



Department for  
Communities and  
Local Government

# Renegotiation of Section 106 planning obligations

Consultation

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# Introduction

## Background

### Section 106 planning obligations

1. Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a landowner, or persons who intend to develop that land, in association with the granting of planning permission. These planning obligations are intended to deliver or address matters that are necessary to make a development acceptable in planning terms.

### The policy proposal

2. The Government's Housing Strategy "Laying the Foundations: A Housing Strategy for England" published on 21 November 2011 set out a number of proposals to help unlock stalled development. There are currently around 1400 housing schemes of over 10 housing units with planning permission that are stalled.\*<sup>1</sup> 62% of stalled units predate April 2010.
3. The Government is concerned about the high number of stalled schemes and the lost economic benefit they represent. Some planning obligations negotiated in different economic conditions now make sites economically unfeasible – resulting in no development, no regeneration or community benefits.
4. We want to ensure that effective renegotiation of planning obligations can be achieved to make them more reflective of the current market and help unlock stalled development, whilst continuing to ensure through the use of obligations that development is acceptable to communities and local authorities in line with local plans. Wherever possible, such renegotiation should be agreed on a voluntary basis.
5. Where agreement cannot be reached on a voluntary basis, we are proposing that signatories to section 106 agreements should be able to formally request reconsideration of planning obligations agreed in more buoyant market conditions. This would apply to planning obligations agreed prior to 6 April 2010. This change would not apply to planning obligations agreed since April 2010 and current arrangements would continue for these obligations.

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<sup>1</sup> Source: Glenigan, as at June 2012. Glenigan (<https://www.glenigan.com/>) is a private firm that supplies the Homes and Communities Agency (HCA) with information on the status of planning applications for internal use. Information from Glenigan is commercially available for a fee.

## Scope of the consultation

<b>Topic of this consultation:</b>	The Government's Housing Strategy "Laying the Foundations: A Housing Strategy for England" published on 21 November 2011 set out a proposal to allow reconsideration of planning obligations agreed in more buoyant market conditions.
<b>Scope of this consultation:</b>	The aim of this consultation is to set out the details of how the proposal will work and to seek views.
<b>Geographical scope:</b>	England.

## Basic Information

<b>To:</b>	This consultation is aimed primarily at: local authorities; house builders, landowners and key partners with an interest in section 106 planning obligations.
<b>Body/bodies responsible for the consultation:</b>	This consultation is being run by the Community Infrastructure Levy / section 106 team within the Department for Communities and Local Government.
<b>Duration:</b>	This consultation will run for 8 weeks. It will begin on 13 August and end on 8 <sup>th</sup> October 2012.
<b>Enquiries:</b>	cil@communities.gsi.gov.uk
<b>How to respond:</b>	We are seeking your views directly on the proposals. Responses should be sent by email or by post please:  Email responses to: cil@communities.gsi.gov.uk  Written responses to: <b>William Richardson</b> <b>Communities and Local Government</b> <b>CIL Team</b> <b>Zone 1/H6 Eland House</b> <b>Bressenden Place</b> <b>London SW1E 5DU</b>
<b>Additional ways to become involved:</b>	N/A
<b>After the consultation:</b>	A summary of responses to the consultation will be published on the Department's website within three months of the closing date. Following full consideration of the consultation responses the Department will lay regulations in Parliament before coming into force later this year.

## **Proposed legislative change**

6. Section 106A of the Town and Country Planning Act 1990 allows voluntary renegotiation of a planning obligation at any time. Where voluntary agreement cannot be reached there may be a formal request to reconsider an obligation when that obligation is 5 years old. The local authority must take a decision on such a request. If the local authority decision is not to renegotiate terms then there is a right to appeal to the Planning Inspectorate.
7. In March 2011 the Department wrote to all authorities encouraging them to consider carefully whether voluntary renegotiation of planning obligations was appropriate in order to stimulate development. It is clear that this has happened in some cases. We now wish to take this further by ensuring that there is greater opportunity to require reconsideration of planning obligations where there is clear justification for doing so.
8. We propose that for all planning obligations agreed on or prior to the 6 April 2010, the relevant local authority can be asked to formally renegotiate the terms one month after the introduction of new regulations. For all planning obligations agreed after 6 April 2010, the period will remain at 5 years. There will be no change to the ability to renegotiate obligations voluntarily at any time, and the Department encourages this to happen where appropriate.
9. We consider that 6 April 2010 is an appropriate cut-off date for this change. New statutory tests were introduced for most planning obligations on 6 April 2010 which ensure that obligations agreed after that date must only cover what is necessary to make the development acceptable, must be directly related to the development and reasonable in scale and kind. It is also clear that a high proportion of stalled developments are dated prior to April 2010 when market conditions were different.
10. Our proposal will require a new regulation to allow the change for obligations agreed prior to April 2010. The draft regulation is attached at **Annex A**

## **Ensuring development is acceptable in planning terms**

11. The intent of this change is to assist in bringing forward stalled development. It will not mean that obligations should be reduced arbitrarily or the terms altered automatically. Nor should it be a reason to permit unsustainable development. There must be a strong justification for any change, and the resultant obligation must still be sufficient to make the development acceptable in planning terms. The principles for modifying planning obligations are given in section 106A of the Town and Country Planning Act 1990. This requires that an obligation must “*no longer serve a useful purpose*” or that it “*continues to serve a useful*

*purpose...equally well'* if it is to be modified. These principles will be important considerations during negotiations.

12. Planning Inspectors, when hearing appeals, will also have to apply these principles in reaching their decisions. They will also need to have regard to the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus consider the evidence for modifying the obligation in light of the local plan policy position and any other relevant material considerations.
13. Subject to the outcome of this consultation, the Planning Inspectorate will aim to consider the majority of written representation appeal cases, made under section 106A of the Town and Country Planning Act, within 14 weeks.
14. Those requesting reconsideration of planning obligations should have clear evidence when presenting their case to a local authority or the Planning Inspectorate, as to how a proposed modification to their planning obligation would meet the tests set out in the legislation.

**Question 1** - is the Government's objective to encourage formal reconsideration of Section 106s on stalled development supported by the shortened relevant period given in the draft regulation?

**Question 2** - does 6 April 2010 represent a reasonable cut off for the proposed change?

### **Impact on affordable housing**

15. Planning obligation contributions towards affordable housing represent the largest proportion of all obligations.
16. The Department's view is that some obligations agreed prior to April 2010 which include a high level of affordable housing, may now be so unviable that development may not occur at all under the current terms. Those applications will therefore not deliver any affordable housing, and therefore the policy change will help bring forward more affordable housing than would otherwise happen.
17. As with all other areas of obligations, renegotiation does not mean that affordable housing contributions should automatically be reduced or lost. It means that obligations should be tested against local plan policies to see if a revised obligation serves its purpose equally well. It may be possible, for example, for authorities and developers to agree a similar level of provision, but in different ways or to change the phasing in which delivery is expected. Where the overall level of affordable housing needs to be reduced to reflect changed viability, local authorities may consider requiring delivery within an agreed timeframe.

**Question 3** – what approaches could be taken to secure acceptable

affordable housing delivery through revised obligations?

## Consultation questions – response form

We are seeking your views to the following questions on the proposals to allow earlier renegotiation of section 106 obligations agreed prior to April 2010.

### How to respond:

**The closing date for responses is 8 October 2012**

This response form is saved separately on the DCLG website.

Responses should be sent preferably by email:

Email response to [cil@communities.gsi.gov.uk](mailto:cil@communities.gsi.gov.uk)

Written response to:

William Richardson  
Communities and Local Government  
CIL Team  
Zone 1/E2 Eland House  
Bressenden Place  
London SW1E 5DU

### About you

#### i) Your details:

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

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**ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?**

- Organisational response
- Personal views

**iii) Please tick the box which best describes you or your organisation:**

- District Council
- Metropolitan district council
- London borough council
- Unitary authority/county council/county borough council
- Parish council
- Community council
- Non-Departmental Public Body (NDPB)
- Planner
- Professional trade association
- Land owner
- Private developer/house builder
- Developer association
- Voluntary sector/charity
- Other

(please comment):	
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**iv) What is your main area of expertise or interest in this work (please tick one box)?**

- Chief Executive
- Planner



- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Planning policy/implementation
- Environmental protection
- Other

(please comment):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes  No

**ii) Questions**

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Question 1** – is the Government’s objective to encourage formal reconsideration of Section 106s on stalled development supported by the shortened relevant period given in the draft regulation?

Yes No

Comments

**Question 2** – does 6 April 2010 represent a reasonable cut off for the proposed change?

Yes No

Comments

**Question 3** – what approaches could be taken to secure acceptable affordable housing delivery through revised obligations?

Comments

## Annex A

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### S T A T U T O R Y   I N S T R U M E N T S

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**2012 No. \*\*\***

## TOWN AND COUNTRY PLANNING, ENGLAND

### Town and Country Planning (Modification and Discharge of Planning Obligations) (Amendment) (England) Regulations 2012

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, in exercise of the powers conferred by sections 106A(4)(a) and (9)(a) of the Town and Country Planning Act 1990<sup>(2)</sup>, makes the following Regulations:

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<sup>(2)</sup> 1990 c. 8. Section 106A was inserted by section 12 of the Planning and Compensation Act 1991 (c. 34). The powers are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales They were previously transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672; see the entry in Schedule 1 for the 1990 Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.

### **Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Modification and Discharge of Planning Obligations) (Amendment) (England) Regulations 2012 and shall come into force on [Date].

(2) These Regulations apply in relation to England only.

### **Amendments to the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992**

2. The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992<sup>(3)</sup> are amended in accordance with the following regulations.

### **Amendment to regulation 3 - applications for the modification or discharge of planning obligations**

3. For regulation 3(1), and 3(2) substitute—

“An application for the modification or discharge of a planning obligation shall be made in writing to the local planning authority and shall contain such information as is necessary to enable the local planning authority to determine the application.”

### **Prescribed period**

4. After regulation 3 insert—

#### **“Prescribed Period**

**3A.**—(1) This regulation applies in respect of all planning obligations entered into on or prior to 6 April 2010.

(2) The prescribed period for the purposes of section 106A(4)(a) of the 1990 Act will be one month beginning with the date on which these Regulations came into force.”

Signed by authority of the Secretary of State for Communities and Local Government

*Name*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 106A of the Town and Country Planning Act 1990 enables a person against whom a planning obligation is enforceable to apply to the local planning authority to have the obligation modified or discharged

These Regulations amend the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (“the 1992 Regulations”), in relation to England. The 1992 Regulations remain in force for Wales.

Regulation 3 removes the prescriptive requirements, in regulation 3 of the 1992 Regulations, Applications are to be made in writing to the local planning authority and are to contain such information as is necessary to enable the authority to determine the application.

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<sup>(3)</sup> S.I. 1992/.2832

Regulation 4 prescribes a period of one month beginning from the date on which these Regulations came into force for applications to modify and discharge planning obligations where the obligation was entered into on or prior to 5 April 2010.