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The *Planning-gain Supplement (Preparations)* Bill

Bill 37 of 2006-7

In the December 2006 *Pre-Budget Report* the Government announced that it would move forward with the implementation of Planning-gain Supplement (PGS) if, after further consultation, it continues to be deemed workable and effective. To this end it would "shortly introduce a preparations bill to Parliament providing HM Revenue & Customs with the authority to build the systems necessary to administer PGS, if enacted." The *Planning-gain Supplement (Preparations) Bill* 2006-07 was introduced in the Commons on 12 December 2006 and is due to be debated on second reading on 15 January 2007. PGS would apply across the UK, but because it is essentially a local measure, all PGS revenues generated in the Devolved Administrations would be returned to the country in which they were generated.

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Summary of main points

The Bill would allow the Government to spend money preparing for the introduction of Planning-gain Supplement (PGS). The decision whether to go ahead with PGS will be announced in spring 2007. PGS would be a tax on the increase in land value resulting from a grant of planning permission.

The proposal follows a report for the Government by Kate Barker. She considered that the existing means for gaining benefit for the community from the grant of planning permission, the so-called section 106 agreement, was an inadequate means to finance necessary infrastructure. The proposal was supported by a Select Committee, provided the rate was low and most of the money returned to the local community. However, the proposal has been criticised by many in the development industry.

To complement PGS, section 106 agreements would be scaled back but would include the provision of affordable housing. Almost one half of affordable housing currently provided is financed in part by section 106 agreements.

The term ‘paving Bill’ is generally used to describe this type of legislation: that is, a Bill to provide a department with the authority to spend money in a preparatory fashion, before legislation is presented to implement a new function or service. There have been a number of occasions in recent years where this procedure has been used. One criticism that has been made of paving Bills is that they provide for expenditure on an initiative, prior to Parliament approving the measure itself.

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I Background - paying for infrastructure

A. Introduction

The British planning system was originally established in 1947 on the basis that there would be a tax on development gains. The grant of planning permission often increases land value dramatically. The broader community does not necessarily see much benefit. Indeed, the local authority may find itself liable for increased infrastructure spending as a result of the development. There have been several attempts to introduce a special levy on the increase in land values resulting from planning consent. However, each time the legislation has been repealed soon afterwards, partly as a result of practical difficulties, partly through a change in Government. This happened to parts of the *Town and Country Planning Act 1947*; to the *Land Commission Act 1967*; and to the *Community Land Act 1975* and the *Development Land Tax Act 1976*.[1]

The Government has returned to the problem through its concern to encourage a higher level of housebuilding. Kate Barker was commissioned by the Treasury and the ODPM to investigate the supply of housing and reported in 2004. This paper will refer to her report as the Barker Review.[2] It should not be confused with the Barker Review of Land Use, written by the same author, which appeared in December 2006. The Barker Review recommended the introduction of Planning-gain Supplement (PGS) to be a tax on the increase in land values resulting from a grant of planning permission. Consultation on this proposal has followed and in the December 2006 Pre Budget Report the Government announced that they would be introducing a Planning-gain Supplement (Preparations) Bill to provide for public spending in developing this idea. The Pre Budget Report did not make a definite commitment to implement Planning-gain Supplement. It said in paragraph 3.116:

> The Government will move forward with the implementation of PGS if, after further consultation, it continues to be deemed workable and effective.

B. Planning obligations/section 106 agreements

A practical way of dealing on a small scale with the problem of development gains has been through planning obligations – also known as planning gain or section 106 agreements. Section 106 of the *Town and Country Planning Act 1990* (as amended) allows local planning authorities to negotiate arrangements whereby the developer makes some commitment if he obtains planning permission. The Government has been considering making a more radical change to the system. The *Planning and Compulsory Purchase Act 2004* s.46 and s.47 give the Secretary of State the power to make regulations to replace s106, but the Secretary of State has not yet used these powers.

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[1] After repeal of the *Community Land Act*, the Development Land Tax continued at a reduced rate until 1985.

[2] Kate Barker, *Delivering stability; securing our future housing needs*, March 2004 http://www.hm-treasury.gov.uk/consultations_and_legislation/barker/consult_barker_index.cfm

In the early years of the 1947 planning system, local councils were in a difficult position if a grant of planning consent would force them to spend extra money on infrastructure, such as a link road or a new primary school. It seemed unfair to refuse consent for sound applications, but they could not always afford the consequences of granting permission. The practice arose in such circumstances of allowing developers to contribute to the costs of any infrastructure required as a result of the development. Planning obligations are not a development tax and neither Government guidance nor court judgements would support them in that role.

The Circular on Planning Obligations issued in July 2005 (replacing a 1997 Circular) stated the basic rule of the policy:

> B5. The Secretary of State's policy requires, amongst other factors, that planning obligations are only sought where they meet all of the following tests. The rest of the guidance in this Circular should be read in the context of these tests, which must be met by all local planning authorities in seeking planning obligations.
>
> A planning obligation must be:
> (i) relevant to planning;
> (ii) necessary to make the proposed development acceptable in planning terms;
> (iii) directly related to the proposed development;
> (iv) fairly and reasonably related in scale and kind to the proposed development; and
> (v) reasonable in all other respects.
>
> B6. The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms (see B5 (ii)).
>
> B7. Similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development, i.e. as a means of securing a "betterment levy".[3]

C. Problems with section 106 agreements

On 30 January 2004, the ODPM issued a statement on planning obligation policy, after consulting on a proposal to allow local authorities the option of a fixed charge instead of a negotiated agreement. It had the following conclusion:

> 27. It is clear from the consultation process that consultees are almost unanimous in their criticism of the existing system of planning obligations. The summary of responses which the Government will publish makes this quite clear. The Government is not prepared to continue with a system variously described as

[3] ODPM Circular 05/2005, *Planning Obligations*, July 2005 http://www.communities.gov.uk/index.asp?id=1500145

> opaque, slow, unfair, complex and reactive. It proposes to develop a new policy based on the idea that planning obligations are an essential tool for the good planning needed to deliver sustainable communities. Planning obligations will need to remain flexible. But the Government also wants more transparency, speed and certainty. That is why the Government is committed to a process of dialogue and engagement with stakeholders to ensure that the best use can be made of the new powers which are being sought in the Planning and Compulsory Purchase Bill.[4]

Those powers – to allow the option of a fixed charge instead of a negotiated agreement – have not yet been brought into force. However, the above paragraph shows why the Government chose another mechanism to tax development gains.

There are other examples of problems with section 106 agreements. In a debate on the Thames Gateway in October 2005, Derek Wyatt raised an objection to section 106 agreements:

> **Derek Wyatt:** The trouble with section 106 agreements, certainly in my patch, is that they are never implemented. They are a bribe to tell the developers, "Hey, build us the school"—or the village hall or the pub—but they actually build more houses. The problem is that section 106 agreements cannot be enforced legally. Section 106 helps the developer, not the citizen. However, the hon. Gentleman makes an interesting point about having a tariff: 500 houses equal a school, a swimming pool, a village hall or whatever. Of course, as soon as a house [is] built, people pay council tax, but they have no facilities until the last house is built and the road is adopted. They can wait four years for that to happen, which does not seem fair either. So I also have some planning anxieties.[5]

In an adjournment debate in October 2006, Paul Truswell criticised the lack of community involvement:

> In my area, developers, as I said, invariably submit plans for housing with a density of 70 to 90 properties per hectare on brownfield sites, which is well above the 30 to 50 properties per hectare indicated by PPG 3. They argue that the sites fulfil PPG requirements for greater density, because of transport links and other factors. In almost all cases, community involvement and pressure has led to the rejection of initial planning applications, and subsequent ones are reduced to about 50 properties per hectare—in some cases, that is almost half the figure in the original application.
>
> Developers or even planning officers point to a local station, for example, or the existence of a major road corridor with bus services, as evidence of good public transport links. The community, however, points to a station at which trains do not stop, because they are full as a result of lack of capacity and overcrowding at peak times. They point out that bus services have been reduced and become far less reliable in the 20 years since deregulation was introduced. Section 106

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4 ODPM, *Contributing To Sustainable Communities - A New Approach To Planning Obligations*, 30 January 2004 http://odpm.gov.uk/pub/842/AnewapproachtoplanningobligationsStatementonthereformproposalsWord49Kb_id1147842.doc

5 HC Deb 20 October 2005 c1055

> agreements can be used to derive a contribution from developers towards infrastructure, including crossings, road improvements, open space, public transport and school buildings.
>
> However, it is often the cumulative effect of developments, rather than a single development, that creates the pressures and it is difficult, therefore, to apportion section 106 contributions to individual developments over time to address those cumulative effects. Many local authorities do not have a coherent strategic approach to the negotiation and use of 106 moneys. Certainly, in my experience, there is little community involvement in determining how it is used. All too often, it is used in a very ad hoc way.
>
> No one can deny the need for affordable housing, but developers will often come up with reasons for having less affordable housing than is needed. The cost of decontaminating land is a favourite excuse, or developers offer to build at lower densities if they do not have to include a full quota of affordable homes. Councils' role as the "people's champion" in the planning process can be, and often is, overstated. They are not always on the ball when it comes to promoting community involvement.[6]

A study of section 106 agreements undertaken by Sheffield University for the ODPM showed that section 106 agreements have become more common, but they are still far from universal even in large housing developments:

> Planning agreements are now attached to 40% of major residential planning permissions. All other categories of development have seen a rise in the proportion of planning permissions accompanied by planning agreements in the last six years.
>
> • The proportion of major planning permissions accompanied by planning agreements is highest in the South East (40%) and lowest in the North (7.5%).
>
> • There are tremendous variations in the number of agreements secured by authorities within the same families and regions. The variation in the number of permissions granted explains some of the variation in the number of agreements.[7]

D. The Barker Review on section 106 agreements, March 2004

The Barker Review noted the need for large scale house building, especially in areas of high demand like the South East. It did not recommend using section 106 agreements to fund the necessary infrastructure improvements, noting problems associated with the use of section 106 agreements:

> **3.32** As a condition for receiving planning permission, developers are usually required to pay an upfront contribution to fund infrastructure costs, under either Section 106 of the Town and Country Planning Act 1990, or Section 278 of the Highways Act 1980. This can help internalise some of the negative externalities

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6 HC Deb 16 October 2006 cc705-6

7 Sheffield University for ODPM, *Valuing Planning Obligations in England: Final Report*, May 2006 http://www.communities.gov.uk/index.asp?id=1500142

associated with new housing development, such as increased congestion. However, this approach may create or exacerbate other market failures, and thereby serve as a barrier to new development. In particular:

• Infrastructure required to service one development can also benefit future housing developments, or indeed the existing community. Any developer making the first move faces the risk of subsequent developments free-riding on its efforts. In other words, there are positive externalities associated with some infrastructure.

• The costs of funding infrastructure can increase site-specific risk, by adding to negative cash flow early on in development. This prevents some sites from being developed, particularly if other risks and upfront costs are already a factor, as is often the case with brownfield sites.

Section 106 and local authority incentives

3.45 Over time, Section 106 has evolved through case law, so that the scope of development contributions has, in practice, been extended beyond strict 'necessity'. For major housing developments, Section 106, as it currently stands, offers the local authority the prospect of obtaining planning contributions over and above those strictly required to mitigate the impact of development.

3.46 Section 106 has, therefore, come to offer a possible method of allowing local authorities to share in development gain – that is, access some of the windfall gains that accrue to landowners from selling land for residential development. By changing the relative costs and benefits of development, this can have the effect of addressing the externalities facing local authorities when deciding on housing growth.

3.47 The proposition that Section 106 allows for development gain appropriation, is supported by evidence of the behaviour of land prices. Residential land values, as measured by the Valuation Office Agency, now usually include a 'Section 106 charge' typical for the area and are thus lower than they would otherwise be (see Chapter 4 for more information on land markets and their interaction with development costs). Therefore, although intended as a mitigation measure, Section 106 offers local authorities a mechanism for sharing development gain more widely.

3.48 However, the Interim Report noted the problems surrounding the incentivising and value capture effects of Section 106 in practice:

• the value of contributions achieved varies considerably between areas, and even between sites, in the same housing market locality;
• Section 106 agreements are mostly attached to major housing schemes and many authorities will deal with applications of this scale relatively infrequently;
• negotiations can take many months, occasionally years, and are costly in both local authority and developer time and resources;
• there may be asymmetries in negotiating expertise between the two parties, leading to unsatisfactory outcomes;
• local authorities are not always aware of the level of planning contributions that might reasonably be expected in a given development, due to the non-transparent nature of the system; and

• some local authorities may misuse Section 106 to delay or discourage development, by asking for unreasonably onerous levels of developer contributions.

3.49 All these factors will combine to reduce the potential infrastructure and incentive effect of Section 106, by making it more difficult and costly for local authorities to secure appropriate developer contributions.

Infrastructure, incentives and Section 106 reform

3.50 Local authority incentives for housing development, and the infrastructure necessary to facilitate it, are clearly essential if housing supply is to be increased. However, as discussed above, Section 106 in its current form does not offer the best method for achieving these aims.

3.51 Current Government policy, as outlined in the recent consultation on planning obligation reform and the proposed optional planning charge, is already moving in the direction of greater certainty and clarity. Proposals consulted upon would provide developers with the option of paying a set charge in place of entering a negotiated agreement.

3.52 However, the Review has considered an alternative which develops the principles behind the Government's proposals. Section 106 should be scaled back to cover direct impacts and mitigation along with affordable and social housing requirements.

II Planning-gain Supplement proposals

A. The Barker Review recommendations, March 2004

The Barker Review recommended the introduction of an explicit tax on development gains, instead of extending section 106 agreements in that direction:

Recommendation 24

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 outlined in Chapter 4 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.

• 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.

If the Government decides to maintain the current fiscal framework as it is, then it should press ahead with the Section 106 reforms, on which it has recently consulted, that aim to introduce an optional planning charge in place of a negotiated agreement. However, this would be second best and leaves open the possibility of prolonged and costly Section 106 negotiations for large developments.

[…]

Recommendation 26

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 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 Planning-gain Supplement 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, as set out elsewhere in Chapter 3, to take account of this new charge.

• The Government may want to consider allowing developers to pay their Planning gain Supplement in instalments over reasonable time periods so as to ensure that housebuilder 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.

Recommendation 27

The provision of subsidised housing should be increased. At least 17,000 additional houses are required each year compared with current provision to keep up with demographic trends. Addressing the backlog of housing need would

> raise this to 23,000 per annum (assuming substitution from sub-market to market housing, as market affordability improves).
>
> Based upon current costs of provision, additional investment building-up to £1.2 to £1.6 billion per annum would be needed to support this expansion, not all of which will be from Government. [8]

An ODPM statement on 17 June 2004 explained the Government's plans for revising planning obligations and separately considering the Barker idea of a Planning-gain Supplement.[9]

B. Consultation, December 2005

On 5 December 2005, as part of a major package of measures on planning and housing, the Government announced a consultation exercise on Planning-gain Supplement. An ODPM factsheet explained its purpose:

> The Government is consulting on the Planning-gain Supplement (PGS), which would capture a modest portion of the increase in land value that occurs when full planning permission is granted. A significant majority of PGS revenues would go back to the local level to help local communities share the benefits of growth and manage its impacts, with the remainder used to finance regional and strategic infrastructure to promote growth.
>
> What will it do?
> • PGS revenues would be used to help fund the infrastructure needed to stimulate growth and service development, ensuring local communities share in the benefits of development. A significant majority of PGS would be recycled to the local level, with the remainder used to fund major infrastructure such as transport improvements.
>
> • Planning obligations would be scaled back to take account of PGS. Section 106 would apply only to items directly related to the development site, such as an access road or environmental improvements, and affordable housing.
>
> • PGS would apply UK-wide, on both residential and non-residential developments. This will have implications for planning, housing and local government policies in the devolved administrations and HM Treasury and ODPM will work closely with them going forward.[10]

The consultation document is available at
http://www.hm-treasury.gov.uk/media/F59/D3/pbr05_planninggain_449.pdf.[11]

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8 Kate Barker, *Delivering stability; securing our future housing needs*, March 2004 http://www.hm-treasury.gov.uk/consultations_and_legislation/barker/consult_barker_index.cfm

9 HC Deb 17 June 2004 cc43-4WS

10 ODPM Factsheet 2, *Infrastructure - Planning Gain Supplement*, 5 December 2005

11 HMT/ODPM/R&C, *Planning-gain Supplement: a consultation*, December 2005

The consultation document includes the following:

> 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 HMRevenue 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.

C. Select Committee Report on Planning-gain Supplement

1. The Committee Report

On 7 November 2006, the Communities and Local Government Select Committee published a report on Planning-gain Supplement. It supported the idea, provided that the rate was low and that most of the revenue had to go to the local authority. The report has the following summary:

> There is widespread agreement that investment in infrastructure needs to increase if the Government's ambition to increase the supply of housing is to be achieved. A planning gain supplement, levied at an appropriate rate, offers one mechanism for increasing resources for investment. It is however important that PGS is not implemented as a single solution but rather as part of an overall package of measures. It should not be seen as, or treated as, a replacement for existing sources of funding beyond those aspects of planning obligations which it will subsume. Any additional revenue which it generates must remain additional.
>
> Our analysis of the Government's PGS proposals has identified a number of potential benefits. For local authorities these include an opportunity to plan and, critically, to fund infrastructure provision in their area in a more strategic manner, following the lines of local development plans and regional spatial strategies, while at the same time reducing incentives to permit development purely on the grounds of planning gain. Local authorities could also benefit from both additional cash injections and savings resulting from a less demanding planning obligations regime. For developers the potential advantages include greater certainty, greater equity and a less demanding planning regime. There is real value in certainty for developers. Delivering that certainty provides part of the justification for increasing the contribution that developers make towards infrastructure. Central Government too may benefit, in terms of additional resources for investment in the infrastructure required to deliver its commitments on housing supply. And the public may benefit from more strategic provision of critical resources such as schools, housing, transport services and public amenities.

On the other hand, there are significant risks if the details of implementation are not precisely tuned and do not take account of the many justifiable concerns raised by our witnesses. Simplicity in its administration and clarity in its application are essential to the success of PGS. Previous attempts to tax windfall gains have foundered on the costs of administration or been locked in litigation for years. This is the principal reasoning for our rejection of calls for exemptions and discounts. Setting a very low threshold for liability will remove from the scope of PGS those very small-scale developments where the imposition of PGS would be counter-productive. Standard definitions for key aspects of the valuation process are required to make the system workable and to reduce the potential for delay and litigation.

There are advantages in the Government, rather than local authorities, collecting PGS receipts but this needs to be coupled with statutory obligations that the overwhelming majority of PGS revenue is recycled to local authorities and that the majority of PGS revenue should be returned to the local area affected by the development. A clear funding formula should be used to determine precisely how much revenue is returned to each local authority.

As the Government has acknowledged, there is still a huge amount of work to be done before it can implement PGS. This includes not only statistical modelling and cost-benefit analysis to determine the benefits of PGS in specific circumstances but also a range of negotiations and agreements with interested parties is required to ensure that PGS can operate effectively, efficiently and economically.

The provision of infrastructure to support development is as important a part of the PGS proposals as the tax itself. Preparedness to pay is largely dependent on developers' perceptions of the need for infrastructure to support their projects and on the understanding that PGS receipts will be used to deliver this.[12]

2. Government Response

The Government response to the Committee starts on the key issue of whether PGS is really necessary:

Recommendation
We urge the Government to consider a range of means to secure for the public benefit a portion of land value uplift which results from the granting of planning permission. Such consideration should include comparative cost-benefit analyses of PGS and scaled-back Section 106 arrangements on the one hand and, on the other, a fully effective utilisation by local authorities of Section 106 powers, including possible freeform and enhancements.

The Government has looked closely at alternative models, such as the optional Planning Charge and planning tariffs, but continues to believe that a workable and effective PGS, alongside a scaled-back planning obligations system, is the right approach to securing a portion of land value uplift for public benefit.

[12] Communities and Local Government Committee, *Planning Gain Supplement*, 7 November 2006 HC 1024-1, 2005-6

> Compared to approaches based on the planning obligations regime, PGS represents a fairer means of releasing land value. In particular, because liability to PGS is based on the available land value, rather than the cost of infrastructure, PGS is more proportionate and should not inhibit development on marginal sites. Further, it is possible to apply PGS to a wider range of developments, thereby sharing the contribution made by developers and landowners more evenly. Many respondents to our 2005 consultation, and indeed to Kate Barker's earlier consultation, suggested that the Government consider other means to secure a portion of land value uplift. Indeed, the Government have supported a number of innovative schemes using section 106 powers, and tariff-style approaches such as that used at Milton Keynes. However, we do not believe that these measures have the same potential as PGS.[13]

D. Other comments on the proposals

The magazine *Planning* in December 2005 recorded criticisms of the proposals:

> Proposals for a planning gain supplement (PGS)…have met a hostile reception…[T]he Royal Town Planning Institute lambasted the proposal, arguing that it exposes the "folly" of introducing a land tax. It argued that basing PGS at a local level means areas with little or no growth will lose out, placing extra pressure on growth areas. It also pointed out that the proposed scheme fails to take housing market fluctucations into account…Town and Country Planning Association director Gideon Amos said the updated system could be a fair way to share the gains generated by land value uplifts. But he warned against setting the rate too high…Stuart Robinson, head of planning at CB Richard Ellis, called the proposals "barking mad". He said they would deter housing development even though the Barker review identified undersupply as the chief problem.[14]

Another article at the same time noted opposition to the plan:

> The British Property Federation (BPF), the Royal Town Planning Institute and the Royal Institution of Chartered Surveyors had already come flat out against the idea. Many other bodies, including the Chartered Institute of Housing, the British Urban Regeneration Association and the Town and Country Planning Association had expressed serious concerns.
>
> However, the rash of popular enthusiam for new Conservative Party leader David Cameron may pose the most serious threat to the proposal. Three previous attempts to introduce a tax on land value increases since the Second World War all failed because they were opposed by popular opposition parties. This led landowners to hold on to development land rather than build on it, on the assumption that the next party to win power would repeal the tax. True to form the Tories have wasted little time in stating their opposition to the latest land tax.[15]

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[13] *Government Response to the Communities and Local Government Committee's Report on Planning-gain Supplement*, December 2006, Cm7005

[14] "Supplement proposals trigger sector outrage", *Planning*, 9 December 2005

[15] "Omens bleak for Brown's levy plan", *Regeneration & Renewal*, 16 December 2005

The article also mentioned concern that developers asked to self-assess value uplift would find ways to avoid paying the tax.

A sceptical article by a solicitor in January 2006 noted that section 106 agreements will continue alongside the new PGS:

> The Chancellor proposes to remove infrastructure and off-site considerations, with the slack being taken up by the PGS, while retaining streamlined section 106 agreements to secure social housing and site-specific environmental and amenity obligations. This may be the worst of both worlds – an increased tax burden and continuing delays for major strategic sites due to section 106 negotiations. The PGS may well render many large developments uneconomic or stall them for long periods while financial viability studies are revisited. Many land options might not be taken up at all, while others will be sat on until the position is clarified or the terms of the option come up for renegotiation. At best, some delay may result while developers seek to determine their potential financial exposure under existing agreements.
>
> The consultation proposals may offset these effects. The PGS will not come into effect until 2008, creating a powerful incentive for developers to bring forward schemes already in the pipeline before the tax bites. The government is also considering a lower rate for brownfield land which would boost recent efforts to achieve more than 60% of new homes on previously developed sites…
>
> [T]he biggest delay in the system derives from a simple lack of resources, particularly human resources in the form of planning officers and local government lawyers to process the caseload of applications. The mechanism might only serve to increase this burden.
>
> The Chancellor talks about a "modest levy". Although its exact level is unclear, recent speculation is that a rate of around 20% is being considered…Even at 20%, which is far lower than previous development taxes, the fear remains that the PGS will fail to achieve the objective of increasing housing land supply. It may even materially reduce the amount of housing land brought forward. The consultation paper seeks to soften the blow by raising the possibility of offsetting PGS payments against other taxes as an allowable business expense, as well as permitting phased payments to allow for cash-flow difficulties…[16]

An article in May 2006 estimated that 80% of current planning gain contributions would remain alongside the new system:

> Professor John Henneberry of Sheffield University told *Regeneration & Renewal* that around 80% of current contributions would still be applicable even if the government presses ahead with the proposed planning gain supplement (PGS). This is despite the Government's promise that the current system, which works through section 106 deals between developers and councils, would be scaled back if PGS was introduced. Under the plans in the current PGS consultation, section 106 deals would still be used to negotiate the affordable housing contribution, which accounted for £1.2bn of the £1.9bn figure [current annual contributions under planning gain]. The deals would also still be used to extract

[16] "Land gain tax tests resolve of developers", *Planning*, 27 January 2006

> other contributions to mitigate the impact of new schemes…The report found that only 40% of major planning applications attract developer contributions. Only 7% of all applications have such deals…[17]

An article in *Regeneration & Renewal* in September 2006 shows a potential problem with replacement of section 106 by PGS:

> A new development tax being proposed by Government will be so easy to avoid that it could end up producing less revenue than the existing planning system, according to a report published this week. Consultancy Knight Frank's examination of the proposed planning gain supplement (PGS) found that many large developments would contribute less to public funds than via current arrangements…
>
> The report…draws upon 18 development case studies. The total negotiated sum from the 18 sites was £375million, higher than the amount that would have been gained by PGS under the three scenarios tested. At 10% a levy would have raised £195million, at 20% £279 million and at 30% £363million. The Government will not say at what rate PGS would be levied, but industry sources suggest that it would probably be around 20%.
>
> The report also says the ability of developers to manipulate the planning value of a development in the new tax's self-assessment system means it is likely the Government would raise even less…[18]

E. The December 2006 Pre-Budget Statement

In the Pre-Budget Statement of 6 December, the Chancellor announced that he would be taking forward the idea of Planning-gain Supplement and issued further consultation papers:

> **Progress on the Planning-gain Supplement**
> 3.115 The proposed Planning-gain Supplement (PGS) aims to release increases in land value created by the planning process to help finance the infrastructure needed to support new housing and growth. Kate Barker recommended introducing PGS, alongside a revised planning obligations regime, in her review of housing supply, as an essential part of a package of reforms to incentivise the release of more land for development. The Government responded to Barker's recommendation, publishing a consultation paper on PGS alongside the 2005 Pre-Budget Report.
>
> 3.116 The Government will move forward with the implementation of PGS if, after further consultation, it continues to be deemed workable and effective. In response to views expressed by consultation respondents on specific policy areas, the Government is today publishing consultation papers on elements of the design of PGS and the new approach to planning obligations:

[17] "Developers face double tax", *Planning*, 26 May 2006 p2
[18] "Land tax will raise less, says study", *Regeneration & Renewal*, 22 September 2006

• Valuing Planning Gain: a Planning-gain Supplement consultation, HM Revenue and Customs;[19]
• Paying PGS: a Planning-gain Supplement technical consultation, HM Revenue and Customs;[20] and
• Changes to planning obligations: a Planning-gain Supplement consultation, Department for Communities and Local Government.[21]

3.117 Many respondents suggested that the Government consider alternative measures to capture land value, including the Optional Planning Charge and planning tariffs. Kate Barker's review of housing supply examined options for capturing value uplift and the Government has looked closely at these models. The Government continues to believe that a workable and effective PGS, alongside a scaled-back planning obligations system, represents a fairer and more effective means of releasing land value to help finance infrastructure.

3.118 Given the need to allow markets sufficient time to adjust to the new regime, the Government now proposes that a workable and effective PGS would not be introduced earlier than 2009.

3.119 As proposed in 2005, PGS would be levied at a modest rate across the UK to generate additional revenue for investment in infrastructure at the local and regional levels while preserving incentives for development to come forward.

3.120 The Government consulted on whether a lower rate of PGS should be applied to brownfield land. Many respondents suggested that because lower values associated with brownfield sites would be reflected in PGS valuations, a lower brownfield rate would not encourage regeneration. The Government agrees with this assessment, but will continue to examine this issue and whether other instruments could better create incentives for regeneration.The Government intends to review certain tax incentives for the development of brownfield land (as discussed earlier in this chapter).

3.121 Maintaining a broad scope with a wide base would enable PGS to be levied at a modest rate with a reduced risk of creating economic distortions or avoidance opportunities. The 2005 consultation proposed that PGS apply to residential and non-residential development but that home improvements would be exempt from the levy. This remains the proposed scope of the levy. The Government is still considering thresholds for small-scale non-residential development.

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19 http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_026418

20 http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_026417

21 http://www.hm-treasury.gov.uk/pre_budget_report/prebud_pbr06/other_docs/prebud_pbr06_odplanninggain.cfm

3.122 The application of PGS and a revised planning obligations system to major infrastructure projects, to public sector works, to minerals and waste consents and to non-Town and Country Planning Act consents remains under review.

3.123 The Government committed at Budget 2006 to recycle a significant majority of PGS revenues back to the local authority area in which the revenues derived. The Government now proposes that at least 70 per cent of PGS revenues would be hypothecated for local infrastructure priorities and would be returned to the local authority area in which they were generated. Remaining PGS funds would be returned to the regions to help finance strategic infrastructure projects.

3.124 PGS will apply across the UK but because it is essentially a local measure, all PGS revenues generated in the Devolved Administrations would be returned to the country in which they were generated. The use of PGS funds in the Devolved Administrations would be determined by the administrations and would not be subject to many of the conventions prescribed for the use of PGS revenues in England, although it is proposed that PGS revenues should be dedicated to infrastructure throughout the UK. The Government will continue to engage with the Devolved Administrations on this and other interactions with devolved policy areas.

3.125 PGS revenue allocation will need to be consistent with the 2007 CSR Review into Supporting Housing Growth (as discussed earlier in this chapter). Robust local planning is critical to the efficient and effective delivery of infrastructure. The Review is exploring options for improving infrastructure delivery planning at the local and regional level. PGS revenues would be used, alongside scaled-back planning obligations and other revenue streams, to fund priorities set out in infrastructure plans. At the local level, the use of PGS funds could also be subject to the new performance management framework set out in the recent Local Government White Paper.

3.126 Transitional arrangements will aim to ensure that development already formally in the planning process would not be subject to PGS. The Government proposes that for development where planning permission was granted before an appropriate appointed day in the future, including for outline planning permissions, PGS would not apply. There will be dialogue with stakeholders on transitional arrangements before further announcements are made.

3.127 The Government will shortly introduce a preparations bill to Parliament providing HMRC with the authority to build the systems necessary to administer PGS, if enacted. Further announcements on PGS are expected in spring 2007.[22]

The Government published several documents to coincide with the Pre-Budget Report. Two of the consultations mentioned in paragraph 3.116 deal with technical matters – valuing planning gain and paying PGS. The third one covers the proposals for how planning obligations should be changed to co-exist with PGS. There were two further documents. One was the Government response to the Select Committee Report mentioned in the previous section. The second was the response to the consultation on

[22] HM Treasury, *Pre-Budget Statement 2006*, 6 December 2006 http://www.hm-treasury.gov.uk/media/571/B7/pbr06_chapter3.pdf

the 2005 proposals, which included views on whether a new method of capturing development gains was needed:

> **Capturing a portion of development gains**
> 1.7 There was general support for the principles and objectives that the Government proposed for PGS and a scaled-back system of planning obligations in England. The principle of capturing a portion of the land value uplift created by the planning process, in order to help finance additional infrastructure, received broad acceptance by those consulted.
>
> 1.8 The need for additional investment in infrastructure, particularly alongside the Government's commitments to increase the supply of housing, was considered important, and many, including those involved in the development process, accepted that they had a role to play in contributing to the infrastructure needed to support growth.
>
> 1.9 There was widespread support for reform of the current planning obligations system, although significant concern was raised regarding certainty of delivery of those matters that would be taken out of the scope of planning obligations, for example education and health infrastructure.[23]

III Affordable housing

Section 106 agreements have been described by the National Audit Office as an "increasingly important lever" in the affordable housing delivery chain.[24] The DCLG's evidence to the Communities and Local Government Select Committee inquiry into Affordability and the Supply of Housing states that almost 50 per cent of new affordable homes are now delivered in part by developer contributions:

> Most affordable housing delivered through the planning system also receives grant from the Housing Corporation, which ensures that it is available at a sufficiently low price to meet the assessed local need of target groups and that there are secure arrangements to ensure the unit is affordable for future occupiers (or any subsidy recycled for additional affordable housing). In some cases affordable housing is now provided grant-free through developer contributions, and the properties transferred to a housing association.[25]

Research published by the Department in May 2006 found that the proportion of planning permissions accompanied by planning agreements (including unilateral undertakings) had risen from 1.5 per cent of all permissions in 1997-98 to 6.9 per cent in

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[23] HM Treasury et al, *Planning-gain Supplement: summary of consultation responses*, December 2006 http://www.hm-treasury.gov.uk/pre_budget_report/prebud_pbr06/other_docs/prebud_pbr06_odplanninggain.cfm

[24] *Building more affordable homes: improving the delivery of affordable housing in areas of high demand,* Joint National Audit Office and Audit Commission report, HC 459 Session 2005-06, December 2005

[25] HC 703-II Session 2005-06, Ev 289, paras 49-50

2003-04.[26] The estimated value of affordable housing delivered through planning obligations in 2003-04 was approximately £600 million.[27]

The Government has said that the proposals to introduce a Planning-gain Supplement (PGS) would be accompanied by a scaling back of section 106 agreements to cover only those matters relating to the physical environment of the development site and affordable housing provision.[28] The reasons for retaining affordable housing within the scope of section 106 agreements were explained in evidence to the Communities and Local Government Select Committee inquiry into the PGS proposals:

> First, if affordable housing was removed, it would prove very difficult to create the sort of communities which the Government seeks. The Minister for Housing said that the Government "made the decision to keep affordable housing within the section 106 approach because in practice you really want it to be considered as an on site delivery. If you are going to deliver mixed communities, you want affordable housing to be built into the developer's attitude and conception of the site from the beginning".
>
> …Secondly, Government did not want to take any action that might jeopardise current performance, especially over any transitional period.[29]

Housing organisations, such as the National Housing Federation, generally support this approach. There is concern that if the link between planning applications and the provision of affordable housing is broken it would prove very difficult for local authorities to secure the on-site provision necessary for the development of mixed communities.

Responses from housing bodies to the December 2005 consultation paper, *Planning-gain Supplement,* illustrated concern amongst housing bodies that a PGS might have an adverse effect on the supply of affordable housing. The Chartered Institute of Housing commented, for example:

> It is appropriate that the cost of any affordable housing to be provided should be deducted from PGS liability, but there is some possibility that this system could be abused and lead to under-provision of social housing. Some areas could be tempted to forfeit provision of affordable housing to increase PGS revenue which can be spent on local infrastructure. The PGS system should interact with PPS3 [Planning Policy Statement 3] to ensure that use of the planning system to meet affordable housing targets is prioritised over raising revenue for other local needs.
>
> Government should clarify whether RSLs [registered social landlords] would have to pay PGS. Although they too benefit from uplift in value of land they own, payment of PGS would limit the funds they could reinvest in the community and, for schemes using SHG [social housing grant], would amount to taxation of government funding. Exemption from PGS liability would make better use of

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26 DCLG, *Valuing Planning Obligations in England,* May 2006: http://www.communities.gov.uk/pub/144/ValuingPlanningObligationsinEnglandFinalReport_id1500144.pdf
27 *ibid*
28 DCLG, *Planning Obligations: Practice Guidance,* July 2006, para 1.8
29 HC 1024-I Session 2005-06, para 63

> government resources and help to deliver the increased level of affordable housing which government desires.[30]

It has also been suggested that developers will not welcome local authorities seeking section 106 contributions for affordable housing on top of having to pay a PGS:

> Unless a significant proportion of the 'national share' of PGS were to be earmarked for grant to supplement the existing Housing Corporation programme, the net result could well be a reduction in the number of affordable homes delivered through the planning system, the very opposite of what the government is seeking to achieve.[31]

The report of the Select Committee's inquiry into the PGS proposals acknowledged the possibility that some authorities might be moved to maximise PGS revenue as opposed to maximising the provision of affordable housing via section 106 agreements.[32] The Committee recommended that the Government, through planning guidance and target setting, should ensure that meeting affordable housing targets is not jeopardised in favour of revenue raising:

> If the additional cost which PGS will impose on developers outweighs the benefits it offers to them in terms of certainty, transparency and infrastructure provision to the extent that land is not brought forward for development, there will be a detrimental effect on affordable housing as well as on all other forms of development. **Retaining affordable housing within the scope of planning obligations is wholly appropriate: it will serve to ensure that affordable housing has the first call on any land value uplift and it will provide a means to deliver sustainable mixed communities. Even so, if the potential for PGS to increase the supply of affordable housing is to be fully realised, the Government needs to increase the scope of developments subject to Section 106 agreements beyond the current limits, to ensure affordable housing is eligible to benefit from PGS receipts and to facilitate more local authorities making fully effective use of planning obligations.**[33]

Additional information on the supply of affordable housing can be found in Library Research Paper 06/41, *Affordable Housing in England.*

IV The Bill

A. Introduction

In the *Pre-Budget Report* published on 6 December 2006 the Government announced that it would "move forward with the implementation of [Planning-gain Supplement, or

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[30] The CIH's submission to the consultation on Planning-gain Supplement, February 2006: http://www.cih.org/display.php?db=policies&id=620

[31] 'More Pain than Gain,' *Roof Magazine,* March/April 2006

[32] Because planning obligations are to be taken into account in the calculation of planning value, the higher the value of affordable housing secured, the lower the land value uplift upon which PGS liability will be assessed.

[33] HC 1024-I Session 2005-06, para 69

PGS] if, after further consultation, it continues to be deemed workable and effective." To this end it would "shortly introduce a preparations bill to Parliament providing HMRC with the authority to build the systems necessary to administer PGS, if enacted."[34] The *Planning-gain Supplement (Preparations) Bill* 2006-07 was introduced in the Commons on 12 December 2006;[35] it is expected to be debated on second reading on 15 January 2007.[36]

The Bill is one page long and consists of three clauses. As the explanatory notes to the Bill explain, the Bill "will enable the Commissioners for Her Majesty's Revenue and Customs, and the Secretary of State for the Department of Communities and Local Government (DCLG) to incur preliminary expenditure for the purposes of facilitating the introduction of and designing business processes for a Planning-gain Supplement." The notes provide the following commentary on each clause:

> **Clause 1 Preparatory Expenditure**
> *Subsections (1) and (2)* enables the Commissioners for Her Majesty's Revenue and Customs, the Secretary of State and the Northern Ireland Department to incur expenditure for the purposes of preparing for the introduction of the Planning-gain Supplement. This is a proposed tax on the increase in the value of land arising from the granting of planning permission in respect of that land.
>
> *Subsection 3* provides that the money will be paid out of monies provided by Parliament in the usual manner (and therefore subject to the annual supply procedure).
>
> **Clause 2 Extent**
> This clause provides the Act to have effect throughout the United Kingdom …
>
> **Clause 3 Short title**
> This clause provides for the Bill to be known as the "Planning-gain Supplement (Preparations) Act 2007" when it is enacted. It will come into force at Royal Assent.[37]

The notes provide some examples of the work that the Bill is to fund, as well as estimates of the amounts of money involved:

> The successful implementation of the PGS will … require expenditure to be incurred on the technological and administrative infrastructure of the PGS well in advance of the implementing legislation. For example -
>
> a) Her Majesty's Revenue and Customs will need to incur expenditure, on the design and procurement of new information technology and preparing HMRC and the Valuation Office Agency (an agency of HMRC) to administer the PGS;

34 Cm 6984 December 2006 paras 3.116, 3.127
35 HC Deb 12 December 2006 c750
36 The provisional date for the Bill's second reading was announced in Business Questions on 14 December 2006 (HC Deb c1009).
37 Bill 37-EN paras 15-18. At: http://www.publications.parliament.uk/pa/cm200607/cmbills/037/en/07037x--.htm

> b) the Secretary of State will need to incur expenditure for the purposes of adapting the Planning Portal (the Government internet gateway to planning information throughout the UK) to support PGS processes; and
>
> c) the Department of Personnel and Finance in Northern Ireland need to incur expenditure for the purposes of preparing the Valuation and Lands Agency to administer the PGS in Northern Ireland …
>
> Project planning is at an early stage. The enactment of this Bill will allow further development of the project by HMRC and their IT partners and for the technology to be properly costed. The current upper end estimate is that IT build, infrastructure and service costs will be approximately £40 million, however these are subject to change as the project is refined and policy finalised. Between enactment of the Bill and the implementation of PGS a core team of project staff will also be needed to develop the new operating model and recruit and train staff. These costs are currently estimated at £12 million for HMRC and the Valuation Office Agency up to and including 2008/09.[38]

The term 'paving Bill' is generally used to describe this type of legislation: that is, a Bill to provide a department with the authority to spend money in a preparatory fashion, before legislation is presented to implement a new function or service. Authoritative guides to Parliamentary procedure, such as Erskine May[39] and the *Handbook of House of Commons Procedure*[40] do not offer a definition of the term – though there have been a number of occasions in recent years where this procedure has been used. Some examples are discussed in section IV.C below. Before that, the next section provides a more detailed explanation of precisely why this form of statutory authority is needed in these cases. This requires a discussion of some relatively arcane aspects of "supply procedure" – the method by which Parliament approves of Government spending – which readers may prefer to skip.

B. Supply procedure and approval for 'new services'

As a rule government departments need to obtain two things for their expenditure and resource consumption to be both proper and regular:

- first, parliamentary approval for the activities and services that they carry out; and
- second, funds provided by Parliament to allow them to carry out those activities and services

The former is usually provided by specific enabling legislation; the latter through the "supply procedure" by which Parliament votes funds to departments.

Focusing on supply procedure first, each year every department draws up estimates of its resource requirements in discussion with Treasury spending teams. Each main category of expenditure is called a "Request for Resources" (RfR). The department has to include a prose description for each RfR of the functions to which the resources will be

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[38] Bill 37-EN paras 10-1, 20
[39] Erskine May, *Parliamentary Practice*, Twenty-third edition 2004
[40] Paul Evans, *Handbook of House of Commons Procedure*, 5th edition 2004

allocated – known as the "Ambit" of the Request. Estimates from all departments are collated in the Main Supply Estimates, which are presented to Parliament around the beginning of the financial year. For the current financial year, the Main Estimates were published in May 2006.[41] Taking the case of HM Revenue & Customs, the department makes five RfRs:

> RfR 1: Administering the tax and customs control systems fairly and efficiently and making it as easy as possible for individuals and businesses to understand and comply with their obligations and receive their tax credit and other entitlements
> RfR 2: Growing a contribution to the good management of property where the public interest is involved
> RfR 3: Providing payments in lieu of tax relief to certain bodies
> RfR 4: Making payments of rates to Local Authorities on behalf of certain bodies
> RfR 5: Payments of Child Benefit and Child Trust Fund endowments

The Ambit for the first of these Requests is reproduced below:

> Administration and the associated non-cash items incurred in the management and collection of the direct and indirect taxes, duties and levies, Shipbuilders' Relief, new tax credits, National Insurance contributions, Child Benefit and the Child Trust Fund, Money Laundering regulatory regime, the National Insurance Funds for Great Britain and Northern Ireland; OPG and government banking services; the operation of customs controls including prohibitions and restrictions; the provision of trade information; the provision of Capital Grants for Excise Tax Stamps; the provision of resources to independent investigatory bodies (including the HMIC, IPCC and the police authorities) to facilitate the independent inspection of professional standards within the Department, the investigation of allegations of mis-conduct or criminal activities by Departmental staff and fulfilment of reciprocal complaints investigation arrangements with police authorities; the provision of incentive payments for e-filing; payments in respect of the Customs National Museum; air travel carbon-offsetting; and for services provided to the department's information technology and wider markets' partners, other departments and public bodies and overseas tax administration.[42]

Parliamentary approval for the Estimates is provided through the passage of the Appropriation Act. Amendments to departmental spending plans through the financial year are presented in revised and supplementary estimates and, again, approval for these is provided by legislation. In each case the Bills granting the authority for departments to spend these resources are taken in a purely formal manner, without debate. The process is set out in detail in the Main Estimates:

> **Supply Procedure** Under long-established constitutional practice it is for the Crown (the Government) Procedure to demand money, the House of Commons to grant it and the House of Lords to assent to the grant. Parliament gives statutory authority for both the use of resources and for funds to be drawn from

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41 *Central Government Supply Estimates 2006–07: Main Supply Estimates*, HC 1035 May 2006. At: http://www.hm-treasury.gov.uk/documents/public_spending_and_services/parliamentary_supply_estimates/pss_pse_mainest0607.cfm

42 HC 1035 May 2006 p570

the Consolidated Fund (the Government's general bank account at the Bank of England) to meet most expenditure by government departments and certain related bodies by Acts of Parliament known as Consolidated Fund Acts and Appropriation Acts. Parliamentary procedure leading to the passing of these Acts is known as "Supply procedure". Specific provision is made available under the Acts only for a specified financial year (although an individual Act may authorise Supply for separate Estimates from different financial years).

Vote on Account Because Parliament does not normally approve the Main Estimates until around the middle of July the process begins with the Votes on Account to provide provision for the early months of the financial year. These are normally presented to Parliament in the previous November along with the winter Supplementary Estimates. In general they will seek for the coming financial year 45 per cent of the amounts, resources and cash, authorised to date in the current year.

Main Estimates Around the turn of the new financial year the Treasury presents to Parliament the Main Estimates with supporting statements and notes. Part I of each Estimate forms the basis of a Supply Resolution, which is normally voted on by the House of Commons before the end of June. An Appropriation Bill is then brought in and passed before Parliament rises for the Summer Recess.

Appropriation Acts The resulting Appropriation Act authorises departments to use resources and spend Acts cash up to the amounts requested in the Main Supply Estimates as amended by any Revised Estimates or added to by summer Supplementary Estimates. The Act not only gives parliamentary authority for total resources requested to be used and cash to be issued from the Consolidated Fund but also limits the way in which the resources can be used by prescribing how the overall sum is to be appropriated to particular RfRs in order to finance specified services. Since 2004–05 there have been two Appropriation Acts per year. The first Act (the spring Appropriation Act) will have been presented in March 2006 appropriating the Supplementaries from 2005–06 and any Statement of Excesses for 2004–05. The second Act (the summer Appropriation Act) will be presented before the end of July, appropriating the Main Estimates 2006–07.

Revised Estimates Revised Estimates may be presented to replace the original Estimate before the Estimates Supply Resolution is voted on. They either reduce the provision sought in the original Estimate or vary the way in which it is to be allocated.

Supplementary Estimates The Government may decide to ask Parliament for additional resources and/or cash Estimates during the year. Supplementary Supply Estimates, where necessary, are usually presented in June (summer), November (winter) and February (spring). Following any Estimates Day debates and the vote on the necessary Supply Resolution, formal statutory authority for extra funds is provided by an Appropriation Act in March (following presentation of Spring Supplementary Estimates and Statement of Excesses) covering winter and spring Supplementaries and appropriating Supply in respect of any Excess Votes relating to the previous year.[43]

[43] HC 1035 May 2006 p9-10. This section of the Main Estimates also discusses what happens when departments exceed their spending plans, the auditing of department accounts, and the method Parliament chooses to debate the Estimates ("Section 3: Parliamentary Procedure" pp 9-12).

As noted above, in order to spend money on an activity a department needs both a *power* to carry out the activity and *resources* to be voted for that activity – and government cannot rely on the Appropriation Act alone to provide this power. *Government Accounting* provides guidance for departments on their proper handling and reporting of public money, and gives the explanation of why this is the case:

> Although it is usually legal for departments to commit resources or incur expenditure on the sole authority of the Appropriation Act, it may be not be proper for them to do so. This is because:
>
> - the Appropriation Act covers the whole range of voted expenditure and therefore does not provide Parliament with the opportunity to scrutinise underlying policies in detail; and
> - each Appropriation Act is for one year only, and is repealed by the Appropriation Act for the next-year-but-one. The Act does not therefore provide a continuing statutory basis for expenditure.
>
> On the basis of the above, there is a long-standing agreement … – between the Treasury and the Public Accounts Committee (PAC) that continuing functions of government should be defined by specific statute. The Treasury has agreed to aim to observe this principle … For expenditure to be properly incurred, there should therefore normally be specific statutory authority for the activity or service as well as authority through Estimates for the related expenditure.[44]

The 'long-standing agreement' cited here is the 1932 Public Accounts Committee Concordat. The Committee had strongly criticised the reliance on the Appropriation Act by the then Ministry of Labour to finance expenditure on continuing services in relation to the training and resettlement of unemployed men and women, which did not have any other statutory basis. The full text is published in *Government Accounting* (Annex 2.1). One application of the Concordat – of particular relevance to the *Planning-gain Supplement (Preparations) Bill* – is the "New Services" rules. Subject to certain exceptions, departments must not consume resources or incur expenditure on work that is part of a new service until the specific enabling legislation has been passed and provision has been made in Estimates for the new service.[45]

All of which leads back to the need for legislation to allow HM Revenue & Customs to incur expenditure, preparing for the potential introduction of Planning-gain Supplement. As noted above, the long development period required for a successful infrastructure to the PGS means that work on it must begin now, well in advance of any legislation being presented to Parliament to establish the PGS itself. As this work does not lie within the Ambit of the department's current RfRs, separate statutory authority must be sought. *Government Accounting* explains that departments will usually obtain the necessary statutory authority for developing new services through Parliamentary approval of the Estimates, though certain types of preparatory work may merely be preliminary to a new service, and not require this form of approval. In addition, a paving Bill is an alternative where timing is a crucial factor:

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44 HM Treasury, *Government Accounting 2000 (Amendment 4/05)* paras 2.2.2-4. This guidance is published on the internet at: http://www.government-accounting.gov.uk/current/frames.htm

45 For more detail see Chapter 2.3 of *Government Accounting*.

> Where specific statutory authority is required, expenditure can, except in certain exceptional circumstances, only be incurred once Parliament has enacted the specific legislation, provision has been made in an Estimate and the Estimate has been approved. Normally, therefore, departments do not seek provision in Estimates until enabling legislation has received Royal Assent. Where legislation is being introduced to provide for a new service, departments should wait until the Bill has received Royal Assent before incurring expenditure on preparing for or implementing the new service…
>
> Departments may incur expenditure on relevant pilot studies (i.e. those which inform departments' choice of the final agreed policy option). This is because these will often satisfy the new services rules and need not await Royal Assent of the Bill concerned. In such cases, if the pilot did not prove the case for the preferred option, the expectation would be that the intended policy would be modified or abandoned altogether. In advance of legislation, departments may legitimately incur expenditure on scoping studies, (i.e. those studies which are designed to identify in detail the implications of a proposal in terms of staff numbers, accommodation costs and other related expenditures and expenditure of any other type which informs the legislative process). Work of any significance associated with preparing for or implementing the new task (e.g. renting offices, hiring staff or purchasing computers) is not, however, permissible.
>
> Establishing a project team and/or a project management board is likely to satisfy the rules provided that such bodies are set up entirely in-house. In addition, the use of private sector consultants is acceptable where they are used to help with identifying the chosen policy option or with scoping studies and other work informing the legislative process.
>
> If, exceptionally, a department considers that the preparatory work on a particular policy development is so urgent that it cannot wait until Royal Assent, it may wish to consider taking a short Paving Bill for this purpose.[46]

C. Some examples of previous 'paving Bills'

1. Tax Credits (Initial Expenditure) Bill 1997-98

Arguably this Bill represents the closest precedent to the *Planning-gain Supplement (Preparations) Bill.* In his March 1998 Budget the Chancellor, Gordon Brown, announced the introduction of two tax credits – the Working Families Tax Credit and the Disabled Person's Tax Credit – to replace the in-work benefits Family Credit and Disability Working Allowance from October 1999.[47] In turn these credits were replaced by the current system of tax credits introduced in April 2003.[48] Legislation to introduce

[46] *op.cit.* paras 2.3.10, 2.3.12-5. In addition there are circumstances where departments use the Contingencies Fund to finance expenditure on a new service before legislation comes into force. Readers are referred to this section of *Government Accounting* for details.

[47] HC Deb 17 March 1998 cc1104-5. In addition a childcare tax credit would be a component of each new credit, for claimants with childcare costs.

[48] For more details see, "Tax credits: annual assessments, changes in circumstances and overpayments", Library Standard Note SN/SP/3205, 1 July 2005.

these credits was introduced in December 1998,[49] though this was foreshadowed by the *Tax Credits (Initial Expenditure) Act 1998*. The Act – which received Royal Assent on 21 May 1998 – allowed the Inland Revenue and Department of Social Security (DSS) to spend money on preparing for the introduction of the tax credits. (This legislation predated the merger of the Revenue with HM Customs & Excise in April 2005.) The financial memorandum to the *Tax Credits (Initial Expenditure) Bill*, published on 23 April 1998, estimated this expenditure at around £15-20 million.[50] The Bill was a page long, and contained only two clauses. Clause 1 allowed for money to be spent to facilitate the replacement of family credit and disability working allowance with income tax credits, irrespective of Parliamentary approval for that change. Clause 2 provided for the Act's territorial extent and its short title.

The Bill received a second reading in the Commons on 7 May 1998.[51] During the course of a short debate, the then Financial Secretary, Dawn Primarolo, set out the Government's plans for the new credits, before going on to explain the need for this paving bill:

> Having described in some detail the structure that we propose for the tax credits, I am sure that hon. Members will appreciate the extent of the work involved in preparing for the introduction of such a scheme, and the many, many questions that need to be answered. Given the improvement that the scheme will provide for a range of people on low incomes, it is absolutely essential that it works efficiently and effectively from the start. Computer systems and processes need to be designed and ready to begin on the date of the introduction of the working families and disabled persons tax credits. That cannot be done overnight--hence the importance of starting the work as soon as possible.
>
> In order to build on the success of family credit, it is clearly vital that the Inland Revenue work closely with the Department of Social Security, and that both Departments start work straight away to develop the necessary business processes--thereby providing another example of closer working between Government Departments. Until the legislation introducing the working families tax credit and the disabled persons tax credit has been sanctioned by Parliament, the costs for these aspects of development work are outside the current accounting remit of both the Departments involved--hence the need for the Bill, to allow them to spend money preparing for the introduction of the tax credits. That authority is essential to enable the development work to begin, so as to meet the timetable for introduction set out by my right hon. Friend the Chancellor in his Budget speech.[52]

During the debate Archy Kirkwood – then Chairman of the Social Security Committee – raised concerns about the use of a paving Bill, as "it takes for granted the decisions that the House of Commons will take when the principal legislation is introduced":

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49 The *Tax Credits Bill 1998-99* had its second reading in the Commons on 26 January 1999, and received Royal Assent on 30 June 1999. Background on this legislation is given in *Tax Credits Bill*, Library Research Paper 99/3, 18 January 1999.

50 Library Research Paper 99/3 p 7

51 HC Deb 7 May 1998 cc874-90

52 HC Deb 7 May 1998 c876

> My understanding is that the money will start to be spent from Royal Assent of the Bill. A computer system will be bought, applications will be put on to the hardware, and the system will start. If the Bill to introduce the working families tax credit fails to secure a Second Reading in the House, that money will not be recoverable. It will have gone. We had better be clear about this. The House of Commons is spending money in anticipation of the Government's success in getting the legislation through the House of Commons at a subsequent date.[53]

In response Ms Primarolo said:

> The paving Bill will provide for the two Departments to spend money to conduct the necessary development work for the introduction in the next Session of legislation to enshrine in detail the workings of the working families tax credit. That money would be subject to exactly the same accountabilities, through the accounting officers, as is all expenditure through any Government Department.
>
> The hon. Member for Sevenoaks is trying to turn this into a chicken-and-egg argument. How are we to ensure that the legislation is drafted to the high standards that we all want, having answered the questions that have been raised relating to business and individuals, if we are not to be given authority to conduct the work? If it fell inside the current vote application of the Inland Revenue, the paving Bill would not be required, but it is, because it is about accountability of expenditure through Departments.[54]

The Bill's remaining stages were completed on the floor of the House on 14 May 1998 without any amendments; and it completed its second and third reading in the Lords on 21 May, the day it received Royal Assent. During the Committee stage the Opposition had tabled amendments to cap the preparatory expenditure that could be incurred under the Bill, and to require the Revenue to report the money spent under the Bill. Ms Primarolo argued that both amendments were unnecessary for two reasons; first, the Bill was a solution to the problem of introducing credits within the timetable set out by the Chancellor:

> The Inland Revenue is not authorised to spend money on preparations because the tax credits represent a completely new area for it. The Department of Social Security is not authorised to spend money because the tax credit will eventually be administered by the Inland Revenue--the tax credit does not belong to it, so to speak.
>
> We need a paving Bill because there is a gap in the two Departments' authority to do the work on the substantive legislation--we need to close that gap. As I explained on Second Reading last week, we cannot afford to wait to begin that work. It is important that tax credits are introduced according to the timetable that we announced, so that people can benefit from them as soon as possible. The paving Bill fills the gap and--Conservative Members mentioned accountability--properly brings the matter before Parliament for its approval.

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[53] HC Deb 7 May 1998 c881

[54] HC Deb 7 May 1998 c886

> The introduction of such a paving Bill is the right way in which to deal with the unusual situation that we face. The Bill follows the usual procedures, as can be demonstrated by reference to paving Bills introduced by the previous Conservative Government, which related to privatisations--the broad principle was brought before Parliament for endorsement, and the details were brought forward subsequently. Then as now, the paving Bill enabled work to begin on the broad concept because, then as now, there would otherwise be no authority to begin the work.[55]

Second, Ms Primarolo went on to argue that the Bill in no way represented a “blank cheque”, as suggested by the Opposition:

> The purpose of the Bill is to enable the most cost-effective preparations to be made; the Bill is not a licence to spend money. The estimates of costs in the explanatory and financial memorandum are, by necessity, tentative. They give Parliament an idea of the money that the two Departments may need to spend on the preparatory work between Royal Assent to this Bill and enactment of the substantive Bill, which we intend to introduce as soon in the next Session as the legislative timetable permits.
>
> I tell the Committee in all honesty that we cannot say with certainty how soon we shall be able to introduce the substantive Bill, nor can we predict how long it will take before the measures of that Bill become law. The financial estimates are designed to take account of that uncertainty, but … they are, finally, only estimates …
>
> If [Opposition Members] are concerned that there should be tighter financial controls on the expenditure, I must point out that all the expenditure of both Departments is tightly controlled--the Departments are scrutinised by the National Audit Office and, ultimately, by Parliament through the Public Accounts Committee, as hon. Members are well aware … I ask the Committee to reject [these amendments] on the basis that accountability is in place through the normal parliamentary processes. All public money is accountable, and the National Audit Office and the Public Accounts Committee are the watchdogs to ensure that it is … If Conservative Members want progress on the matter, given the safeguards that they know are in place, they will allow this paving Bill to go through, in the same way as they facilitated their own paving Bills when their party was in office.[56]

2. Three other paving Bills

The Office of Communications Bill 2001-02 was published on 12 July 2001, and received Royal Assent on 19 March 2002. In December 2000 the Government had published a white paper - *A New Future for Communications* Cm 5010 – which foresaw the establishment of a single regulator to govern across the communications sector. The purpose of this Bill was to establish Ofcom, giving it a single initial function - to prepare to assume regulatory functions at a later stage. This left Ofcom’s remit and powers to be determined in subsequent legislation – the *Communications Act 2003*. *The Office of*

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55 HC Deb 14 May 1998 c545

56 HC Deb 14 May 1998 cc546-7

Communications Act 2002 also gave the existing regulators additional functions and duties to assist OFCOM to prepare.[57]

In opening the second reading debate in the House of Lords, Baroness Blackstone described the bill as a paving measure:

> The Ofcom Bill which is before you today is a paving measure which will enable us to make progress on the essential practical work which is necessary to set up Ofcom. Folding three statutory organisations, one non-ministerial government department and an agency into a new statutory body is extremely complex. We have to bring together five separate groups of professional expertise based across 20 or more offices around the country, with differing pay systems, pension schemes and organisational cultures, without disrupting this important industry and while maintaining effective protection for consumers.[58]

The then Minister for E-Commerce and Competitiveness, Douglas Alexander, described the Bill in similar terms at its second reading in the Commons:

> The Office of Communications Bill is a paving measure, which will enable us to make progress on the essential practical work that is necessary to create Ofcom. The work needed for the new statutory body to evolve out of five existing regulators is complex. We must bring together three statutory organisations, one non-ministerial Department and an agency. They are based in 20 or more offices around the country, with differing pay systems, pension schemes and organisational cultures. That must be done with the minimum disruption to those who are regulated and the staff, while ensuring that the interests of consumers and citizens are safeguarded. The Ofcom Bill will allow the essential preparatory work to begin so that the new regulator will be in a position to take on regulatory functions quickly once the regime that is set out in the main communications Bill has been fully discussed and come into force.[59]

Further background on the Bill is given in the Library paper prepared for this second reading debate.[60]

The Referendums (Scotland and Wales) Bill 1997-98 was published on 15 May 1997, and received Royal Assent on 31 July 1997. In its general election manifesto the Labour party had stated that, "as soon as possible after the election, we will enact legislation to allow the people of Scotland and Wales to vote in separate referendums on our proposals [for devolution], which will be set out in white papers. These referendums will take place not later than the autumn of 1997 ... Popular endorsement will strengthen the legitimacy of our proposals and speed their passage through Parliament."[61] The Bill's second reading in the Commons took place on 21 & 22 May 1997. The first day's debate focused on Scotland, the second day's on Wales. Introducing the Bill on the first day, the then Secretary of State for Scotland, the late Donald Dewar, said:

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57 *Explanatory Notes to the Communications Act 2003 (chapter 21)* para 6
58 HL Deb 15 October 2001 c351
59 HC Deb 14 January 2002 cc55-6
60 *The Office of Communications Bill*, Library Research Paper 02/03, 14 January 2002
61 Labour party, *New Labour: because Britain deserves better*, 1997 p 5

> This is an important Bill. On the face of it, it is neither long nor complex, but it is a first and decisive step towards delivering a Parliament for the people of Scotland … The Bill will pave the way for that Parliament, and its passage is an essential preparation for it … The Bill will allow a test of public opinion and is a matter of establishing consent. It is not a Second Reading aperitif for devolution in Scotland or Wales. There is, I would argue, a strong case for having a test of public opinion, but whether we should or should not is the question before us. If the Bill reaches the statute book and we move to the referendum, there will be a White Paper that will clearly set out the scheme and which will inform the public of the details--although I have to say that, in Scotland, Wales and other parts of the country, these issues are well understood … I have made the point, and I spell it out again, that the Second Reading is on the Bill, not on devolution as such. The Bill makes no judgment on the issues and arguments surrounding devolution, but allows the final decision about endorsement to lie with the people.[62]

Again, further background on the Bill is given in the relevant Library paper on the Bill.[63]

The British Rail and British Coal (Transfer Proposals) Bill 1992-93 was published on 7 May 1992 and received Royal Assent on 19 January 1993. The purpose of the Bill was set out in a press notice when it was introduced to the Commons:

> The *British Coal and British Rail (Transfer Proposals) Bill* has been introduced in order to give British Coal and British Rail the powers to do those things required to pave the way for privatisation. This could include, for example, considering and taking advice on proposals for privatisation, advising the Government on such proposals and drawing up plans for implementing proposals. In general effect it is similar to paving bills for previous privatisations. The Bill does not in itself provide any powers to implement a scheme or schemes of privatisation.[64]

The then Secretary of State for Transport, John MacGregor, explained the purpose of the Bill at its second reading on 18 May 1992:

> The Bill is short and has a single purpose ... [It] is similar to paving bills for previous privatisations--for example, electricity and water; it follows that pattern. The Bill is very short, with only two clauses. Its sole purpose is to give British Rail and British Coal powers to take any steps necessary to prepare for privatisation. Clause 1 confers on British Coal and British Rail powers to act in relation to proposals for the transfer of their commercial activities to the private sector or proposals for the establishment of new arrangements for their other activities …
>
> Clause 2 gives the short title of the Bill, sets out the financial provisions and extends the Bill to Northern Ireland. The financial provisions deal with the source of any loans and clarify the destination of any repayments, should British Coal or British Rail require additional funding to meet costs incurred in preparation for privatisation. However, as the financial memorandum makes clear, any expenditure incurred for that purpose will not be significant in relation to the total

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62 HC Deb 21 May 1997 c716, c720

63 *The Referendums (Scotland and Wales) Bill*, Library Research Paper 97/61, 20 May 1997

64 Department of Trade and Industry press notice P/92/280, *Tim Eggar welcomes publication of British Coal Paving Bill*, 7 May 1992. For further background on this issue see, *British Rail: whose future?*, Library Research Note 92/38, 14 May 1992.

> amount of public expenditure being incurred on these two industries, and will undoubtedly give the taxpayer good value for money. That is therefore all that the Bill does--it does not give British Coal or British Rail powers to implement any scheme of privatisation.[65]

Alan Williams MP strongly criticised the Bill on the grounds that it undermined the Government's accountability to the House:

> The Bill is about getting one's retrospective legislation in first by giving oneself the power to do that which may be deemed necessary at some time in the future but of which the House cannot be told at present. The Minister said that the use of the powers would impose small costs, with the interesting qualification that those costs would be small in relation to the total public expenditure involved in the industries. In fact, it will be a substantial sum, and we have precedent to demonstrate it. In the case of the denationalisation of the water industry, the cost came to £39 million. That may be small in relation to the total expenditure of the industry, but none the less it has to be borne by the industry's customers. In terms of parliamentary accountability, it is a cost that Ministers refuse to recognise.[66]

In response the Secretary of State said:

> The Bill simply enables British Rail and British Coal to incur expenditure and consult outside advisers so that the Government can engage in discussions with those industries about the proposals and some of the questions that will be raised in relation to the proposals as the main legislation makes progress through the House. British Rail and British Coal do not have powers at the moment to engage outside advisers for some of the purposes that we shall want so that Parliament can be better informed by the time that we consider the main legislation.[67]

3. Paving provisions within the Finance Act

In addition to the examples of paving Bills discussed above, there have also been occasions where legislation allowing for departments to incur preparatory expenditure has been included in the annual Finance Act. Two cases are discussed below.

Preparations for entry to the Euro

Following the creation of the single European currency on 1 January 1999, the Prime Minister made a statement to the House the following month on the publication of an Outline National Changeover Plan - "a snapshot of where preparations stand today on the practical aspects of possible UK entry." In this, Mr Blair referred to the need for certain departments to incur expenditure, prior to any decision about the UK adopting the euro:

> Firms can now pay taxes, file accounts, issue and redenominate shares, and receive certain grants in euros, and Customs and Excise has trained some 10,000 staff to respond to business needs. Small businesses will have the help

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[65] HC Deb 18 May 1992 c22
[66] HC Deb 18 May 1992 c50
[67] HC Deb 18 May 1992 c51

> that they need. The City of London is prepared, and is already taking a good share of euro-denominated business. These, however, are all preparations for the euro with Britain, at present, out of that single currency. It is also necessary now to prepare for Britain being part of it. If, as we have already announced, we want to keep open the option of making a decision early in the next Parliament to join, we need to step up our practical preparations now; hence the national changeover plan …
>
> Each Department now has a Minister responsible for euro preparations, and each will now report regularly on the preparations that are being made. Where computer systems are being upgraded, all Departments will build in euro compatibility where that represents value for money. In the case of the Department of Social Security, the Inland Revenue and Customs and Excise, the scale and complexity of their computer systems makes advance preparations critical. Together, those Departments are the main interface between central Government and the business community, and deal with almost every individual in the UK. They may need to spend some money prior to a referendum to make their information technology systems euro-compatible, so that we can maintain the flexibility for Britain to make the changeover as quickly and cost-effectively as possible.
>
> It is right that Parliament should be asked to give explicit approval to such expenditures, which will amount to some tens of millions of pounds spread over a number of years. We will therefore include provisions in the Finance Bill and the Social Security Bill that will authorise the spending -- and, of course, there will be the normal votes on the appropriation accounts.[68]

Case studies of the preparations to be made by each of these three departments were published at the time.[69] It was estimated that this preparatory work "may cost some tens of millions of pounds."[70] Section 131 of the *Finance Act 1999* provided that both the Revenue and Customs might "incur expenditure in order to secure that, if the United Kingdom were to move to the third stage of economic and monetary union, they would be able to exercise their functions relating to taxes and duties." Debate in Committee focused on the economic arguments for and against the single currency, though speaking for the Liberal Democrats, Dr Vincent Cable, suggested that the preparations being made by Government were similar in nature to those often found in the private sector:

> [Nick Gibb, speaking against the provision for the Conservatives] said that a prudent business manager would not spend shareholders' money on such exercises … My experience of business is that that is not the way that big companies operate. Big companies--and not just in the defence sector--often engage in expensive contingency planning … On a more mundane level, every property developer and council buys bits of land in cities on an option basis. At

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68 HC Deb 23 February 1999 c180-1. As noted above, prior to the creation of HMRC in April 2005, the revenue authorities were composed of two departments: the Inland Revenue (dealing with direct taxes), and HM Customs & Excise (responsible for indirect taxes).

69 HM Treasury, *Outline national changeover plan*, February 1999 [Deposited paper Dep 99/413] pp 51-54 (DSS & Inland Revenue); HM Treasury, *Getting ready for the Euro: second report*, February 1999 [Deposited paper Dep 99/414] p 25 (HM Customs & Excise).

70 HC Deb 3 March 1999 c774W

> some time in the future, that land may be useful for a development. They spend money, but they may not follow the project up. However, it is sensible business planning to engage in such preliminary investments and to spend shareholders' money on them … There are two types of planning for the future. The first deals with strategic issues. They include deciding whether we should join the single currency and considering the implications of not being a member or, even, of being linked to the dollar. Any sensible Government should consider such options.
>
> The second type of planning deals with technical matters. If we join EMU--and we may do--many practical actions will have to be taken in relation to software and equipment. If economic conditions prove to be right and there is a majority verdict in a referendum, it is sensible to prepare the country for making the necessary moves. In that sense, there is no difference between the role of Government and the private sector.[71]

On this occasion the then Economic Secretary, Patricia Hewitt, gave the rationale for this provision as follows:

> [This clause] provides the statutory authority that the Prime Minister undertook to establish to permit spending in preparation for a possible decision to join the single currency. We must prepare so that we have a genuine choice. The provision is prudent and preserves parliamentary accountability.[72]

A second paving provision was included in the *Finance Act 2004* covering this type of expenditure. On 9 June 2003 the Chancellor had made a statement to the House on the 'five tests', first announced in 1997, to determine whether it would be in the UK's economic interest to join the single currency.[73] It was the Government's assessment that, "a clear and unambiguous case for UK membership of EMU has not at the present time been made and a decision to join now would not be in the national economic interest."[74] Nevertheless, a third National Changeover Plan was published at this time, and the Chancellor also announced the "introduction of further paving legislation for additional departmental allocations for preparations."[75] Section 324 of the *Finance Act 2004* made provision for this type of expenditure by the Debt Management Office (DMO), and National Savings and Investments (NSI). In Committee, the then Financial Secretary, Ruth Kelly, set out the purpose of the provision:

> The clause allows the DMO and NSI to reduce the risks associated with a possible changeover by making small, targeted investments on euro preparations. It is up to the individual Departments, together with the DMO and NSI, to present a business plan for approval that says how the money would be spent, but we have clear evidence that, in the euro area, early planning reduces costs and the associated risks of changeover.

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71 SC Deb (B) 17 June 1999 cc665-6
72 SC Deb (B) 17 June 1999 c685
73 For background on this issue see, *The euro: background to the five economic tests*, Library Research paper 03/53, 4 June 2003. Further information is collated on the official Treasury resource on the euro: http://www.euro.gov.uk/home.asp
74 HM Treasury, *UK membership of the single currency – an assessment of the five economic tests* Cm 5776 June 2003 p 6
75 HC Deb 9 June 2003 c415

> We are not talking about significant sums but about much smaller sums than those involved in the three critical path Departments. It is impossible to say with accuracy what the figure will be. Sometimes it is a question of preparing systems in a slightly different way than would otherwise have been the case and of building in euro compatibility—for example, by investing in new IT systems—where that represents value for money. Given the key role that both the DMO and NSI play in our Government debt management and some of the issues that need to be considered, which were set out by the Bank of England in its "Practical Issues" City changeover plan, it is important that we prepare early to reduce future risk.[76]

The Minister also gave details of the amount spent up to that point by the three 'critical path departments' – those likely to be most affected by the possible introduction of the euro:

> Those are the Inland Revenue, where £18.7 million has been spent, HM Customs and Excise, where £7.1 million has been spent, and the Department for Work and Pensions, which has spent £8 million. The size of the task faced by those Departments meant that, if we were to be in a position to prepare and decide, they had to make that investment early. Otherwise the cost of a possible changeover would have been absolutely huge. The amount of money spent early reduces the total cost.[77]

Turning back to the Prime Minister's statement in February 1999 that Parliamentary approval was required for spending by the revenue authorities *and* the Department of Social Security, in the latter case this was done by section 82 of the *Welfare Reform and Pensions Act 1999*. However, the approach taken was slightly different; the explanatory notes to the Act provide a short explanation of section 82:

> This section enables the Secretary of State to incur expenditure on preparing for legislative changes within his responsibilities, provided that he has the consent of the Treasury and the approval of the House of Commons. Under a 1932 Public Accounts Committee concordat, any functions of a Government Department that continue beyond a given year - particularly where there are financial liabilities - should normally be defined by specific statute, rather than rely solely on the authority of the annual Appropriation Act.
>
> The section enables the Secretary of State to seek specific Parliamentary approval to incur expenditure to prepare for future changes in the functions within his responsibilities (i.e. social security benefits, child support, war pensions), without the need for further primary legislation. For example, a new benefit, or major changes to existing provisions, requires a significant amount of preparatory work: such as developing and testing new computer systems, and preparing manuals for use by staff. Often such work has significant lead-in time. This power will enable the Secretary of State to obtain the approval of the House of Commons to commence such work, and so avoid the risk of a delay in implementation.[78]

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[76] SC Deb (A) 24 June 2004 cc751-2
[77] SC Deb (A) 24 June 2004 c751
[78] *Explanatory Notes to the Welfare Reform and Pensions Act 1999 (chapter 30)* – section 82

When this provision was debated in the Lords, Earl Russell raised concerns about whether the clause undermined Parliament's control of government expenditure, recalling debate on the *Tax Credits (Initial Expenditure) Bill* in the previous Session:

> Some noble Lords may remember the paving Bill for the working families' tax credit, which contained one of the most colossal Henry VIII clauses[79] that I have ever seen. I understand the need for this kind of thing, but there is a real problem here. Without preliminary expenditure, a large number of policy changes cannot even be contemplated. So I understand why the Government want to be able to proceed by statutory instrument rather than needing an Act of Parliament to authorise each particular piece of expenditure.
>
> However, the principle which is here--I shall not say breached, but possibly weakened--is one of very great importance historically and in another place it is guarded very jealously indeed … I should like to know what safeguards will be in the way of this exercise of power.[80]

Responding for the Government, Baroness Hollis of Heigham, set out the types of expenditure covered by this provision:

> Without the clause, expenditure could not be incurred on much of the work needed to prepare for a change in social security until after Royal Assent for the substantive legislation introducing the change. As the social security system is large, complex and increasingly dependent on computers--heaven help us--there are long lead in times for making changes. Having to wait for Royal Assent, therefore, means that much needed welfare reform is delayed or implementation is rushed with resulting higher costs and possible loss of quality.
>
> So the clause is intended to give a specific and time-limited power to incur expenditure on making preparations for future change of the social security system. The power covers two types of preparatory work: first, work in support of changes arising from decisions on social security policy, such as the introduction of a new benefit or for major changes to existing policies which will require primary legislation; and, secondly, work in support of changes to the social security system needed as a consequence of other government policies. For example, as the Prime Minister made clear in his statement on 23rd February, the power could be used to allow work in preparation for the country joining the European Monetary Union. I was pressed on that question in your Lordships' House. I said that unless one spent the money in advance there would be no choice for people to make in a possible referendum. If we wish to have the option of joining, we must prepare for it and the scale and complexity of the DSS computer systems make advance preparation critical. At the time I believe[d] I had the support of the noble Earl and his colleagues.

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79 The term "Henry VIII" powers refers to provisions which enable primary legislation to be amended or repealed by secondary legislation with or without further parliamentary scrutiny. See, House of Lords Select Committee on the Scrutiny of Delegated Powers, *First report* 1992-93 HL 57 para 10.

80 HL Deb 20 July 1999 c942. The clause had not been debated at any length when scrutinised in the Commons (Clause 67 of Bill 44 : SC Deb (D) 27 April 1999 c1004).

> There would be firm additional parliamentary controls on this expenditure. They are set out in the clause itself and are additional to the normal processes of estimates and supply. First, only preparatory work could be subject to this procedure. Substantive expenditure on the new service--for example, payments of a new benefit--could not be approved in this way. Secondly, a report detailing the nature and amount of intended expenditure would need to be laid in the House of Commons before expenditure could be approved. Thirdly, that approval would have to be by affirmative resolution. Fourthly, any such approval would be limited to a time period of two years. There is no question of indefinite and continuing expenditure.
>
> In addition to those provisions on the face of the Bill, my honourable friend the Minister of State, Mr Timms, assured the chairman of the Social Security Select Committee--the noble Earl's honourable friend Mr Kirkwood--and the chairman of the Public Accounts Committee, at col. 1338 of Hansard for 20th May 1999, that arrangements could be made so that in normal circumstances those committees could examine the report before the House of Commons takes a decision.[81]

Preparations for a Lorry Road User Charge (LRUC)

In his Pre-Budget statement on 8 November 2000 the Chancellor, Gordon Brown, announced the Government's intention to introduce a vignette system, "a British disc under which non-British companies and lorries pay their share to Britain for using British roads."[82] Following consultation, in *Budget 2002* the Government confirmed it would go ahead with a road charge for lorries based on distance, with off-setting tax cuts for the UK haulage industry, to be implemented in 2005 or 2006.[83] Legislation to prepare for the introduction of a LRUC [lorry road-user charge] was included in the *Finance Act 2002* (specifically section 137). This provided for a "tax, to be known as lorry road-user charge" to be charged on the use of roads by lorries, and for ministers to spend money on preparing for this new charge. The legislation made no specifications as to the nature of the charge, other than it would be based on distance travelled. This provision was the subject of a short debate at the Committee stage of the Finance Bill, when the then Financial Secretary, Paul Boateng, opposed an Opposition amendment setting an implementation date for the LRUC:

> It would be wrong to commit ourselves to a fixed date by which the proposals are to be implemented ... We need to be sure that we tackle complicated issues of compatibility in a way favourable to Britain's competitive interests and the interests of the haulage industry. We have therefore chosen to proceed with enabling legislation, which, in all probability, will become law in future Finance Bills. We shall bring those matters before Parliament again when they have received the technical and other consideration that they deserve and when we have developed a successful scheme; the Committee should unite on that outcome.[84]

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[81] HL Deb 20 July 1999 c 943. At the Bill's report stage in the Commons on 20 May, an amendment to remove the clause was not debated for lack of time, though the Minister, Stephen Timms, took the opportunity to make this statement.

[82] HC Deb 8 November 2000 c323

[83] HC 592 April 2002 para 7.48

[84] HC Deb 9 May 2002 c397

Further consultation took place with the industry and progress reports were published in 2002, 2003 and 2004. However, in July 2005 the Government announced that the LRUC would be scrapped as a stand alone project and that the scheme would be incorporated in the Government's broader plans for national road pricing.[85] Further details on this issue are given in a Library standard note.[86]

[85] HC Deb 5 July 2005 c173
[86] "Lorry road-user charge", Library Standard Note SN/BT/588, 3 October 2005