

# Lowering the ladder: regulatory frameworks for sustainable development

*Geoffrey Payne*

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*A major proportion of urban housing in developing countries, and also in some European countries, is developed outside officially sanctioned processes. This is less a reflection of a global desire to break the law than of the existence of inappropriate planning regulations, standards, and administrative procedures. Many countries have inherited or imported their regulatory frameworks from outside, and these were designed to meet very different conditions from those currently facing countries in the South. By attempting to impose such approaches on populations which are invariably too poor to be able to conform to them, the danger is that respect for the law and official institutions in general will be undermined. For urban development to be socially, economically, and institutionally sustainable, it is therefore vital to assess the extent to which changes in the regulatory frameworks are required in order to lower the bottom rung of the legal housing ladder so that the urban poor can start climbing it. This paper serves as a 'position paper' for an international research project to evaluate the social and economic costs of such frameworks for new urban development.*

## Introduction

Why do so many people in the cities of developing countries live in housing and urban settlements which disregard official planning regulations, standards, and administrative procedures? Clearly, there are many factors to consider in attempting to answer this question. However, opportunities for access to legal shelter are significantly influenced by the social and economic costs of conforming to official requirements. Where these costs are greater than households can afford, they have little alternative but to seek other options. An extreme example of this is squatting, though there are now many other processes of varying degrees of legality or illegality operating in most cities. For example, households may construct a house on land they own, in an area officially designated for residential development and in conformity with building regulations, but not in conformity with administrative regulations. Since such developments will not qualify for the essential documentation required by the authorities, they may be regarded in the same category as other unauthorised housing.

Under such conditions, the ability of urban authorities to impose official norms is restricted to developments under their direct control. Elsewhere, the proportion of people unable to

conform has reached a critical mass that enables people to act with relative impunity in undertaking further illegal actions. Such processes not only challenge the authority of the urban agencies responsible for managing urban development, they also threaten public respect for all other laws and official regulations. Increasing access to legal shelter for the urban poor and improving urban governance for all sections of the increasing urban populations therefore require that this issue be addressed by researchers, policy makers, and administrators alike.

Although unauthorised housing and urban development has become so widespread as to represent the norm, households may still be exposed to insecurity and limited access to credit, services, and public facilities. They may also suffer from social and environmental costs, isolating them from civil society.

Many of the planning regulations, standards, and administrative procedures operating in developing countries have been inherited or imported from countries where the economic, social, institutional, and climatic conditions are significantly different from those pertaining in the South. For example, building regulations in the southern African kingdom of Lesotho are based on those of Sweden, and those of the highlands of Papua New Guinea on Australian category 'A' regulations derived from coastal conditions.

Initial intervention by many international agencies to improve urban housing conditions in the South focused on designing and implementing pilot projects. Sites and services projects were undertaken in the hope that the experience acquired would filter through to the mainstream activities of urban development agencies and gain acceptance for the principle of incremental development. In some cases, as in the Nairobi Dandora projects funded by the World Bank in the early 1970s, reviews were commissioned of existing planning and building regulations, standards, and administrative procedures with a view to making them more appropriate to local conditions. Perhaps inevitably, these indicated that existing standards were too high for many people to be able to conform to them and it was recommended that some be reduced. However, the subject was particularly sensitive and it was more than 20 years before any of the recommendations were accepted, and even then only in a partial form.

It is understandable that central or local governments are reluctant to adopt planning and building standards for the populations of independent countries that were once imposed on them by colonial powers, or which are routinely applied in countries reflecting standards to which they aspire. However, inappropriate regulatory frameworks raise the cost of getting onto the legal housing ladder to such a level that the urban poor cannot do so, inhibiting the rate at which long-term improvements can be made in housing and environmental living conditions. In particular, they inhibit social cohesion and economic activity, waste land, discourage private sector participation in housing markets, encourage corruption, and even accelerate the very unauthorised settlements they were intended to prevent. For all these reasons, it is important to assess the social and economic costs of each component in order to identify options for reform. Once this is done, it will then be possible to identify the institutional, technical, and other constraints to more appropriate frameworks.

Among early studies of regulatory frameworks, attention focused on the administrative procedures by which urban development proposals are processed. Kitay (1985:20) claims that in many developing countries it can take many years to record a land transaction on official title registers and delays are a major impediment to the involvement of private sector developers in low-income housing. In a similar vein, Struyk et al. (1990) record that in West Java, land transfers take an average of 32.5 months for a title to be issued and estimate that this adds between 10 per cent and 29 per cent to the cost of land acquisition. In an influential analysis of urban administration in Peru, de Soto (1989) calculated that administrative procedures were so cumbersome that development could not take place unless people ignored the rules, or secured preferential treatment through political or bureaucratic patronage.

Similarly, in Tanzania, applicants for building permits have to endure 28 different steps, taking time off work to visit different agencies over more than a year (Payne 1997).

Other studies, such as Durand-Lasserve (1987), Dowall and Clarke (1991), and Farvacque and McAuslan (1992), have also stressed the need to review regulatory frameworks. However, empirical evidence of the extent to which particular planning regulations, standards, or administrative procedures constitute the most significant barriers to improving access by the urban poor is not easily available. In recent research on public–private partnerships (Payne 1999), it was found that planning standards impede the growth of innovative approaches to shelter provision for the poor. This finding is consistent with other research by ITDG (2000) on building standards, which has demonstrated that they are invariably inappropriate to the needs of the urban poor and that their impact has been to marginalise people, rather than uplift them.

## Planning regulations

Planning regulations are generally intended to prevent incompatible land uses or development considered to be against the public interest. Few would object to regulations which separate polluting industries from residential neighbourhoods. However, regulations which inhibit residents from using their dwellings for income-generating activities, such as petty manufacturing, commerce, or rental subdivisions, deny them a major opportunity to supplement low and often irregular cash incomes and work their way out of poverty. They also reduce the amount of housing available for the poorest households and inhibit house and environmental improvements.

Few planners responsible for formulating or enforcing planning regulations would consider these outcomes desirable. However, it has proved immensely difficult to waive or even relax them. As McAuslan (1989:30) states in relation to Madras:

*...so concerned have the authorities been to close every loophole against illegal development, corruption, exploitation of scarce resources, the exercise, and therefore the possible wrongful or non-exercise, of discretion, that the principal aim of the Madras Metropolitan Development Authority—to get orderly and equitable development underway in Madras and its environs—has been lost sight of.*

As a result, 'laws were not being observed or enforced, illegal and unauthorised development was widespread and plans were not being followed'.

McAuslan goes on to claim that the legal regulations in Madras also lack consistency and the more complex they become the more likely this is to happen. By attempting to control all aspects of land development, particularly land use, planning regulations have therefore restricted both access to land and the options for those who do gain access. Such approaches are the reverse of the approaches adopted in most unauthorised settlements, where a significant proportion of the population may be employed locally and in ways which benefit the wider urban economy. For example, in China and even Japan, many of the components required in hi-tech manufacturing are produced in home-based units.

Such restrictive regulations also have a more pernicious aspect. Their obtuse language, complexity, and comprehensiveness load the dice in favour of professionals, their affluent clients, and the political élite and against the uninitiated majority.

Among the regulatory factors restricting investment in urban land development, particularly for commercial and industrial uses, few have greater impact than zoning regulations. By insisting on the complete segregation of residential, commercial, industrial, and recreational activities, these negate the very qualities that make cities dynamic and attractive places in which

to live and work. Most thriving cities, including popular destinations for tourism, embody mixed land uses, low- to medium-rise development and medium to high densities. Yet these qualities are often impossible to achieve within current zoning and other planning regulations.

## Planning standards

Concern over unplanned development of squatter settlements has often been used as the justification for establishing what are regarded as minimum acceptable standards of development. As with planning methods and regulations, these are also invariably based on inherited or imported standards, or reflect aspirations for national development based on some notional assessment of what is accepted in Europe or North America.

Consideration of what constitutes acceptable standards has invariably been examined at the individual level rather than at the scale of the city. Thus, standards on road widths and standards of construction, plot size, utilities provision, or building design are considered in terms of what a notional household should regard as adequate and not on what this implies at the scale of the city. If it is considered important for households to have space to grow food on their plots, and enjoy private open space, standards may require minimum plot sizes in excess of 300 m<sup>2</sup>. However, the low densities that result may make it prohibitively expensive to install basic utilities or operate an efficient public transport system, thereby isolating people from employment centres and community facilities which may be even more important than the option of growing crops.

The imposition of official standards on private sector projects increases costs, which are passed on to purchasers, reducing the ability of the private sector to serve the needs of lower-income groups. In developments designed and implemented by public sector agencies, the gap between the cost of meeting official standards and the ability of residents to afford them was either not quantified or was covered by various subsidies and has proved to be unsustainable on a large scale.

As competition for urban land increases, so does the need to put it to the most intensive and effective use. Studies of squatter and other unauthorised settlements in which the planning standards are based on local perceptions and not on official ordinances, all suggest that people are willing to accept higher densities, mixed land use, and less space for roads than are required by official standards. This is largely because official standards are not normally based on the capital and recurring costs involved in their implementation or the implications for urban development and management.

An equally important consideration is that standards rarely distinguish between initial and consolidated standards of development. Yet almost all locally controlled development is incremental in nature, with people establishing a modest initial house, which they expand and improve as resources become available. In many cases, such housing reaches official standards eventually, though attempts to impose such standards at the outset raise the bottom rung of the housing ladder too high and exclude people from participating in the legal housing market. Ironically, therefore, standards designed to ensure good-quality urban development are partly responsible for the growth of unauthorised and substandard development.

A major consideration in this respect is the cost of roads. In any large urban development project, the area occupied by roads will be considerable. This land has to be acquired, developed, and maintained permanently, yet generates no direct return on the investment. Despite this, it is common to find standards for road reservations higher than those found in Europe. Clearly, such standards cannot be justified on objective grounds.

Similar concerns can be cited in the case of utilities provision. By insisting on individual connections to a public water supply, consumption levels will be substantially higher than if

initial provision is off-plot. Individual connections require a higher (and more expensive) standard of waste disposal and drainage that may be impossible to provide to all those in need, or may prove too expensive for many households to afford, even with subsidies.

Finally, the imposition of high standards on house design and construction, with maximum floor area ratios, required setbacks, and minimum gaps between buildings also raises costs and lowers densities, with adverse consequences for the urban poor.

## Administrative procedures

In a major review of urban policy within the World Bank, Cohen (1992:13) cited regulatory frameworks as the second major constraint to improving urban productivity in countries receiving Bank support. He suggested that a key question should be to ask what are the costs and benefits of all these regulations and proposed that the Bank would introduce regulatory audits, or cost-benefit balance sheets of the regulatory systems operating in specific cities, to clean out elements which constrain economic activity. While accepting that some regulations are undoubtedly necessary, he suggested that others, such as the common requirement that the distance between two buildings should be equal to their height, did not appear to have a rational justification.

This concern with regulatory frameworks was reinforced in the Bank's subsequent Housing Sector Policy Paper (1993:11) which stated that 'nothing influences the efficiency and responsiveness of housing supply more than the legal and regulatory framework within which housing suppliers operate'. The paper contrasts the simple and efficient regulations of Thailand with the cumbersome approach adopted in Peru; there it was estimated to take almost seven years from project inception to occupation of units in new developments. Not only do these delays increase costs, but regulations also eliminate cheap housing and force the poor to spend a larger proportion of their incomes on housing.

The extent to which administrative procedures affect the urban poor in the case of Peru was quantified extensively by de Soto (1989). This indicated that it took 289 days to establish a factory legally, while procedures for legally obtaining a plot of land were estimated to take six years eleven months, or 56 times the official minimum wage at the time! He concluded that this forced people out of the legal market, even if they were otherwise willing and able to obtain legal shelter. Consequently, the informal sector in Peru accounted for about 70 per cent of all new construction, employed 439,000 people, and provided 90 per cent of the city's transportation. Following recommendations resulting from this study, the situation in Peru has improved considerably, though this is the exception rather than the rule.

In many countries, it is even difficult for people to obtain information on administrative procedures to which they are expected to conform. In Lesotho, for example, all forms relating to registering land titles or to developing plots, are written in English, though many people cannot even read the local language.

Procedures tend by their nature to become more, not less, complex over time. In some cases, they may also become contradictory. In Tanzania during the 1980s, recipients of plots in sites and services were required to build and occupy a house within 12 months or forfeit their plots. However, it took considerably longer than this to complete all the steps required to obtain official permission to build a house, though failure to do so could also lead to the forfeiture of their plot!

However, the full impact of complex administrative procedures is rarely even recognised. This consists of the financial cost imposed by delays in the time taken to conform to, or obtain unofficial exemption from, official permissions. This is particularly serious in countries experiencing high rates of domestic inflation and even higher real rates of interest. Clearly,

where interest rates are in the region of 20 per cent a year or more, a delay of a year in obtaining permission to build on land just acquired dramatically adds to total costs. During many years of organising planning simulation exercises for professionals in urban development agencies, this writer has found that participants rarely consider the cost of money in discussions on urban project costs. When the cost of borrowing funds to undertake projects is included, it becomes abundantly clear how expensive lengthy procedures can be and how much could be saved by simplifying them.

However, the greater the number of desks which applicants have to visit in order to obtain planning permission, the greater the opportunities for staff to exact personal benefits. As long as public sector salaries remain low, such tendencies become difficult to resist and vested interests, especially bureaucrats who extract bribes from those seeking permissions, become entrenched. While it is relatively easy to propose that the administrative system should be reformed, ensuring that such reforms are implemented requires that these interests be taken into account.

## Recent trends

It is clear from the above that the underlying rationale for regulatory frameworks has traditionally been to assert control over processes of urban development. Methods have tended to be reactive rather than proactive and rigid rather than flexible. The evident failure of such approaches makes the concerns expressed by various observers and the World Bank, to change this approach to more market-sensitive approaches, both justified and urgent.

However, in view of the current impact of globalisation and privatisation, it is important to consider what an appropriate basis should be for more relevant regulatory régimes. For example, deregulation is unlikely in itself significantly to improve the efficiency of urban management of land and housing markets, or access to these by the poor. This has been recognised by Cohen (1992) and the World Bank (1993) in its Housing Sector Policy Paper, which claimed that 'nothing influences the efficiency and responsiveness of housing supply more than the legal and regulatory framework within which housing suppliers operate' (ibid.:11). The Bank recommended the introduction of regulatory audits listing the costs and benefits of selected regulations as a basis for reform and introduced such audits in Mexico in the early 1990s, to identify bottlenecks at the local level and design reforms to remove them. Initial work identified unnecessarily high building standards, large plot sizes, oversized roads, and complex titling procedures. It estimated that 25 per cent of housing costs in Mexico were attributable to clearly excessive local regulation. However, it appears that further more detailed audits have not yet been undertaken.

The Bank links these measures to the strategic objective of increasing urban productivity and emphasises the linkage between sectoral policies, such as housing, and the macro-economy. Its approach to regulatory reform has been questioned by Jones and Ward (1994:42) who suggest that the Bank has restricted its attention to the formal segment of the land market. They express doubts about the application of deregulation to the informal segment of the market, since this is already produced in an unregulated manner. While they acknowledge that removing selected planning and land-use regulations may decriminalise certain activities, hinder corrupt officials, and allow some capital to be invested, they claim that it will do little for the conditions under which the occupants or providers of land or housing compete for resources, and may also expose them to taxes and other costs from which they had previously been exempt. They indicate that the effect of the Bank's policy would be to formalise informal processes rather than deregulate land and housing markets, which they consider 'a curious form of radicalism in societies where 80 per cent of households already fend for themselves

in an unregulated manner'. However, this overlooks the fact that existing regulatory frameworks impose costs and conditions which discriminate against the poor and render them vulnerable to exploitation by unscrupulous developers and other providers of commercial shelter in the informal sector. While access to formal shelter undoubtedly involves costs in the form of taxes, these may also confer benefits if the costs are affordable and residents receive benefits in the form of services and facilities in return.

## Future prospects

The real questions should perhaps be: what aspects of the land and housing development process should be regulated and how should this be achieved? This in turn poses the question of what objectives regulations are intended to fulfil. Two possibly conflicting elements appear necessary in that new regulatory régimes will be required to stimulate domestic and external investment and also provide transparent and equitable guidelines for development led by others. In this context, the World Bank has a strong case for proposing that it should concentrate on identifying those regulations which create the most severe distortions in sector performance (World Bank 1993: 35), though the final objective should perhaps be broader than this.

Such changes will require a fundamental change in working practices, attitudes, and value systems and will therefore take time to take root. Addressing powerful vested interests will also be more challenging than preparing objective recommendations based on costs, since they represent the greatest constraint to change. One option in addressing this issue will be to reduce the number of steps required to obtain planning permission, as in Peru, and to make the processing of applications more transparent. Another way is to require the relevant authorities to process proposals within a specific timespan, failure to achieve which entitles the applicant to proceed. This approach has been adopted with great success in Mali.

Before changes can even begin, however, it will be important for policy makers and administrators to obtain accurate assessments of which components of the regulatory framework represent the greatest bottlenecks to the creation of more focused and appropriate frameworks. This, in turn, requires research into the various social and economic costs of existing planning regulations, standards, and administrative procedures. The regulatory audits proposed by the World Bank in Mexico represent an important step in this process and other recent research into building standards in Kenya and Zimbabwe has provided valuable findings (ITDG 2000). In particular, it appears that relatively few countries have undertaken reviews of regulatory frameworks and, of those that have, information on their adoption and implementation is difficult to obtain.

The ITDG research emphasised the need to obtain the views of residents on housing standards and found that many people were not aware of existing standards and, of those who were, many found them socially or financially inappropriate. For research focusing on planning standards, it is essential to include a wide range of stakeholders, since residents may be less able to appreciate the wider urban implications of personal preferences and it will be necessary to obtain agreement on the options for reform. However, present arrangements have created strong vested interests based on professional and personal considerations. Changing practices will therefore require that these interests be addressed and that proposals be formulated which can generate sufficient support to be implemented.

These issues will be addressed in two major research projects that are about to start with support from the UK Department for International Development (DFID). These will examine regulatory frameworks for upgrading of existing settlements and for affordable new settlements in India, Kenya, Lesotho, South Africa, Tanzania, and Turkey. Examples from other countries will be included as appropriate.

While economic factors will play a critical part in both studies, cultural, gender, and public health aspects will also be given prominence. In many countries, particularly in sub-Saharan Africa, plot sizes, for example, are traditionally much larger than in Asia. Equally important will be the need to distinguish between initial and full standards, and attention will be given to determining the minimum level sufficient to permit permanent occupation of a plot. This should be at standards affordable to the majority of people—using market costs as the yardstick—since standards which are significantly higher than this will be dependent upon subsidies.

A key consideration will be that both utilities and building standards can and should be designed to minimise initial entry costs to legal shelter—to lower the bottom rung of the housing ladder. This will need to be designed in ways which can facilitate subsequent upgrading and consolidation, using approaches such as that proposed in Davidson and Payne (2000).

The research will build on recent and current practice in several countries. India has regularly revised its planning standards in line with changing needs and circumstances, which are based on excellent research by the Housing and Urban Development Corporation. Peru has incorporated many of the recommendations of de Soto's research and introduced 'one-stop shops' to streamline the procedures for processing development proposals. Chile has also made considerable changes in its regulatory framework for urban development, though Smolka and Sabatini (2000) suggest that how these changes are assessed varies greatly according to one's ideological position. While they have undoubtedly improved the supply of housing and the efficiency of the housing market, many poor communities have been evicted from well-to-do areas, a result which the authors note would meet strong resistance in less autocratic societies where the rights of poor occupants are recognised as legitimate. The ultimate assessment of progress in regulatory reform will be by the poor themselves, since they are most directly affected by the conditions influencing access to officially sanctioned shelter.

Care will also be taken to distinguish between those elements on which relaxation would be desirable and those on which enforcement should concentrate. For example, relaxed attitudes to planning regulations and standards has enabled the urban poor in Turkey to obtain relatively easy access to land and services for many decades, yet a similar attitude to the enforcement of building regulations led to a heavy death toll and massive destruction when earthquakes struck in 1999.

Finally, the research will identify the public sector agencies at central, provincial, and municipal levels which are responsible for formulating and implementing regulatory frameworks and any changes necessary to meet basic needs and provide local flexibility. It is hoped that the projects will provide a series of matrices that can identify those specific bottlenecks which impose the highest social and economic costs. By addressing the constraints opposed to relaxing or replacing these, it is hoped that the costs of access to affordable and legal shelter for the urban poor can be significantly reduced and opportunities for them to use shelter as a vehicle for development increased.

## Preliminary recommendations

It is perhaps inadvisable to propose recommendations on the strength of research which has not even started. However, the research team will need to arrive at conclusions and recommendations on several key questions. The following ideas are therefore offered in the interests of exposing initial prejudices and encouraging feedback to help inform the research.



The first question concerns how decisions should be made regarding regulatory frameworks in fast-growing settlements in developing countries. The broad answer to this is that decisions should be made at the lowest administrative levels with sufficient competence to formulate and enforce the various regulations, standards, and procedures. However, such decisions should not be the sole preserve of public officials, most of whom have been educated to require inappropriate standards, but should include community groups, NGOs, and private sector developers. This will ensure that regulatory frameworks are closely related to what can be achieved for all sections of society on a long-term, sustainable, basis. It is also vital that regular audits be undertaken of the impact of specific regulations, standards, and procedures to see what changes are needed to reflect changing needs and resources.

Second, how will revised regulations, standards, and procedures lead to sustainable development? It is clear from experience that the urban poor have not benefited equally from the development of towns and cities in developing countries, despite their substantial contribution to them. Relaxing or abandoning many rules and regulations is unlikely, therefore, to cause additional suffering since the poor do not follow existing requirements. However, developing and enforcing regulatory frameworks which the poor themselves consider appropriate could considerably reduce the need for unplanned development and the vulnerability of the poor to exploitation. This will require professionals to listen to and learn from what the poor want and can afford, rather than making arbitrary decisions on their behalf.

Third, what kinds of regulatory frameworks are necessary and what kinds are not? The most relevant principle here is that regulation should be appropriate to the scale of the activity involved and its social, economic, and environmental impact. While a heavily polluting factory should, therefore, be subject to intense scrutiny from municipal and possibly even central government agencies, the opening of a microenterprise in a domestic dwelling is a matter primarily for the residents and their immediate neighbours. In the 1970s and 1980s, when the *gecekondus*, or unauthorised settlements, of Ankara were developed by the people who lived in them, it was common for a range of non-residential activities, such as shops and workshops, to operate within the neighbourhood, provided neighbours did not object. Municipal inspectors would intervene only if a number of people living near a particular activity made an official complaint, at which point the planning regulations would then be applied. The more formal subdivisions created by commercial developers since that period have weakened this self-regulating system, though it would seem to represent a reasonable approach in principle. The most important aspects for the development of new urban areas relate to the standards, regulations, and procedures by which the public realm is defined. Emphasis here should be on creating developments in which the maximum proportion of available land is allocated to private, revenue-generating uses, and the minimum area allocated to roads. Second, standards for the initial provision of public utilities should be based on the minimum level essential for permanent occupation of the land or dwelling. These should be designed with a view to the efficient and economic upgrading of utilities as resources become available. Third, standards and regulations for the development of individual plots should be restricted to aspects concerned with structural safety, such as earthquake resistance; all others should be advisory rather than mandatory, and presented in a form which is easily understood by all social groups. Lastly, procedures should be kept to the absolute minimum and focus on aspects of public concern.

Finally, if formal regulatory regimes are largely ineffective in informal urban communities, what forms of informal regulation are needed to protect people's well-being? For most situations, it is likely that community management will be the most appropriate level to resolve disputes over individual developments, assuming that the public realm has been developed in

accordance with the criteria outlined above. Recourse to outside agencies or authorities should be regarded as the exception and not the rule.

The above suggestions are based on experience rather than evidence. However, they seek to encourage regulatory frameworks that will enable the urban poor to obtain access to legal shelter and participate actively in the key decisions which affect their lives. Such an inclusive approach will be necessary if cities are to be socially, as well as economically and environmentally, sustainable.

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## The author

Geoffrey Payne is a housing and urban development consultant, and is a specialist on urban land tenure and property rights in developing countries. He is principal of Geoffrey Payne and Associates, which was established in 1995 and has undertaken consultancy, training, and research assignments in most parts of the world. He is currently directing two major international research projects; first, on innovative approaches to secure tenure for the urban poor and, second, on regulatory guidelines for affordable shelter. He is an External Associate Adviser to the British Council on built environment subjects and a member of the editorial boards of various journals. Contact details: Geoffrey Payne & Associates, 34 Inglis Road, Ealing Common, London W5 3RL, UK. <GKPayne@gra.org.uk>.