



**London Borough
of Hounslow**

Community Infrastructure Levy

Charity Relief

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Mandatory Charity Relief

Certain types of charitable development are entitled to mandatory relief from the Community Infrastructure Levy (CIL). This note details those types of development and provides information about the process for claiming relief.

Charitable Development entitled to mandatory relief

To be eligible for mandatory relief a charity must:

1. own a material interest in the land
2. the land must be going to be used 'wholly or mainly for charitable purposes'
3. the land must be occupied by, or under the control of a charitable institution
4. the charitable institution must not own the material interest jointly with a person who is not a charitable institution
and
5. any exemption must not constitute state aid.

Full relief will also be applied to those parts of a charitable development intended to be used for social housing which satisfy the requirements set out in Regulations 49-52.

Types of charities that may benefit from relief

1. A charity – which is any person or trust established for charitable purposes only (as defined by section 2 Charities Act 2011). These will comprise:
 - a. registered charities: charities which are registered with the Charity Commission
 - b. exempt charities: charities which cannot register under the Charities Act 2011 and are not directly regulated by the Charity Commission. They are listed in Schedule 3 of the Charities Act 2011 and include some educational institutions, and most universities and national museums.
 - c. excepted charities: charities exempted from the need to register but which are still supervised by the Charity Commission (once an exempted charity has a gross annual income of more than £100,000 it must be registered with the Charity Commission (Section 30 Charities Act 2011))

Other bodies that do not fall into these categories may still be eligible for relief where they are established for a charitable purpose only.

2. Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of this type are collective investment schemes – for example, unit trusts and common investment funds.

A Her Majesty's Revenue and Customs charity reference number is a strong indicator (but is not conclusive) as to whether a body is a charity. There will be some bodies which qualify as a charity but are not registered with HMRC.

Charging and collecting authorities must treat EU charities the same way as UK charities for the purposes of charitable relief. The Regulations do not preclude non-UK charities from the definition so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.

Where a development is owned jointly by a charitable institution and a private institution then the exemption will not apply. However, if there is more than material interest and the charity is the sole owner of a material interest then the exemption will apply to the charity but not to the owners of any other material interest in the site.

Relief is not limited to only one charitable institution, where relief conditions are met every charitable institution owning a material interest in the relevant land can benefit from relief for their portion of the charge.

The process for claiming mandatory charitable relief

In order to benefit from charitable relief, the person/organisation claiming relief must follow the processes below.

1. Assume liability to pay CIL, through the submission to the Council of a **Assumption of Liability** form (Form 1) prior to the commencement of the chargeable development.
2. Submit to the Council a **Claiming Exemption or Relief form** (Form 2), prior to commencement of the chargeable development. If there is more than one material interest in the relevant land, the claimant must submit an apportionment assessment alongside the claim. Please refer to Regulation 34 for more detail.
3. Notification of decision – The claimant must not commence the development until it has received notification of the decision on the claim from the Council. The Council is obliged to respond as soon as practicable after receiving a valid claim. The Council must give its decision, giving reasons, and where relief is granted the amount of the relief.
4. Before development commences a **Commencement Notice** must be submitted to the Council.

If development begins before a commencement notice is received the claim for relief will lapse.

Withdrawal and clawback of charitable relief¹

A charitable relief claimant must inform the Council where an event happens that disqualifies it from eligibility for relief up to seven years after commencement of development (the “clawback period”). This must be done within 14 days of the day on which the disqualifying event occurred. Where this is not done, the Council can impose a surcharge equal to 20 percent of the CIL liability triggered by the disqualifying event or £2,500, whichever is the lesser. A disqualifying event occurs where one or more of the following events have occurred:

- Change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief i.e. the owner ceases to be a charitable institution or the development may no longer be used wholly or mainly for charitable purposes.
- Change of ownership: The whole of the relevant interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief.
- Change of leasehold: the interest in the land in which relief was given is a lease which is terminated before the end of its term and the owner of the reversion is not eligible for charitable relief.

Where a disqualifying event happens before commencement, the relief is cancelled and the full charge once more applies, unless a new claim by the charitable institution relief is submitted. If the disqualifying event occurs after commencement, the claimant’s share of the charge becomes due. In either instance, a revised liability notice must be issued showing what is payable and a demand notice must be served to collect the clawed back relief.

Despite the threat of surcharge, a minority of claimants may not inform the collecting authority of a disqualifying event within the 14 day period. In such cases the charitable relief along with the surcharge is payable immediately by the claimant.

Charitable relief appeals

A charitable relief claimant, or the assumed liable party for the chargeable development, may appeal to the Valuation Office Agency www.voa.gov.uk if they consider that the collecting authority has incorrectly determined the value of the charity’s interest in the land (used in an apportionment assessment) to which the claim for relief relates². An appeal must be submitted within 28 days of the date of the collecting authority’s decision on the claim. Any appeal will lapse where the chargeable development is commenced prior to the Valuation Office Agency making its decision. At appeal the Valuation Office Agency may increase or reduce the amount of relief given to the claimant. Where the Valuation Office Agency amends the claimant’s share, the collecting authority

¹ This section was duplicated.

² This appeal is pursuant to reg 116 – and deals only with the value of the interest. Any dispute over the calculation of the amount of the CIL has to be separately appealed under reg 114.

must serve a revised liability notice. The liability notice will detail the new value of charitable relief.

There is no right to appeal to an external body on any other grounds for charitable relief. Any dispute over the calculation of the amount of the CIL has to be separately appealed under Regulation 114. Collecting authorities may decide to allow claimants to request a review of decisions made on their claim by a different officer to the officer that decided the claim.

State aid

The regulations prohibit the giving of a mandatory charitable exemption where it would constitute a state aid.

However, if the CIL relief constitutes state aid but the collecting authority is satisfied that it does not need to be notified to and approved by the European Commission then the CIL relief will be available if the charity otherwise qualifies, provided that the collecting authority has published a document making such discretionary exemption available in its area. Hounslow does not offer discretionary relief at the moment.

Charging authorities may wish to formulate policies which automatically ensure that mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45.

Discretionary charitable investment relief can similarly be given where relief is not a notifiable state aid. More detail on this and the de minimis block exemption can be found in the state aid document on line.

Default of liability

Where a party assuming liability fails to pay the full amount of the levy owing, the regulations allow the collecting authority to determine that liability has been transferred to the owners of the relevant land within the chargeable development. A collecting authority may only do this after it has taken all reasonable efforts to recover the outstanding amount, using one or more of the provisions set out within the regulations.

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land.

This exemption will not cover any part of the actual CIL liability attributable to the development which is not exempt, because part of the development is not to be used for charitable purposes. Therefore if a person has assumed liability for this part and then defaults on such liability, the liability may be transferred back to the owner –which may be a charity.

Charities are expected to manage the risk of a default of liability by another party. It is expected that they will carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

Reg 43(2)(b) provides that where part of a chargeable development to be used for charitable purposes is owned jointly by a charity and a non-charitable institution then the exemption does not apply.

Further assistance can be obtained from:

www.charitycommission.gov.uk

www.planningportal.gov.uk/cil