

# Planning-gain Supplement: a consultation

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December 2005





HM TREASURY



HM Revenue  
& Customs



Office of the  
Deputy Prime Minister  
Creating sustainable communities

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# Planning-gain Supplement: a consultation

December 2005

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# FOREWORD

The Government believes everyone should be able to live in a decent home at a price they can afford. As a direct result of macroeconomic stability, rising prosperity and increased investment, there are now one million more homeowners in Britain than in 1997 and we have doubled investment in social housing.

But if the Government is to help more people realise their housing aspirations further action is needed. Over the past thirty years, house prices have risen rapidly as household growth has outpaced housing supply. Looking forward, rising prosperity and longer, healthier lives mean these challenges will not diminish.

To secure a continued growth in opportunity and build more and better quality homes, the Government is responding to Kate Barker's independent review of housing supply. In doing so, the Government is seeking to build sustainable communities supported by new investment in transport, schools, health centres and local services.

To help finance this vital infrastructure and support growing communities, Kate Barker recommended that the Government should capture a portion of the land value uplift arising from the planning process. This document launches a consultation on a Planning-gain Supplement (PGS) that builds upon her original recommendation and proposes a fair, efficient and transparent levy.

We believe that, combined with reforms to the planning obligations system, this represents a principled approach to funding the infrastructure that makes growth possible and acceptable. As planning reforms enable more land to be approved for housing, a portion of the wealth created by the planning system should be released for the benefit of the wider community. In this sense, PGS will be largely a local measure, its proceeds recycled to the local level for local priorities and for the vital strategic infrastructure needed for new development.

Ultimately, we face a critical choice. Meeting the needs of future generations for more housing requires more investment. Without this, a step-change in housing supply will not be possible. PGS is therefore a means to an end: a mechanism to help finance the investment needed to offer greater housing opportunities to everyone.

To achieve our goals, the views and experience of stakeholders and the wider public will be important. We look forward to this consultation and your responses.



**John Healey MP**  
Financial Secretary  
HM Treasury



**Yvette Cooper MP**  
Minister for Housing and Planning  
Office of the Deputy Prime Minister



# INTRODUCTION

**1.1** The Government is committed to improving housing supply and offering everyone an opportunity to live in a decent home at a price they can afford. Kate Barker’s independent review showed that constrained housing supply has led to increasingly unaffordable housing, frustrating the home ownership aspirations of many individuals and families, and that, without concerted action by the Government, housing affordability and social mobility will decline in the future. <sup>1</sup>

**1.2** In response to the recommendations made in the Barker Review, and building upon the goals set out in the Sustainable Communities Plan, the Government is proposing to increase housing supply and further reform the planning system for housing delivery.

**1.3** This document forms part of the Government’s response to Kate Barker’s review of housing supply and launches a consultation on the Government’s proposal for a Planning-gain Supplement (PGS). The full response is set out in *The Government’s Response to Kate Barker’s Review of Housing Supply*.

**1.4** If the Government is to achieve its housing ambitions, additional investment is required to ensure that growing communities are also sustainable. The focus of this paper is therefore on how increases in land value created by planning decisions can be released more effectively to help finance the infrastructure needed to stimulate and service growth, and to ensure that local communities better share in the benefits that growth brings.

## The Barker recommendation

**1.5** Having identified shortcomings in the planning obligation system and challenges for infrastructure provision, the Barker Review made the case for tax measures alongside its recommendations for increased housing supply and planning reforms. Barker suggested:

- if Government is to reform the planning system to bring forward more land for development, it will increase the potential for unearned gains from selling land for development. Consequently, there is a strong case for Government to consider the use of a levy to allow the wider community to share more broadly in the development gains its actions will create; and
- as the levy is part of a package of reforms designed to increase the supply of land brought forward for development and affordable housing, the result should be an increase in the amount of new housing overall. Indeed, many of these policies might not be possible without additional dedicated revenue to support growth. <sup>2</sup>

**1.6** Building on this rationale, the Barker Review recommended introducing a PGS to capture a portion of the land value increases or “uplift” created by the planning process. Box 1.1 below sets out the key components of the Barker Review recommendation for PGS.

<sup>1</sup> *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, Kate Barker, 2004.

<sup>2</sup> Barker Review Final Report p 70.

### **Box 1.1: The Barker Review recommendation for PGS**

**Government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development.**

**Government should impose a Planning-gain Supplement on the granting of planning permission so that landowner development gains form a larger part of the benefits of development.**

**The following principles might be considered:**

- **information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas;**
- **Government would then set a tax rate on these values. This tax rate should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from section 106 developer contributions and provides additional resources to boost housing supply;**
- **the granting of residential planning permission would be contingent on the payment of the supplementary planning contribution of the proposed development;**
- **Government may want to consider the operation of a (substantially) lower rate for housing development on brownfield land, and the possibility of varying rates in other circumstances, e.g. for areas where there are particular housing growth strategies, or where other social or environmental costs may arise;**
- **a proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of section 106 planning obligations to take account of this new charge; and**
- **the Government may want to consider allowing developers to pay their contributions in instalments over reasonable time periods so as to ensure that house builder cash flow pressures are sufficiently accounted for.**

**The introduction of a tax would need to be accompanied by transitional measures to ameliorate the impact on developers already engaged in land sales contracts that were drawn up before this charge was introduced, or for those who hold large amounts of land already purchased, but where planning permission has yet to be secured.**

## **The Government's response**

**1.7** In its initial response to the Barker Review at Budget 2004, the Government announced that, "in order to meet the key objectives of stability and improved market affordability, there is a good case for additional social housing investment, incentives to local authorities to deliver housing growth, [and] support for infrastructure to complement new developments...all of which would require additional investment. The Government agrees that it is in principle fair to fund this proposed package of measures out of the uplift in land values experienced during the development process."<sup>3</sup>

<sup>3</sup> Budget 2004, p 76.

**I.8** Further to this announcement, the Government accepted the conclusion of the Barker Review that a Planning-gain Supplement (PGS) was likely to be more effective than other means of capturing land value uplift (such as VAT on new housing on greenfield sites or the current planning obligations regime) in providing resources to support the expansion of housing supply, provided it could be successfully designed and implemented.<sup>4</sup>

## Supporting growth

**I.9** PGS would be set at a modest rate to capture a portion of the land value uplift created by the planning process, in order to help finance additional infrastructure while preserving incentives to bring forward land for development.

**I.10** The Government believes it is fair in principle for the wider community to share in the wealth created by planning decisions in their area, given the sizeable uplift in land value that planning decisions often confer. Table 1.1 below shows the significant value uplift for agricultural land when granted permission for residential and non-residential development.

**Table 1.1: Value per hectare (£) of land by use type, in England, Scotland, Wales and Northern Ireland.<sup>1</sup>**

Country	Mixed agricultural land	Land for residential use	Industrial and warehousing land	Business (Class B1) <sup>2</sup>
England	9,287	2,460,000	632,000	749,000
Wales	8,628	2,180,000	218,000	264,000
Scotland	4,858	1,680,000	235,000	588,000
Northern Ireland	17,290	1,675,000	n/a	n/a

<sup>1</sup> Source: Valuation Office Agency Property Market Report, January 2005.

<sup>2</sup> Class B1 is for use as an office other than for financial and professional services, for research and development of products or processes or for an industrial process which can be carried out in a residential area without detriment to the amenity of that area.

**I.11** The Government believes that PGS can be levied efficiently on this uplift. However, not all planning permissions would be subject to PGS. The Government is committed to excluding home improvements from the scope of PGS. Additionally, the Government is considering whether a lower levy rate should be applied to brownfield land.

**I.12** To improve the efficiency and transparency of the planning obligations system, reforms to planning obligations (“s106 agreements”)<sup>5</sup>, as recommended by Kate Barker, would accompany the introduction of PGS. These reforms could reduce the scope of the planning obligations regime to matters affecting the environment of the development site and the provision of affordable housing.

**I.13** The revenues generated by PGS would be dedicated to local communities to manage the impacts of growth, and to funding the local and strategic infrastructure necessary to support and stimulate new development and contribute to long-term sustainability. PGS would be used to ensure that local land value uplifts benefit local communities and support efforts to expand housing supply.

<sup>4</sup> Budget 2004, p 76.

<sup>5</sup> Made under s106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991.

## Principles and objectives

**I.14** There are a number of objectives against which PGS and scaled-back planning obligations will be assessed. They are:

- to finance additional investment in the local and strategic infrastructure necessary to support housing growth, while preserving incentives to develop;
- to help local communities to share better the benefits of growth and manage its impacts;
- to provide a fairer, more efficient and more transparent means of capturing a modest portion of land value uplift; and
- to create a flexible value capture system that responds to market conditions and does not inappropriately distort decisions between different types of development.

**I.15** Previous attempts to capture the gains from development through development gains taxes (DGTs) have provided lessons for PGS. Box 1.2 describes some of the lessons learned from these experiences.

### **Box 1.2: Lessons learned from development gains taxes**

**The Barker Review analysed the four development gains taxes that operated in the UK in the past 60 years. It noted that the taxes had not been as successful as planned, particularly since complex design and high rates of tax led to widespread avoidance and created incentives to hold back development.**<sup>6</sup>

**Looking back at previous DGTs there are some important lessons in considering PGS. The particular lessons are that:**

- **PGS should only capture a modest portion of the uplift, thereby preserving incentives to develop;**
- **the cost of valuations should be managed through clear definitions of value and a self-assessment process; and**
- **PGS should be designed in a way which minimises avoidance opportunities, particularly those relating to complex ownership and offshore arrangements.**

## Alternatives to PGS

**I.16** The alternatives to PGS for infrastructure funding and the mitigation of development impacts are generally adaptations of the planning obligations regime or tax measures. When compared to the current system, planning-related measures (often called planning charges or planning tariffs) could be useful in speeding up the planning system and providing infrastructure more consistently across the country. They are, however, potentially limited in their scope, since they are most suited to addressing local concerns and may not easily deliver the investment required to support significant housing growth.

<sup>6</sup> Barker Review Final Report, p 78.

**I.17** Kate Barker suggested that the introduction of an Optional Planning Charge (OPC) (as consulted on by ODPM in 2003) would be an improvement to the current planning obligations system<sup>7</sup> on the basis that it would bring predictability and simplification, while retaining flexibility for planning applicants to negotiate a planning obligation agreement if they preferred. The government retains an interest in enacting OPC if PGS is not introduced.

**I.18** However, since planning charges are aimed at addressing planning issues more than capturing land value uplift, they may not adequately or fairly release value for community benefit. The OPC is also less well placed than PGS to deliver the strategic or regional infrastructure so critical to unlocking more land for development. The Government therefore believes PGS – alongside a scaled-back planning obligations system – can best capture land value uplift, speed up the planning process, and release resources for infrastructure finance. Chapters 5 and 6 discuss a new approach to planning obligations and the use of PGS revenues to fund infrastructure and local priorities.

**I.19** The Barker Review also considered whether alternative tax measures could be used to effectively capture land value uplift. The Review found that capital gains tax inadequately captured value uplift owing to the availability of reliefs and allowances. Applying VAT to new homes was found too inflexible and the Review’s analysis showed it could subject many regions of the UK to high effective tax rates. A broader land value tax (LVT) was deemed inconsistent with the planning system, which currently determines the value of land. Introducing LVT would also produce widespread repercussions for the broader tax system and local government finance. The Government agrees with this analysis and considers PGS a more appropriate and targeted measure to finance the infrastructure needed to stimulate and service growth.

## PGS and the devolved administrations

**I.20** If introduced, PGS will be applied throughout the UK. The Government will continue to work with the devolved administrations on the interaction of PGS with devolved policy areas, such as local government, planning and housing. For example, the devolved administrations have their own developer contribution regimes, i.e. s75 of the Town and Country Planning (Scotland) Act 1997; separate policy guidance on the use of s106 in Wales (Welsh Office Circular 13/97) and the potential to create a new system under s48 of the Planning and Compulsory Purchase Act 2004; and Article 40 of the Planning (Northern Ireland) Order 1991.

## This consultation

**I.21** This consultation paper is part of the Government’s response to the package of measures recommended by Kate Barker’s review of housing supply. It seeks to engage the development industry, business, local government, the voluntary sector, professional associations and the wider public in creating a fair, workable and effective levy. This paper:

- describes key elements of the design of PGS and how it might operate;
- discusses reforms to the system of planning obligations that would accompany implementation of PGS; and

<sup>7</sup> Barker Review Final Report, p 68.

- identifies principles and options for how PGS revenues could be used to benefit local communities and support increased housing supply.

**I.22** The workability of PGS is a key determinant in assessing the merits of this proposal. Mechanisms must be devised to fairly and efficiently value land and determine when and on whom the charge should be levied. Chapters 2–4 discuss these issues, along with the application of the levy to various development types.

**I.23** Chapter 5 discusses proposed reforms to the system of planning obligations that are intended to make the planning process more efficient and transparent alongside the introduction of PGS.

**I.24** A key objective for PGS is maintaining the link with local delivery. PGS revenues are derived from local planning decisions and should play an important role in helping local communities to manage the impacts of much-needed growth. Chapter 6 discusses how PGS revenues could be used to support growing communities and better finance infrastructure.

**I.25** The policy presented here for consultation builds upon Kate Barker’s original PGS proposal and aims to make PGS more consistent with the development process, simpler to comply with, and more closely linked to local delivery. Box 1.3 highlights some of the key features that form the basis for the Government’s proposal.

### **Box 1.3: Main features of PGS**

- **PGS would not be implemented before 2008;**
- **PGS would capture a modest portion of the value uplift arising on land for which full planning permission has been granted;**
- **PGS would be payable under a self-assessment regime administered by HM Revenue and Customs (HMRC);**
- **payment would not be required until the commencement of development;**
- **a Development Start Notice would identify a chargeable person before commencement of development;**
- **PGS would apply to non-residential as well as to residential development land;**
- **planning obligations could be scaled-back to matters relevant to the environment of the development site and affordable housing; and**
- **PGS revenues would be dedicated to local communities and the provision of infrastructure.**

**I.26** At the end of each chapter a number of questions are presented on which specific responses are welcome. Moreover, responses on any of the matters discussed in this paper are similarly encouraged.

# 2

## VALUING PLANNING GAIN

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**2.1** A workable Planning-gain Supplement requires a clearly identifiable levy base, a liable person to pay it and an effective system to enforce payment in a way that minimises the risk of avoidance without creating undue burdens. Chapter 3 describes how in general a developer<sup>1</sup> would pay PGS when development commences. This chapter sets out:

- the proposed levy base;
- the basis for calculating PGS liability; and
- a proposal for a self-assessment regime for valuations.

### The levy base

**2.2** There are a number of events in the planning process that result in increases in land values, including:

- a change in Government policy regarding the use of land;
- the allocation of land in a development plan;
- the granting of outline planning permission; and
- the granting of full planning permission.

**2.3** Increases in land value can occur throughout the planning process. The granting of full planning permission<sup>2</sup> is the most suitable event on which to base the levy because it:

- captures a majority of the land value uplift; and
- is a clearly identifiable event in the development process.

**2.4** An alternative point at which the levy base for PGS could be measured would be the sale or deemed disposal of the land. This approach would potentially provide a clear event to capture value created by the development process. However, this is less attractive because it could require assessment of each disposal and the apportionment of PGS liability amongst what could be a complex web of land interests and owners. Unpacking and tracking such activity would be administratively difficult and could enhance the potential for avoidance.

### Calculating PGS liability

**2.5** The base for calculating PGS would be the “planning gain” — the difference between the land value with full planning permission (planning value or PV) and the value of the land in its current use as permitted by the planning system (current use value or CUV). The charge would be calculated by applying the PGS rate to the difference between the two values. Two separate valuations – one for PV and one for CUV – would be necessary to determine the uplift. The basic calculation is shown in Box 2.1:

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<sup>1</sup> For the purpose of this document, the “developer” is the active party intending to carry out development. This covers all those carrying out development, whether commercial property developers, businesses, individuals or other organisations.

<sup>2</sup> Full planning permission relates to permissions granted under all enactments, including final reserved matters approval where outline consent has been given, the making of a Local Development Order or permission under other legislation such as the Electricity Acts.

### Box 2.1: The PGS calculation

$$\text{uplift} = \text{PV} - \text{CUV}$$
$$\text{PGS liability} = \text{PGS rate} \times \text{uplift}$$

**2.6** Clear definitions of the PV and CUV would be important. Box 2.2 explains what these definitions could be in practice:

### Box 2.2: Definitions of planning value and current use value

**Planning value is the market value of the land the moment after full planning permission is granted assuming that there is no prospect of obtaining permission for any other development in the future other than development permitted under the General Permitted Development Order 1995.**

**Current use value is the market value of the land the moment before full planning permission is granted assuming that it is and will continue to be unlawful to carry out any development other than development permitted under the General Permitted Development Order 1995 or development in accordance with planning permissions granted before an appointed day.**

**Both the PV and CUV will be assessed on the basis of an assumed unencumbered freehold interest with vacant possession in the whole of the site covered by the planning permission.**

**For the purposes of these definitions, “land” includes any development already on the site.**

**2.7** The CUV would depend on the value of any development already permitted on the land, and could vary depending on the nature of the site. Greater variation would be expected among previously developed sites than among undeveloped sites.

**2.8** The PV would be determined largely by the ultimate development value, which in turn depends on the nature (e.g. residential, commercial or mixed-use), the density and the location of the development, and on market conditions. The expected costs of developing the land, including remediation costs, could affect the PV. Contributions made under a reformed planning obligation regime (to be discussed further in Chapter 5) would be taken into account for the PV and therefore would be factored into the land value uplift calculations made to determine PGS liability.

**2.9** An alternative basis for the levy would be to use only the value of the site immediately after full planning permission had been granted. This approach could be simpler to administer because only one valuation would be needed, but is less attractive because it would not solely capture the uplift and could place an unfair burden on brownfield development land.

## Valuation methodology

**2.10** Kate Barker suggested that the land value uplift could be measured using either actual or average valuations:<sup>3</sup>

- **actual valuations** – established through an individual appraisal of an assumed freehold interest with vacant possession; or

<sup>3</sup> *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, Kate Barker, 2004 p 84

- **average valuations** – based on the average value of freehold interests in land of similar types in a given area.

**2.11** Using average valuations could potentially reduce complexity but would require a high degree of confidence that there was not significant variation in the value of similar sites within a given area. Analysis of the potential accuracy of average valuations as a proxy for actual valuations has shown that, while they were potentially credible for residential development on agricultural greenfield land, it was not feasible to apply average valuations to non-agricultural greenfield land, brownfield sites or commercial sites.

**2.12** Non-residential values can vary widely within the same local planning authority area even if sites are used for similar purposes. On brownfield land, site-specific features, such as the need for remediation work, make averages difficult to apply credibly. The wide variation in land values suggests that actual valuations would be fairer and more credible than average valuations.

## Actual valuations and self-assessment

**2.13** Using actual valuations with a self-assessment PGS regime should prove fairer for PGS payers and would be more cost-effective to administer. Self-assessment would place the requirement for carrying out valuations (PV and CUV) on the chargeable person. The chargeable person (to be discussed further in Chapter 3) would make a self-assessment of their liability using their own valuations, which would form part of the PGS return. HM Revenue & Customs (HMRC) and the Valuation Office Agency (VOA), or the Valuation and Lands Agency in Northern Ireland, would carry out a risk-based assessment of the PGS return including the valuations.

**2.14** Chapter 3 proposes that payment of PGS would be required when development commenced, which could possibly be some years (typically up to 3 years) after the granting of full planning permission. This has implications for the timing of self-assessed valuations. Land valuations can be made retrospectively, even at a considerable distance in time (for example, the VOA routinely makes valuations as at March 1982 for capital gains tax purposes). But information about the condition of the land at the date full planning permission is granted would need to be made available to the chargeable person where ownership of the land had changed since the granting of planning permission.

### Chapter 2 — issues for consultation:

- **What further clarifications to the definitions of planning value and current use value (as described in Box 2.2) would be helpful to provide further certainty to developers?**
- **How can the self-assessment of PGS valuations and liability be made as easy to comply with as possible?**
- **What information on the condition of land at the granting of full planning permission should be made available to the chargeable person?**



**3.1** The granting of full planning permission was proposed by Kate Barker as a suitable event for capturing a portion of the increase in value that arises during the planning process. The Review made the case that, because new housing development legally requires planning permission to go ahead, and only by obtaining planning permission can gains be realised, the granting of planning permission could provide a useful point in the process at which to collect a levy.<sup>1</sup>

**3.2** This chapter considers:

- whether the grant of full planning permission is the most appropriate event at which to require payment of PGS;
- who should be liable for PGS; and
- how PGS might be enforced.

### Payment of PGS

**3.3** The previous chapter explained that the assessment of PGS liability would be calculated with reference to the current use value and the planning value of the land at the time of the granting of full planning permission. However, requiring payment of PGS at the granting of full planning permission is not viable because:

- no person with a clear liability for the PGS necessarily emerges at this point;
- several applications are possible in respect of the same piece of land; and
- landowners/developers may never implement the planning permission.

**3.4** Instead, it is proposed that, while the grant of full planning permission is the right event to measure the land value uplift created by the planning process, payment of PGS should not be required until development commences.

**3.5** Requiring payment of PGS at the commencement of development<sup>2</sup> would better address cash flow problems, cited by developers, and recognised in the Barker Review, that would arise if the payment of PGS was required earlier in the development process. The period between the grant of planning permission and commencement of development is often critical for land acquisition and financing. By the time development starts, those carrying out the development have either secured sufficient interest in the land comprising the development site or have received approval to develop from the landowner(s) and have usually secured financing for the construction.

**3.6** It is also worth noting that at the point development commences the developer and the landowner(s), if not now one and the same person, share an economic interest in the benefits deriving from development. Requiring payment of PGS when development commences therefore ensures that the chargeable person is most likely to be the active party implementing the planning permission.

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<sup>1</sup> *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, Kate Barker, 2004 p 84.

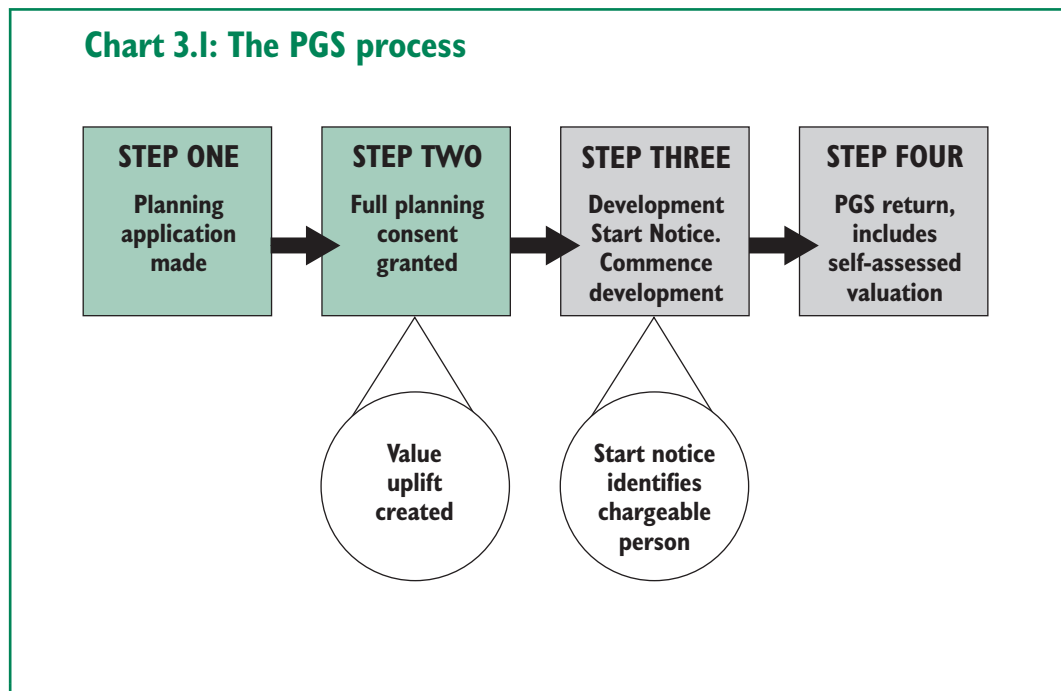
<sup>2</sup> Commencement of development is currently defined by s56(4) of the Town and Country Planning Act 1990.

### The Development Start Notice

**3.7** To make commencement of development a statutory chargeable event for the purposes of PGS, and in order for PGS to be fairly applied, transparent and consistent with the overarching principles described in paragraph 1.14, the Government proposes the creation of a statutory “Development Start Notice” procedure.

**3.8** The developer would be required to declare their intention to commence development on any site that carried a potential PGS liability through the Development Start Notice procedure. That person would be the chargeable person for the purposes of the PGS liability for the relevant development site. Development could not lawfully proceed without a validated Development Start Notice.

**3.9** The chargeable person would be required to make a PGS return to HM Revenue & Customs (HMRC) within a specified period of time. As described in Chapter 2, the PGS return would include self-assessed valuations (for planning value and current use value), relevant supporting information and payment. To help ensure transparency, both the Development Start Notice and the PGS liability could be registered as a local land charge so that prospective land buyers would be aware of existing liabilities. Chart 3.1 shows the main steps in the PGS and development processes.



**3.10** As the chart shows, Step Two – the granting of full planning permission – continues to be the event creating the levy base for PGS. However, payment is not required until after a Development Start Notice has been submitted and validated (Step Three). The next step is the making of a PGS return to HMRC within a specified period.

**3.11** The proposed model allows for a market-based approach to determining liability with the chargeable person self-electing through the Development Start Notice procedure. This process would allow developers and landowners greater flexibility in meeting the obligation to pay PGS, which should make it more compatible with the development process than the original proposal in the Barker Review.

## Securing compliance

**3.12** Taken together, the proposed PGS structure has the following main features:

- the base for the PGS charge is the grant of full planning permission – the difference between the current use value and the planning value of the site;
- the chargeable person is identified through a Development Start Notice; and
- payment requirements are triggered at the commencement of development.

**3.13** In cases of non-compliance, PGS would be enforced by a combination of interest charges, penalties and other compliance measures. Where non-compliance was sustained, a new dedicated “Development Stop Notice” would be employed. Such a notice might be issued where:

- a Development Start Notice had been submitted and development commenced – but no subsequent PGS return was made; or
- when development commenced without submission and validation of a Development Start Notice.

**3.14** In the first instance, interest and penalties would apply until the return was filed and payment was made. If the failure to comply persisted beyond a specified date, a Development Stop Notice would be issued followed by an application for a court injunction if the stop notice was not complied with.

**3.15** If development commenced without a validated Development Start Notice, a PGS chargeable person would not have emerged and accepted liability for PGS, and the development in question would be unlawful. After appropriate warning, a Development Stop Notice could be issued in respect of the development site and enforced by court action if necessary. For development to recommence lawfully, a Development Start Notice would have to be submitted alongside a PGS return and payment, including interest applied from the date development initially commenced and any penalties due.

**3.16** The Government is considering the responsibilities of local authorities and HMRC in administering the Development Start Notice and enforcing PGS. Local authorities will be invited to work with HMRC and ODPM in structuring these processes. Chapter 6 describes the Government’s commitment to ensure that a significant majority of PGS revenues would be recycled back to the local level.

**3.17** As discussed in Box 1.2, previous development gains taxes (DGTs) are widely seen as having been overly complex, prone to avoidance and unfair. The process and enforcement regime the Government is proposing for PGS is easy to understand and aims to minimise the scope for avoidance. Using a Development Start Notice to identify a chargeable person, and potentially a Development Stop Notice against non-compliance, alongside a self-assessed PGS return, should make PGS more effective – and therefore more equitable – than previous DGTs.

## Transitional arrangements

**3.18** In recommending the introduction of PGS and the scaling back of planning obligations, Kate Barker noted the need for transitional arrangements to enable the market to adjust to the levy. If PGS is introduced, the Government will consider how best to take account of the transition period before and after its introduction, to ensure that the levy is fair while protecting yield and minimising risks of avoidance.

**3.19** In examining these issues, including when planning permissions would become subject to PGS liability, the Government recognises the importance of providing information to enable markets to adjust. It is envisaged that planning permissions granted before an appropriate appointed date will not be subject to the levy.

**3.20** This consultation builds on the proposal in the Barker Review and provides further detail on how PGS might operate. If PGS is introduced, then the Government envisages further consultation, including on draft legislation. PGS would not be introduced prior to 2008.

### Chapter 3 – issues for consultation:

- **Should payment of PGS occur at the commencement of development or another point in the development process?**
- **Should the Development Start Notice be submitted to the local authority or HMRC?**
- **How should the proposed approach to compliance be made to fit with larger, phased developments?**

**4.1** In considering the scope of PGS the Government's priorities are to ensure that the levy can be applied at a modest rate with minimal risk of avoidance opportunities and inappropriate economic distortions, while maintaining flexibility to meet Government objectives, such as the regeneration of brownfield land. This chapter discusses:

- application to residential and non-residential developments;
- treatment of greenfield and brownfield land;
- minimum thresholds; and
- interactions with taxes.

## Residential and non-residential development

**4.2** The Government believes that it is fair in principle to capture a portion of the value uplift arising on development land and use it for the benefit of the wider community. This principle holds for both residential and non-residential development. Although the land value uplift experienced by different types of non-residential developments varies substantially, in many cases, the uplift associated with non-residential development will be significant.

**4.3** The application of a single rate to all types of development would also minimise the risk of inappropriate distortion and mitigate the problems of apportionment on mixed-use sites.

## Greenfield and brownfield land

**4.4** The Government has made a strong commitment to brownfield regeneration. In 1997, only 57 per cent of new housing development was on brownfield land. By 2004 this had increased to 70 per cent of new development in England, exceeding the Government's target of 60 per cent of new housing provided on previously developed land.<sup>1</sup> The Government considers regeneration of brownfield land a priority and is considering how the introduction of PGS would interact with regeneration policies.

**4.5** Brownfield sites differ significantly, with some experiencing substantial value uplift with little or no remediation, while others may incur additional costs. Due to the importance the Government places on regeneration, it will consider introducing a lower rate of PGS for brownfield sites, as suggested by Kate Barker in her Review. This might promote environmentally desirable behavioural changes, and is in line with Government policy to encourage the use of brownfield sites for development.

## Minimum thresholds

**4.6** Not all planning permissions will result in a PGS liability. In recommending PGS, Kate Barker did not intend home improvements to be included in the levy. It would be unfair to levy PGS on such works, even if planning permission was necessary, and therefore the Government proposes that home improvements should be excluded from PGS.

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<sup>1</sup> Source: Land use change statistics in England to 2004: Additional Table LUCS-20A, ODPM, 2005.

**4.7** Home improvements accounted for around half of the 645,000 planning applications made in 2004–05 and their exclusion will reduce the administrative costs of PGS. The Government will also consider how to treat small-scale improvements on non-residential property so as not to discourage their enhancement.

**4.8** Whether there is a case for a further threshold, possibly to exclude smaller development projects from PGS, also remains under review. However, thresholds can create unwanted market distortions, alter developer behaviour and add complexity to the administration of the levy. If a minimum threshold were to be set, the Government would favour a very low threshold to reduce complexity and compliance costs.

**4.9** The need to maintain a modest rate and prevent avoidance suggests not providing further exemptions but the Government will keep this under review.

## Interactions with taxes

**4.10** The structure the Government is proposing for PGS (as described in chapter 3) has been designed to measure and extract a share of the land value uplift that arises from the granting of planning permission. It does this by requiring the person who seeks to implement a planning permission – the developer – to pay PGS when development commences. Kate Barker’s analysis was that in most cases the developer would pass the cost of PGS back to the landowner “through lower prices bid for land”.<sup>2</sup>

**4.11** However, while a developer may pay a reduced price for the land by factoring PGS into their calculations, they will nonetheless have to pay PGS when developing a site. In this way, PGS will be a cost to the developer, just as developer contributions made under the planning obligation regime are a cost. The Government is considering treating the PGS paid by a developer as an allowable business expense for tax purposes.

**4.12** Correspondingly, the amount a landowner will receive from the sale of development land should be lower where the cost of PGS is factored into the land price. For the purposes of capital gains the landowner will make, and be taxed on, a potentially smaller gain than if PGS had not been a factor.

**4.13** The Government does not intend to make any special provision for PGS in relation to inheritance tax, VAT, Stamp Duty Land Tax, Council Tax, or Non-Domestic Rate liabilities. Furthermore, no special provision for PGS in relation to Aggregates Levy, Landfill Tax, or Climate Change Levy is proposed.

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<sup>2</sup> *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, Kate Barker, 2004 p 84

**Chapter 4 – issues for consultation:**

- **To encourage regeneration, should a lower rate of PGS be applied to brownfield land? What might be the drawbacks?**
- **How should a PGS threshold for small-scale development be set? What factors should be considered?**



# 5

## FINANCING INFRASTRUCTURE THROUGH THE PLANNING SYSTEM

**5.1** This chapter considers potential changes to the planning obligations system accompanying the introduction of PGS. This chapter only addresses planning obligations as they relate to England (often referred to as section 106 agreements<sup>1</sup>). As mentioned in paragraph 1.20, developer contribution regimes exist in Scotland, Northern Ireland and Wales and the potential interaction of PGS with those systems will be considered with the devolved administrations.

**5.2** Based on Kate Barker's recommendations to improve planning obligations and implement PGS, the Government is considering a reduction in the scope of planning obligations to those matters that relate specifically to the environment of the development site, and affordable housing. Introducing PGS and using a part of its proceeds to finance elements of infrastructure currently secured through planning obligations is considered a more efficient and transparent means of releasing value. Box 5.1 details key components of the Barker Review recommendation for scaling back s106.

### **Box 5.1: The Barker Review's recommendations for section 106**

**Section 106 should be reformed to increase the certainty surrounding the process and to reduce negotiation costs for both local authorities and developers.**

**If the Government accepts the recommendations [for a PGS] concerning the capture of development gains:**

- **section 106 should be 'scaled back' to the aim of direct impact mitigation and should not allow local authorities to extract development gain over and above this, except as indicated below. ODPM should issue guidance, or new legislation, to this end;**
- **section 106 should retain its current affordable and/or social housing requirements as set out in Circular 6/98, and other specific regional guidance; and**
- **local authorities should receive a direct share of the development gain generated by the Planning-gain Supplement in their area, to compensate for a reduced Section 106. Local authorities should be free to spend this money as they see fit. This share should at least broadly equal estimates of the amount local authorities are currently able to extract from Section 106 agreements.**

**5.3** This chapter will discuss:

- the current planning obligations regime – its legislative basis and how it works in practice;
- the case for scaling back the planning obligations system; and
- the proposed new approach.

<sup>1</sup> Section 106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991.

## The current system

**5.4** The legislative framework for planning obligations is broad, allowing a wide range of agreements to be reached between developers and local planning authorities (LPAs). Section 106 (d), for example, allows agreements to be reached “requiring a sum or sums to be paid to the authority on a specified date or dates periodically.”<sup>2</sup>

**5.5** The policy framework for the planning obligations that can be required by LPAs has always been narrower. For a planning obligation to constitute the difference between grant and refusal of planning permission, it must be “relevant to planning; necessary to make the proposed development acceptable in planning terms; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; and reasonable in all other respects.”<sup>3</sup>

**5.6** However, case law<sup>4</sup> has confirmed a broader interpretation of the type of developer contribution that can be agreed through planning obligations, so in practice local authorities are accepting contributions from developers that are related to the development, but that do not meet the Secretary of State’s policy tests.

**5.7** Recently, the Government has initiated interim reforms to streamline the current arrangements for negotiated planning obligations, ahead of the potential enactment of wider changes as proposed in this paper. A new Circular on planning obligations was published in July 2005 (see Box 5.2).

### **Box 5.2: ODPM Circular 5/05 — Planning obligations**

**This Circular makes a number of beneficial changes to the current arrangements for negotiated planning obligations:**

- **retention of the Secretary of State’s policy tests from the previous Circular (DoE I/97), but making the “necessary” part “necessary in planning terms”, to emphasise the link to the planning requirements of the site;**
- **clarification of the place of affordable housing contributions in s106;**
- **greater emphasis on inclusion of policies in Local Development Frameworks (LDFs) and “joining up” between different statutory bodies in formulating those policies. The use of LDFs in Growth Areas for example allows for strategic contributions relating to above-average growth to be sought as well as site-specific ones;**
- **encouraging the pooling of obligations within and between LPAs; and**
- **a range of process measures, for example use of standard legal agreement documents, use of mediation, and better monitoring of planning obligation implementation.**

**5.8** The Government will be encouraging LPAs to implement the measures in the new Circular in advance of PGS introduction, especially the use of formulaic and standard charge approaches to planning obligations, examples of which are being developed in the Growth Areas (see Box 5.3).

<sup>2</sup> Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991.

<sup>3</sup> Circular 5/05, *Planning obligations*, ODPM.

<sup>4</sup> Such as *Tesco Stores Ltd. v Secretary of State for the Environment* (1995).

**Box 5.3: An approach to standardised planning obligations: Milton Keynes**

One approach to standardising planning obligations payments has been developed in Milton Keynes.\*

Milton Keynes Partnership Committee (a sub-committee of English Partnerships and the local planning authority for the Milton Keynes expansion areas) has developed, with input from local landowners and developers, a “prospectus” identifying and prioritising the local infrastructure (e.g. schools) and strategic infrastructure (e.g. roads) needed to deliver 15,000 homes in the expansion flanks over the period to 2016. The prospectus takes account of committed and planned levels of mainstream and Growth Area public expenditure of these services.

The prospectus also identifies the contributions to infrastructure that will be made by developers, through planning obligations, broken down on a per dwelling basis. The s106 contribution that developers are expected to make amounts to around £18,500 per dwelling, plus land for social infrastructure and affordable housing.

In order to overcome the timing differences between expenditure on infrastructure (front-loaded) and receipts from developers (forthcoming over time alongside planning permission and development), English Partnerships has agreed to forward-fund the infrastructure and recoup the outlay from developers.

\* This approach has yet to go through the statutory planning process and is awaiting final business case approval.

**5.9** Despite these beneficial changes to the current arrangements for negotiated planning obligations, the Government believes scaling back along the lines recommended by Kate Barker will further speed up and improve the efficiency of the planning obligations system and enable it to operate effectively alongside PGS. The next section details the rationale for this proposal.

## The case for scaling back planning obligations

**5.10** While practice varies between different LPAs, commonly cited problems with the current system of planning obligations are that it can lack certainty and transparency, and can contribute to costly delays to the planning process. Developers can find the planning obligations system confusing and unpredictable, particularly because the range of contributions required by LPAs can differ between authorities. The range of matters required by LPAs also differs from what can be accepted, as described in paragraph 5.6.

**5.11** Because the agreement of planning obligations is usually based on bilateral negotiations, it is difficult to judge whether a planning obligation that is agreed was “accepted” by the LPA or formally sought on the basis of the Secretary of State’s policy tests. Further, the planning register does not show which agreements were made voluntarily and which were made in line with the policy tests. These factors hinder public accountability and can lead to accusations that planning permission is being “bought or sold”.

**5.12** The current scope of the policy tests results in a wide variation in practice between local planning authorities in terms of contributions sought. Table 5.1 below shows the contributions that may be required through s106 agreements by two contrasting LPAs.

**Table 5.1 Planning obligations in contrasting LPAs**

Local planning authority A	Local planning authority B
Open space	Open space Recreation/outdoor sports facilities Indoor sports facilities Built heritage Nature conservation Archaeology Public art Primary education facilities Secondary education facilities Libraries Transport and movement
Community facilities	Community centres and facilities Youth Support Community safety Health facilities
Affordable housing Flood defence Public realm Biodiversity and landscape Waste and recycling Air quality	Affordable housing

**5.13** Allowing relevant local matters to be dealt with according to local planning policies is beneficial for communities. But the variable nature of s106 application across England raises questions about fairness and could cause competitive or market distortions. Some of the more extreme variations currently seen could be especially problematic if PGS was introduced, since some developers could be disadvantaged by having to pay PGS on top of significant planning obligations sought in certain communities.

**5.14** For these reasons, the Government is considering how planning obligations can be scaled back to matters relating to the development-site environment and affordable housing provision. The next section describes this proposed approach.

### The development-site environment approach

**5.15** The development-site environment approach is aimed at improving the planning obligations system by reducing and clarifying the range of matters that can be negotiated by applicants for planning permission and LPAs. Under this approach, the scope of planning obligations would be defined on a statutory basis as: those matters that need to be addressed in order for the environment of the development site itself to be sustainable, safe, of high quality and accessible; and the provision of affordable housing. Using this scope, Table 5.2 below shows matters that could fall inside the scope of a new system, and those that could fall outside and be funded through alternative mechanisms in the future, including PGS.

**Table 5.2: The scope of planning obligations under a development-site environment approach**

Included in new scope	Outside new scope of planning obligations
On-site landscaping	Education provision
On-site roads and traffic calming	Health provision
Access road	Community centre
Open space	Bus service
Mix of uses	Fire station
Mix of housing types	Employment and training
Flood defence	Labour initiatives
Street lighting	Town centre management
Phasing and timing of development	Cultural facilities
Landscaping	Leisure facilities
Design coding	
Environmental improvements	
Operational effectiveness	

**5.16** In principle, a way of describing the new scope under a development-site environment approach could follow the language in Box 5.4 below:

**Box 5.4: Principles for matters to be included in new development-site environment approach to planning obligations**

a) the provision of affordable housing: i.e. necessary to contribute to the securing of the relevant proportion of affordable housing in a residential or mixed-use development, as required by the application of the Local Development Framework (LDF) policy to the site;

b) direct replacement/substitution: i.e. necessary to replace/substitute directly for the loss or damage to a facility or amenity caused by the development; or

c) development-site acceptability: i.e. necessary to make the development-site acceptable in terms of the following attributes:

- connectivity to access points;
- physical safety;
- environmental quality;
- biodiversity;
- design or landscaping;
- archaeological protection;
- mix of uses; and/or
- operational effectiveness (of the site and others functionally linked to it).

The exact nature and scale of the obligation requirements could still be governed by tests of relevance to planning; direct relationship to the development; reasonableness; and proportionality.

**5.17** The advantages of adopting this approach are that it:

- significantly reduces the scope of matters covered by planning obligations, making negotiations simpler and easier to conclude;
- places reasonably clear limits on the size of contributions that can be sought from developers, by limiting them to the development site itself and making the proportionality test statutory. Therefore the amount of funding for “acceptable” items is more easily quantified – contributing to greater transparency and certainty of financial impact; and
- reduces disparities between local planning authorities as all or most of the matters that could be addressed under the new scope would be necessary wherever a similar development was proposed on a similar site across the country. It is envisaged that planning obligations would be factored into the planning value for any site (as described in paragraph 4.11) and that this would lead to a more equitable PGS take from all sites.

**5.18** If this approach was adopted, the Government accepts that many of the matters excluded from the new scope would need to be funded from other sources, including from the revenues generated by PGS. A challenge remains in ensuring that necessary infrastructure, and the provision of land for public facilities that may no longer be provided directly through planning obligations, is delivered by alternative means in a timely manner to service new development. The next chapter will discuss the principles the Government would use to guide the allocation of PGS revenues, including the provision of infrastructure at the local level.

**5.19** The Government will examine options for bringing highways agreements made under s278 of the Highways Act 1980 into line with any changes to the current system of planning obligations. In considering any reforms to increase the transparency and efficiency of current arrangements, the Government will need to be satisfied that any alternative will continue to ensure the timely provision of the road infrastructure necessary to support sustainable growth.

**5.20** The Government considered Kate Barker’s proposal to retain affordable housing within the scope of planning obligations and accepts the rationale for that position. Affordable housing delivery is a Government priority and changing the means by which it is delivered could make it more difficult to meet demand and create mixed communities. Rationalising the affordable housing requirements imposed by local authorities so as to ensure greater consistency and to prevent attempts to maximise land value capture at the local level will however be examined.

**5.21** The Government examined other potential approaches for scaling back planning obligations. Making the Secretary of State’s current policy tests statutory would prevent matters currently outside them, but allowed under case law, from being offered as planning obligations. While this would reduce delays and lend itself to greater predictability for developers, even if enshrined in legislation, it does not offer a sufficiently clear limit for planning obligations to allow them to operate effectively alongside PGS. And the significant scope permitted under the current policy tests would still lead to disparity and uncertainty between localities.

**5.22** If, however, the Government decides to re-examine the proposed development-site environment approach after consultation, suggestions for alternative approaches will be considered.

**Chapter 5 – issues for consultation:**

- Does the development-site environment approach proposed here represent an effective and transparent means of reducing the scope of planning obligations?
- How should infrastructure no longer funded through planning obligations be provided, including through the use of PGS revenues?



# 6

## ALLOCATING PGS REVENUES

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**6.1** To deliver housing growth, new investment is needed to ensure the long-term sustainability of the communities where growth will be achieved. Sustainable communities require access to high-quality public services — such as schools, health centres, parks and open spaces, and public transport. These services must accompany new development and additional investment must be targeted to strategic and local priorities to achieve this goal.

**6.2** In Budget 2004, the Government responded to Kate Barker’s recommendation for PGS stating, “...there is a good case for additional social housing investment, incentives to local authorities to deliver housing growth, [and] support for infrastructure to complement new developments ... The Government agrees that it is in principle fair to fund this proposed package of measures out of the uplift in land values experienced during the development process.”<sup>1</sup>

**6.3** This chapter discusses the principles underpinning the allocation of PGS revenues and sets out the Government’s proposed options for meeting its commitment to dedicate PGS revenues to supporting growth. The Government’s commitments on PGS revenue allocation should be considered within the context of the wider package of investment and reform necessary to deliver its housing ambitions as set out in the Government’s full response to the Barker Review.

### Revenue allocation principles

**6.4** Chapter 1 (paragraph 1.14) identified a number of objectives against which PGS will be assessed alongside plans to reduce the scope of planning obligations and the wider reforms to increase housing supply. Taking into account these objectives and following further consideration over the past year of the conditions necessary to support sustainable housing growth, the Government commits to the following key principles for allocating revenues if PGS is implemented:

- as an essentially local measure, a significant majority of PGS revenues will be recycled directly to the local level for local priorities. This will help local communities to share better the benefits of growth and manage its impacts, and will ensure that local government overall will receive more funding through PGS than was raised through s106;
- PGS revenues will be dedicated to financing additional investment in the local and strategic infrastructure necessary to support growth. The Government anticipates that an overwhelming majority of PGS funds will be recycled within the region from which they derived; and
- PGS revenues will ensure growth is supported by infrastructure in a timely and predictable way. Local and regional stakeholders, including businesses, will play an important part in determining infrastructure priorities, to help unlock development land.

**6.5** The Government proposes to engage with the development industry, business, local government, the voluntary sector, professional associations and the wider public in designing

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<sup>1</sup> Budget 2004, p76.

the mechanisms for allocating PGS revenues that best meet these principles. The remainder of this chapter puts forward for consultation the lead options for recycling PGS revenues to the local and regional levels.

### Options for allocation

**6.6** The Government has identified two options for recycling PGS revenues to the local level. The first option is to distribute PGS revenues to the local level as grants in direct proportion to the revenues raised. This would require the PGS return to identify the local area in which the development site was located. The appropriate proportion could then be recycled back to the local level. This would give local communities and developers greater certainty and clarity, as they would see a direct link between PGS revenues and the funding of the local infrastructure needed to support growth.

**6.7** An alternative approach would be to recycle revenues back to the local level as grants on the basis of a formula not specifically connected to PGS revenues raised, but which acted as a suitable proxy for infrastructure need — for example the amount of development brought forward. This would inevitably be more complex and potentially less transparent to local communities and developers, but would benefit communities delivering housing growth in areas of low land values. The Government invites views on the relative merits of these two options, or suitable alternatives, and on how these options should best be designed to deliver its objectives.

**6.8** While the majority of PGS revenues would be recycled directly to the local level, a significant proportion would be used to deliver strategic regional, as well as local, infrastructure. The Government proposes that this be done through an expanded and revised Community Infrastructure Fund (CIF). The CIF was established in the 2004 Spending Review, in response to the Barker Review, as a fund worth £200 million over two years to support the transport infrastructure costs required to enable faster housing development in the four Growth Areas.

**6.9** The Government invites views on the appropriate geographical coverage and eligibility criteria of a revised CIF, or suitable alternative options that would deliver its objectives. The Government also invites views on the best means of ensuring that local and regional stakeholders, including business, help determine infrastructure priorities to unlock housing development, including building on the Regional Spatial Strategy process.

**6.10** In parallel to consulting on these options for recycling PGS revenues, the Government is announcing, as part of the 2007 Comprehensive Spending Review, a cross-cutting review to:

- determine the social, transport and environmental infrastructure implications of housing growth;
- establish a framework for sustainable and cost-effective patterns of growth; and
- ensure that departmental resources across Government are targeted appropriately to providing the national, regional and local infrastructure necessary to support future housing and population growth.

**6.11** Taken together, these proposals will ensure that the Government's ambitious plans for a step-change in housing supply are supported by the necessary investment in social, transport and environmental infrastructure at the local, regional and national level.

**Chapter 6 – issues for consultation:**

- How should PGS revenues be recycled to the local level for local priorities?
- How should PGS revenues be used to fund strategic infrastructure at the regional level?
- How can local and regional stakeholders, including business, help determine the strategic infrastructure priorities most necessary to unlock housing development?



# 7

## ISSUES FOR CONSULTATION

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### SUMMARY OF RESPONSES SOUGHT

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**7.1** The Government would welcome the views of all stakeholders on any of the issues raised in this consultation document. A number of specific issues were raised in each chapter, a full list of which is included below. Responses are welcome to any or all of the following questions.

#### Chapter 2

- Q 2.1 What further clarifications to the definitions of planning value and current use value (as described in Box 2.2) would be helpful to provide further certainty to developers?
- Q 2.2 How can the self-assessment of PGS valuations and liability be made as easy to comply with as possible?
- Q 2.3 What information on the condition of land at the granting of full planning permission should be made available to the chargeable person?

#### Chapter 3

- Q 3.1 Should payment of PGS occur at the commencement of development or another point in the development process?
- Q 3.2 Should the Development Start Notice be submitted to the local authority or HMRC?
- Q 3.3 How should the proposed approach to compliance fit with larger, phased developments?

#### Chapter 4

- Q 4.1 To encourage regeneration, should a lower rate of PGS be applied to brownfield land? What might be the drawbacks?
- Q 4.2 How should a PGS threshold for small-scale development be set? What factors should be considered?

#### Chapter 5

- Q 5.1 Does the development-site environment approach proposed here represent an effective and transparent means of reducing the scope of planning obligations?
- Q 5.2 How should infrastructure no longer funded through planning obligations be provided, including through the use of PGS revenues?

#### Chapter 6

- Q 6.1 How should PGS revenues be recycled to the local level for local priorities?
- Q 6.2 How should PGS revenues be used to fund strategic infrastructure at the regional level?
- Q 6.3 How can local and regional stakeholders, including business, help determine the strategic infrastructure priorities most necessary to unlock housing development?

The closing date for this consultation will be Monday 27 February 2006.

Responses to the consultation should be sent to:

Planning-gain Supplement consultation  
Room 2-32  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Email: [PGS@hm-treasury.gsi.gov.uk](mailto:PGS@hm-treasury.gsi.gov.uk)

A summary of responses to the consultation will be published after this date on the Treasury website. Annex B sets out further detail on the disclosure of responses.

Responses to this consultation will be used to inform Government policy.

The Government is also publishing its response to the Barker Review. This can be found on the Treasury website, at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

# A

# PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)

## CONSULTATION ON THE PROPOSED PLANNING-GAIN SUPPLEMENT

### PURPOSE AND INTENDED EFFECT OF THE MEASURE

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#### Objective

**A.1** This Partial Regulatory Impact Assessment examines the Government's proposed introduction of a Planning-gain Supplement (PGS), and accompanying reforms to reduce the scope of planning obligations.<sup>1</sup> Chapter 1 sets out further detail on the background for this proposal and the Government's objectives. PGS aims to improve the means of funding infrastructure to support the expansion of housing supply and is part of the Government's response to Kate Barker's independent review.<sup>2</sup> The Government would not implement the proposed PGS earlier than 2008.

**A.2** This RIA also outlines alternatives to PGS to finance the infrastructure necessary to accompany growth that have been considered.

#### Background and rationale for Government intervention

**A.3** The Barker Review made a strong case for expanding housing supply to meet growing demand. It argued that reforms to the planning system were needed to make more land available for development and to encourage developers to build more housing. To support such development new infrastructure would be needed to mitigate the impacts of development and encourage new housing creation.

**A.4** To finance additional investment, Barker proposed that a levy be placed on the increase in value that arises when land goes through the planning process. The Interim Report of the Review also noted the problems surrounding the existing planning obligations systems concluding that it was "difficult and costly for local authorities to secure developer contributions."<sup>3</sup>

**A.5** The Barker Review proposed that to help speed up and simplify the planning process developers should still negotiate planning obligations for matters directly related to the development and affordable housing, but that such agreements should not include anything beyond these matters.

**A.6** In Budget 2004, the Government accepted that it would be fair in principle to capture some of the uplift in land value associated with planning permission, to fund the Barker package: "The Government accepts that, in order to meet the key objectives of stability and improved market affordability ... it is in principle fair to fund this proposed package of measures out of the uplift in land values experienced during the development process".<sup>4</sup>

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<sup>1</sup> In England through the use of section 106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991.

<sup>2</sup> *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, Kate Barker, 2004.

<sup>3</sup> *Barker Review Interim Report* (2003).

<sup>4</sup> Budget 2004, p 76.

## CONSULTATION

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**A.7** This Partial Regulatory Impact Assessment accompanies the formal consultation document on PGS. Comments are welcome on the likely regulatory impact of the proposals.

## OPTIONS

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**A.8** The Barker Review included a detailed analysis of a range of proposals for capturing a portion of the value uplift arising on land during the planning process. It examined options such as a Land Value Tax (LVT), a Development Gains Tax (DGT) and VAT on new housing, as well as PGS. The final Barker report recommended a PGS, but also discussed the Optional Planning Charge (OPC).

**A.9** In light of the Barker Review, this RIA assesses three options:

- Option One: a “Do Nothing” option;
- Option Two: the Optional Planning Charge (OPC); and
- Option Three: the Planning-gain Supplement (PGS).

### Option 1: “Do nothing”

**A.10** One option would be to leave the current system unchanged. This would mean no additional burdens on any sector, but would do nothing to address the issues that cause delay and uncertainty in the planning process. In the context of the Government’s planned increase in house building, leaving the system unchanged would increase the risk that the necessary infrastructure for growth would not be delivered.

### Option 2: Optional Planning Charge

**A.11** The Government consulted on the OPC in 2003 in *Contributing to sustainable communities — a new approach to planning obligations*. Under the OPC, developers would have a choice of either paying a standardised charge or entering into full negotiation with the local planning authority as they do now. If they chose to pay the charge, they would have to negotiate with the local planning authority over only a limited number of site-specific development impacts.

**A.12** The OPC would be based on a charge that would indicate the level of contribution required from developers for the impact of their development on local infrastructure. It is not designed to capture the increase in land value, but would instead assess the costs of development to the environment or community. Local planning authorities would publish the charge in their Local Development Framework, enabling developers to predict the costs of their contribution, should they choose to pay the OPC.

**A.13** As the OPC is a planning charge, and planning is devolved to the UK devolved administrations, the decision to introduce legislation to apply it in England would be separate from adoption in Wales, Scotland and Northern Ireland.

**A.14** The OPC, when compared to the current planning obligation regime, could speed up the planning system and provide more consistency across the country. However, it is potentially limited in scope since it is most suited to addressing local concerns and is less well placed than PGS to deliver the regional investment required for significant housing growth. Redistribution of revenues outside the region where raised or to subsidise sites with high infrastructure demand but low land value uplift, such as some brownfield sites, would be precluded. Yield disparities between localities could emerge and this could hamper regeneration.

**A.15** Moreover, mitigation measures such as the OPC are aimed more at addressing planning issues than capturing increases in land value and therefore may not adequately or fairly release value for community benefit.

### Option 3: Planning-gain Supplement

**A.16** The Planning-gain Supplement (PGS) seeks to capture a portion of the land value increase that occurs when full planning permission is granted. The increase in the value of the land will be the difference between:

- the land value immediately after planning permission was granted; and
- the land value immediately before planning permission was granted assuming that no other development can be legally carried out on the site.

**A.17** Developers would be required to declare their intention to commence development of any site that carried a potential PGS liability through the Development Start Notice procedure. That person would be the chargeable person for the purposes of the PGS liability for the relevant development site and would be required to make a PGS return and pay the PGS within a specified time from the date of the start notice.

**A.18** The PGS return would require a self-assessment of the PGS due, including two land valuations used to compute the PGS liability.

**A.19** To retain the local link between developer contributions and local planning permission, a significant majority of PGS revenues would be recycled to the local level, to enable local authorities to provide infrastructure for growth. This would allow local communities to share in the benefits of growth and use PGS funds to mitigate the wider impacts of development. The remainder of PGS revenues would be ring-fenced for strategic infrastructure. PGS would apply to both residential and non-residential development.

**A.20** PGS would be accompanied by a scaling-back of planning obligations, so that negotiated agreements would be used only to cover the costs of the immediate impacts on the environment of the development site, such as site road access, as well as affordable housing provision. This significant reduction of the scope of planning obligations would bring improved certainty and speed to the planning process and improve the fairness of the planning obligations regime.

**A.21** PGS would apply across the whole of the United Kingdom.

## RISKS ASSOCIATED WITH THE PGS

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**A.22** In response to the recommendation in the Barker Review, it has been suggested that PGS has the following risks:

- It has been suggested that PGS could affect the supply of land for development: PGS is part of a package of reforms designed to increase the supply of land brought forward for development and affordable housing. These include measures to address timely infrastructure provision and planning reforms to bring forward the supply of land. The result should be an increase in the amount of new housing overall. Indeed, the Government's ambition to deliver increased housing growth might not be achievable without additional dedicated revenue to support growth;
- It has been suggested that PGS could require additional compliance procedures: While developers would require a validated Development Start Notice before commencing development of a site, and to submit a self-assessment of their PGS liability (including provision of additional land valuations), both processes are more easily built into the existing planning and development process than those made in the original Barker proposal. It is envisaged that the start notice procedure would be easy to comply with, and many valuations are already routinely carried out as part of the development process. The implementation of PGS would be accompanied by a scaling-back of the negotiated element of the planning obligation process, reducing the compliance burden of planning obligations. This is expected to outweigh the additional time required to comply with PGS;
- It has been suggested that PGS could affect the regeneration of brownfield land: Additional costs of development may fall more heavily on marginal sites. However, PGS is proportionate to increases in land values and so should reduce these risks. Moreover, the Government considers regeneration of brownfield land a priority and is consulting on whether a lower rate PGS should be applied to brownfield land; and
- It has been suggested that PGS could affect the cost of housing: PGS is not expected to increase the cost of housing because new supply accounts for only around 10 per cent<sup>5</sup> of housing transactions. Since existing housing is a good substitute for new housing, the price of housing therefore tends to be set by the existing stock. PGS is part of a package of reforms to increase the supply of housing and improve affordability.

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<sup>5</sup> Barker Review Final Report, p 80.

## SECTORS AND GROUPS AFFECTED BY PGS

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**A.23** The policy changes would potentially affect those carrying out development requiring planning permission and above the minimum threshold. This includes:

### Private sector:

- real estate activities — any applicant for planning permission to expand or develop new premises. However, the Government is considering exemptions for small-scale business improvements to avoid a disproportionate impact on smaller businesses;
- construction industry and services;
- landowners;
- individuals seeking planning consent. However, the Government is proposing exemptions for small-scale householder improvements;
- housing associations; and
- the legal representatives of purchasers of new developments.

### Public sector:

- Central Government;
- local authorities; and
- other public sector agencies.

## COSTS & BENEFITS

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### Do nothing

**Costs A.24** The current planning obligations system is criticised for its slowness, unpredictability, lack of transparency and lack of accountability. Uncertainty about the contributions likely to be sought and delays in negotiation create costs for business and local planning authorities. The historic lack of transparency and accountability has sometimes undermined the credibility of the planning system.

**A.25** PGS is an integral part of the Government's wider response to the Barker Review. Not pursuing PGS would make it difficult to address housing supply issues that characterise the existing development environment and would lead to continued insufficient supply of housing.

**Benefits A.26** Some minor benefits might arise due to continuity in policy.

## Optional Planning Charge

**Economic Costs A.27** In the private sector some developers would face additional charges for impact mitigation where a local authority previously would not have applied charges to smaller or marginal developments.

**A.28** The public sector would incur the following economic costs:

- all 384 local planning authorities in England would incur costs in setting up the OPC system. This would include the costs of staff time in setting impact charges, as well as in changing procedures; and
- some local planning authorities that had previously secured contributions from voluntary planning obligation agreements that went beyond impact mitigation would lose additional revenue.

**Social & environmental costs A.29** No social or environmental costs are envisaged.

**Economic benefits A.30** The costs associated with delays in planning obligations negotiations could be reduced for private sector developers who chose to pay the OPC because the negotiation time would be reduced.

**A.31** The public sector would receive the following economic benefits from OPC:

- the introduction of the OPC would simplify the planning process and achieve a greater consistency of infrastructure provision across local authorities. Currently, the success that local authorities have in reaching agreements is variable, with some authorities less well equipped to achieve their desired aims than others; and
- local authorities would be able to coordinate infrastructure funding more efficiently and more transparently, by accurately costing any improvements needed, then setting the level of the OPC to cover the spending.

**Social & environmental benefits A.32** The local community would benefit from a more transparent system. The OPC would include mitigation formulae to quantify and charge appropriately for the adverse environmental and social impacts of development. The contributions made would then be used for schemes that addressed these impacts.

## Planning-gain Supplement

**Economic costs A.33** The private sector would incur the following costs under PGS:

- a minimal level of additional staff time could be required to submit a Development Start Notice and a PGS return;
- the costs of making two valuations for the PGS return. However, many developers already make some of the valuations needed for PGS as part of their business activities; and

- developers would have to factor the impact of scaled-back planning obligations and PGS into their business plans.

**A.34** The public sector would face the following economic costs:

- some local planning authorities could lose some of the revenues or in-kind benefits that they received through the use of negotiated agreements. However, it is expected that local government will be better off overall under the new system; and
- local authorities and HM Revenue & Customs (HMRC) would have to develop, monitor and administer new procedures and this would bring one-off start-up costs and ongoing implementation costs. There would also be costs associated with the change to the administration of the remaining planning obligations.

**Social & environmental costs** **A.35** Reducing the scope of planning obligations would mean that the local community could not benefit from some elements of infrastructure previously obtained through negotiated developer contributions. However, they would retain control of the scaled-back portion of the negotiated agreements and would benefit from the additional PGS revenues, a significant majority of which would be recycled back to them.

**Economic benefits** **A.36** Developers would receive the following benefits from PGS:

- scaling back planning obligations to development-site environment impact mitigation and affordable housing would simplify and speed up the planning system, helping to reduce the amount of time developers spend seeking planning permission and the costs of complying with planning obligations. It would also increase certainty as developers would be better able to predict the costs of development, reducing the uncertainty currently experienced;
- as the value of the PGS charge would be proportionate to the increase in the value of the site, rather than a flat-rate charge, PGS would be less likely to discourage marginal development than the OPC; and
- developers would benefit from a standardised PGS that would apply across local planning authorities. The current system and the OPC option allow local planning authorities to apply different charges. Developers would benefit from not having to conform to differing regimes in different areas.

**A.37** Local planning authorities would benefit from PGS for the following reasons:

- PGS would bring a simpler planning obligation process, with lower costs than the current system of negotiated agreement;
- PGS would bring additional revenues that would reward local authorities directly for enabling growth, and which they could spend on local priorities. PGS has the potential to bring in more additional revenue than an OPC and is not bound by local planning requirements; and
- PGS also enables redistribution of revenues at the regional and strategic level and to low value sites, and so could finance wider infrastructure projects.

**Social & environmental benefits** **A.38** PGS revenues will address the impacts of development, and ensure that communities are properly served with the appropriate infrastructure such as schools, hospitals, and appropriate public transport and roads. Improved infrastructure can have wide-ranging social benefits, from shorter commute times to greater access to facilities and employment.

## SMALL FIRMS IMPACT TEST

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**A.39** Full consultation with small firms will take place during consultation. The Government will work with small firms to design and implement PGS in a way that minimises the administrative burdens on them.

## EQUALITY, DISABILITY OR RACE RELATION ISSUES

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**A.40** It is not anticipated that there would be any significant disability, race relation or social discrimination impacts resulting from PGS. Associated issues such as affordable housing will continue to be addressed by local planners.

## COMPETITION ASSESSMENT

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**A.41** The Government has reviewed this proposal in light of its competition assessment process, which indicates that the full competition assessment is not required at this time. The Government does not anticipate that new businesses in these markets would be disadvantaged by this proposal. Competition issues will be kept under review as the consultation process develops.

## RESPONSES

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**A.42** Responses to any of the issues raised in this partial Regulatory Impact Assessment (RIA) are welcome, and should be addressed to:

Planning-gain Supplement (RIA)  
Room 2-32  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Email: [PGS@hm-treasury.gsi.gov.uk](mailto:PGS@hm-treasury.gsi.gov.uk)

The closing date for responses to this Partial Regulatory Impact Assessment is 27 February 2006.

# B

## WRITTEN CONSULTATION CODE OF PRACTICE

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### ABOUT THE CONSULTATION PROCESS – THE CONSULTATION CRITERIA

- B.1** Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
- B.2** It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- B.3** A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
- B.4** Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
- B.5** Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
- B.6** Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
- B.7** Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

Further information on the Code of Practice on Consultation is available from the Cabinet Office website. [www.cabinet-office.gov.uk/regulation/Consultation/Code.htm](http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm)

This document has been produced to conform to these criteria, as will the consultation process that follows.

### COMPLAINTS

If you have any complaints about any element of the consultation process leading from the issue of this document, please contact:

HM Treasury  
The Better Regulation Unit  
Her Majesty's Treasury  
1 Horse Guards Road  
London SW1A 2HQ

Phone: 020 7147 2382

## CONFIDENTIALITY DISCLOSURES

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Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Freedom of Information Contact:

HM Treasury  
The Better Regulation Unit  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

Phone: 020 7147 2382

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