries as to what relief they will receive.

Withdrawal of social housing relief

Regulation 53 of the CIL Regulations 2010 (as amended) sets out the withdrawal of social housing relief.

Following the grant of social housing relief, the chargeable amount (i.e. the levy that would have been payable if the exemption had not been granted) will be registered as a land charge. Should a disqualify event occur within 7 years of commencement, or in the case of condition 5 (Regulation 49), 7 years from the date the qualifying dwelling is first let, then the Council can withdraw the social housing relief and clawback the chargeable amount.

A disqualifying event is where a dwelling ceases to be a qualifying dwelling for social housing.

The material disposal of a qualifying dwelling does not cause it to cease being a qualifying dwelling if

- a) The proceeds of sale are spent on a qualifying dwelling, or qualifying communal development
- b) The proceeds of sale are transferred to the Secretary of State, a local housing authority or a HCA
- c) The disposal is made to the Welsh Ministers under paragraph 15 or 27 of Schedule 1 of the Housing Act 1996
- d) The disposal is made to the Regulator of Social Housing under S167 or S253 of the Housing and Regeneration Act 1996

Clawback payments

Clawback payments must be paid by the relevant person – this is the person who benefitted from social housing relief. The occupant of the dwelling will not pay clawback as liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

Where a disqualifying event occurs, the relevant person must notify the Council in writing of the event within 14 days of it occurring. The notification must state the Gross Internal Area of the dwelling, or communal development, which has ceased to be social housing and be accompanied by a plan which identifies the location of the dwelling.

The Council will then notify the relevant person of the withdrawn amount and how it was calculated. A new liability notice will be issued and a demand notice served to collect the clawback relief.

This will be done even if the development is completed as the clawback period lasts for 7 years from the commencement of the development.

Information Notices

Under Regulation 54, the Council can serve an Information Notice on

- a) A person claiming social housing relief
- b) A person who has made a material disposal of land in accordance with Regulation 52
- c) A person who has notified the Council of a disqualifying event

The information notice may require the person to provide information, documentation or materials to assist the Council in determining the extent a development is eligible for social housing relief and to calculate the qualifying amount of relief. This information must be provided within 14 days of the notice being served.

Failure to comply with the notice will result in surcharges being imposed in accordance with Regulation 86.

Examples of how social housing relief is calculated

The following examples show how social housing relief will be calculated. Scenario 2 deals with how existing floorspace is taken into account and scenario 3 deals with a site with existing dwellings

Scenario 1

A social housing residential development of 2,000sqm GIA on a cleared site is granted planning permission

The developer is a housing association

The residential CIL rate for the zone in which development will happen is £35/sqm which equates to a CIL Liability of £70,000.00

$$(2000 \times 35 = 70,000)$$

Prior to commencement of the development, the Council receives a claim for 2,000sqm of social housing relief as the whole development will be social housing.

The Council grant social housing relief on the 2,000sqm and the CIL Liability is reduced to £0.00 (nil).

Scenario 2

A residential development of 4,000sqm GIA on a cleared site is granted planning permission

The residential CIL rate for the zone in which development will happen is £35/sqm which equates to a CIL Liability of £140,000.00

$$(4000 \times 35 = 140,000)$$

Prior to commencement of the development, the Council receives a claim for 950sqm of social housing relief – not all of the development will be social housing

The Council grant social housing relief on the 950sqm and the CIL Liability recalculated as below

The GIA of the eligible for relief dwelling is deducted from the total GIA of the development

$$4,000 - 950 = 3050$$

The CIL liability is recalculated

$$3050 \times 35 = 106,750$$

A revised liability notice is sent for £106,750.00

Scenario 3

A residential development of 4,000sqm GIA is granted planning permission. The site is currently occupied by a house in lawful use which has a GIA of 125sqm. This dwelling is to be demolished after the planning permission has been granted. The residential CIL rate in the relevant charging zone is £35sqm.

The existing floorspace is deducted from the CIL liability because the dwelling is still in use at the time planning permission was granted and will be demolished to make way from the new development.

The CIL Charge would therefore be

$$4000-125 (= 3875\text{sqm}) \times 35 = \text{£}135,625.00$$

A Liability Notice is sent out accordingly.

Prior to commencement of the development, the Council receives a claim for social housing relief for some of the new development (950sqm), and therefore a new Liability Notice is required.

It may be assumed that to calculate the new liability we would just need to multiply the floorspace of the proposed social housing (950sqm) by the rate of the CIL Charging zone (£35) to determine the amount of relief and then deduct this from the total CIL liability as in Scenario1 - this would be incorrect !

This is because of the demolition – just as the demolished floorspace reduces the total CIL liability it also produces a pro-rata reduction in the amount of Social Housing relief. The revised calculation would therefore be as follows:-

- a. **Calculation of the percentage** of the total GIA the discounted GIA comprises
 $125\text{sqm} \text{ divided by } 4000\text{sqm} \times 100 = 3.125\%$
- b. **Calculate 3.125% of the GIA claim** for Social Housing relief to obtain the level of GIA to be deducted from the relief claim
 $950\text{sqm} \text{ divided by } 100 \times 3.125 = 29.6875$ (This would be rounded to the nearest sqm) = 30sqm
- c. **Calculate the revised GIA** of the claim
 $950\text{sqm} - \text{pro rata deduction (30sqm)} = 920\text{sqm}$
- d. **Deduct the GIA eligible for relief** from the total chargeable area
 $3875\text{sqm} - 920\text{sqm} = 2,955\text{sqm}$
- e. **Recalculate** the CIL Liability
 $2955\text{sqm} \times 35 \text{ (CIL Rate)} = \text{£}103,425.00$