CIL TESTS

(i) Making the Circular 5/05 tests statutory for CIL development

1.29 CIL regulation 122 places into law for the first time the Government's policy tests on the use of planning obligations. From 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL if the obligation does not meet all of the following tests:

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

1.30 These three statutory tests are based upon three of the five policy tests in Circular 5/05 at paragraph B5 (tests (ii), (iii) and (iv)). The two remaining tests from Circular 5/05 (tests (i) and (v)) have been omitted from the new statutory set as they were considered unnecessary or repetitive.

1.31 Developments which are capable of being charged CIL includes most buildings that people normally use. Such development is considered capable of being charged CIL for the purpose of these tests whether there is a local CIL in operation or not. Buildings into which people do not normally go, and buildings into which people go only intermittently, for example, for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable for CIL charges. For developments that are not capable of being charged CIL, the policy tests in Circular 5/05, along with the other policy therein, continue to apply, until it is replaced by the proposed new policy Annex.

1.32 The statutory tests are intended to clarify the purpose of planning obligations in the light of CIL, improve the effectiveness of their use and negotiation and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential local contributions towards the granting of planning permission, rather than more general contributions which are better suited to the use of CIL.

(ii) Ensuring the local use of CIL and planning obligations does not overlap

1.33 Upon the local adoption of CIL, CIL regulation 123 (2) restricts the local use of planning obligations in relation to the intended use of local CIL monies. Where a charging authority sets out that it intends to fully or partially fund an item of infrastructure via CIL then that authority can not seek a planning obligation contribution towards the same item of infrastructure. This is to ensure that individual developments are not charged for the same items through use of both planning obligations and CIL and prevents any opportunity for 'double charging'.